(2015) 09 KAR CK 0379

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 7652/2013 (MV)

Oriental Insurance Company Limited — APPELLANT

Vs

H.M. Kantharaju and Others — RESPONDENT

Date of Decision : 22-09-2015

Acts Referred:

Citation : (2015) 09 KAR CK 0379

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : A.M. Venkatesh, for the Appellant; Thimmarayaswamy, Advocates for the Respondent

Final Decision : Allowed

Judgement

S.N. Satyanarayana, J—The second insurer in MVC No. 2214/2012 on the file of MACT, Bengaluru has come up in this appeal challenging the quantum of compensation awarded in favour of the first respondent - claimant before the tribunal.

2. Brief facts leading to this appeal are as under:

"Claimant a pillion on motorcycle bearing registration No. KA 04 EY 5214 met with an accident due to rash and negligent driving of lorry bearing registration No. KA 04 C 2019 which has taken place near Presidency hotel, Sadahalli road. The accident is not in dispute. So also the injury suffered by the claimant which is crush injury to his left upper limb i.e., to his left arm. Immediately after the accident claimant was taken to NRV hospital where first aid was given to him and subsequently shifted to Raj Mahal Vilas hospital in Sanjayanagar, Bengaluru, where he was inpatient for about 41 days from 18.12.2011 to 28.01.2012. During the said period the crush injury on the left hand was treated by the doctor at Raj Mahal Vilas Hospital. Though the doctor gave an option to claimant either to get his hand amputed from below the elbow of left hand he opted for retaining the said hand which had suffered crush injury without fracture of any bone of the left arm. It is seen that the claimant was treated accordingly and thereafter he filed claim petition seeking compensation for the injuries suffered in the said accident."

3. In the proceedings before the tribunal claimant examined himself as P.W.1. In support of his case he has produced and marked as many as 21 documents which are marked as EXs.P1 to P21. In support of the accident as well as injury suffered he examined the doctor who treated him in Raj Mahal Vilas hospital as P.W.2. The doctor who treated him has given evidence as P.W.2 and his opinion in examination in chief is that the claimant has suffered 100% limb disability to the left arm and the whole body disability is to an extent of 34% and he would also say that with the help of left hand he is not in a position to do any work unless he undergo surgery for debulking of his left arm which has swollen beyond normal proportion due to injuries suffered in the accident. In the said proceedings claimant also examined a person by name Narayaswamy to establish that he was working as electrician under him. The court below taking into consideration the evidence of Narayanaswamy that the claimant was working as electrician under him on monthly income of Rs. 6,000/- accepted the same and proceeded to award compensation to him in a sum of Rs. 15,52,222/- which is apportioned under various heads as under:

4. Out of that the compensation which is awarded towards loss of future income is calculated at Rs. 10,80,000/- which is by taking the income of the claimant at Rs. 6,000/- and the disability at 100% with the multiplier of ''15'' and arriving at the compensation payable under the head loss of future income at Rs. 10,80,000/-. The third respondent insurer in the said proceedings has come up in this appeal challenging the judgment and award passed by the tribunal, so far as it pertains to loss of future income awarded at Rs. 10,80,000/- which according to it is on the higher side. According to appellant insurer the evidence of the doctor itself is that the claimant has suffered 34% disability to the whole body, therefore taking the same at 100% is without any basis.

5. Heard the learned counsel for the appellant as well as the contesting respondent. Perused the lower court records. Particularly, the evidence of P.W.2 Dr. R. Chandrashekar of Raj Mahal Vilas Hospital in his examination in chief at paragraph No. 5(C) he would state that he is of the opinion considering the symptoms and observed signs that the claimant has physical disability of 100% with respect to left upper limb and 34% with respect to the whole body, when certain specific question were put to him by the tribunal he has answered that the claimant has suffered 100% disability to his left hand and with that he cannot attend any work. He has also explained before the court that the claimant had the option of either loosing the left arm below the elbow or to retain it and he would give the evidence that the claimant has opted to retain his left hand though it may not be of any use with reference to his ability to work.

