
(2011) 01 KAR CK 0172
In the Karnataka High Court
Case No : M.F.A. No. 47 of 2009

N.D. Umesh

APPELLANT

Vs

H.V.L.K. Murthy and TATA AIG General Insurance Co. Ltd.

RESPONDENT

Date of Decision : 31-01-2011

Acts Referred:

Citation : (2011) 01 KAR CK 0172

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : K.L. Sreenivas, for the Appellant; H.S. Lingarah, for R 2, for the Respondent

Judgement

N. Ananda, J.—This is a claimant's appeal for enhancement of compensation.

2. Heard Sri K.L. Sreenivas, learned Counsel for claimant and Sri H.S. Lingaraj, learned Counsel for Insurance Company.

3. As per the wound certificate, claimant had suffered following injuries:

- 1) Lacerated wound measuring 5x4 cms. over middle 3rd of right thigh exposing cut end of femur
- 2) Laceration about 2x2 cms. over medial aspect of right knee
- 3) Abrasion about 2x1 cm. over dorsal aspect of 2nd and 3rd toe on right side.
- 4) Compound fracture of right femur.

4. The claimant was treated in District Hospital at Mandya. He was operated for reduction of fracture. At the time of accident, the claimant was aged about 31 years, Though claimant had stated that he was a Sub Contractor (Electrician), he has failed to substantiate the same, Therefore, it could safely be presumed that he was sustaining by manual work.

5. The tribunal has awarded compensation of Rs. 1,17,000/- under following

heads:

1) Pain and suffering Rs. 50,000/- 2) Medical expenditure Rs. 15,000/- 3) Loss of earning during laid up period Rs. 16,000/- 4) Loss of amenities Rs. 25,000/- 5) Conveyance & nourishment charges Rs. 5,000/- 6) Future surgery costs Rs. 6,000/-

Total Rs. 1,17,000/-

6. On reconsideration of the matter, I am of the opinion that having regard to the fact that claimant had suffered compound fracture of right femur and partial permanent physical disability of right lower limb, claimant is entitled to compensation under the head loss of earning capacity and future loss of earnings". The medical evidence given by PW-2 Dr. K. Bhaskar is not satisfactory. It appears to be highly exaggerated. Therefore, having regard to the nature of injuries in particular, the compound fracture of right femur and its residual effects and also taking into consideration that claimant was sustaining by manual work, I determine the loss of functional disability at 10% and award a sum of Rs. 57,600/- (Rs. 3,000 x 12 x 16 x 0.10) under the head "loss of earning capacity and future loss of earnings". Apart from this, I do not find any other discrepancy in the compensation awarded by the tribunal. Thus, claimant is entitled to total compensation of Rs. 1,74,600/-.

7. In the result, I pass the following order:

The appeal is accepted in part. The impugned award is modified. Compensation of Rs. 1,17,000/- awarded by the tribunal is enhanced to Rs. 1,74,600/- with interest at 6% p.a. from the date of petition till the date of realisation. The payment and investment shall be in the ratio evolved in the impugned award. Parties are directed to hear their costs.