

**(2000) 09 KAR CK 0031**

**In the Karnataka High Court**

**Case No :** Miscellaneous First Appeal No. 3500 of 2000

National Insurance Company Limited, Gowripet, Kolar

APPELLANT

Vs

Krishnappa and another

RESPONDENT

**Date of Decision :** 19-09-2000

**Acts Referred:**

**Citation :** (2001) ACJ 1105 : (2000) 6 KarLJ 575

**Hon'ble Judges :** V.G. Sabhahit, J; R.V. Raveendran, J

**Bench :** Division Bench

**Advocate :** Sri O. Mahesh, for the Appellant; Sri S.P. Shankar, for the Respondent

## **Judgement**

R.V. Raveendran, J.—The insurer who had been permitted to contest the claim proceedings u/s 170 of the Motor Vehicles Act, 1988 by the Tribunal is the appellant in this appeal against the judgment and award dated 27-6-2000 in M.V.C. No. 26 of 1998 on the file of the Principal Civil Judge and Motor Accident Claims Tribunal, Kolar. The first respondent herein was the claimant in the said claim petition. The 2nd respondent herein who is the owner of the vehicle involved in the accident was the first respondent before the Tribunal. The appellant herein was the 2nd respondent. The 3rd respondent before the Tribunal who was the driver has not been impleaded in this appeal.

2. The claimant filed M.V.C. No. 26 of 1998 alleging that on 17-7-1997 he was riding a scooter bearing No. KA-05/E-7892 near Chatrak-odihalli on the road leading from Kolar - Takel with one C.M. Venkatareddy as a pillion rider; that at that time, a school tempo van bearing No. MEB-3191 came from the opposite direction being driven in a rash and negligent manner; and that the said tempo suddenly came to the wrong side of the road and dashed against the scooterist who was driving the said scooter on the correct side of the road cautiously. Consequently, the rider and pillion rider of the scooter sustained grievous injuries. He therefore filed the said claim petition claiming compensation of Rs. 10 lakhs. Both the owner and insurer resisted the claim petition. The Tribunal framed appropriate issues in regard to the occurrence of the accident, sustaining

of injuries, negligence and quantum of compensation. The issues framed by the Tribunal are as follows:

1. Whether the petitioner proves that he sustained grievous injuries in the motor accident that occurred on 17-7-1997 at about 5 p.m., at Chatrak-odihalli on the road leading from Kolar - Takel while he was going on his scooter bearing No. KA-05/E-7892 along with pillion rider?
2. Whether the petitioner further proves that the said accident occurred due to the rash and negligent driving of the driver of the tempo No. MEB-3191?
3. Whether the 2nd respondent proves that the alleged accident occurred due to the rash and negligent riding of the scooter by the petitioner himself?
4. Whether the petitioner is entitled to compensation, if so, to what amount and from whom?

#### ADDITIONAL ISSUES

1. Whether the petition is bad for non-joinder of necessary parties namely owner, driver and insurance company of scooter bearing Registration No. KA-05/E-7892?
2. Whether the 3rd respondent proves that the accident was caused due to rash and negligent driving of the scooter No. KA-05/E-7892?
3. Common evidence was recorded in M.V.C. No. 26 of 1998 filed by the 1st respondent herein and M.V.C. No. 28 of 1998 filed by the pillion rider. The claimant in M.V.C. No. 26 of 1998 was examined as P.W. 1 and the pillion rider who was the claimant in M.V.C. No. 28 of 1998 was examined as P.W. 2. The two Doctors who treated the claimant were examined as P.Ws. 3 and 4. Exs. P. 1 to P. 355 were marked on behalf of the petitioner. On behalf of the respondents no evidence was let in.
4. After appreciating the evidence, the Tribunal allowed both the petitions by its common order dated 27-6-2000. The Tribunal held that the accident occurred solely due to rash and negligent driving of the driver of the van bearing No. MEB-3191; that the scooterist (claimant) was in no way responsible for the accident; it also held that the claimant had sustained grievous injuries in the said accident. It determined the total compensation as Rs. 9,57,030/- and awarded the same with interest at 9% per annum from the date of petition till the date of realisation. The compensation has been awarded under the following heads:

Rs.