6. In fact the claimant first respondent is present before the court. With the observation made by the court it is seen that the left hand of the claimant from

elbow to the tip of his finger tips has deformity with bulkiness which according to doctor is required to be trimmed if he is agreeable to undergo the process of debulking, for which he has to spend a sum of Rs. 80,000/-. As could be seen that the mobility of claimant''s right hand is fully in order and it is seen that he is able to perform any job a normal person would do by using his right hand, can be performed by the claimant who is present before the court. With this observation this court feel that the tribunal has committed a grave error in taking the whole body disability of the claimant at 100% as against the opinion of the doctor at 34%.

7. At this juncture learned counsel Sri M. Thimmaraya Swamy appearing for first respondent claimant would state that the tribunal by relying upon the judgment rendered by the Apex Court in the matter of S. Suresh Vs. Oriental Insurance Co. Ltd. and Another, (2010) ACJ 497 : (2010) 124 FLR 1 : (2009) 14 JT 359 : (2010) 1 LLJ 839 : (2009) 14 SCALE 48 : (2010) 13 SCC 777 : (2009) 15 SCR 990 has proceeded to award compensation to claimant taking his disability at 100% and he would also furnish copy of the said judgment. On going through the same it is clearly seen that the claimant in the said proceedings was a driver who had suffered amputation of his left leg below the knee. With that the court below observed that he would not be in a position to do driving and there is 100% disability and proceeded to award compensation. In that case the doctor had also opined that there was 100% disability to whole body which was accepted by the tribunal but the High Court had reversed the same which was reconsidered by the Apex Court. Whereas in the instant case with reference to disability, the opinion of the doctor itself is to the extent 34% to the whole body due to the injury suffered by the claimant which this court has also accepted. The only hitch in this proceedings is that as against the opinion of the doctor, the tribunal has wrongly assessed the compensation on the basis of the disability suffered to the arm which is at 100% and taking it as whole body disability which is erroneous. Therefore, even on facts the judgment relied upon by the tribunal will have no bearing to the facts on hand and also wound not enure to the benefit of claimant to seek assessment of compensation taking the whole body disability at 100% as against the opinion of doctor which is at 34%. In that view of the matter, this court feel that while retaining the compensation payable on all other grounds the compensation payable under loss of future income is required to be reassessed taking the income of the claimant at Rs. 6,000/- p.m. with 34% disability which works out to Rs. 2,040/- p.m. In other words Rs. 24,480/- p.a. If the same is multiplied by relevant multiplier ''15'' the claimant would be entitled to compensation towards loss of future income at Rs. 3,67,200/- as against Rs. 10,80,000/- awarded by the tribunal.

8. In the result, the appeal filed by the Insurance Company is allowed in part. The compensation payable under the head loss of future income is reduced to Rs. 3,67,200/- as against Rs. 10,80,000/- awarded. While considering that this court would also observe that there is an error committed by the tribunal in not considering the future medical expenses which is assessed by the doctor at Rs.

80,000/- and has wrongly awarded a sum of Rs. 10,000/- towards future medical expenses. Therefore, this court feel that if the compensation awarded by the tribunal is modified increasing the future medical expenses from Rs. 10,000/- to Rs. 80,000/- and reducing the loss of future income from Rs. 10,80,000/- to Rs. 3,67,200/- the compensation which is awarded to the claimant would be revised to Rs. 9,09,422/- which the claimant is entitled to receive with interest at 6% from the date of petition till the date of deposit of entire amount. Accordingly, this appeal filed by the Insurance Company is allowed in part.

9. From out of the revised compensation with interest this court would order that 60% with proportionate interest shall be deposited in Fixed Deposit in any nationalized bank in favour of claimant for a period of ten years with right to receive interest periodically and balance 40% shall be released in favour of claimant to meet his immediate need and also to clear the loan if any taken for his treatment.

10. In view of the appeal being allowed, the amount in deposit is ordered to be sent to tribunal for disbursement. The balance amount shall be deposited by the insurer within six weeks from the date of receipt of certified copy of this judgment.