

(2013) 07 KAR CK 0252

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 7534 of 2008 (MV)

Prakash P.

APPELLANT

Vs

Hanumappa, The Managing Director and The Chairman

RESPONDENT

Date of Decision : 22-07-2013

Acts Referred:

Citation : (2013) 07 KAR CK 0252

Hon'ble Judges : B. Sreenivase Gowda, J

Bench : Single Bench

Advocate : A. Hanumanthappa, for the Appellant; Kaleemullah Shariff, for-R. 2 and Smt. H.R. Renuka, for R. 2 and R. 3, for the Respondent

Final Decision : Partly Allowed

Judgement

B. Sreenivase Gowda, J.—This appeal is by the claimant seeking enhancement of compensation awarded by the Tribunal. Heard. The appeal is admitted and with the consent of the learned Counsel appearing for the parties, it is disposed of finally.

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

3. As there is no dispute regarding injuries sustained by the claimant in a road traffic accident occurred on 06-04-2006 due to rash and negligent driving of the offending KSRTC bus bearing registration No. KA-26-F-519 by its driver and liability of the corporation of the offending vehicle, the only point that remains for my consideration in the appeal is:

Whether compensation awarded by the Tribunal is just and proper or does it call for enhancement?

4. After hearing the learned Counsel 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 therefore, it is

deserved to be enhanced.

5. As per wound certificate, discharge card, CT scan film and report, x-ray film and case sheet-Exs. P.6, P.8, P.54, P.55, P.66 and P.67, claimant had sustained the following injuries;

- 1) Comminuted fracture middle 1/3rd shaft of left femur.
- 2) Fracture 5th and 6th ribs on right side laterally.
- 3) Fracture of lateral wall of right orbit.

P.W. 2-Dr. Mallikarjun Reddy in his evidence has stated, claimant has suffered disability of 30% to limb.

6. Considering nature of injuries sustained by the claimant, Rs. 50,000/- awarded by the Tribunal towards pain and suffering is just and proper and there is no scope for enhancement under this head.

7. Claimant has produced medical bills for Rs. 10,532/- and he was treated as inpatient for 14 days at Bapuji Hospital. Considering the same, Rs. 25,000/- awarded by the Tribunal towards medical and incidental expenses is just and proper and there is no scope for enhancement under these heads.

8. He claims to have been earning Rs. 6,000/- per month by working as a flower merchant. But it is not established by producing any documents. In the absence of proof of income, considering his age as 35 years and year of accident as 2006, his income is assessed at Rs. 3,500/- per month. Nature of injuries suggest that he must have been under rest and treatment for a period of six months. Considering the same, a sum of Rs. 21,000/- is awarded towards loss of income during laid up period.

9. Considering nature of injuries, disability stated by the doctor and an amount of discomfort and unhappiness which the claimant has to undergo for the rest of his life, a sum of Rs. 25,000/- is awarded towards loss of amenities.

10. He is aged about 35 years. Multiplier applicable to his age group is "16". His income is assessed at Rs. 3,500/- per month. Disability stated by the doctor at 30% to limb so to whole body it comes to 10%. So, loss of future income works out to Rs. 67,200/- (Rs. 3,500/- x 12 x 10/100 x 16) and it is awarded.

11. Considering nature of injuries sustained by the claimant a sum of Rs. 15,000/- is awarded towards future medical expenses as against Rs. 10,000/- awarded by the Tribunal.

12. Thus the claimant is entitled for the following compensation:

13. Accordingly the appeal is allowed in part and the Judgment and award of the Tribunal is modified to the extent stated herein above. The claimant is entitled for additional compensation of Rs. 27,200/- with interest at 6% p.a. from the date of claim petition till the date of realisation.

14. The Insurance Co. is directed to deposit the additional compensation amount with interest, within two months from the date of receipt of a copy of this judgment, from which 75% with proportionate interest is ordered to be deposited in FD in the name of the claimant in any nationalised or scheduled Bank for a period of 3 years, with a right of option to withdraw interest periodically and the remaining amount is ordered to be released in his favour. The Tribunal while releasing 25% of the compensation is also directed to issue F.D. slip to the claimant to enable him to withdraw the amount on its maturity without approaching the Tribunal once again. The Bank in which the deposit is made is also directed to release the F.D. amount on its maturity without insisting for an order from the Tribunal.

No order as to costs.