

(2016) 06 KAR CK 0124
In the Karnataka High Court
Case No : MFA No. 10480 of 2011(MV)

Naishar A.U. S/o Usman

APPELLANT

Vs

New India Assurance Co. Ltd., Bangalore

RESPONDENT

Date of Decision : 15-06-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2016) AAC 1823

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : Venkategowda K, Advocate, for the Petitioners; M. Narayanappa, Advocate, for the Respondents No. 1; Notice dispensed V.C.O Dated : 27.08.2015, for the Respondents No. 2

Final Decision : Partly Allowed

Judgement

B. Manohar, J.—Appellant is the claimant, being not satisfied with the quantum of compensation awarded in the judgment and award dated 14-7-2011 made in MVC No. 5361/2008 passed by the VI Additional Judge, Court of Small Causes and Motor Accident Claims Tribunal, Bangalore (hereinafter referred to as 'the Tribunal' for short) filed this appeal seeking enhancement of compensation.

2. The appellant had filed a claim petition contending that on 29-5-2008 at about 9.30 p.m., while he was proceeding in his motorbike bearing Registration No. KA-05/HB-5831 on Kanakapura Road, near Jyothi School, a lorry bearing Registration No. KA-42/1350 driven by its driver in a high speed and in rash and negligent manner, dashed against the motorbike. Due to the said impact, the claimant fell down and sustained grievous injuries. Immediately after the accident he was shifted to S.M. Hospital, after first aid, he was shifted to Apollo Hospital, wherein he took treatment as inpatient for a period of 50 days and undergone four surgeries. He claims that he has spent more than Rs. 5,00,000/- towards medical expenses. At the time of accident, he was studying final year

Bachelor of Computer Application (?BCA? for short) at Oxford College of Science, J.R. Nagar. In view of the accidental injuries sustained, the claimant was out of education for one year. He lost the fees for that year. First respondent being the insurer and the second respondent being the insured of the offending vehicle, are liable to compensate the claimant jointly and severally and sought for compensation of Rs. 25,00,000/-.

3. Though the owner of the vehicle was served with notice, he remained unrepresented. The insurance company filed written statement denying the entire averments made in the claim petition and also contended that due to the rash and negligent riding of the motorbike, the claimant has sustained injuries. Further contended that the driver of the offending vehicle did not possess the valid and effective driving license as on the date of accident. There is breach of conditions of the policy. The compensation claimed is exorbitant and sought for dismissal of the claim petition as against the insurance company.

4. On the basis of pleadings of the parties, the Tribunal framed the necessary issues. The claimant in order to prove his case examined himself as P.W. 1 and got marked the documents as Exs. PI to Ex. P22. The doctors who treated the claimant was examined as P.W. 2 and P.W. 3. On behalf of the respondents, none of the witnesses were examined nor any documents have been marked.

5. The Tribunal after appreciating the oral and documentary evidence let in by the parties and taking into consideration the IMV report, copy of the sketch, mahazar and copy of the complaint and other relevant records held that the accident occurred due to the rash and negligent driving of the offending lorry by its driver. The claimant is entitled for compensation.

6. With regard to quantum of compensation is concerned, the claimant has sustained (a) rupture of urethra; (b) fracture of pelvis; (c) injury to anterior cruciate ligament and medial collateral ligament tear of his right knee, internal degloving of skin over right thigh. He was admitted to Apollo Hospital on 25-8-2008. He has undergone four surgeries to urethra on 26-8-2008 and on various dates. Under epidural anesthesia, he underwent cystoscopy; perineal anastomotic urethroplasty, He was discharged from hospital on 2-9-2008. Thereafter he had taken follow-up treatment for a period of another 8 months. For degloving injuries, skin grafting has been made. Taking into consideration the injuries sustained and the medical bills submit and in view of the fracture of urethra erectile dysfunction, the Tribunal has awarded a sum of Rs. 9,11,500/- towards medical and incidental charges; Rs. 1,50,000/- towards pain and suffering; Rs. 75,000/- towards loss of amenities in life; Rs. 50,000/- towards loss of marriage prospects; Rs. 25,000/- towards attendant charges and a sum. of Rs. 3,00,000/- towards future medical expenditure. In all, the Tribunal has awarded compensation of Rs. 15,11,500/- with interest at the rate of 6% p.a. on Rs. 12,11,500/-. Since the driver of the offending lorry was possessing the valid and effective driving license as on the date of accident, the liability was fastened on the insurance company to compensate the claimant. The appellant being not

satisfied with the quantum of compensation filed this appeal seeking enhancement of compensation.

