

(2011) 03 KAR CK 0287
In the Karnataka High Court
Case No : MFA No. 1416 of 2009

Narasimha Murthy

APPELLANT

Vs

M.J. Vargis and The United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 24-03-2011

Acts Referred:

Citation : (2011) 03 KAR CK 0287

Hon'ble Judges : H.S. Kempanna, J

Bench : Single Bench

Advocate : Sumanth L. Bharadwaj, Iqbal Ahmed Khan and Asharaf Ali and Car Assts, for the Appellant; P.B. Raju, for R2, for the Respondent

Judgement

H.S. Kempanna, J.—Though this matter is listed for admission with consent of the learned Counsel for the respective parties and as records have also been received, it is taken up for final disposal.

2. This appeal is by the claimant seeking for enchantment of compensation awarded in respect of the injuries sustained in a motor accident.

3. The brief facts of the case are:

The Appellant/claimant instituted the claim petition before the Tribunal praying for grant of compensation in respect of the personal injuries, which he sustained in the motor accident that took place on 04.02.2001 at 3.00 p.m. near Nandihalli gate located on Tumkur-Chelur road involving the car bearing Reg. No. KA-09/M.3329 owned by first Respondent and insured with the second Respondent at the relevant point of time. In the impugned accident he sustained severe injuries, which comprised of fractures, for which he took treatment in the hospital for a period of one month and underwent one surgery. He spent huge money for the treatment of injuries. Despite the same, he is not completely cured of the injuries, due to which, he is unable to carry on his avocation as agriculturist, which has resulted in lose of income to him. Hence, on all these grounds he sought for grant of compensation from the Respondents.

4. After service of notice, the first Respondent-owner remained absent. Hence, he was placed ex-parte. The second Respondent -Insurer appeared and contested the claim of the Petitioner. It was contended that the accident in question did not take place due to the fault of the driver of the offending car. On the other hand it has taken place due to the negligence of the claimant himself. They further contended that the driver of the offending car did not possess any valid and effective licence, as such there is breach of terms and conditions of the policy. They also denied all other averment made by the claimant in his petition and contended that they are not liable to pay any compensation accordingly sought for dismissal of the petition.

5. On the basis of the above pleadings, the Tribunal framed in all two issues.

6. The claimant in support of his case got himself examined as PW.1 and the doctor who treated him as PW.2. He produced 11 documents, which came to be marked as Exs.P.1 to P.11 and also six documents, which came to be marked as Exs.C.1 to C.6. On behalf of the Respondents, they did not lead any oral evidence nor got produced any documents in support of their case.

7. The Tribunal on considering the oral and documentary evidence on record held that the accident in question has taken place solely on account of the fault of the driver of the offending car and accordingly, the claimant has established actionable negligence. Further the Tribunal looking to the evidence of the claimant and documents placed on record has awarded a total compensation of Rs. 1,41,000/- with interest at 6% per annum from the date of petition till realisation under various heads. It further saddled the liability of payment of compensation on the second Respondent/insurer.

8. The Appellant/claimant being aggrieved by the quantum of compensation awarded is in appeal before this Court.

9. The learned Counsel for the Appellant/claimant submits that the Tribunal has not awarded just and reasonable compensation to the claimant under all heads despite the evidence of the claimant, doctor who has examined him and the documents placed on record. Hence a case for enhancement is made out.

10. Per contra, the learned Counsel appearing for the insurer supported the impugned judgment and award of the Tribunal.

11. Taking the rival submission into consideration and the papers now made available at the time of bearing, the point that arises for my consideration is:

Whether Appellant/claimant has made out a case for enhancement of compensation?

12. The facts are not in dispute. The Appellant/claimant having met with accident, injuries sustained, treatment taken and the amount spent for the same are also not in dispute. It is the case of the claimant that in the impugned accident he has sustained fracture to his left leg and nasal bone. He took

