(2013) 12 KAR CK 0110

In the Karnataka High Court

Case No : M.F.A. No. 881 of 2012 (MV)

Rangappa APPELLANT

Vs

N.B. Shivakumar and The Divisional Manager, New India Assurance Co. Ltd. RESPONDENT

Date of Decision : 06-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0110

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : R. Shashidhara, for the Appellant; E.I. Sanmathi, for R2, for the Respondent

Final Decision : Allowed

Judgement

S. Abdul Nazeer, J.—This appeal by the claimant is directed against the judgment and award in MVC No. 309/2010 dated 24.11.2011 on the file of the Senior Civil judge and Addl. MACT at Holalkere, whereby the Tribunal has awarded total compensation of Rs. 90,400/- with interest at 6% p.a. from the date of the petition till the date of deposit. Learned counsel for the appellant/claimant would contend that the claimant had sustained fracture of right femur in the accident in question. He was aged about 55 years at the time of accident. He was hospitalized for 12 days. The doctor has assessed the permanent disability to a particular limb at 55% and 15% to the whole body. The claimant was working as an agricultural coolie. It is further contended that his right leg was shortened about 10 cms. due to the injuries sustained by him in the accident. Therefore he is not in a position to do the work. He requires an attendant. He had sustained 100% functional disability. The Tribunal is not justified in taking 20% functional disability to the whole body. The claimant was earning Rs. 6,000/- per month by doing agricultural work. The Tribunal has taken Rs. 3,000/- per month for the purpose of assessment of loss of future earning capacity. The compensation awarded under other heads is also on the lower side.

2. On the other hand, learned advocate appearing for the respondent-insurance company has sought to justify the impugned judgment and award.

3. I have carefully considered the arguments made at the Bar and perused the materials placed on record.

4. There is no dispute as to the occurrence of the accident and liability of the insurance company to pay the compensation. Having regard to the contentions urged, the only question for consideration is whether the award of compensation by the Tribunal is adequate?

5. As stated above, the accident had occurred on 30.08.2006. The claimant had sustained fracture of right femur. He was hospitalized for 12 days. The doctor, who had treated the claimant was examined as P.W. 2. He has stated that the claimant was aged about 70 years at the time of accident. The claimant was examined as P.W. 1. In his evidence, he has stated that he was working as an agricultural coolie. On account of the injuries sustained in the accident, there is a shortening of his right leg to an extent of 10 cms. He is not in a position to do the day-to-day work. He requires an attendant for the said purpose. He was earning Rs. 6,000/- per month. He walks with the help of crutches. The doctor who had treated the claimant was cross-examined on behalf of the respondent-insurance company. However, nothing worthwhile has been elicited to discredit his version. The doctor has stated that the claimant had sustained grievous injuries in the accident. There is shortening of his right leg. He assessed the disability to the right limb at 55% and to the whole body at 15%. As noticed above, the claimant was working as an agricultural coolie and he is not in a position to do the said work because of the permanent disability. He is walking with the help of the crutches. In the circumstances it is just and proper to hold 50% permanent functional disability to the claimant.

6. Though the contends that he was earning Rs. 6,000/- per month, the said plea has not been established. The accident had occurred on 30.08.2010. Having regard to the facts and circumstances, it is just and proper to assess his monthly income at Rs. 4,500/-. By taking his income at Rs. 4,500/- with application of multiplier 5 and 50% permanent functional disability, the compensation payable towards loss of future earning capacity comes to Rs. 1,35,000/-. Award of compensation in a sum of Rs. 35,000/- towards pain and agony is just and reasonable. He is entitled for a sum of Rs. 13,500/- (3 months earning) towards loss of income during the treatment period. He is also entitled for a sum of Rs. 50,000/- towards loss of amenities and a sum of Rs. 15,000/- towards conveyance, nourishment and attendant charges.

7. Thus, the compensation payable to the claimant is reassessed as under:

8. The Tribunal has totally awarded Rs. 90,400/-, which has to be deducted from the aforesaid amount. Thus, the claimant is entitled for a balance compensation of Rs. 1,58,100/-. In the result, the appeal succeeds and allowed in part. The respondent-insurance company is directed to deposit a sum of Rs. 1,58,100/-

with interest at 6% p.a. from the date of the application till the date of deposit within a period of six weeks from the date of receipt of copy of this order. Out of the enhanced compensation, a sum of Rs. 1,00,000/- shall be kept in Fixed Deposit in a Nationalised Bank for a period of Five years. He is permitted to withdraw the interest amount annually. The balance of compensation shall be released in favour of the claimant. No costs.

