

(2012) 01 KAR CK 0166

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 7335 of 2010 (MV)

Nanjundegowda

APPELLANT

Vs

C.N. Rangegowda and The Manager, The National Insurance
Co. Ltd.

RESPONDENT

Date of Decision : 04-01-2012

Acts Referred:

Citation : (2012) 01 KAR CK 0166

Hon'ble Judges : A.S. Pachhapure, J

Bench : Single Bench

Advocate : Chethan B, for the Appellant; M.U. Poonacha, for R2, R1 Notice
Dispensed, for the Respondent

Final Decision : Allowed

Judgement

A.S. Pachhapure

1. The appellant dissatisfied with the amount of compensation awarded by the Tribunal for the injuries sustained in a motor vehicle accident has filed this appeal seeking enhancement.

2. The facts reveal; that on 9.1.2007 the appellant, was waiting at Hosur Gate to board a bus. At that time, the rider of the Motor Cycle bearing No.KA-13-R-5591 came in a rash and negligent manner and hit the appellant. Thereby, the appellant sustained fracture of his left hand and also sustained other injuries He was shifted to the Hospital at Hassan and thereafter, having suffered disability claimed the compensation. The respondents appeared before the Tribunal and contested the claim. During the enquiry, the appellant examined himself as PW.1 and a witness PW.2 and in the evidence got marked the documents Exs.P. 1 to P.46. The Tribunal held actionable negligence on the part of the driver of the motor cycle and after considering the material placed on record, granted total compensation of Rs. 99.300/- with interest at 6% p.a. Dissatisfied with the amount of compensation, the personnel appeal has been filed.

3. I have heard the learned counsel for both the parties. The point that, arise for my consideration is:

Whether the appellant is entitled to enhanced compensation? If so, to what extent?

4. The Tribunal has assessed the income of the appellant at Rs. 3,000/- p.m. He is an agriculturist. The accident is of the year 2007. Even in respect: of a labour, the Apex Court took the income at Rs. 3,000/- p.m. in respect of an accident in the year 2001. Hence, I think it just and proper to consider and assess the income at Rs. 3,750/-. The Doctor has deposed in his evidence that the appellant has suffered disability to an extent of 25% to the left upper limb. But the Tribunal has considered the disability at 15% to the whole body. This approach of the Tribunal is erroneous. In respect of disability, 1/4 of the disability of the upper limb has to be considered as the disability for the whole of the body. Thereby, the disability has to be considered at 6.5%. So, adopting the multiplier of 14 with the income at Rs. 3,750/- and disability at 6.5%, $(3750 \times 6.5 \times 14 \times 12/100 = 40,950)$, the total loss of future Income would be Rs. 40,950/-. So, an excess amount of Rs. 5,850/- has been awarded under this head.

5. Though the Tribunal granted compensation of Rs. 21,500/- towards medical expenses, has not granted any compensation for food, nourishment; attendant charges etc., I think it would be just and proper to grant Rs. 5,000/- under this head.

6. The appellant has sustained fracture of left hand and the Tribunal has granted only Rs. 10,000/- towards pain and suffering. This is on the lower side and hence, I think it just and proper to grant Rs. 20,000/- for pain and suffering for the fracture sustained.

7. Considering the income at Rs. 3,750/- and the probable period of assuming the normal duties as three months, the loss of income during this period has to be considered at Rs. 11,250/-. But the Tribunal has granted only Rs. 2,000/- and hence, the appellant is entitled to an additional sum of Rs. 9,250/- under this head. So, deducting the excess amount of Rs. 5,850/- granted towards the future loss of income from the additional compensation of Rs. 24,250/- the appellant is entitled to a sum of Rs. 18,400/- with interest at 6% p.a. from the date of petition till payment. Hence. I answer the point in affirmative and proceed to pass the following:

ORDER

The appeal is allowed in part. In addition to the compensation of Rs. 99,300/-, the appellant is entitled an additional compensation of Rs. 18,400/- with interest at 6% p.a. from the date of petition till payment. The appellant is permitted to withdraw the enhanced amount after deposit.