
(2013) 04 KAR CK 0094
In the Karnataka High Court
Case No : M.F.A. NO. 2039 of 2011 (WC)

Reliance General Insurance Company Limited	APPELLANT
Vs	
Manjunath Reddy and Sowmya Revankar	RESPONDENT

Date of Decision : 15-04-2013

Acts Referred:

Citation : (2013) 04 KAR CK 0094

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : H.S. Lingaraj, for the Appellant; V.B. Siddaramaiah, for R1, R2, for the Respondent

Judgement

S.N. Satyanarayana, J.—Second respondent, insurance.. company in WCA. CR. No. 24/2008 on the file of Commissioner for Workmen's Compensation, Udupi, has come up in this appeal impugning the judgment dated 1.6.2010 so far as it pertains to quantum of compensation awarded therein. The accident is not in dispute. So also injuries suffered by claimant that is fracture of left tibia and fibula and right tibia of claimant resulting in his hospitalization for a period of 15 days in Chinmaya Hospital, Kundapur and thereafter, filing claim petition seeking compensation. In the said proceedings, on appreciation of oral and documentary evidence available on record the Commissioner has proceeded to accept loss of earning capacity of claimant at 85% and accepting his income at Rs. 5,500/- pm., as driver of vehicle and restricting the same to Rs. 4,000/- pm., and applying relevant multiplier of 159.80 awarded compensation in a sum of Rs. 3,25,992/- payable with interest at 12% pa., from 12.6.2008 till deposit of entire amount. Being aggrieved by the same, present appeal is filed.

2. On going through the grounds of appeal and judgment impugned, this Court find that following substantial question of law arises for consideration in this appeal:

Whether Commissioner was justified in taking the loss of earning capacity of

claimant at 85% based on disability certificate, Ex. P4?

3. Heard the counsel for appellant and as well as contesting respondent. Perused the judgment impugned with reference to oral and documentary evidence available on record and also pleadings before Commissioner. On re-appreciation the substantial question of law is answered partially in the negative for the following:

REASON

As stated supra, accident is not in dispute. So also injuries suffered by claimant, which are three fractures i.e., two to left leg and one to right leg. Admittedly, claimant was working as driver at the relevant time of accident and because of accident he was inpatient in Chinmaya Hospital for 15 days, wherein he has undergone surgery for putting implants to the fractures suffered in both legs and thereafter, he has taken follow-up treatment, which according to doctor, PW.2 has resulted in healing of injuries suffered by claimant. The evidence of claimant also discloses that injuries are healed. Though it is stated that there is disability, the fact that claimant has not surrendered his licence and he continues to hold the same by taking necessary endorsement to drive transport vehicle from time to time is not in dispute. In that view of matter, the finding of Commissioner in taking loss of earning capacity of claimant at 85% appears to be exorbitant.

4. Regarding loss of earning capacity, it is seen though claimant has driving licence to continue driving he could not be driving the vehicle as he was driving earlier and to that extent there would be some amount of reduction in his ability and performance which would result in loss of earning capacity to a greater extent. However, the same would not be to the extent of 85%. In that view of matter, this Court is required to reassess the same. Considering the nature of injuries this Court feels it would be just and appropriate to take the loss of earning capacity of claimant at 40% as against 85% taken by Commissioner. If 40% disability is taken and compensation is reassessed by retaining notional income of claimant taken by Commissioner at Rs. 4,000/- pm., and relevant multiplier of 159.80, claimant would be entitled to compensation as under:

$\text{Rs. } 4000/- \times 60\% = \text{Rs. } 2400/-$
 $\text{Rs. } 2400/- \times 40\% = \text{Rs. } 960/-$
 $\text{Rs. } 960/- \times 159.80 = \text{Rs. } 1,53,408/-$

Claimant is entitled to receive aforesaid modified compensation along with interest at 12% pa., from 30th day of accident till date of deposit of entire amount.

Accordingly, the appeal is allowed in part. The judgment and order dated 1.6.2010 passed in WCA. CR. No. 24/2008 on the file of Commissioner for Workmen's Compensation, Udupi is modified.

In view of the appeal being allowed in part, from out of the amount in deposit the modified compensation along with interest is ordered to be sent to Commissioner for Workmen's Compensation, Udupi for disbursement to claimant and balance, if any, is ordered to be refunded to appellant," insurance company.