

(2012) 03 KAR CK 0083
In the Karnataka High Court
Case No : MFA. NO. 6153 of 2011 (MV)

Rajesh Kumar Singh @ Raj Singh

APPELLANT

Vs

Murthy V. and The Manager, The Oriental Insurance Company
Limited, No. 44, Anantha Complex, Peenya 1st Stage,
Bangalore- 560 058

RESPONDENT

Date of Decision : 15-03-2012

Acts Referred:

Citation : (2012) 03 KAR CK 0083

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : Kalyan. R, for the Appellant; K. Suresh, Advocate For R. 2, for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda

1. Appellant/ claimant sustained grievous injuries to left leg, fracture of left femur and fracture displacement left hand, head injury in a road traffic accident on 15.09.2008 and filed a claim petition in the MACT against the owner and insurer of the offending vehicle. The Motor Accident Claims Tribunal, on appreciation of evidence, found actionable negligence on the part of the driver of the offending vehicle and after assessing the loss suffered, under the pecuniary and non-pecuniary heads, passed the award for Rs. 2,08,800/- with interest at 6% per annum on Rs. 1,93,800/-. Dissatisfied, the claimant has filed this appeal seeking enhancement of compensation. Respondents have not questioned the impugned judgment and award passed by the Tribunal directing them to pay compensation, as above.

2. Sri. Kalyan, learned advocate for appellant contended that, there being credible evidence placed on record with regard to avocation and income of the claimant, the Tribunal has committed an error in taking the income at Rs.

4,000/- per month and the permanent disability suffered at 10% in relation to the whole body. Consequently, Motor Accident Claims Tribunal has failed to pass Just and reasonable award. He submitted that, compensation awarded under other heads is also meager and hence reassessment of the loss, both on pecuniary and non-pecuniary heads, may be undertaken and appropriate award may be passed in the matter.

3. Sri. K. Suresh, learned advocate for Respondent No. 2, on the other hand would argue that, there is just and reasonable award passed by Motor Accident Claims Tribunal and hence, there is no scope for enhancement of compensation and the appeal may be dismissed.

4. Perused the records. The only point for consideration is, "whether the MACT has passed a just and reasonable award?"

5. Claimant has deposed as PW.1. Ex.P.2 is wound certificate, which shows that, claimant had sustained grievous injuries/ fracture of left femur, head injury, fracture of left hand. He has taken treatment. The discharge summary is at Ex.P.6. Dr. Mruthunjaya, T.D. has deposed as PW.2. He has assessed permanent disability suffered to left lower limb at 28%, 10% to the left hand and in relation to the whole body at 13%. Tribunal has taken disability suffered in relation to whole body at 10% Despite the evidence produced that he is a carpenter, Tribunal has taken the income at Rs. 4,000/- per month and assessed the loss during the treatment and rest period as well as future earning.

6. The accident having taken place on 15.09.2008, appellant being aged about 28 years at the time of accident, injury sustained being fracture of left femur, fracture of left hand and in view of evidence of PW.2, permanent disability suffered in relation to whole body ought to have been taken at 13%. Income, even in the absence of credible evidence, ought to have been taken at Rs. 5,000/- per month and there is thus underassessment of the loss. Keeping in view, the evidence on record in my opinion, Tribunal has not awarded just and reasonable compensation in favour of the claimant. The respondents are liable to pay the compensation is as follows:

HEADS

Amount in Rs.

1.

Pain & Suffering

Rs. 40,000/-

2.

Medical expenses as per bills

Rs. 33,000/-

3.

Incidental expenses -conveyance, nourished diet, attendant charges

Rs. 10,000/ -

5.

Loss of income during treatment and rest period (Rs. 5000x4)

Rs. 20,000/-

Loss of future earnings (650 x 12 x 17)

Rs. 1,32,600/ -

Loss of amenities of life

Rs. 15,000/-

Total

Rs. 2,50,600/-

In the result, appeal is allowed in part and the impugned judgment and award is modified. Compensation payable by the respondents is determined at Rs. 2,50,600/- with interest at 6% p.a. from the date of filing of claim petition till date of deposit, except for the delay period of 107 days condoned, as per order dated 31.10.2011 in Misc. Cvl. No. 2228/2010.

Two months time is allowed for the respondents to deposit the balance amount in the MACT. No order as to costs.