

(2011) 03 KAR CK 0236

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2103 of 2009

S. Manmohan

APPELLANT

Vs

John Distillers Limited and The Manager The New India
Assurance Co. Ltd.

RESPONDENT

Date of Decision : 14-03-2011

Acts Referred:

Citation : (2011) 03 KAR CK 0236

Hon'ble Judges : C.R. Kumaraswamy, J;Ajit J. Gunjal, J

Bench : Division Bench

Advocate : G. Chandra, for H. Pavanachandra Shetty, for the Appellant; R Jaiprakash, for R2, for the Respondent

Judgement

Ajit J. Gunjal, J.—Even though this appeal is listed for orders, with the consent of both the Counsel, we have taken up this appeal for final hearing.

2. This appeal is by the claimant seeking for enhancement of compensation. The date of accident is on 14.03.2007. It is not in dispute that he was in hospital for 4 days and was discharged on 17.03.2007. The age of the claimant is 37 years. He was proprietor of small scale industry and also CEO of Lakshmi Industries doing import and export business. The claim of the claimant is that he was earning Rs. 1,00,000/- per month. However, we notice that except the income tax returns, no documents are forthcoming to substantiate his contention.

3. The claimant- Appellant has suffered the following injuries:

1. Lacerated wound 4 x 3cm bone deep over right leg;
2. Fracture right fibula lower 1/3;
3. Fracture medial malleolus right leg;
4. Compound fracture dislocation right ankle joint

Ex. P16 is the wound certificate. PW2 is the doctor. On assessing the status of

the claimant, the doctor would depose that the claimant has got permanent disability. There is pain, swelling over the right ankle, swelling and tenderness over right ankle joint, he is not able to run/stand for a long time, he is facing difficulty in squatting/sitting cross legged and wasting of right calf by 1cm foot. The doctor has deposed that the disability is to the extent of 45% of the right lower limb and 15% to the whole body. The Tribunal has awarded compensation of Rs. 2,55,000/- which is inclusive of pain and suffering, medical expenses, loss of income during the period of treatment, unhappiness and loss of amenities and future surgery.

4. We have heard Mr. G. Chandra, learned Counsel appearing for the claimant and Mr. R. Jaiprakash, learned Counsel appearing for the insurer.

5. Indeed, we notice that the compensation awarded by the Tribunal under all the heads is just and proper in the circumstances, but however, we notice that the Tribunal has not awarded any compensation towards future loss of earning capacity and more so having regard to the nature of injuries. It is no doubt true that the contention as sought to be urged before us by Sri. R Jaiprakash, counsel appearing for the insurer that the industry which is set up is still running, thus, there is no loss of earning capacity, but however, we notice that the doctor has opined that the disability is to the extent of 15% to the whole body. Without going into the niceties of calculation, we propose to award a lumpsum amount of Rs. 35,000/- under the head loss of future earning capacity. Thus, the total compensation awardable to the claimant would be Rs. 2,90,000/-. Hence, the following:

ORDER

- a) The appeal is allowed in part.
- b) The claimant is entitled to the enhanced compensation of Rs. 35,000/-.
- c) The enhanced compensation shall carry interest at the rate of 6% from the date of petition till the date of deposit.
- d) The appeal stands disposed of accordingly.