

(2021) 06 KAR CK 0039

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 3793 Of 2013 (MV)

Patalappa

APPELLANT

Vs

Venkataramanappa

RESPONDENT

Date of Decision : 10-06-2021

Acts Referred:

Citation : (2021) 06 KAR CK 0039

Hon'ble Judges : H.P. Sandesh, J

Bench : Single Bench

Advocate : Suguna R. Reddy

Final Decision : Partly Allowed

Judgement

H.P. Sandesh, J

1. Though the appeal is listed for admission, with the consent of learned counsel for both the parties, the appeal is taken up for final disposal.

This appeal is filed challenging the judgment and award passed in M.V.C.No.24/2009 dated 19.12.2012 on the file of the Senior Civil Judge and CJM and Additional Motor Accident Claims Tribunal, Chickballapur questioning the quantum of compensation.

2. The factual matrix of the case is that the claimant- injured had sustained grievous injuries in an accident that was taken place on 10.12.2008 at

about 2.15 p.m. due to the rash and negligent driving of the driver of Hero Honda Passion vehicle bearing No.KA-40, K-3091 at Sidlaghatta Circle,

M.G. Road, Chickballapur City and immediately the injured was taken to the hospital, wherein he was inpatient as inpatient from 10.12.2008 to

18.12.2008. It is his case that due to the accidental injuries, he has suffered permanent disability.

3. In pursuance to the claim petition, the Tribunal has issued notice to the respondent. Though the respondent is represented through a counsel, not filed any objection statement.

4. The claimant, in order to substantiate his claim, examined himself as P.W.1 and the Doctor as P.W.2 and got marked the documents, Exs.P1 to

P28. The respondent has not led evidence and did not marked any documents.

5. The claimant, in order to prove his claim has produced Ex.P9- wound certificate, Exs.P10 to Ex.P21-RTCs to show that he is an agriculturist and

also Ex.P22-Milk Producer pass book. Apart from that, he has also produced medical bills, 19 in number which are marked as Ex.P23 and discharge

summary which is marked as Ex.P24. The claimant was also doing Electric Winding work and to that effect, he has produced Ex.P25-salary

certificate and he was earning Rs.100/- per day.

6. The Tribunal, after considering both oral and documentary evidence placed on record, awarded compensation of Rs.29,017.59/- under three heads

i.e., Rs.9,017.59 towards medical bills, Rs.15,000/- towards pain and suffering and Rs.5,000/- towards diet and incidental charges. Hence, the present

appeal is filed.

7. The counsel appearing for the claimant would vehemently contend that the Tribunal has committed an error in awarding Rs.15,000/- towards pain

and suffering. The claimant has suffered comminuted fracture lower 1/3rd of right tibia and also took treatment as inpatient for 9 days. The Tribunal

failed to award any compensation on the head of loss of earning during laid up period and also not awarded any compensation under the head loss of

future loss income, in coming to the conclusion that the disability has not been proved, in spite of the fact that P.W.2-doctor has been examined.

Hence, it requires interference of this Court.

8. Having heard the learned counsel for appellant and also on perusal of the material available on record, the points that would arise for consideration

of this Court are:

(i) Whether the Tribunal has committed an error in not awarding just and reasonable compensation and it requires interference of this Court?

(ii) What order?

Point No.(i):

9. Having heard the arguments of learned counsel for the appellant and also on perusal of the records particularly, Ex.P9-wound certificate, it is

evident that the doctor has opined that the injury suffered by the claimant is grievous in nature and the X-ray shows that he has suffered comminuted

fracture lower 1/3rd of right tibia. The claimant has also produced Ex.P24-discharge summary wherein, the admission date is mentioned as

10.12.2008 and he was discharged on 18.12.2008. The doctor, who has been examined as P.W.2 in his evidence in the form of affidavit categorically,

says that the claimant was subjected to CRIF surgery with interlocking nailing right tibia. On examination, he also observed right lower limb hold

healed scar over anterior aspect of right knee midline, tenderness over lower 1/3rd right leg, right knee joint moments, range of moments restricted to

10 degrees of flexion terminally, right ankle joint tenderness present around the right ankle joint and range moments restricted to 10 degrees of plantar

flexion and 5 degrees of dorsi flexion. Hence, he assessed the disability at 20% to the right lower limb and 10% to the whole body. This witness was

not cross-examined.

