

(2016) 08 KAR CK 0041
In the Karnataka High Court
Case No : MFA No. 31235 of 2011 (MV)

Rajkumar alias Basawaraj Patil

APPELLANT

Vs

Basawaraj Deshmukhappa Honna

RESPONDENT

Date of Decision : 10-08-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, Section 168, Section 173

Citation : (2016) AAC 2492

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : Sri Santosh Biradar, Advocate, for the Appellant; Sri Sudarshan M., Advocate, for the Respondent; Notice to R1 dispensed with, for the Respondent No. 1

Final Decision : Partly Allowed

Judgement

B. Veerappa, J. - The claimant who is a practicing advocate filed the present appeal for enhancement of compensation against the impugned judgment and award dated 21.12.2010 made in MVC No.229/2008 on the file of the Fast Track Court-II Bidar (MACT Bidar), awarding the compensation of Rs.2,14,554/- with interest @ 6% from the date of petition till deposit of the amount and also held that the respondent No. 2 the insurer was directed to deposit the said amount within a period of two months.

2. It is the case of the claimant that on 27.01.2007 at about 4.45 p.m. that claimant was proceeding on his bike Hero Honda splendour bearing registration No. KA-38/J-570 towards the Court near Madival Circle, by that time the driver of TATA Safari vehicle bearing registration No.KA-34/MC-1661 came from Dr. Siddareddy Hospital driving in a high speed and negligent manner endangering the human life and dashed against the claimant and ran away from the spot. As a result of said accident, the claimant sustained grievous injuries on his right knee and also sustained fracture of tibia and fibula and also grievous injuries to die other parts of the body and he was shifted to Government Hospital Bidar, due

to grievous and fracture injury the claimant was referred to Udaya Orthopedic clinic at Hyderabad and admitted to the said hospital and he was in the Hospital from 28.01.2007 to 05.02.2007. The claimant further contended that he has undergone the operation of his right knee and bone grafting was done after the operation the Doctor advised the claimant to take full rest of five months and even after taking best treatment the claimant was not fully recovered and still there is pain in the right knee and the claimant cannot fold his leg full and sit on the ground with cross leg and the claimant is unable to walk in fast and has become permanent disable man. He further contended that he was practicing advocate along with agricultural work and he was earning Rs. 10,000/- per month. He also contended that he has spent Rs. 1,00,000/- for his treatment and needed of Rs.75,000/- for further treatment and spent Rs.30,000/- for transportation charges. Therefore, he prays for compensation as prayed for.

3. After receipt of summons from the Tribunal, the respondent Nos. 1 and 2 appeared and second respondent filed written statement denying the averments made in the claim petition and contended that the second respondent has no personal knowledge about the injuries sustained by the claimant and denied that the claimant sustained fracture injuries and not spent any amount for his treatment and also denied the age, occupation, and income of the claimant and nature of injuries sustained by in him. Further it is contended that the police collusion with the claimant filed false case against the driver of the TATA Safari and also denied that the driver of TATA Safari ran away from the accident spot and further contended that the respondent is not liable to pay the compensation and the driver of the TATA Safari was not having valid effective driving license to driver the vehicle. Therefore, the respondent No.2 is not liable to pay the compensation.

4. On the basis of the pleadings of the parties, the Tribunal framed the following issues:

1. Whether the claimant proves that on 27.01.2007 at 4.45 p.m. the accident took place due to the rash and negligent driving of the Tata Safari bearing Reg. No. KA-34/MC/1661 near Dr. Siddareddy Hospital, Bidar.

2. Whether the claimant further proves that he has sustained the grievous injuries in the accident?

3. Whether the respondent No.2 proves that the driver of the Tata Safari Vehicle No. KA-34/MC/1661 was not having valid driving license to drive the said vehicle on the date of accident?

4. Whether the claimant is entitled for the compensation? If so what extent, and from which respondents?

5. What order or Award?

5. In order to substantiate his claim, the claimant examined as PW.1 and one doctor examined as PW.2 marked the documents Exs.P1 to P3, the respondent

has not lead any evidence.

6. After hearing both the parties and after considering the entire material on record, the Tribunal recorded a finding that the claimant proved that on 27.01.2007 at 4.45 p.m. the accident took place due to the rash and negligent driving of the TATA Safari bearing registration No. KA-34/MC-1661 near Dr. Siddareddy Hospital, Bidar and also proved that he has sustained grievous injuries, fracture of tibia and fibula and sustained grievous injuries to the other parts of the body and the insurance company has failed to prove that the driver of the TATA Safari vehicle bearing registration No. KA-34/MC-1661 was not having valid and effective driving license to drive the vehicle as on the date of the accident and claimant is entitled for the compensation. Accordingly, the Tribunal by the impugned judgment and award has awarded the compensation of Rs.2,14,554/- with 6% interest from the date of petition till realization. Hence, the preset appeal is filed by the claimant for enhancement of compensation.

