

(2015) 06 KAR CK 0081

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 200722/2014 (MV)

Rammanna

APPELLANT

Vs

Vinod and Others

RESPONDENT

Date of Decision : 23-06-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(1)

Citation : (2015) 06 KAR CK 0081

Hon'ble Judges : C.R. Kumaraswamy, J.

Bench : Single Bench

Advocate : Sanjeev Patil, Advocate, for the Appellant

Final Decision : Partly Allowed

Judgement

C.R. Kumaraswamy, J.—This Miscellaneous First Appeal is filed under Section 173(1) of the MV Act, against the judgment and award dated 17.07.2013 passed in MVC No. 154/2010 on the file of the Senior Civil Judge and Addl. MACT-III at Shorapur, sitting at Shahapur, partly allowing the claim petition and seeking enhancement of compensation.

2. With the consent of the learned counsel for the appellant and the learned counsel for the respondent No. 2, this matter is heard on merits. The materials placed before this Court is sufficient to dispose of this case at this stage.

3. The case of the claimant in the Claims Tribunal is that on 01.01.2009 at 4.00 PM near Laxmipur bus stand, the claimant along with deceased Tippanna were proceeding on a motor cycle bearing Reg. No. KA-33/H-2629 towards Sagoor village. At that time, driver of the lorry bearing Reg. No. KA-25/9363 drove the same from the opposite side and hit against the motor cyclist, as a result of which Tiuppanna succumbed to the injuries and claimant sustained fracture of Supracondylar of right femur and injury to the left eyebrow. He was shifted to Basaveshwar Hospital, Gulbarga.

4. In the Claims Tribunal respondent No. 1 has not filed objection statement. The

respondent No. 2 has filed objection statement.

5. The Tribunal relying on Ex. P9 certified copy of the judgment passed in MVC No. 914/2009 in respect of deceased Tippanna and also since the Court has fixed the liability against respondent No. 2 and based on the documentary and oral evidence came to a conclusion that the driver of the lorry bearing Reg. No. KA-25/9363 was driving the same in rash and negligent manner and caused this accident.

6. The Claims Tribunal has awarded compensation as under:

7. Not satisfied with the award amount, the claimant has preferred this appeal.

8. Learned counsel for the appellant submits that the disability assessed by the Claims Tribunal is on the lower side though the doctor has positively stated in his evidence that there is a disability of 38% to the whole body. He has also produced Photostat copy of the deposition of PW-2 Dr. Ravi Shivaraya. He further submits that the income assessed by the Claims Tribunal is also on the lower side. Therefore, he seeks to enhance the compensation.

9. Learned counsel for the respondent No. 2 submits that the doctor who assessed the disability is not the treated doctor and even the disability stated by the doctor is exaggerated and without any data. Therefore, he submits that the disability stated by the doctor cannot be taken into account.

10. PW-2 Dr. Ravi Shivaraya has stated in his evidence that he has examined Ramanna, injured on 24.11.2012. He has sustained following injuries:

"Cut lacerated wound over right knee joint 7 cm x 2 cm x 0.5 cm Cut lacerated wound over left elbow 3 cm x 1 cm x 0.5 cm Supra Condylar fracture right femur."

On 28.01.2009 he underwent surgery i.e. ORIF with locking compression plate. He has to undergo another surgery i.e. implant removal on later date. Cost of surgery would be Rs. 30,000/-. He examined him and found restriction of right knee movements at 20%, difficulty in walking and running at 10%, difficulty in squatting and sitting cross legs at 10% and pain (mild) 3%. X-ray of right knee joint AP/Lat. Evidence of fracture of distal end of femur with callus formation with internal fixation in situ. Total disability by combining formula is 38%. Hence, the doctor is of the opinion that injured is having permanent disability for the whole body at 38%. During cross-examination he states that he has not treated the patient. He has issued disability certificate. He denies the suggestion put to him that there is no disability of 38%. He also denies the suggestion put to him that the claimant can do normal work.

11. I have carefully examined the evidence of the doctor. The doctor has clearly stated in his evidence that there is disability of 38% to the whole body. He has also stated about the restriction of right knee movements and there is difficulty in walking, running, squatting and sitting cross legs. Considering all these

aspects and also occupation of the claimant, in my opinion the functional disability can be assessed at 18% to the whole body. The Claims Tribunal has assessed the income at Rs. 3,000/- per month which is on the lower side. The date of accident is 01.01.2009. Normally this Court takes income at Rs. 5,000/- per month for the accident that occurred in the year 2009. Therefore, I fix the income of the injured claimant at Rs. 5,000/- per month. The loss of income proportionate to the disability of 18% would be Rs. 900/- per month. So due to the reduced capacity of work, the claimant has lost income of Rs. 900 x 12 = Rs. 10,800/- x 14 = Rs. 1,51,200/-.

12. There is a positive evidence of the doctor that the claimant has to undergo one more operation. There is also evidence to the effect that on 28.01.2009 he underwent surgery i.e. ORIF. Though the claimant has produced medical bills to the extent of Rs. 1,00,000/-, the Claims Tribunal has made an observation that he has produced abnormal medical bills. Taking into consideration that he has to undergo one more surgery and also vouchers produced by him, in my opinion, it is just and reasonable to award a sum of Rs. 60,000/- under the head of medical expenses.

13. Claimant was hospitalized for about 72 days. During that time he needs an attendant. Therefore, it is just and reasonable to award a sum of Rs. 10,000/- under the head of attendant charges.

14. During hospitalization in order to speedily recover, he has to take nourished food. Therefore, it is just and reasonable to award a sum of Rs. 5,000/- under the head of nourishment expenses.

15. The claimant was hospitalized for 72 days. He might have spent some amount towards conveyance charges. Therefore, it is just and reasonable to award a sum of Rs. 5,000/- under the head of conveyance charges.

16. The income of the claimant is assessed at Rs. 5,000/- per month. The claimant had sustained serious injuries and he was hospitalized for 72 days. Even after discharge from the hospital he has to take rest. Therefore, it is just and reasonable to award a sum of Rs. 15,000/- under the head of loss of earning during laid up period.

17. In all, the claimant is entitled for compensation as under:

18. In all, the claimant is entitled for compensation of Rs. 3,01,200/-. This Court while condoning the delay has observed vide order dated 06.02.2015 that the appellant shall not claim interest over the delayed period. Therefore, the appellant is not entitled for interest for a period of 198 days. However, for the rest of the period the appellant is entitled for interest at 7% on the enhanced compensation amount.

19. In view of the above discussion, I pass the following:

"(i) This appeal is allowed in part.

(ii) The compensation is enhanced from Rs. 1,64,760/- as awarded by the Claims Tribunal to Rs. 3,01,200/-.

(iii) The appellant is not entitled for interest for the delayed period of 198 days. For the remaining period he is entitled for interest at 7%."