
(2010) 01 KAR CK 0091

In the Karnataka High Court

Case No : M.F.A. No"s. 2730 and 4178 of 2008 (MV)

New India Assurance Co. Ltd.

APPELLANT

Vs

Vasanth Kumar and another

RESPONDENT

Date of Decision : 12-01-2010

Acts Referred:

Citation : (2011) ACJ 2705

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : O. Mahesh, for the Appellant; Puttasiddappa, for the Respondent

Judgement

N. Ananda, J.—M.F.A. No. 2730 of 2008 is filed by the insurance company for reduction of compensation. M.F.A. No. 4178 of 2008 is filed by the claimant for enhancement of compensation.

2. I have heard Mr. O. Mahesh, learned counsel for the insurance company, and Mr. Puttasiddappa, learned counsel for the claimant.

3. It is established from medical records and evidence of Dr. Rizwan Ali Khan, PW 4, that the claimant had suffered following injuries:

- (i) Lacerated wound over left parietal region.
- (ii) Minor abrasions over left forearm and fingers.
- (iii) Minor abrasion over right great toe.
- (iv) Left fronto-parieto-occipital depressed fracture.

The claimant was treated in D.G. Hospital from 11.8.2005 to 29.8.2005 and from 25.9.2005 to 5.10.2005. The claimant had undergone operation for wound debridement, elevation of depressed fragment and duraplasty. The C.T. scan report confirms fracture of left frontoparietal with acute subdural haematoma and haemorrhagic contusions. Though claimant was treated for a period of eight months, his condition did not improve. The claimant suffers from speech

disturbances, right hemiparesis and weak memory power.

At the time of accident claimant was aged about 19 years. He was working as trainee-cum-operator in A.R. Enterprises and earning a salary of Rs. 2,400 per month, besides he was doing part-time in a provision store on daily wage of Rs. 50. PW 4 on subsequent examination of the claimant, having regard to his condition, has assessed permanent physical disability of whole body at 40 per cent.

4. The Tribunal has awarded compensation of Rs. 7,97,400 under the following heads:

Pain and suffering

Rs. 70,000

Medical expenses (including conveyance, attendant charges and extra nourishment)

Rs. 1,25,000

Loss of income during treatment period

Rs. 31,200

Loss of future earnings (Rs. 3,900 x 12 x 18x 0.5)

Rs. 4,21,200

Future medical expenses

Rs. 50,000

Loss of amenities and enjoyment of life

Rs. 1,00,000

Total

Rs. 7,97,400

5. Mr. O. Mahesh, learned counsel for insurance company, would submit that Tribunal did not have sufficient material to determine income of claimant at Rs. 3,900 per month. Dr. Rizwan Ali Khan, PW 4, who has assessed permanent physical disability, is not a neurosurgeon. The assessment of disability is on the higher side. Compensation awarded by Tribunal under the head "loss of earnings during laid-up period" cannot be sustained since "loss of earning capacity and future earnings" is determined taking into consideration the age of claimant as on the date of accident.

6. The learned counsel for the claimant would submit that claimant has become invalid, in fact, claim petition was filed through the father of claimant. The claimant suffers from 100 per cent permanent physical disability. The claimant

needs a constant attendant. The claimant cannot do any work on his own. He cannot attend to his basic needs. The marital prospects of claimant are completely bleak. Therefore, compensation awarded by the Tribunal is inadequate.

7. The Claims Tribunal has taken into consideration medical expenses to award compensation of Rs. 1,25,000 under the head "medical expenses" (including extra nourishment, conveyance and attendant charges). The Tribunal having regard to the nature of injuries, consequent pain and suffering, has awarded compensation of Rs. 70,000 under the head "pain and suffering". The Tribunal has awarded compensation of Rs. 50,000 under the head "future medical expenses".

The Tribunal having determined loss of earning capacity and loss of future earnings, taking into consideration age of the claimant at the time of accident, should not have awarded compensation of Rs. 31,200 under the head "loss of earnings during laid-up period". Therefore, compensation of Rs. 31,200 awarded by Tribunal under the head "loss of earnings during laid-up period" cannot be sustained.

8. The Tribunal has awarded compensation of Rs. 1,00,000 under the head "loss of amenities and enjoyment of life". This cannot be termed as excessive, having regard to the fact that claimant has to depend on others for his normal activities of life and even to attend to his basic needs during the rest of his life, which is likely to spread over for several decades. The Tribunal having noticed that claimant's physical and mental faculty has been impaired and his marital prospects are completely bleak, has not awarded compensation under the head "loss of marital prospects". Therefore, I award compensation of Rs. 50,000 under the head "loss of marital prospects". In view of the above, claimant is entitled to total compensation of Rs. 8,16,200.

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

M.F.A. No. 2730 of 2008 filed by the insurance company is dismissed. M.F.A. No. 4178 of 2008 filed by the claimant is accepted in part. The impugned award is modified. Compensation of Rs. 7,97,400 awarded by the Tribunal is enhanced to Rs. 8,16,200. The said amount shall carry interest at 6 per cent per annum from the date of petition till the date of realization. The payment and investment shall be in the ratio evolved in the impugned award. The amount deposited by the insurance company shall be transferred to the Tribunal. Parties are directed to bear their costs.