10. Having considered the evidence of P.W.2-doctor, it is clear that he has assigned reasons in coming to the conclusion of disability. It is not in

dispute that the disability assessed by the doctor is in respect of the particular limb i.e., right lower limb to the extent of 20%. While deposing the

disability, he said 10% disability to whole body. However, the Tribunal has committed an error in coming to the conclusion that the disability has not

been proved, in spite of the fact that the doctor has been examined and he has given reasons and not cross-examined. In spite of assigning reasons for

disability also, the Tribunal has come to the conclusion, no reason has been assigned by the doctor with regard to the disability and the very approach

of the Tribunal is erroneous. Having taken note of the said fact, the disability comes to 7%, if 1/3rd is taken out of 20% as assessed by the doctor and

10% to the whole body assessed by the doctor is not correct.

11. Now coming to the aspect of income, the accident is of the year 2008. The claimant claims that he was an agriculturist and apart from that, he

was doing milk vending business. In order to substantiate the same, he has produced Exs.P10 to Ex.P21-RTCs and also Ex.P22-Milk Producer Pass

Book to prove that he was doing milk vending business and no person has been

examined, both in respect of milk vending business and with regard to his claim that he was doing electric winding work and hence, the same cannot be considered. However, taking into note of the fact that he is an agriculturist, for the year 2008, the notional income would be Rs.4,500/- per month and considering the RTC extracts, Rs.500/- can be added and if the same is added, the monthly income of the claimant would be Rs.5,000/- per month.

12. Having taken note of the fact that the claimant has sustained fracture and accident has taken place in the year 2008, it is appropriate to award

Rs.30,000/- on the head of pain and suffering as against Rs.15,000/- awarded by the Tribunal.

13. The Tribunal also considered medical bills to the tune of Rs.9,017.59/- and hence, the same is retained since it is based on the documentary evidence.

14. The Tribunal has committed an error in awarding Rs.5,000/- on the head of diet and incidental expenses. The discharge summary shows that the claimant was inpatient for a period of 9 days. Hence, it is appropriate to award Rs.10,000/- on the head of food, nourishment, conveyance and other incidental expenses.

15. Taking into note of the nature of fracture i.e., comminuted fracture lower 1/3rd of right tibia, it requires minimum three months for uniting the fracture and rest, the loss of income has to be considered for a period of three months during the laid up period. Hence, a sum of Rs.15,000/-towards loss of income during laid up period taking the income of the claimant at Rs.5,000/- per month.

16. The injured was aged about 60 years and the doctor has also assessed the disability to whole body at 10%. However, this Court has taken the disability as 7%. When such being the case, the loss of future income would be Rs.37,800/- $\text{Rs.5,000} \times 7 \times 12 \times 9 / 100$.

17. The injured is also entitled for compensation under the head loss of amenities and taking into consideration the age of the claimant as 60 years and he has to lead rest of his life with disability of 7%, it is appropriate to award Rs.10,000/- under the head loss of amenities.

18. After revisiting compensation on all the heads, the total compensation comes to Rs.1,11,818/- as against Rs.29,100/- awarded by the Tribunal.

19. In view of the discussions made above, I proceed to pass the following:

ORDER

(i) The appeal is allowed in part.

(ii) The judgment and award passed in M.V.C.No.24/2009 dated 19.12.2012 on the file of the Senior Civil Judge and CJM and Additional Motor

Accident Claims Tribunal, Chickballapur is modified granting compensation of Rs.1,11,818/- with interest at 6% per annum as against Rs.29,017.59/-.

(iii) The respondent is directed to deposit the amount within six weeks from today.

(iv) The Registry is directed to transmit the TCR to the concerned Tribunal forthwith.