7. Sri. Venkategowda, learned counsel appearing for the appellant contended that the quantum of compensation awarded by the Tribunal is on the lower side. While discharging from the hospital, the doctor has clearly prescribed that the appellant has to use cathedral pipe for the urinary discharge and he has to change the same once in two days. He has to use the same throughout his life. The cost of one Indian pipe is Rs. 50/- and Rs. 600/- for imported pipe. But no compensation has been awarded for the expenditure incurred for the said pipe. In view of the injury to urethra, there is erectile dysfunction and that will affect the marriage prospects. A here sum of Rs. 50,000/- awarded towards marriage prospects is on the lower side. Further, with that disability the claimant has to lead his remaining life. Hence, Rs. 75,000/- awarded towards loss of amenities in life is also on the lower side. He was inpatient for a period of 56 days after discharge, he had taken follow-up treatment for a period of 8 months. A sum of Rs. 25,000/- awarded towards attendant charges is on the lower side. Further, the claimant is a student of final year BCA. Since he was inpatient for a period of 56 days and had taken follow-up treatment for a period of 8 months, he lost one year, thereby he lost fees of that year. Hence, he submit that the claimant is entitled for higher compensation and sought for enhancement of compensation.

8. On the other hand, Sri. M. Narayanappa, learned counsel appearing for the first respondent argued in support of the judgment and award passed by the Tribunal and contended that taking into consideration the injuries sustained and sufferings undergone by the claimant, the Tribunal has awarded higher compensation. No document has been produced to show that he has undergone any surgery subsequent to discharge from the hospital. The Tribunal has awarded a sum of Rs. 3,00,000/- towards future medical expenditure. Hence, the claimant is not entitled for any enhanced compensation and sought for dismissal of the appeal.

9. I have carefully considered the arguments addressed by the learned counsel for the parties and perused the judgment and award, oral and documentary evidence adduced by the parties and other relevant records.

10. Having heard the learned counsel for the parties, the only point that arises for consideration in this appeal is whether the quantum of compensation awarded by the Tribunal is in accordance with law or requires enhancement?

11. Occurrence of the accident due to the actionable negligence on the part of driver of the offending lorry, injuries sustained by the claimant, the fact that he was inpatient in the hospital and undergone four surgeries are not in dispute. The dispute is only with regard quantum of compensation. In view of rupture of urethra, fracture of pelvis, injury to anterior cruciate and medial, collateral ligament tear of right knee, the claimant has suffered permanent disability. He has to lead his remaining life with that disability. The claimant has undergone

four surgeries for rupture of urethra. In view of four surgeries there is erectile dysfunction. Though the doctor who has treated the claimant in his evidence has deposed that the claimant requires another sum of Rs. 5,00,000/- towards one more operation. He opined that even after the operation there is no guarantee that erectile dysfunction would be cured. For that purpose, the Tribunal has awarded a sum of Rs. 3,00,000/- towards future medical expenditure. For the injuries sustained and sufferings undergone, the Tribunal has sufficiently compensated the claimant. However, no compensation has been awarded towards loss of education career of the claimant for a period of one year. Since he was a student of outside Karnataka, he has spent more than Rs. 1,00,000/- for his education for that relevant year. The claimant is entitled to a sum of Rs. 50,000/- towards loss of education fees for a period of one year. A sum of Rs. 50,000/- awarded towards marriage prospect is lower side. The doctor himself has opined that even after surgery there is no guarantee for cure of erectile dysfunction. Hence, the claimant is entitled to another sum of Rs. 50,000/- towards loss of marriage prospects. Further, "even after discharge from the hospital he has to go to hospital for two months. Hence he is entitled to another sum of Rs. 25,000/- towards attendant charges in addition in Rs. 25,000/- awarded by the Tribunal. Further he has to lead his remaining life with that disability and he has to use catheter pipe for passing urine. Hence he is entitled for another sum of Rs. 25,000/- towards loss of amenities in addition to Rs. 75,000/-. In all, the claimant is entitled to enhanced compensation of Rs. 2,00,000/- in addition to a sum of Rs. 15,11,500/- awarded by the Tribunal. Accordingly, pass the following:

ORDER

12. The appeal is allowed in part. The judgment and award dated 14-7-2011 passed in MVC No. 5361/2008 on the file of the VI Additional Judge, Court of Small Causes, Bengaluru and Motor Accident Claims Tribunal is modified. The appellant is entitled to enhanced compensation of Rs. 2,00,000/- with interest at the rate of 6% p.a. in addition to a sum of Rs. 15,11,500/- awarded by the Tribunal.