

(2014) 09 KAR CK 0187

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 10250 of 2013 (MV)

Rajan M.

APPELLANT

Vs

V. Prakash

RESPONDENT

Date of Decision : 04-09-2014

Acts Referred:

Citation : (2014) 09 KAR CK 0187

Hon'ble Judges : K. Bhakthavatsala, J

Bench : Single Bench

Advocate : Shripad V. Shastri, Advocate for the Appellant; M.S. Rajendra Prasad, Sr, Advocate for the Respondent

Judgement

K. Bhakthavatsala, J.—Though the appeal is listed for admission, with the consent of learned counsel for the parties, heard arguments for final disposal.

2. Learned counsel for the appellant-claimant submits that the claimant was working as a cable operator and earning Rs. 7,500/- per month; the claimant sustained grievous injuries and permanent disability to the extent of 18% of the whole body, but the Tribunal has not awarded adequate compensation, he prays for enhancement of compensation.

3. Sri. M.S. Rajendra Prasad, learned Senior counsel appearing for respondent No. 2 - Insurance Company submits that the Tribunal has awarded adequate compensation and there is no good ground for enhancement of compensation.

4. Perused the impugned judgment.

5. It is the case of the claimant that on 25-11-2011 at about 8.30 a.m., when he was proceeding on a motor cycle bearing registration No. KA-03-HH-1592, on the left side of the road, one Tempo bearing registration No. GA-02-T-9107 came from the opposite direction and dashed against the motor cycle and as a result of which, he fell down and sustained grievous injuries. He filed claim petition against the owner of the Tempo and the Insurance Company seeking

compensation.

6. The Tribunal has answered Issue No. 1 on the point of negligence in the negative against the respondents. The Tribunal has fixed the income of the claimant at Rs. 60,000/- per annum, applying multiplier "17" and permanent disability at 12% to the whole body awarded compensation as under:

7. It is the case of the claimant that he sustained one simple injury and one grievous injury. X-ray report of the right leg shows that he has comminuted fracture of both bones of right leg. The claimant is resident of Bangalore. He was admitted to the Bowring hospital on 25-11-2011 and discharged on 30-11-2011. In support of the case of the claimant, he has examined Dr. Ramachandra as PW.2. The claimant sustained comminuted fracture of both bones of right leg, middle 1/3rd. The claimant underwent surgery on 28-11-2011 namely, Open reduction and internal fixation (ORIF) with intramedullary interlocking nail. PW-2 has deposed that he treated the claimant. He has deposed that the claimant has got permanent disability to the extent of 36.3% to the right limb and 18% to the whole body. He has further deposed that the claimant has to undergo two more operations namely, correction of partial union of tibia by bone grafting and non-union of fibula by ORIF. Since the claimant falls in the age group of 26-30 years, the Tribunal has applied the multiplier of "17" while assessing compensation towards permanent disablement at 12% of the whole body. The claimant has not produced any record to show that he was earning Rs. 7,500/- as a Cable technician. However, keeping in view, the accident occurred in the year 2011 and the claimant is aged about 29 years, his income can be safely fixed at Rs. 7,000/- per month. In my view, the claimant is entitled for compensation as under:

8. In the result, appeal is partly allowed holding that the appellant/claimant is entitled for additional compensation of Rs. 1,51,960/- along with costs and interest at the rate of 6% p.a. from the date of petition till realisation. Accordingly the impugned Judgment and Award are modified.

Respondent No. 2/Insurance Company is directed to deposit the enhanced compensation amount along with costs and interest with the Tribunal within two months from today. Out of the enhanced compensation, a sum of Rs. 1,00,000/- shall be kept in fixed deposit for a period of 5 years and the claimant is entitled to draw periodical interest that accrues on the deposit.

M/s. M.S. Rajendra Prasad, Associates granted 5 weeks time to file Vakalath for respondent No. 2.