

(2015) 01 KAR CK 0547

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 21982/2010 (MV)

Parasappa Ramappa Sankaratti

APPELLANT

Vs

Mubarak Bandenawaz Biradar Patil

RESPONDENT

Date of Decision : 16-01-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173(1)

Citation : (2015) 01 KAR CK 0547

Hon'ble Judges : P.D. Waingankar, J

Bench : Single Bench

Advocate : H.M. Dharigond, for the Appellant

Final Decision : Partly Allowed

Judgement

P.D. Waingankar, J.

1. This appeal by the claimant under Section 173(1) of the Motor Vehicles Act is preferred against the judgment and award dated 10.08.2009 passed in M.V.C. No. 2758/2004 on the file of the Additional MACT and Presiding Officer, FTC-III, Belgaum.

2. On 16.08.2004, at about 3.30. p.m., the appellant-claimant and his brother Bhimappa were going to their village after completion of their work at Athani. At that time, Mahindra Jeep bearing registration No. KA-23/M-5503 came in a great speed and in the negligent manner dashed against the claimant from behind. As a result, he sustained grievous head injuries. Initially, he was treated at Civil Hospital, Athani as inpatient followed by Dr. V.K. Jadhav, Neurology Centre at Miraj. He spent substantial amount for his treatment. He lost his income during the period of treatment. Despite the best treatment, he has suffered disability. Therefore, claiming compensation of Rs. 8,00,000/-, he filed claim petition under Section 166 of the Motor Vehicles Act. The claim petition was opposed by the insurer of the Jeep. It came up for consideration before the Tribunal. The Tribunal upon consideration of the evidence placed on record and upon hearing the

submission made by both the counsel, come to the conclusion that the accident and the resultant injuries sustained by the claimant were on account of rash and negligent driving of the Jeep and thereby awarded total compensation of Rs. 1,87,160/- with interest at 12% p.a. from the date of petition till realization.

3. Dissatisfied with the quantum of compensation awarded by the Tribunal, the claimant has preferred this appeal.

4. I have heard both the learned counsel appearing for the claimant and the insurer. The only point that arise for my determination is:

Whether the compensation awarded by the Tribunal is just and reasonable?

5. So far as the findings arrived at by the Tribunal that the accident occurred on account of rash and negligent driving of Mahindra Jeep, there is no dispute between the parties. Ex. P4 is the wound certificate, which reveals that the claimant has sustained following injuries.

i) Lacerated wound 5" x 1" x 1" over the acciptial region.

ii) Lacerated wound 4" x 1" x 1" over the right head and bleeding present.

iii) Abrasions red in colour ?" x ?" over the right knee.

iv) Closed head injury with fracture of right temporoparietal bone with right parieto occipital actue subdural haematoma.

6. Exs. P5 and 6 are the treatment certificates. Ex. P7 is the follow-up card and Ex. P8 is the disability certificate. Apart from oral evidence of the claimant, who has been examined as P.W. 1. Dr. S.M. Kulkarni, Neurologist has been examined as P.W. 2, who in turn has spoken that the claimant is left with 85% permanent disability. The Tribunal having regard to the nature of injuries and the period of hospitalization, awarded a sum of Rs. 20,000/- under the head "injury, pain and suffering". Since the claimant had sustained closed head injury with fracture of right temporoparietal bone with right parieto ocipital actue subdural haematoma and that he was treated as inpatient on two occasions, the amount of Rs. 20,000/- awarded under head "injury, pain and suffering" is definitely on the lower side. The ends of justice will be met, if an amount of Rs. 30,000/- is awarded under the head "injury, pain suffering" as against Rs. 20,000/- awarded by the Tribunal.

7. So far as medical expenses are concerned, though the claimant has produced as many as 994 bills for Rs. 1,08,235/-, the Tribunal has awarded a sum of Rs. 75,000/-. No reasons are forthcoming in order to award an amount of Rs. 75,000/- as against Rs. 1,08,235/-. However, having gone through the bills produced by the claimant and upon verification of the same, I deem it just and proper to award a sum of Rs. 90,000/- under the head "medical expenses", as against Rs. 75,000/- awarded by the Tribunal.

8. Regarding the amount awarded under the head "loss of future earnings", the

Tribunal has taken into consideration the disability at 10% of the whole body and the income at the rate of Rs. 3,000/- p.m. The accident is of the year 2004. The injured claimant was maintaining apart from himself his five children and wife. In that case, the income of Rs. 3,000/- p.m. taken by the Tribunal is on the lower side. I am inclined to take monthly income of the claimant at Rs. 4,000/- p.m. and the disability to the whole body at 20%. The appropriate multiplier is "14". Therefore, the compensation under the head "loss of future income" comes to Rs. 1,34,400/- (Rs. 4,000 x 12 x 20/100 x 14). So an amount of Rs. 1,34,400 is awarded under the head "loss of future earnings" on account of disability as against Rs. 56,160/- awarded by the Tribunal.

9. The Tribunal has awarded "loss of income during the period of treatment" amounting to Rs. 10,000/- taking monthly income of the claimant at Rs. 3,000/- p.m. On account of accidental injury, the claimant must have been incapacitated from attending to his work at least for a period of three months and thereby he lost his earnings for a period of three months. So an amount of Rs. 12,000/- is awarded under the head "loss of income during the period of treatment".

10. The Tribunal has awarded a sum of Rs. 6,000/- under the head "nourishment, attendant charges and conveyance", which is on the lower side. The ends of justice will be met, if an amount of Rs. 12,000/- is awarded under the head "nourishment, attendant charges and conveyance" as against Rs. 6,000/- awarded by the Tribunal.

11. Further, the Tribunal has awarded a sum of Rs. 20,000/- towards "loss of amenities", which is also on the lower side. I deem it proper on my part to award a sum of Rs. 30,000/- under the head "loss of amenities" as against Rs. 20,000/- awarded by the Tribunal.

12. Thus, the claimant is entitled for the compensation under various heads as under:

13. In all, the appellant/claimant is held to be entitled for a total compensation of Rs. 3,08,400/- as against Rs. 1,87,160/- awarded by the Tribunal. There shall be enhancement of Rs. 1,21,240/-. Accordingly, I proceed to pass the following:

ORDER

(i) The appeal is partly allowed. The judgment and award dated 10.08.2009 passed in M.V.C. No. 2758/2004 on the file of the Additional MACT and Presiding Officer, FTC-III, Belgaum, stands modified.

(ii) The appellant/claimant has been awarded enhanced compensation of Rs. 1,21,240/- together with interest at the rate of 12% per annum from the date of claim petition till realisation from respondent Nos. 1 and 2 jointly and severally over and above the compensation awarded by the Tribunal.

(iii) Respondent No. 2 is directed to deposit the enhanced amount together with interest within a period of two months from the date of receipt of a copy of this

order.

(iv) Since the accident is of the year 2004, the entire amount shall be released to the claimant in the event of deposit.

Send the records forthwith to the Tribunal.