treatment in the hospital for about one month during which period he underwent one surgery in which the fracture sustained was set right by fixing plates, screws and another surgery for removal of the same. He spent huge money for the treatment of the injuries. The testimony of the claimant is fortified from the evidence of the evidence of PW.2 medical Officer and the wound certificate, which is at Ex.P.4 placed on record. A perusal of the evidence of PW.2 -Medial Officer reveals that the claimant has sustained fracture of his nasal bone, fracture of both bones of left leg and other injuries. It further discloses that the fracture of left leg has been set right under a surgery and the claimant has disability to an extent of 15% to his left lower limb. Taking all this into consideration, the Tribunal has awarded a sum of Rs. 46,000/- towards injury, pain and suffering. The same appears to be just and proper and does not call for any modification. Further the Tribunal has awarded a sum of Rs. 6,200/- towards medical expenses relying upon the medical bills which are at Ex.P.9 aeries coupled with prescription which are Ex.P.10. The Tribunal accepting the geniuses of the bill produced has awarded the said sum. No grievance in respect of the same made before this Court. Hence, the same also does not call for any modification. Further the Tribunal has awarded only a sum of Rs. 3,000/- towards conveyance, nourishment and attendant charges. As already pointed out the claimant has stated that he has taken treatment in the hospital for a period of one month. He sustained fracture of both bones of his left leg and also nasal bone. That follows that the claimant must have taken follow up treatment after he has been discharged from the hospital. It further follows that he must have spent considerable amount for the same. Therefore in the facts and circumstances, having regard to the date of the accident which took place on 4.02.2001, the claimant is awarded a further sum of Rs. 2,000/- towards conveyance, nourishment and attendant charges in addition to Rs. 3,000/- awarded by the Tribunal. Further the Tribunal has awarded a sum of Rs. 12,000/- towards loss of amenities. The claimant has sustained fracture of both bones of left leg and nasal bone. Therefore, having regard to the nature and degree of the injuries sustained which comprised of fractures as has been adverted to above and taking into consideration that the claimant has to suffer discomfort and unhappiness in future also he is awarded a sum of Rs. 15,000/-towards loss of amenities in addition to Rs. 12,000/-awarded by the Tribunal. Thus the claimant is in all entitled to a sum of Rs. 27,000/- towards loss of amenities.

Next aspect that dwells for consideration in the determination of the income of the claimant, compensation to be awarded towards loss of income during laid up period and loss of future income. The claimant has claimed that he is aged 29 years, agriculturist cum milk vendor, earning more than Rs. 5,000/- per month. He has not placed any clinching material to substantiate his claim in respect of his income. Therefore, the Tribunal having regard to his age, avocation and date of the accident has determined his income at Rs. 3,000/- per month. In my view, the same appears to e just and reasonable and does not call for any modification/ interference in this appeal. The Tribunal taking his income at Rs. 3,000/- per

month has awarded a sum of Rs. 9,000/- towards loss of income during laid up period for a period of three months. In my view, having regard to the nature of injuries which comprises of fracture sustained, the claimant could not have attended to his normal work for a period of four months. Therefore he should be compensated for the said period towards loss of income. Taking this into consideration, the claimant is further awarded a sum of Rs. 3,000/- towards loss of income during laid up period i.e. in all sum of Rs. 12,000/- for four months at the rate of Rs. 3,000/- per month. Last aspect that falls for consideration is the loss of future income. The evidence of PW.2 Medical Officer reveals that the claimant has functional disability of the lower limb to an extent of 15% But he has not stated what would be permanent disability to the whole body when compared to the disability to the particular limb. However the Tribunal has taken the disability at 10% and has awarded a sum of Rs. 64,800/- taking his income at Rs. 3,000/- per month and by applying the multiplier of 18. The same in the facts and circumstance appears to be just and reasonable and does not call for any modification. Thus the claimant in all is entitled to a sum of Rs. 1,61,000/- with interest at 6% per annum from the date of petition till realisation as against Rs. 1,41,000/- with interest at 6% per annum from the date of petition till realisation awarded by the Tribunal. The enhanced compensation comes to Rs. 20,000/- with interest at 6% per annum from the date of petition till realisation. The break up of the compensation awarded is as under:

1. Towards loss of dependency

Rs. 46,000/-

2. Towards loss of medical Medical expenses

Rs. 6,200/-

3. Towards conveyance, Nourishment and Attendant charges,

Rs. 5,000/-

4. Towards of income during laid Up period

Rs. 12,000/-

5, Towards loss of amenities

Rs. 27,000/-

6. Toward loss of future income

Rs. 64,800/-

Total

Rs. 1,61,000/-

Accordingly, appeal has to succeed in part.

13. In result for the foregoing reasons, I proceed to pass the following:

ORDER

(i) Appeal is allowed in part.

(ii) The impugned judgment and award passed by the Tribunal is modified and the claimant is awarded a total compensation of Rs. 1,61,000/- with interest at the rate of 6% per annum from the date of petition till realisation as against Rs. 1,41,000/- with interest at the rate of 6% per annum from the date of petition till realisation. The enhanced compensation comes to Rs. 20,000/- (Rs. 1,61,000/- Rs. 1,41,000) with interest at the rate of 6% per annum from the date of petition till realisation.

(iii) Second Respondent who is the Insurer of the offending vehicle shall deposit the entire enhanced compensation with interest before the Jurisdictional Tribunal within four weeks from the date of receipt of the copy of the judgment and award.

(iv) On such deposit, the entire enhanced compensation with interest is ordered to be released in favour of the Appellant/claimant.

Office to draw the award according.