7. The insurance company has not filed any appeal against the impugned judgment and award passed by the Tribunal.

8. I have heard the learned counsel for the parties to the lis.

9. Sri Santosh Biradar, the learned counsel for the appellant vehemently contended that the impugned judgment and award passed by the Tribunal in granting the compensation of Rs.2,14,554/- is highly inadequate contrary to the material on record and also contended that the Tribunal erred in taking the income of the claimant as Rs.5,000/- though PW.1 has categorically stated on oath that he was practicing advocate and was earning Rs. 10,000/- per month and the same was not denied by the insurance company by producing the contrary material. It is also not in dispute that the claimant has sustained the fracture of tibia and fibula and also sustained grievous injuries to the other parts of the body. He contended that, though PW.2 the doctor who has stated on oath that the claimant has sustained disability to the extent of 49% of the disability of the right leg and 20% to the whole body. The Tribunal erred in taking the 10% of the disability against the evidence of PW.2 and as per Ex.P-38, certificate issued by Dr. Vedprakash stating that the claimant was advise for surgery and the approximate cost of the operation includes surgery and he has to spent Rs.38,000/- in future requires removal of implants (Plate and Screws) from his right tibial condyle and the same has not been considered by the Tribunal. Therefore, he sought for enhancement of the compensation by allowing the appeal.

10. Per contra, Sri Sudarshan M., the learned counsel for the respondent insurance company sought to justify the impugned judgment and award passed by the Tribunal and strenuously contended that though the claimant has stated that he was practicing advocate, no material documents has been produced before the Tribunal except ROR with regard to the agriculture. Therefore, the Tribunal is justified in taking the income of the claimant as Rs.5,000/- and

granted the compensation by the impugned judgment and award. Therefore, he sought to dismiss the appeal.

11. In view of the rival contentions urged by the learned counsel for the parties, the only point that arise for consideration in the present appeal is;

"Whether the appellant has made out a case for further enhancement".

12. I have given my anxious consideration to the arguments advanced by the learned counsel for the parties to the lis and perused the entire material on record.

13. It is an admitted fact that the accident occurred on 27.01.2007 at 4.45 p.m. due to the rash and negligent driving of the driver of the TATA Safari vehicle bearing registration No. K.A-34/MC-1661 and thereby claimant has sustained fracture of tibia and fibula and grievous injury to the other parts of the body. It is also not in dispute that as on the date of the accident, the said TATA Safari was insured with the second respondent insurance company and the Tribunal has recorded a specific finding that the accident was occurred due to the rash and negligent driving of the driver of the TATA Safari and the insurance company has failed to prove that the driver of the TATA Safari was not having valid and effective driving license to drive the said vehicle. It is specific case of the claimant that he was a practicing advocate and also doing agricultural work and he was getting income of Rs. 10,000/- per month from his profession and agriculture and the doctor who has examined as PW.2 has specifically stated that the claimant has sustained the injury of 49% disability to his right leg and 20% to whole body. The Tribunal has only taken as 10% disability which is on the lower side. Therefore, it is appropriate to take at least 18%, when PW. 1 has specifically stated that he was a practicing advocate and getting Rs.10,000/- per month. In the cross-examination nothing has been elicited by the insurance company and has not denied that he was a practicing advocate. Therefore, it is appropriate to take the income of the claimant as Rs. 6,000/- in stead of Rs.5,000/- taken by the Tribunal. It is also not in dispute that Dr. Vedprakash, Orthopedic Surgeon, has issued certificate dated 12.06.2010 certifying that. This is to certify that Mr. Raj Kumar Patel alias Mr. Basava Kumar Patel (claimant) requires removal of implants from his right tibial condyle and he is advised surgery. The approximate cost of the operation includes surgery, lab investigations, medicines, hospital stay is Rs.38,000/- in future. The said certificate was marked as ExP-38 and the same has not been considered by the Tribunal.

14. In view of the aforesaid reasons the above point raised in the appeal has to be answered in affirmative holding that the appellant has made out a case for further enhancement.

15. Considering the evidence of PWs. 1 and 2 and material documents Exs. P1 to P53 and after re-assessing the entire material on record the claimant is entitled to the compensation under the following heads;

1

Loss of future earning

Rs. 1,81,440/-

2

Pain and suffering

Rs. 50,000/-

2

Loss of amenities

Rs. 25,000/-

4

Loss of earning during the course of treatment

Rs. 24,000/-

5

Attendant charges

Rs. 2,000/-

6

Food and nourishment

Rs. 5,000/-

7

Medical expenses (as per the bills) (as awarded by the Tribunal)

Rs. 64,554/-

8

Future medical expenses

Rs. 38,000/-

16. In all the claimant is entitled for the compensation of Rs. 4,34,994/- subtracting sum of Rs. 2,14,554/- awarded by the Tribunal, which comes to Rs. 2,20,440/- will be the enhanced compensation.

17. In view of the aforesaid reasons, the appeal filed by the claimant is allowed in part. The impugned judgment and award dated 21.12.2010 made in MVC No.229/2008 on the file of the Fast Track Court-II Bidar, is modified and claimant is entitled for the enhanced compensation of Rs.2,20,440/- with interest @ 6% per annum from the date of petition till the date of realization.