

(2010) 09 KAR CK 0017
In the Karnataka High Court
Case No : M.F.A. No. 1247 of 2007

Ravi K.J.

APPELLANT

Vs

The Oriental Insurance Company Limited and J.
Ramachandran

RESPONDENT

Date of Decision : 15-09-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2011) ACJ 2185

Hon'ble Judges : N.K. Patil, J;K. Govindarajulu, J

Bench : Division Bench

Advocate : Vishwanath S. Shettar, for the Appellant; R. Rajagopalan, for R-1, for the Respondent

Judgement

N.K. Patil, J.—This is a claimant's appeal directed against the impugned judgment and award dated 4th July 2006, passed in M.V.C. No. 2939/2004, on the file of the IX Additional Judge, Court of Small Causes, Member, Motor Accident Claims Tribunal-7, Metropolitan Area. Bangalore, (SCCH-7) (for short, Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 7,52,250/-, after deducting 25% towards contributory negligence as against his claim for Rs. 25.00 Lakhs, is inadequate.

2. The Appellant claims to be aged about 34 years, working as Manager in a Hotel, getting income of Rs. 8,000/- per month. He was hale and healthy prior to the date of accident. That at about 3:13 A.M., on 11-03-2004, when the Appellant was riding his motor cycle bearing No. KA-05/EA 6096 on H. Siddaiah Road, near Urvashi Circle Junction, observing all the traffic rules, at that time a Lorry bearing No. TN 09 AB 8509 being driven by its driver in a rash and negligent manner, with high speed, came and dashed against the motor cycle. Due to the impact, he fell down and sustained grievous injuries such as crush of right leg and was immediately rushed to Victoria Hospital for first aid treatment and thereafter he was shifted to Mallya Hospital, where he took treatment for

nearly 40 days and undergone ten surgeries and amputation of right leg above knee. It is the case of the Appellant that he has spent nearly Rs. 04.00 Lakhs towards conveyance, nourishing food and attendant charges including medical expenses and other incidental expenses and therefore, he has to be compensated adequately.

3. On account of the injuries sustained in the accident, the Appellant filed the claim petition u/s 166 of the Motor Vehicles Act, before the Tribunal, seeking compensation of a sum of Rs. 25.00 lakhs against the Respondents. The said claim petition had come up for consideration before the Tribunal on 4th July 2006. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of Rs. 7,52,250/- with interest at 6% per annum on Rs. 6,27,250/-, from the date of petition, after deducting 25% towards contributory negligence on the part of the Appellant. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the Appellant is in appeal before this Court, seeking enhancement of compensation.

4. We have heard learned Counsel for Appellant and learned Counsel for first Respondent - Insurance Company, for considerable length of time. Notice to second Respondent is dispensed with vide order dated 10th August 2009.

5. After hearing learned Counsel for the parties and after perusal of the judgment and award passed by Tribunal including the original records placed before us, we are of the view that, the occurrence of accident and the resultant grievous injuries sustained by Appellant and the amputation of right leg above knee are not in dispute. It is also not in dispute that he was aged about 34 years and working as Manager at a Hotel.

6. The Tribunal, after assessing the oral and documentary evidence available on file has rightly awarded compensation of Rs. 1,25,000/- towards pain and sufferings, Rs. 3,50,000/- towards medical expenses, Rs. 1,10,000/- towards cost of artificial limb, Rs. 1,13,000/- towards future medical expenses and Rs. 15,000/- for removal of implants. Hence, it does not call for interference.

