

(2015) 01 KAR CK 0357

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 1493 and 5118/2010 (MVC)

National Insurance Co. Ltd. and Others

APPELLANT

Vs

Nagarajappa and Others

RESPONDENT

Date of Decision : 05-01-2015

Acts Referred:

Citation : (2015) 01 KAR CK 0357

Hon'ble Judges : A.V. Chandrashekara, J.

Bench : Single Bench

Advocate : C.M. Poonacha, for the Appellant; B.M. Siddappa, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

A.V. Chandrashekara, J.—MFA No. 1493/2010 is filed by the insurer on the ground that unnecessarily liability has been imposed on the insurer by the MACT, Chitradurga. Connected appeal MFA No. 5118/2010 is filed by claimant seeking enhancement of compensation. Entire lower court records has been called for.

2. Heard the learned counsel appearing for the parties.

3. Case of the insurer is that claimant was an unauthorized passenger in the offending bus and therefore, insurer is not liable to indemnify the claimant. He was injured in the accident. Evidence on record would go to show that the claimant got into the offending bus from Hosadurga to go to a particular place and when the conductor of the bus asked him to pay charges, he found that he had not brought money and therefore, he got down from the bus and while claimant was getting down from the bus, all of a sudden driver of the bus drove the same in a rash and negligent manner, as a result of which he sustained severe injuries to body. This is forthcoming from the very First Information Report lodged by him before the police. Ex.P-2 is FIR lodged by him at an undisputed point of time on 02.07.2005 at about 8.30 p.m. His intention was not to travel as an unauthorized passenger and he was a bona fide passenger; but

on checking his pocket he could not find any money and therefore, he wanted to get down from the bus. In the meanwhile, the accident took place. From the evidence it is found that claimant was not an unauthorized passenger.

4. Insofar as the quantum of compensation is concerned, one has to look into the nature of injuries sustained by him. Ex.P-14 is the discharge summary issued by the C.G. Hospital, Davanagere. He had been admitted on 08.07.2005 and was discharged on 29.07.2005. He had suffered fracture of both bones middle third of right forearm and oral reduction was done. Internal fixation under general anesthesia was done on 19.07.2005. Admittedly, he was treated in the hospital for 21 days as an inpatient. He was hardly aged about 34 years as on the date of accident.

5. A sum of Rs. 10,000/- only is awarded by the Tribunal under the head of "pain and suffering" and same is on the lower side and in view of the gravity of the injuries sustained by the claimant, a sum of Rs. 25,000/-, if awarded, it would meet the ends justice and same is hereby awarded.

6. A sum of Rs. 3,000/- is awarded towards conveyance, nourishment and attendant charges. This is much on the lower side and in view of the same, a sum of Rs. 10,000/- would be reasonable amount under the head of "incidental charges covering conveyance charges, attendant charges, nourishment and diet". Hence, same is hereby awarded.

7. A sum of Rs. 1,540/- is awarded under the head of "medical expenses". Though he was treated in a government hospital, many government hospitals will not have all medicines to treat the patients. Therefore, claimant was expected to purchase many medicines from outside. Hence, a sum of Rs. 1,540/- awarded by the Tribunal is quite insufficient and a sum of Rs. 10,000/- is awarded, under the head of "medical expenses".

8. Internal fixation of plate and screws has been done on both bones and this needs to be removed only by operating claimant. Hence, a sum of Rs. 12,000/- is required to be awarded for future medical expenses and same is hereby awarded under the head "future medical expenses".

9. No compensation has been awarded under the head of "loss of income during laid up period". In view of the gravity of injuries sustained, claimant would have been in rest for atleast 3 months and even, if his monthly income is assessed at Rs. 3,000/- per month, it would be Rs. 9,000/-. Hence, it would be reasonable to award Rs. 9,000/- under the head of "loss of income during laid up period" and same is hereby awarded.

10. A sum of Rs. 54,000/- is awarded by the Tribunal under the head of loss of future income" based on the physical disability. Disability is assessed at 10% and therefore, loss of future income is assessed at Rs. 3,600/-. Instead of multiplier 18, 15 is applied. If same is multiplied by 16, total award amount that would be payable to claimant becomes Rs. 57,600/- as against Rs. 54,000/- awarded by

the Tribunal.

11. In view of gravity of injuries sustained, claimant would have come across certain some discomforts in life. Hence, if a sum of Rs. 20,000/- is awarded under the head "loss of amenities", it would meet the ends of justice and same is hereby granted.

12. Thus in all claimant would be entitled to following compensation as under:

13. Thus, claimant is entitled for enhance compensation of Rs. 1,43,600/- instead of Rs. 71,540/- as awarded by the Tribunal. He is entitled for interest @ 9% p.a. instead of 6% p.a.

ORDER

(i) Appeal is hereby allowed in part.

(ii) The claimant is entitled for enhanced compensation of Rs. 1,43,600/- instead of Rs. 71,540/- with interest @ 9% p.a. from the date of petition till realization.

(ii) Appeal of the insurer is dismissed and appeal of the claimant is allowed.

(iii) Judgment and award of Tribunal stands modified accordingly.

(iv) In the event of deposit, entire enhancement be released in favour of the claimant.