
(2009) 06 KAR CK 0028
In the Karnataka High Court
Case No : Misc. First Appeal No. 4389 of 2005

Nagaraju

APPELLANT

Vs

P.K. Nisar, Abdul Samad and United India Insurance Company
Ltd.

RESPONDENT

Date of Decision : 12-06-2009

Acts Referred:

Citation : (2009) 06 KAR CK 0028

Hon'ble Judges : N. Kumar, J;B. Sreenivase Gowda, J

Bench : Division Bench

Advocate : G.S. Venkata Subba Rao, for the Appellant; T. Mohan Kumar, for R3,
for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.—This is a claimant's appeal seeking for enhancement of compensation for personal injuries sustained in the motor vehicle accident,

2. For the purpose of convenience, the parties are referred as they are referred to in the claim petition.

3. The claimant Nagaraju, is a mechanic and working in a workshop. According to him he was earning Rs. 6,000/- p.m. He was aged about 21 years at the time of accident. He was a pillion rider of Hero Honda motor cycle bearing Reg, No. KA 09/E 4990, which was driven by S. Narayan. Auditor by profession. A lorry bearing Reg. No. KA 12A/4444 drove in rash and negligent manner coming from Bangalore side towards Mysore dashed against motor cycle both the rider and pillion rider fell down and sustained grievous injuries. The claimant sustained fracture of right shaft femur, right patella, right tibia and Fibula, Multiple abrasions over chest and lacerated wound over left side of law, right, elbow, right 2nd 3rd and 4th toes. He was immediately shifted to JSS hospital Mysore where he was operated, He preferred a claim petition seeking compensation of Rs. 5,69,000/- for the injuries sustained in the accident. The rider of the motor cycle

died on the spot, the aged parents have filed separate claim petition.

4. Though the respondents were duly served the driver of the lorry remained ex-parte. The owner did not file any statement of objections though appeared through his counsel. It is only the Insurance Company filed detailed written statement contesting the claim, However, they did not dispute the accident nor insurance coverage to the vehicle in question.

5. On the aforesaid pleadings, the Tribunal framed three issues in both the claim petitions. The claim petitions were clubbed together, common evidence was recorded and common Judgment was rendered.

6. The claimant herself was examined as P.W.2 and he also examined Dr. Suresh as P.W.3 and produced 14 documents, which are marked as Exs.P-1 to P-14. The respondent did not adduce any oral evidence.

7. The Tribunal, on consideration of the oral and documentary evidence on record, held that the accident was on account of rash and negligent driving by the driver of the lorry in question and thus the claimant established actionable negligence. Thereafter it took note of the evidence of the claimant and doctor. The medical records produced in the case and the opinion of the doctor discloses that disability to lower limb is 47%, thereafter, it awarded Rs. 55,000/- towards pain and sufferings, Rs. 23,134/- towards medical expenses, Rs. 2,900/- towards loss of income during treatment period and Rs. 6,000/- towards future medical expenses in all a sum of Rs. 87,034/- was awarded as global compensation with 6% interest from the date of petition till the date of payment. Aggrieved by the said award of the Tribunal, the claimant has preferred this appeal.

8. The learned Counsel for the appellant assailing the impugned award contends when the doctor has assessed the disability to lower limb at 47% atleast 15% of the disability should be taken for whole body and compensation should have been awarded under the heading loss of future income the Tribunal has not done. Similarly the claimant was inpatient for 29 days no amount is awarded towards conveyance, nourishment and attendant charges, As claimant was under treatment for four months no compensation is awarded towards loss of amenities and loss of marriage prospects, The compensation awarded towards loss of future medical expenses was on the lower side as well as loss of earning during the period of treatment; therefore he seeks for enhancement of compensation.

9. Per contra the learned Counsel for the respondent supported the impugned award and opposed for enhancement.

10. The material on record discloses that the claimant was a young, hale and healthy person aged about 21 years and he was a mechanic by profession. He sustained four fractures in the accident i.e., fracture of right Shaft Femur, right Patella, right Tibia and Fibula, multiple abrasions over chest and lacerated wound over leftside of Jaw, right elbow, right 2nd, 3rd and 4th toes. He underwent operation, The doctor has deposed that a rod was inserted, if pains come they

have to be removed. The aforesaid injuries though not prevent him from doing any mechanic works certainly it would come in the way of performing the mechanic work as he was doing earlier to the accident. The doctor has deposed the disability to lower limb at 47% and he was inpatient for 29 days, normally he could not attend the work for four months after discharge. Having regard to the injuries sustained in the accident Rs. 55,000/- awarded towards pain and sufferings by the Tribunal is on the lower side, as the claimant has sustained four fractures apart from several other injuries, we award another sum of Rs. 20,000/- under the same heading. Even if 15% disability for the whole body is taken, and applied the multiplier of 18, by taking the income of the claimant at Rs. 3,000/- p.m., he is entitled for 97,200/- towards loss of future income which could be rounded of to Rs, 1,00,000/-. He was inpatient for 29 days, required constant attention, The Tribunal has not awarded any compensation towards conveyance, nourishment and attendant charges, and in those circumstances we award Rs, 15,000/- under the aforesaid head. The Tribunal has awarded only a sum of Rs. 2,900/- towards loss of income during treatment period, we would like to award another sum of Rs. 15,000/- in addition to what has been awarded by the Tribunal. The Tribunal has awarded Rs. 6,000/- towards future medical expenses, the claimant has to undergo operation for removing implant and we award another sum of Rs. 15,000/- towards future medical expenses. The claimant has sustained four fractures and the doctor has assessed the disability at 47% to the lower limb. He has to suffer severe pain throughout his life, In those circumstances, it is proper to award a sum of Rs. 25,000/- towards loss of future amenities, as the Tribunal has not awarded any amount under the aforesaid heading, The claimant was a young boy of 21 years, these four fractures certainly affected his marriage prospects, and thus we award Rs. 10,000/- towards the same.

11. Thus the claimant would be entitled to additional compensation of Rs. 2,00,000/- in addition to what has been awarded by the Tribunal Hence, we pass the following:

ORDER

The appeal is allowed in part. The claimant is entitled for compensation of Rs. 2,00,000/- with interest at 5% p.a. from the date of petition till the day of payment. No costs.

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12. The insurance company which is the third respondent in the appeal, its name is not shown in the cause title of the final order. For inclusion of the third respondent, this, application is filed.

13. The application is allowed. The order to be corrected showing the name of the insurance company.