

(2014) 02 KAR CK 0097
In the Karnataka High Court
Case No : M.F.A. No. 2367/2011 (MV)

R. Govindappa

APPELLANT

Vs

M/s. The Oriental Insurance Co. Ltd. and Anil Ashok Koti

RESPONDENT

Date of Decision : 03-02-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2014) 02 KAR CK 0097

Hon'ble Judges : H.G. Ramesh, J

Bench : Single Bench

Advocate : H.B. Somapur, Advocate for the Appellant; M. Sowri Raju, Advocate for R-1, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Huluvadi G. Ramesh, J.—This appeal by the claimant seeking enhancement of compensation is against the judgment and award passed by the learned IX Addl. Senior Civil Judge, Small Causes Court, Bangalore, in M.V.C. No. 1125/2009, dated 29.11.2010.

2. It is the case of the claimant that on 8.3.2008 at about 4.30 a.m. when he was proceeding in his lorry bearing registration No. KA-02-D-7849 on Hubli-Yellapura road, near Savadathi village, another lorry bearing registration No. KA-28-A-4705 came in a rash and negligent manner and dashed against the claimant's lorry due to which, he sustained fracture of lower end of radius of right hand, fracture of left 3rd, 4th, 5th, 6th, 7th ribs and injuries all over the body. The doctor has assessed the disability at 19.5% to the whole body. As such, claimant filed "claim petition u/s 163A of the Motor Vehicles Act, 1988 before the Tribunal seeking compensation.

3. On the matter being contested by the respondent-insurer and owner of the lorry bearing registration No. KA-28-A-4705, the Tribunal raised as many as three issues for consideration. The Tribunal of course, having raised an issue with

regard to involvement of the vehicle in causing the accident, ultimately held that claimant sustained injuries in the accident due to negligence on the part of the driver of the lorry bearing registration No. KA-28-A-4705 and awarded total compensation of Rs. 78,500/- with, 6% interest fixing the liability to pay compensation on the owner and insurer of the offending vehicle lorry bearing registration No. KA-28-A-4705, jointly and severally. Being not satisfied with the quantum of compensation awarded by the Tribunal, the claimant/appellant is before this Court seeking enhancement of compensation.

Heard the learned counsel representing the parties.

4. The learned counsel appearing for the respondent-insurer submitted that as per the formula mentioned in Second Schedule to the Motor Vehicles Act, 1988, Rs. 5,000/- should be awarded in case of injuries and disabilities instead of Rs. 40,000/- as awarded by the Tribunal and further, the amount awarded under other heads has to be reduced and accordingly, sought dismissal of the appeal. However, no cross-appeal is filed by the insurance company.

5. Looking to the involvement of the vehicles and the way in which the accident took place, it appears, there is involvement of both the vehicles. However, final report has been filed against the driver of the lorry bearing registration No. KA-28-A-4705 and ultimately he is acquitted.

6. As per Column No. 5 of Second Schedule to the Motor Vehicles Act, the compensation payable in case of disability to the victim due to non-fatal accidents is by taking into consideration the loss of income, if any, for actual period of disablement not exceeding fifty two weeks plus either of the following i.e., in case of permanent total disablement, the amount payable shall be arrived at by multiplying the annual loss of income by the multiplier applicable to the age on the date of determining the compensation, or in case of permanent partial disablement, such percentage of compensation which would have been payable in the case of permanent total disablement as specified above and injuries deemed to result in permanent total disablement/permanent partial disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen's Compensation Act, 1923.

7. In the case on hand, as per the evidence of the doctor, claimant cannot carry weight from the right hand and difficulty in doing day-to-day works and cannot run or walk briskly. The doctor has assessed the disability suffered by the claimant at 20% to the whole body. Claimant was aged 45 years at the time of accident. The accident is of the year 2008. Taking the income on the higher side, the claimant is entitled for another sum of Rs. 50,000/- over and above the compensation awarded by the Tribunal under the head 'loss of future income due to disability', with interest at 6% p.a. from the date of petition till the date of payment. The insurer of the lorry bearing registration No. KA 28-A-4705 is to deposit the amount within three months.

Appeal is allowed in part accordingly.