

(2010) 12 KAR CK 0061

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2119 of 2010

Puttaswamy

APPELLANT

Vs

N.B. Suresh, Kumar and The Divisional Manager Oriental
Insurance Co. Ltd.

RESPONDENT

Date of Decision : 06-12-2010

Acts Referred:

Citation : (2010) 12 KAR CK 0061

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : M.Y. Sreenivasan, for the Appellant; R. Gunashekar, for R3, for the Respondent

Judgement

S. Abdul Nazeer, J.

This appeal is directed against the judgment and award in MVC No. 518/2008 dated 1.12.2009 on the file of the Additional Civil Judge (Sr. Dn) and MACT. Mandya. The Appellant was the claimant before the Tribunal and the Respondents were the owners and the insurer of the offending vehicle. There is no dispute as to the occurrence of the accident and the liability of the third Respondent - Insurance Company to pay compensation. The Appellant has filed this appeal seeking enhancement of compensation.

2. I have heard the learned Counsel for the parties.

3. Learned Counsel for the Appellant would contend that as per the Doctor, who had treated the claimant, the claimant had suffered 40% permanent disability to the particular limb. In his evidence, the Doctor has stated that the claimant had suffered 20% injury to the whole body. The Tribunal has taken 6% as permanent disability to the whole body and compensation has been awarded accordingly, which is grossly inadequate. It is argued that the accident had occurred in the year 2008. The claimant was earning more than ` 5,000/- per month. The Tribunal has taken his income at ` 100/- per day. The Tribunal has not awarded

any compensation towards loss of amenities. The compensation awarded towards loss of income during the treatment period is also on a lower side. The claimant was hospitalised for 10 days. The award of compensation towards attendant, food, diet, nourishment, conveyance, etc. are also on a lower side. Learned Counsel for the Appellant has taken me through the evidence of the parties, the documents produced by the Appellant/claimant before the Tribunal as also the impugned judgment and award.

4. On the other hand, learned Counsel appearing for the third Respondent-Insurance Company has sought to justify the impugned judgment and award.

5. Having regard to the contentions urged, the question for consideration is whether the compensation awarded by the Tribunal is adequate?

6. It is clear from the evidence of the Doctor that the claimant had suffered 40% injury to the particular limb. Having regard to the nature of injuries sustained by him. it is just and proper to hold that the claimant had suffered 13% permanent disability to the whole body. The claimant has not produced any material to support the contention that he was earning ` 5,000/- per month. The accident had occurred during the year 2008. The claimant was aged 38 years at the time of the accident. Therefore, it is just and proper to take his income at ` 150/- per day (` 4,500/-per month). Since he was aged 38 years at the lime of the accident, the multiplier applicable is 15. If that is so, the claimant is entitled for a total sum of ` 1,05,300/- towards loss of future income. He is also entitled for ` 13,500/- towards loss of income during the laid up period. He was hospitalised for 10 days. Therefore, it is just and proper to award ` 10,000/- towards attendant, food, diet, nourishment, conveyance, etc. The Tribunal ought to have awarded compensation towards loss of amenities. It is just and proper to award a sum of ` 15,000/- under this head. The compensation awarded towards injuries, pain and suffering, medical expenses, and future medical s are just and reasonable. Thus, the claimant is entitled for the compensation as under:

Sl. No.

Particulars

Amount

1

Towards loss of future earning capacity

Rs. 1,05,3000.00

2

Towards pain and sufferings

Rs. 21,000.00

3

Towards loss of amenities

Rs. 15,000.00

4

Towards loss of income during the laid up period

Rs. 13,500.00

5

Towards medical expenses

Rs. 5,000.00

6

Towards attendant charges, food, nourishment and travelling expenses

Rs. 10,000.00

7

Towards future medical expenses

Rs. 15,000.00

8

Towards simple injuries

Rs. 6,000.00

TOTAL

Rs. 1,90,800.00

7. The Tribunal has awarded a sum of ` 87,400/- which has to be deducted from the aforesaid amount and the balance of compensation payable to the claimant is ` 1,03,400/-. The said sum of ` 1,03,400/- shall carry interest at 6% per annum.

8. In the result, the appeal succeeds and it is accordingly allowed in part. The third Respondent - Insurance company is directed to deposit a sum of ` 1,03,400/- with interest at 6% per annum from the date of the application till the date of deposit in addition to what has been awarded by the Tribunal within a period of eight weeks from the date of receipt of a copy of this order. The Appellant is permitted to withdraw the amount on such deposit. No costs.