1.

Loss of future earning

7,56,000-00

2.

Medical expenses

1,13,030-00

3.

Conveyance charges

17,000-00

4.

Towards pain and sufferings

16,000-00

5.

Loss of amenities

25,000-00

6.

Attendants charges

05,000-00

7.

Shortened expectation of life

20,000-00

8.

Nourishment food

05,000-00

Total

9,57,030-00

5. Feeling aggrieved, the insurer (the 2nd respondent before the Tribunal) has filed this appeal contending that the finding regarding negligence is erroneous. According to the appellant, the Tribunal ought to have held that there was contributory negligence on the part of the claimant also. The appellant further contends that the Tribunal committed an error in assessing the income of the claimant as Rs. 4,500/- p.m. and in arriving at the loss of future earning capacity at Rs. 7,56,000/-. Hence, on the grounds urged, the following questions arise for consideration:

(1) Whether the finding of the Tribunal that the accident occurred solely due to rash and negligent driving of the tempo bearing No. MEB-3191 and that there was no negligence on the part of the scooterist is erroneous?

(2) Whether the compensation awarded is excessive and requires to be interfered with?

6. Point No. 1.-Both P.W. 1 who is the scooterist and P.W. 2 who is the pillion rider are the eye-witnesses to the accident. They have stated in their evidence that on 17-7-1997, they were proceeding on the scooter from Kolar to Cholagatta Village; that the scooter was being driven by the claimant in a careful manner and the scooter was proceeding on the left side of the road; and when the scooter was proceeding near Chatrak-odihalli, a matador van bearing no. MEB-3191 came from the opposite direction being driven at a high speed and in a rash and negligent manner, came to the wrong side of the road and dashed against the scooter. The pillion rider, P.W. 2 was not even cross-examined by the respondents before the Tribunal. They did not also choose to examine the driver of the van to prove that there was any contributory negligence on the part of the scooterist. On the basis of the evidence on record, the Tribunal has rightly come to the conclusion that the accident occurred due to rash and negligent driving of the school van bearing No. MEB-3191. The appellant has not been able to point out any infirmity in the said finding. Hence, we answer Point No. 1 in the negative.

7. Point No. 2.-At the time of accident, the claimant was an agriculturist and aged 40 years. The evidence of Dr. Ajit Benedic Rayan (P.W. 3) who is Medical Officer in HOSMAT Hospital, Bangalore and Dr. Shanmugam (P.W. 4), Senior Specialist, SNR Hospital, Kolar read with the evidence of claimant discloses that the claimant sustained compression fracture of vertebra L-3 with traumatic paraplegia with involvement of the bladder and bowel dysfunction. He was admitted to Sri Devaraj Urs Medical College, Kolar where he underwent surgery on 1-8-1997 for fixation of plates and screws; as there was no improvement he was shifted to ETCM Hospital, Kolar, where he was an in-patient for 15 days. Later, he was admitted to HOSMAT Hospital, Bangalore where he underwent surgery on 3-12-1997 for L-3 fracture by removing the in-plants and re-fixation of harrington rods; he was an in-patient in HOSMAT Hospital till 17-12-1997; again he was re-admitted to HOSMAT Hospital on 19-1-1998 as there was no improvement and underwent further treatment.

8. As a result of the said injuries, the claimant has become paraplegic and there is no movement of both lower extremities; he is not in a position to move on his own, and has to be physically lifted and moved by others. He has lost control over bladder and bowel. The disability has been assessed by the Doctors as 100%. P.W. 3 has stated that the claimant will not be in a position to move on his own throughout his life and he will have to be lifted physically and that he cannot do any agricultural work. P.W. 4 who also examined and treated the claimant subsequently has stated that the claimant had suffered 100% disability of the entire body; that he has no control over urination and defecation and there is a injury to the spinal cord; in the case of such injury, any neurological improvement will have to be achieved within 6 months to 1 year but not later;

and that in the case of claimant there is no such improvement. The in-patient file (Ex. P. 333), the out-patient file (Ex. P. 334), CT Scan Report (Ex. P. 335), X-Rays (P. 336 to P. 350 and P. 353 and P. 354), Case sheet (Ex. P. 352) and disability certificate (Ex. P. 351) supports the said evidence.

