

(2010) 08 KAR CK 0071

In the Karnataka High Court

Case No : M.F.A. No. 7996 of 2008 alongwith Miscellaneous Cvl. No. 6606 of 2010

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Sundareshan, G. Prakash Babu and N. Mudhu

RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

Employees State Insurance Act, 1948 — Section 53
Motor Vehicles Act, 1988 — Section 166

Citation : (2010) 08 KAR CK 0071

Hon'ble Judges : K.N. Keshavanarayana, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : O. Mahesh, for the Appellant;

Final Decision : Dismissed

Judgement

K.N. Keshavanarayana, J.—This appeal by the Insurance Company is directed against the judgment and award dated 12.10.2007 passed by the Motor Accidents Claims Tribunal, Bangalore (SCCH-20) in MVC. No. 7450/2006.

2. Respondent No. 1 herein was the claimant before the claim Tribunal. He filed the claim petition seeking compensation for the personal injuries sustained by him in the motor vehicle accident that occurred on 9.8.2006 at about 12.00 p.m. on Old Madras Road, K.R. Puram, Bangalore. The claim petition was contested by the Insurance Company of the offending vehicle. The Tribunal, on assessment of the oral and documentary evidence, quantified the compensation payable to the claimant at Rs. 20,02,500/- as under:

1. Pain and suffering	Rs. 1,20,000-00	2. Medicine and hospital charges	Rs. 9,91,700-00
3. Nourishment	Rs. 4,000-00	4. Attendant and conveyance charges	Rs. 14,000-00
5. Loss of amenities and future unhappiness	Rs. 60,000-00	6. Loss of income during treatment period	Rs. 70,800-00
7. Future loss of income	Rs. 7,22,000-00	8. Future medication	Rs. 20,000-00
Total		Rs. 20,02,500-00	

The Insurance Company was directed to pay the said compensation amount with interest at 6% per annum from the date of the petition till the date of payment. Being aggrieved by the said judgment and award, the Insurance Company is in appeal before this Court.

3. Though this appeal is listed to-day for orders on the application filed for taking out notice of appeal to Respondent No. 1, through paper publication, we have heard Sri. O. Mahesh, learned Counsel for the appellant -Insurance Company on merits. It is the contention of the learned Counsel for the appellant that the claim petition itself was barred u/s 53 of the Employees State Insurance Act, 1948 (for short "the ESI Act") as the claimant was a member of ESI fund as an employee of GE Country Wide, White field, therefore, the court below could not have entertained the claim petition u/s 166 of Motor Vehicles Act. He further submitted that determination of the functional disability of the claimant at 60% is on the higher side and the monthly income assessed at Rs. 5,900/- is also on the higher side, therefore the award towards loss of future earnings is exorbitant as such it is liable to be reduced. It is his further submission that the compensation under other heads also are on the higher side and are liable to be scaled down.

4. We have perused the records and the evidence placed on record.

5. Though in the evidence it is indicated that the claimant was a member of ESI fund as an employee of GE Country Wide, the evidence on record do not indicate that the injury sustained by the claimant was an employment injury within the definition of the ESI Act. The bar u/s 53 of the ESI Act would operate only if the injury suffered is an employment injury and not otherwise. Therefore, we find no force in the said contention.

6. Admittedly, on account of the accidental injuries the left leg of the claimant below the knee has been amputated. The evidence on record also indicated that he was working as an Electrician in GE Country Wide and he was drawing a monthly salary of Rs. 5,900/ -. The medical expenses as noticed by the court below was to the tune of Rs. 9,91,700/ -. This itself indicates the seriousness of the injuries sustained by the claimant, the prolonged treatment and also the pain and suffering undergone by him. It is in the evidence of the claimant that after the accident, on account of amputation of the left leg below the knee, he is not able to continue his work. There is nothing in the cross-examination of claimant to controvert his evidence. In view of the fact that the claimant has suffered amputation, the court below, in our opinion, has rightly assessed the functional disability at 60% and accordingly quantified the future loss of income at Rs. 7,22,000/ -. We find no error committed by the court below in this regard.

7. Yet another submission of the learned Counsel for the appellant is that the amount of Rs. 70,800/ - awarded towards loss of income during treatment period should have been deducted from the compensation computed towards lose of future earning since future loss of income has been quantified by applying

multiplier method and from the date of the accident.

8. Though this argument is a possible one, we do not want to examine the same in this appeal having regard to negligent difference in the ultimate quantum of compensation. Having regard to the nature of injuries sustained by the claimant, the prolonged treatment as also the resultant amputation of left leg below the knee, the compensation awarded under different heads is just and proper, and there are no grounds to interfere with the quantum of compensation determined by the tribunal. In view of the above, we find no merit in this appeal.

9. Accordingly, the appeal is dismissed. The statutory amount deposited by the Insurance Company in this appeal before this Court is ordered to be transmitted to the Tribunal concerned immediately. The balance of 50% payable by the appellant / Insurance Company shall be deposited within 4 weeks from today with interest as indicated in the judgment and award of the court below.