7. Further, the Tribunal has also seriously erred in not awarded any compensation towards conveyance, nourishing food and attendant charges and not awarded reasonable compensation towards loss of income during treatment period, loss of amenities and also towards loss of future income. It needs enhancement. It is stated that the Appellant was working as a Manager at a Hotel, earning Rs. 8,000/- per month, which appear to be little exaggeration. The income assessed by Tribunal at Rs. 4,000/- appears to be on the lower side. Having regard to his age and avocation and the year of accident, we can reasonably re-assess his income at Rs. 6,000/- per month, to meet the ends of justice. He has sustained six injuries in all and was treated as inpatient for nearly 40 days. During this period, he would have spent considerable amount towards conveyance nourishing food and attendant charges apart from undergoing lot of unsaid pain

and agony. Having regard to the nature of injuries sustained and the amputation of right leg above knee, we can easily presume that he would have been out of work and taken follow-up treatment and bed rest at least for a period of six months. The Doctor has assessed disability at 85% in respect of right lower limb and 10% in respect of right upper limb and 31.66% in respect of whole body and we round it off to 32%. The Appellant, being aged only 34 years has to undergo this trauma throughout his life. The proper multiplier applicable in this case is "16" as per the decision of the Hon'ble Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, .

8. Accordingly, taking into consideration all the above aspects, we deem it fit and proper to re-determine the compensation by awarding a sum of Rs. 36,000/- towards loss of income during treatment period, for six months, at the rate of Rs. 6,000/- per month as against Rs. 24,000/-, Rs. 80,000/- towards loss of amenities, inconveniences, unhappiness, and discomforts of life as against Rs. 50,000/- (i.e. Rs. 30,000/- + Rs. 20,000/-towards loss of expectancy), and Rs. 3,68,640/- (i.e. Rs. 6,000/- x 12 x "16" x 32/100) towards loss of future income as against Rs. 2,16,000/- awarded by Tribunal. Having regard to the nature and duration of treatment and the nature of injuries sustained, we deem it fit and proper to award a sum of Rs. 40,000/- towards conveyance, nourishing food and attendant charges.

9. So far as the contributory negligence fixed on the Appellant at 25% is concerned, we are of the view that the Tribunal, after assessing the oral and documentary evidence has rightly fixed the same and we do not want to interfere with the said finding.

10. In the light of the facts and circumstances of the case, as stated above, the appeal filed by Appellant is allowed in part. The impugned judgment and award dated 04th July 2006, passed in M.V.C. No. 2939/2004, on the file of the IX Additional Judge, Court of Small Causes, Member, Motor Accident Claims Tribunal-7, Metropolitan Area, Bangalore, (SCCH-7) is hereby modified, awarding a sum of Rs. 12,37,640/- as against Rs. 10,03,000/- awarded by Tribunal, with interest at 6% per annum on the enhanced sum, from the date of petition till the date of realization. The break-up is as follows:

Towards Pain and sufferings

Rs. 1,25,000/-

Towards Loss of amenities & enjoyment in life and loss of expectancy of life

Rs. 80,000/-

Towards Medical Expenses

Rs. 3,50,000/-

Towards conveyance, nourishing food and attendant charges

Rs. 40,000/-

Towards Loss of earning during treatment period

Rs. 36,000/-

Towards loss of future income

Rs. 3,68,640/-

Towards cost of artificial limb

Rs. 1,10,000/-

Towards future medical expenses Rs. 1,13,000/- + 15,000/- for removal of implants

Rs. 1,28,000/-

TOTAL

Rs. 12,37,640/-

Out of total compensation of Rs. 12,37,640/-, if 25% is deducted towards contributory negligence on the part of the Appellant, the net compensation payable to Appellant comes to Rs. 9,28,230/- as against Rs. 7,52,250/-. The enhanced compensation comes to Rs. 1,75,980/-.

The first Respondent - Insurance Company is directed to deposit the enhanced compensation of Rs. 1,75,980/-, with interest thereon at 6% per annum, within four weeks from the date of receipt of copy of the judgment and award.

On such deposit by the Insurance Company, out of the enhanced compensation of Rs. 1,75,980/-, a sum of Rs. 1,00,000/- with proportionate interest shall be deposited in Fixed Deposit in any Nationalised or Scheduled Bank, in the name of the Appellant, for a period of five years, renewable for another five years, with permission to him to withdraw the periodical interest.

The remaining sum of Rs. 75,980/- with proportionate interest shall be released in favour of the Appellant, immediately.

Office to draw award, accordingly.