(2013) 08 KAR CK 0243

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 7783 of 2009 (MV)

Radhakrishna APPELLANT

Vs

National Insurance Company Limited and Another RESPONDENT

Date of Decision : 14-08-2013

Acts Referred:

Citation : (2014) 3 ACC 309 : (2014) 1 AKR 179 : (2013) 5 KarLJ 542

Hon'ble Judges : B. Sreenivase Gowda, J

Bench : Single Bench

Advocate : Shivaprabhu S. Hiremath, for the Appellant; A.M. Venkatesh, for the Respondent

Judgement

B. Sreenivase Gowda, J.—This appeal is by the claimant seeking enhancement of compensation awarded by the Tribunal. Though the matter is listed in the orders list, with the consent of learned Counsel appearing for the parties, it is taken up for final disposal.

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

3. As there is no dispute regarding injuries sustained by the claimant in a motor traffic accident occurred on 2-3-2007 due to rash and negligent driving of lorry bearing Registration No. TN 02 U 3928 by its driver and liability of the insurer of the said vehicle to pay compensation, the only point arises for consideration is:

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

4. As per Ex. P. 5 Emergency case record of NIMHANS and Ex. P. 10-CT scan discloses the claimant had sustained mild diffused cerebral edema. Injuries sustained and treatment taken by him are also evident from Ex. P. 7 discharge summary and supported by oral evidence of the claimant examined as P.W. 1. Claimant has not examined the doctor regarding disability.

5. Considering nature of injuries sustained by the claimant Rs. 25,000/- is awarded towards pain and suffering as against Rs. 15,000/- awarded by the Tribunal under this head.

6. Claimant has produced medical bills for Rs. 8,636.46/-. He was treated as inpatient for 4 days in two different Hospitals. Considering the same, Rs. 12,000/- is awarded towards medical and incidental expenses such as conveyance, nourishment and attendant charges as against Rs. 11,650/- awarded by the Tribunal under this head.

7. Claimant claims to have been earning Rs. 300/- per day by doing mason work, but it is not established by producing any document. In the absence of proof of income, considering his age as 23 years, year of accident as 2007 and his avocation as daily wager his income could be assessed at Rs. 4,000/- p.m. Nature of injuries suggest that he must have been under treatment and rest at least for three months. Therefore a sum of Rs. 12,000/- is awarded towards loss of income during laid up period as against Rs. 6,000/- awarded by the Tribunal under this head.

8. Considering head injuries sustained by the claimant and the claimant may have to spend some amount towards future medical expenses a sum of Rs. 25,000/- is awarded towards future medical expenses.

9. In the absence of examining the doctor regarding disability on its impact towards loss of future earning no compensation can be awarded towards loss of future income.

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

11. 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. 41,350/- with interest at 6% p.a. from the date of claim petition till the date of realisation but without interest for the delayed period of 492 days in filing the appeal. The Insurance Company is directed to deposit the additional compensation amount with interest, within two months from the date of receipt of a copy of this judgment, without interest for the delayed period of 492 days with in two months from the date of receipt of judgment from which 75% with proportionate interest is directed to be invested in favour of the claimant in F.D. in any nationalised/schedule bank or post office for a period of three years with an option to withdraw periodical interest on the said F.D. Remaining amount is ordered to be released in favour of the claimant. The Tribunal while releasing the remaining compensation is also directed to issue F.D. slips to the claimant to enable him to withdraw the amount on its maturity without approaching the Tribunal once again. The concerned Bank also is directed to release the F.D. amount on its maturity without insisting for an order from the Tribunal or presence of an Advocate.

No order as to costs.