9. Learned Counsel for the appellant however referred to the cross-examination of P.W. 3, wherein he had admitted that the total disability with reference to the entire body is only 55%. He therefore contended that the Tribunal ought to have taken the disability as 55%. P.W. 3 had made clear that there was 100% disability of the lower extremity. P.W. 4 has also confirmed that the disability to the entire body is 100% because of the injury. All that P.W. 3 has clarified is that as per neurological manual, 100% disability of the lower extremity should be treated as 55% disability of the entire body. But this does not mean that the claimant is in a position to function effectively to an extent of 45% to 50%. As a consequence of the injury, the claimant cannot move on his own and he is bound to the bed or the wheel-chair. In the circumstances, the functional and economic disability is clearly 100%, which is relevant for determining future earning capacity.

10. The claimant has given evidence that he was owning 8 acres of agricultural lands and was a vegetable merchant; and that he was earning Rs. 5,000/- per month from agriculture and Rs. 5,000 per month as vegetable merchant. On account of the injuries sustained in the accident, he is no longer in a position to supervise the agricultural land nor carry on trading in vegetables; and that there is a total loss of income. The Tribunal has not accepted the evidence that the claimant was earning Rs. 10,000/- per month. In the absence of any accounts or returns disclosing such an income, and as the claimant had stated in the claim statement that his income was Rs. 5,000/- p.m. and not Rs. 10,000/-, the Tribunal assessed the income of the claimant as Rs. 4,500/- per month or Rs. 54,000/- per annum. As the Tribunal reached the conclusion that there was 100% disability, it arrived at the total loss of earning capacity per year at Rs. 54,000/-. Having regard to the fact that the injured claimant was aged 40 years at the time of accident, by applying operative multiplier of 18, the Tribunal selected the applicable multiplier of 14 and arrived at the total future loss of earning capacity as Rs. 7,56,000/-.

11. The learned Counsel for the appellant contended that there is no basis for assuming the income of the claimant as Rs. 4,500/- p.m. and the Tribunal ought to have taken a lesser income for the purpose of calculating future loss of earning capacity. There is a considerable force in this contention. The claimant had stated in the claim petition that his earning was Rs. 5,000/- p.m. However, he failed to produce any documents to show his income. No doubt, some R.T.C. extracts were produced to show that he owned agricultural lands. But that by itself is not a proof of income. In the absence of any evidence, it is appropriate to evaluate the supervision and management of his agricultural lands and business income as Rs. 100/- per day. Even otherwise, he has to engage someone to

manage and supervise his land and for that purpose, he will have to pay at least Rs. 100/- per day as supervision charges. In the circumstances, it is reasonable to take a sum of Rs. 3,000/- as the monthly income of the claimant. As there is 100% disability, the future loss of income will be Rs. 3,000/- p.m. or Rs. 36,000/- p.a. By applying the multiplier of 14, the total loss of future earning capacity would be Rs. 5,04,000/- and not 7,56,000/-.

12. The appellant-insurer does not have any grievances in regard to the compensation awarded under the other heads. But the learned Counsel for the claimant (1st respondent herein) submitted that the total compensation awarded is just and that the Tribunal has awarded less than what is due under several heads and therefore even if the loss of future earning capacity is to be reduced, the award under other heads has to be increased, so that the compensation awarded by the Tribunal is maintained. He pointed out that the award of compensation for injury, pain and sufferings is wholly inadequate and he also pointed out that nothing has been awarded for future medical expenses or for future attendant charges. He strongly relied upon the decision of the Supreme Court in *R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others*, .

13. In *Hattangadi's* case, *supra*, the Supreme Court while dealing with a similar case of a paraplegic held that the damages should be awarded for medical attendance, loss of earning up to the date of trial and in future, other material loss, for mental and physical shock, pain and sufferings already suffered or likely to be suffered in future, loss of amenities of life (which may include a variety of matters, like inability to walk, run or sit), for the loss of expectation of life (that is the normal longevity of the person concerned being shortened as a result of the injuries), inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life etc. We will examine whether the compensation awarded under the other heads is reasonable or not in the light of the principles laid down by the Supreme Court.

