
(1997) 11 KAR CK 0029
In the Karnataka High Court
Case No : M.F.A. No. 100 of 1994

Raju Adityan

APPELLANT

Vs

Oriental Insurance Co. Ltd. and Another

RESPONDENT

Date of Decision : 27-11-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 168 (1)

Citation : (1998) ACJ 488

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : K.T. Gurudeva Prasad, for the Appellant; Yoga Narasimha, for the Respondent

Final Decision : Allowed

Judgement

P. Vishwanatha Shetty, J.—Learned counsel for the appellant has filed a memo praying that the notice to respondent No. 2 who is the owner of the vehicle may be dispensed with as the liability of the respondent No. 1, the insurance company is admitted. Mr. Yoga Narasimha, learned Counsel for the respondent No. 1 submits that he has no objection to dispense with notice to respondent No. 2. Accordingly, notice to respondent No. 2 is dispensed with.

2. Though this appeal is listed in the orders list, since the appeal is of the year 1994, with consent of the learned Counsel for the appellant and the respondent No. 1, this appeal is taken up for final hearing and disposed of by this order.

3. The appellant in this appeal is a victim of an unfortunate accident that had taken place on 9.1.1993 at about 11.30 p.m. when he was returning from the mills of Subhadra Textiles of Magadi Main Road on his bicycle after attending his duties as a spinner in the mills of Subhadra Textiles. On account of injuries sustained by the appellant in the accident in question, he made a claim before the Motor Accidents Claims Tribunal (hereinafter referred to as "the Tribunal") claiming for award of compensation of Rs. 2,25,000/-. The appellant examined

himself as PW 1 and examined one Dr. Chandramoulesh who is the Head of the Department of Neurosurgery, Victoria Hospital, who had treated him as PW 2.

4. The Tribunal on the basis of the evidence on record and more particularly on the basis of the evidence of PW 2, the doctor, has found that the appellant has suffered permanent disability to the extent of 30 per cent, so far as the earning capacity is concerned and determined the loss of earning at Rs. 36,000/-. While so fixing the compensation for loss of earning at Rs. 36,000/-, the learned Tribunal fixed the income of the appellant at Rs. 750/-p.m. as claimed by the appellant in his claim petition and calculated the loss of monthly income at 30 per cent of Rs. 750. Tribunal also granted a sum of Rs. 5,000 towards pain and suffering and a sum of Rs. 10,000/- towards loss of amenities of life and a sum of Rs. 4,000/- towards medical expenses. The Tribunal on the basis of the evidence has though assessed that the appellant is entitled for payment of total compensation of Rs. 55,000/-, has awarded compensation of only Rs. 50,000 in view of the statement made by the appellant in the course of his evidence that he will be satisfied if a sum of Rs. 50,000 is granted as compensation.

5. Aggrieved by the quantum of compensation awarded by the Tribunal, the appellant has presented this appeal.

6. Mr. G. Prasad, learned Counsel for the appellant, submitted that the Tribunal has seriously erred on the basis of the evidence on record limiting the compensation only to a sum of Rs. 50,000/- as against Rs. 2,25,000/- claimed by the appellant. He points out that the evidence on record shows that the petitioner was an inpatient at National Institute of Mental Health and Neuro Sciences (NIMHANS) and Victoria Hospital, Bangalore for a total period of twenty days and he has suffered grievous injuries on account of the accident in question resulting in weakness of the left side of the body and suffered facial paralysis of the right side and he was unconscious for about ten days. He points out that the evidence on record also shows that the appellant has suffered the blurring of the right eye which has affected his vision. He further points out that according to PW 2, the appellant has suffered permanent disability to the extent of 30 to 40 per cent. In this background, the learned Counsel submits that Tribunal has erred in limiting the permanent disability only at 30 per cent when the evidence indicates that the appellant has suffered permanent disability to the extent of 30-40 per cent. He points out that the permanent disability of 30 to 40 per cent incurred by the appellant has resulted in loss of earning capacity of not less than 70 per cent.

7. Mr. Prasad also points out that there cannot be any dispute that on account of the injuries sustained by appellant, he has lost his employment; and that he could not attend to his work on account of the injuries sustained by him for a period of at least six months and therefore, he is required to be compensated for loss of earning during the period of treatment. He further submitted that the appellant has produced the medical bills for a sum of Rs. 4,025/- and since the appellant was an inpatient for a period of twenty days in two hospitals which are

located at a far-off place from the place of his residence, the Tribunal has erred in awarding only a sum of Rs. 4,000/- towards the medical expenses and other expenses like expenses on the attendant and transport etc. incurred by the appellant. It is the further grievance of Mr. Prasad that having regard to the nature of the gravity of the injuries sustained by the appellant and the period of treatment he has undergone, the Tribunal was not justified in awarding only a sum of Rs. 5,000/- towards pain and suffering. According to him, the Tribunal ought to have at least awarded a sum of Rs. 10,000 on this account.

