

(2009) 04 KAR CK 0077

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 6182 of 2008

Rangegowda

APPELLANT

Vs

Khalimulia and The United India Ins Co. Ltd.

RESPONDENT

Date of Decision : 03-04-2009

Acts Referred:

Citation : (2009) 04 KAR CK 0077

Hon'ble Judges : N. Kumar, J;A.S. Pachhapure, J

Bench : Division Bench

Advocate : Kamala D.K, for the Appellant; S.V. Hegde Mulkhand, for R2, for the Respondent

Judgement

1. The claimant has preferred this appeal, challenging the Judgment and Award of the Motor Accident Claims Tribunal, seeking enhancement of compensation for the personal injuries sustained in a motor vehicle accident.
2. The parties are referred to as they were referred in the original proceedings, for the purpose of convenience.
3. On 29.07.2006 at about 5.45 p.m. the claimant was travelling in an autorickshaw bearing reg. No. MYH 6189 along with others. When he came near Lalanakere-Chagachagere, the driver of the said autorickshaw drove the vehicle in a rash and negligent manner. As a result, the autorickshaw capsized causing grievous injuries to the inmates of the autorickshaw. The claimant was also injured. He sustained fracture of left tibia and fibula. He was immediately admitted to hospital, where he was operated. Thereafter, he preferred the claim petition seeking compensation.
4. After service of notice, the respondents entered appearance and filed a detailed statement of objections contesting the claim. However, they did not dispute the accident or the insurance coverage to the autorickshaw.
5. In fact the other injured in the same accident also preferred claim petitions

before the same Tribunal and all the claim petitions were taken up together and common Judgment and Award was made. The Tribunal framed as many as 3 issues. The claimant in M.V.C. No. 104/2006 i.e., the appellant herein was examined as P.W.1, the doctor was examined as P.W.4 and produced 14 documents, which are marked as Exs.PI to 14. On behalf of the respondents, no oral evidence was adduced. By consent of the parties, the insurance policy was marked as Ex.R1.

6. The Tribunal on appreciation of the aforesaid oral and documentary evidence on record held that the accident was on account of rash and negligent driving by the driver of the autorickshaw and thus actionable negligence is established. Thereafter, he took note of the medical evidence on record. It showed fracture of left tibia and fibula and the claimant was operated and discharged on 08.08.2006. The disability was 25% for the left leg and it was taken as 8% for the whole body on the basis of the medical evidence as deposed by the doctor in this case. The claimant was aged 20 years at the time of the accident. He was an agriculturist and also carrying on business of vending vegetables. Therefore, the Tribunal proceeded to award Rs. 15,000-00 towards medical expenses. Taking the income of the claimant at Rs. 80-00 per day and the disability at 8%, the Tribunal awarded a sum of Rs. 41,472-00 towards the loss of future income, Rs. 10,000-00 towards the loss of amenities, Rs. 10,000-00 towards the attendant charges, conveyance and nourishment and also awarded Rs. 5,028-00 towards the loss of income during the period of treatment. Thus in all the Tribunal awarded a sum of Rs. 81,500-00 as global compensation. Aggrieved by the said award, the claimant has preferred this appeal.

7. The learned Counsel for the appellant assailing the impugned Award contended that when the claimant has sustained 2 fractures, no amount has been awarded under the head of pain and suffering. Medical bills were produced to the extent of Rs. 25,000-00. But, there was no justification to disallow the claim and awarding only Rs. 15,000-00 on that head as it is on the lower side. Award of the attendant charges, conveyance and nourishment was also on the lower side. The accident is of the year 2006. But, the Tribunal taken the income of the appellant at Rs. 80-00 per day. As the appellant is an agriculturist and carrying on business of vending vegetables, the award of loss of future income is on the lower side. Even the amount of compensation awarded on the head of loss of amenities is also inadequate. No amount is awarded towards the loss of future medical expenses and also towards the pain and suffering. The award of Rs. 5,000-00 towards the loss of income during the period of treatment is on the lower side. Further contends that the Award is incorrect and the compensation requires to be enhanced.

8. Per contra, the Insurance Company supported the impugned Order.

9. From the material on record it is clear that the claimant was aged 20 years at the time of the accident. He was an agriculturist and also carrying on business of vending vegetables. The accident took place on 29.07.2006. The appellant

sustained fracture of left tibia and fibula and he was operated. P.W.4, the doctor deposed 25% disability to the lower limb and 8% disability for the whole body. Under these circumstances, the claimant is entitled to Rs. 30,000-00 towards pain and suffering. But, the Tribunal committed serious error in not awarding any compensation under the head of future medical expenses. But, the claimant has produced the medical bills to the extent of Rs. 25,000-00. Unfortunately, some of the bills are not official. The Tribunal has disallowed the same and restricted to the extent of Rs. 15,000-00, which we do not find correct. Therefore, the claimant is entitled to an additional amount of Rs. 10,000-00. The accident is of the year 2006 and therefore, taking the income of the claimant at Rs. 30-00 per day is not proper. The income should have been taken at least Rs. 3,000-00 p.m. Therefore, the claimant is entitled to an additional amount of Rs. 10,368-00 [Rs. 3,000 x 8% x 12 x 18] under the head of loss of income during the period of treatment. The appellant was aged 20 years at the time of the accident and was an agriculturist and in these circumstances, with his fracture he has to bear the burden through out his life and therefore, the award of Rs. 10,000-00 under the head of loss of amenities is on the lower side and the appellant is entitled to an additional amount of Rs. 10,000-00 on this head. The claimant is to be operated to remove the implants. No compensation has been awarded towards the future medical expenses. Therefore, the appellant is entitled to a sum of Rs. 15,000-00 towards the aforesaid head. Having regard to the nature of the injuries, at least for 3 months, the appellant would not have been resumed to work and therefore, Rs. 9,000-00 is awarded under the head of loss of income during the period of treatment as against Rs. 5,000-00 awarded by the Tribunal. Therefore, an additional amount of Rs. 4,000-00 is required to be awarded to the appellant on this head. In all the claimant is entitled to Rs. 79,368-00 as an additional compensation. which can be rounded up to Rs. 80,000-00. Accordingly, we pass the following:

ORDER

The appeal is allowed in part. In addition to what has been awarded by the Tribunal, the claimant is entitled to an amount of Rs. 80,000-00 as an additional compensation with interest at 6% p.a. from the date of the petition till the date of payment. The parties to bear their own costs.