

(2011) 09 KAR CK 0109
In the Karnataka High Court
Case No : M.P.A. No. 6212 of 2010

Ningaraju

APPELLANT

Vs

S. Porushothama and National Insurance Co. Ltd.

RESPONDENT

Date of Decision : 19-09-2011

Acts Referred:

Citation : (2011) 09 KAR CK 0109

Hon'ble Judges : B. Sreenivase Gowda, J

Bench : Single Bench

Advocate : Narendra Gowda, for the Appellant; B.C. Seetharama Rao, for R2
and Notice dispensed With R1, for the Respondent

Final Decision : Allowed

Judgement

B. Sreenivase Gowda, J.—This appeal is by the claimant seeking enhancement of compensation awarded by the Tribunal.

2. Heard, the appeal is admitted and with the consent of the learned Counsel appearing for the parties, it is taken up for final disposal.

3. For the sake of convenience the parties are referred to as they are referred to in the claim petition before the Tribunal.

4. As there is no dispute regarding injuries sustained by the claimant in a road traffic accident occurred on 01.01.2009 due to rash and negligent riding of the Hero Honda Splendor bearing registration No. KA.-13-S-158 by its rider and liability of the insurer of the offending vehicle, the only point that arises for my consideration in the appeal in:

whether quantum of compensation awarded by the Tribunal is just and reasonable or does it call for enhancement

5. After hearing the learned Counsel shearing for the parties and perusing the judgment and award of the Tribunal, I am of the view that the compensation awarded by the Tribunal is not just and reasonable, it is on the lower side and

hence it is required to be enhanced.

6. The claimant has sustained the following injuries:

- 1) Swelling and tenderness base of V MT left foot. X-ray shows fracture base of V MT.
- 2) Cut lacerated wound right elbow.
- 3) Abrasion left knee.
- 4) Wound above right eyebrow,
- 5) Contusion injury over chest.

The injuries sustained by the claimant are evident from the wound certificate Ex.P-3, case sheet Ex.P-11, X-ray Ex.P-12 and supported by oral evidence of the claimant and doctor, who were examined as PWs-1 and 2 respectively, PW-2, Dr. Sree Ranga N., in his evidence bus stated that the claimant has suffered disability of 20% to the left lower limb.

7. Considering the nature of injuries, RS. 10,000/- awarded by the Tribunal towards "pain and suffering" is on the lower side and it is deserved to be enhanced by another Rs. 10,000/- and I award Rs. 10,000/- under this head.

8. As Rs. 11,300/- awarded by the Tribunal towards "Medical expenses" is based on the medical bills produced by the claimant and there is no scope for enhancement under this head.

9. The claimant was treated in Sharada Nursing Home, Hassan, as inpatient for a period of 3 days. Considering the duration of treatment, Rs. 3,000/- awarded by the Tribunal towards "incidental expenses" such as conveyance, nourishment and attendant charges is just and proper and there is no scope for enhancement under this head.

10. The claimant claims to have been doing agriculture and earning a sum of Rs. 6,000/- per month and has produced RTC Extract at Ex.P9. Considering the same, the Tribunal has rightly assessed his income at RS. 3,000/- per month. The nature of injuries suggest that he must have been under rest and treatment for a period of 3 months and therefore a sum of Rs. 9,000/- is awarded towards loss of income during laid up period as against Rs. 3,000/- awarded by the Tribunal.

11. Considering the disability stated by the doctor and an amount of discomfort and unhappiness the claimant has to undergo in his future life, it is just and proper to award a sum of and Rs. 10,000/- towards loss of amenities and it is awarded as against Rs. 5,000/- awarded by the Tribunal,

12. The claimant is aged about 34 years at the time of accident and the multiplier applicable to his age group is 16. His income is assessed at Rs. 3,000/- p.m. PW-2, the doctor in his evidence has stated that claimant has suffered

disability of 20% to the limb, The disability caused to the whole body will be 1/3rd of the disability caused to the limb, which comes to 6.66% and it can be rounded off to 7%, Therefore, the "loss of future income" works out to Rs. 40,320/- (3000 ? 12 ? 16 ? 7/100) and it is awarded as against Rs. 17,280/- awarded by the Tribunal.

14. Thus, the claimant is entitled for the following compensation;

- a) Pain and sufferings Rs. 20,000
- b) Medical expenses Rs. 11,300
- c) Incidental expenses Rs. 3,000
- d) Loss of income during laid up period Rs. 9,000
- E) Loss of amenities Rs. 10,000
- F) Loss of future income Rs. 40,320

TOTAL Rs. 93,620

15. Accordingly the appeal is allowed in part. The judgment end award passed by the Tribunal is modified to the extent stated herein above. The claimant entitled for a total compensation of Rs. 93,620/- as against Rs. 49,580/- awarded by the Tribunal with interest at 6% p.a. on the enhanced compensation of Rs. 44,040/- from the date of claim petition till the date of realisation.

16. The Insurance Company is directed to deposit the enhanced compensation amount together with interest within two months from the date of receipt of a copy of this judgment.

17. Out of the enhanced compensation, 50% of the amount with proportionate interest is ordered to be invested in fixed deposit in the name of claimant in any Nationalised Bank/Scheduled Bank/Post Office for a period of 9 years renewable from, time to time and which a right of option to withdraw interest periodically. Remaining amount with proportionate interest is ordered to be released in favour of the claimant immediately after the deposit.

18. No order as to costs.