8. He further submits when compensation assessed by the Tribunal indicates that appellant was entitled for compensation of Rs. 55,000/-, Tribunal was not justified in limiting the compensation to Rs. 50,000/-solely on the basis that the appellant who is a labourer and working as a spinner in a textile mill has presumably by inadvertence stated that he claims for award of compensation of Rs. 50,000/-. Elaborating this submission, Mr. Gurudeva Prasad submits that Section 168(1) of the Motor Vehicles Act provides for determination of just and fair compensation on an enquiry being held by the Tribunal pursuant to the claim made for the award of compensation and under these circumstances what is required to be awarded by the Tribunal to the claimant is just and fair compensation determined by the Tribunal on an enquiry held by it and not on the basis of the assertion or inadvertent admission made by the claimants. He points out that the permanent disability of 30 to 40 per cent suffered by the appellant has resulted in loss of earning capacity of not less than 70 per cent. He points out that just as the Tribunal is not required to pay higher compensation when it is claimed by the claimant, it is not permissible for the Tribunal to grant lesser compensation even if the claimant restricts his claim in the course of the proceedings before the Tribunal if the Tribunal on evidence is satisfied that the claimant is entitled for higher compensation than the one claimed in the course of the proceedings before the Tribunal. In support of this plea Mr. G. Prasad relied upon a decision of this Court in the case of National Insurance Company Ltd. Vs. R. Vishnu and Another, , and drew my attention to para 7 of the judgment wherein this Court has observed as follows:

(7) The next question for consideration is whether Workmen's Compensation Commissioner had the jurisdiction to award compensation higher than the one prayed for in the application. It is not disputed that in the application the respondent No. 1 had claimed only Rs. 75,000/- as compensation but the Commissioner awarded a compensation of Rs. 92,085/-. It is not the case of the appellant that the amount of compensation awarded is more than what is provided for in the Act. In our opinion, the amount of compensation which could be and has to be awarded by a Commissioner is what is provided for in the Act. For instance, if in a given case, the claimant does not quantify the amount of compensation but has stated as to the type of employment injury he suffered and makes a prayer for awarding compensation in accordance with law, it is for the Commissioner to quantify and award the compensation in accordance with the provisions of the Act. It should be noted that an application filed before the

Workmen's Compensation Commissioner under the Act, which is a social security measure, cannot be equated to a plaint before the court. Once application is filed with necessary details, quantification of the compensation is the duty of the Commissioner and he has to do it in accordance with law. Therefore, if in a given case, as has happened in this case, even though the claimant had asked for lesser amount, after proper adjudication when the Commissioner finds that higher compensation than what was asked for, has to be awarded, he has not only the power but also the duty to award such higher compensation.

9. Mr. Narasimha while fairly submits that in view of the principle underlying grant of compensation and the duties cast on the Tribunal u/s 168(1) of the Act, it is not permissible for the Tribunal to pin down to the statement made by the claimant in the course of evidence given by him either inadvertently or otherwise, the Tribunal can certainly take into account the assessment of injuries sustained by the victim and the loss suffered by him on account of that while determining the compensation. He submits that this is what exactly has been done by the Tribunal in the present case.

10. I find considerable force in the submissions made by learned Counsel for the appellant. Tribunal had determined the loss of earning capacity of the appellant at Rs. 8,000/- per year and on that basis proceeded to award a sum of Rs. 36,000/- as compensation. The appellant in the course of the evidence has stated that he was getting a daily wage of Rs. 35/- and in support of the said plea he has produced the certificate issued by the employer. However, in the claim petition he has stated that his income was Rs. 750/- p.m. Keeping in mind that the appellant was a young man and there is every possibility of his income going up every year, the loss of monthly, income of the appellant can be reasonably fixed at Rs. 1,000/-. As stated earlier, according to the doctor's evidence the loss of future earning capacity of the appellant was between 30 to 40 per cent and in the light of that evidence the loss of earning capacity can be fixed at 35 per cent. In that event, the loss of earning capacity in terms of money can be fixed at Rs. 350/- p.m.

11. The loss of earning capacity per year would be in a sum of Rs. 3,150/-. The appellant was a young man of 20 years. It cannot be disputed that the income would go up. Prospects for better service conditions cannot be ruled out. Under these circumstances, I am of the view that the multiple of 18 would be an appropriate guidance to determine the loss of earning capacity of the appellant. If this is made as the basis, appellant would be entitled to a sum of Rs. 50,400/- which is rounded off to Rs. 50,500/-. Further, as rightly pointed out by Mr. Prasad, the Tribunal has not awarded any amount towards loss of earnings during the period of treatment. Under these circumstances, a sum of Rs. 5,400/- will have to be awarded towards loss of income during the period of treatment. So far as the claim for medical expenses and the expenses of attendant and transport is concerned, taking into account that the appellant was an inpatient for a period of twenty days and thereafter he had to undergo treatment

periodically and visit the hospitals for the said purpose for a period of more than six months, I am of the view it would be just and appropriate to award compensation of Rs. 10,000/-towards medical expenses, the expenses of the attendant who had attended on the appellant during the period when he was an inpatient and the expenses towards transport and other incidental expenses. The Tribunal granted a sum of Rs. 5,000 towards the pain and suffering. As stated earlier, it is not in serious dispute that the appellant was under treatment for a period of six months and the injuries suffered by him are all serious in nature. He was unconscious for a period of ten days and an inpatient for a period of twenty days. Under these circumstances, it would be just and reasonable to grant a sum of Rs. 20,000/- towards pain and suffering as against Rs. 5,000/- granted by the Tribunal. Though Mr. Prasad seriously pressed for enhancement of compensation for the loss of amenities of life, in the facts and circumstances of the case and keeping in view the compensation towards loss of earning has been increased substantially, I do not find any justification to enhance the compensation awarded by the Tribunal.

12. In the light of the discussion made above, I am of the view that the judgment and award passed by the Claims Tribunal requires to be modified. Accordingly, it is modified by awarding a compensation in all amounting to Rs. 95,900/- as against a sum of Rs. 50,000/- awarded by the Tribunal. The respondent is given six weeks" time to pay the enhanced compensation. The appellant is also entitled for cost of this appeal fixed at Rs. 1,000/- payable by the respondent No. 1. The Tribunal while making the payment to the appellant shall keep in mind the observation of the Apex Court at para 17 of the judgment in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, . In terms stated above, this appeal is disposed of.