Re. Injuries, pain and sufferings:

14. The claimant has sustained very serious spinal cord injury, that is fracture of vertebra L-3 with traumatic paraplegia with involvement of the bladder and bowel dysfunction. He has been operated twice. He underwent treatment for more than a year as in-patient and out-patient. Apart from the pain and suffering undergone during period of treatment, he has to undergo pain and suffering in future also. In a similar situation, in *Hattangadi's* case, *supra*, the Supreme Court awarded sum of Rs. 1,50,000/- for injury, pain and sufferings. However, in the present case, the Tribunal has awarded only a sum of Rs. 16,000/- for injury, pain and sufferings, which is wholly inadequate. Therefore, we increase the compensation awarded under the head of injury, pain and sufferings from Rs. 16,000/- to Rs. 1,50,000/-.

Re. Loss or amenities and shortened expectation of life:

15. The Tribunal has awarded a sum of Rs. 25,000/- as loss of amenities and Rs.

20,000/- for loss on account of shortened expectation of life. The evidence shows that the claimant cannot stand or walk or run. In fact he required assistance for any kind of movement and he is confined to wheel-chair and he has no control over bladder and bowel and he requires Constant assistance in his future life. In the circumstances, he will have to undergo inconvenience, hardship, disappointment, frustration and mental stress although his life. Further on account of the spinal injury and dysfunction of bladder and bowel, his life expectancy is also affected. Having regard to these factors, we deem it proper to award compensation of Rs. 75,000/- towards loss of amenities and shortened expectation of life in place of Rs. 45,000/- awarded by the Tribunal.

16. Re. Medical expenses and incidental expenses:

The claimant has produced Exs. P. 126 to 303 aggregating to Rs. 1,13,029/-. The Tribunal has therefore awarded a sum of Rs. 1,13,030/-towards medical expenses. It also awarded a sum of Rs. 17,000/- towards conveyance charges, Rs. 5,000/- towards attendant charges, and Rs. 5,000/- towards nourishing food in all Rs. 1,40,030/-. It is not possible to produce bills for everything having regard to the period of treatment and the nature of service required during the period of treatment. We consider that it is more appropriate to award a sum of Rs. 1,61,000/- as compensation under the head of medical and incidental expenses, including conveyance charges, attendant's charges and nourishing food.

17. Re. Future medical and other expenses:

The Tribunal has not awarded any amount on this account. There is no evidence regarding need for future surgery. But having regard, to the fact that the injured claimant is a "Paraplegic" there is a need to purchase a wheel-chair, special bed etc. There is also need for physiotherapy and service of an attendant. Under these circumstances, we award a sum of Rs. 30,000/- under the head of future medical and incidental expenses.

18. Thus, we hold that the total compensation to which the claimant-respondent is entitled to is Rs. 9,20,000/- (Rupees Nine lakhs twenty thousand only) comprising the following:

Rs.

(a)

Future loss of earning

5,04,000/-

(b)

Injury, pain and suffering

1,50,000/-

(c)

Medical and incidental expenses

1,61,000/-

(d)

Loss of amenities and shortened expectation of life

75,000/-

(e)

Future medical and incidental expenses

30,000/-

9,20,000/-

The claimant however is entitled to interest on Rs. 8,90,000/- only, as the amount awarded as future medical expenses will not carry any interest.

19. Accordingly, we allow this appeal in part as follows:

(i) We reduce the compensation awarded and award compensation of Rs. 9,20,000/- (Rupees Nine lakhs twenty thousand only) with interest at 9% p.a. on Rs. 8,90,000/- from the date of petition to date of realisation.

(ii) Out of the total compensation awarded, a sum of Rs. 5,00,000/- with interest thereon shall be kept in fixed deposit with a nationalised bank for a term of five years with liberty to draw interest.

(iii) The amount deposited by appellant in this appeal may be transferred to the Tribunal.

(iv) Parties to bear their respective costs.