

(2013) 01 KAR CK 0006
In the Karnataka High Court
Case No : M.F.A. No. 7856 of 2007 (M.V.)

S. Noor Mohammad

APPELLANT

Vs

United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 02-01-2013

Acts Referred:

Citation : (2013) 4 ACC 261 : (2014) 2 AKR 393

Hon'ble Judges : N.K. Patil, J;B.S. Indrakala, J

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

N.K. Patil, J.—This is a claimant's appeal for enhancement of compensation against the impugned judgment and award dated 8th February, 2007, passed in M.V.C. No. 5762/2005 by the XII Additional Judge and Member, Motor Accident Claims Tribunal, Bangalore (SCCH-8) (for short "Tribunal"). By its judgment and award, the Tribunal has awarded a sum of Rs. 2,53,000 under different heads with interest at 6% p.a., from the date of petition till the date of deposit as against the claim of the appellant for a sum of Rs. 7,00,000, on account of the injuries sustained by him in the road traffic accident.

2. In brief, the facts of the case are: The appellant claims to be aged about 26 years at the time of the accident. He was hale and healthy prior to the accident and drawing the salary of Rs. 15,000 per month by working as Engineer at Hydroquifs and Hydrolysis Private Limited, Bangalore. He met with an accident at about 11.30 a.m. on 24th July, 2005 on 4th Cross, 7th Main Junction, J.P. Nagar, Bangalore, on account of the rash and negligent driving by the driver of the offending vehicle bearing No. CKS 6372 and sustained injuries as per Ext. P5-wound certificate. Immediately, he was shifted to Hosmath Hospital where he took treatment as in patient on two occasions, undergone two operations with internal fixation and, thereafter, on the advise of the Doctor he has taken bed rest and follow treatment.

3. It is the further case of the appellant that spent considerable amount towards medical and other expenses and other incidental charges and on account of the injuries sustained by him as referred above, he has suffered permanent disability. The Doctor has assessed the disability at 45% to the left lower limb and at 15% to the whole body. Therefore, appellant has filed a claim petition before the Tribunal u/s 166 of M.V. Act, claiming compensation against the respondents.

4. The said claim petition had come up for consideration before the Tribunal. The Tribunal, after hearing both sides and after assessing the oral and documentary evidence, has allowed the said claim petition in part and awarded a sum Rs. 2,53,000 as compensation under different heads with interest at 6% p.a., from the date of petition till the date of deposit.

5. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant has presented this appeal, seeking enhancement of compensation.

6. We have heard the learned Counsel appearing for appellant and learned Counsel for Insurer.

7. After hearing the learned Counsel for the parties and after perusal of the materials available on record, including the impugned judgment and award passed by the Tribunal, it emerges that, there is no dispute regarding the occurrence of the accident and the resultant injuries sustained by the appellant. Further it emerges that, the Tribunal after assessing oral and documentary evidence, particularly, the medical bills produced by the appellant, has rightly awarded a sum of Rs. 1,25,000 towards medical expenses and therefore, interference by this Court is not called for.

8. However, the Tribunal has erred in not awarding reasonable compensation towards pain and suffering, towards conveyance, nourishing food and attendant charges, towards loss of income during treatment period, towards loss of amenities and discomforts and in not awarding any compensation towards future medical expenses and, therefore, it needs to be awarded. Admittedly, on account of the fracture of left tibia and fibula and abrasion on the left foot and other injuries sustained by the appellant in the accident he has taken treatment as in patient for 15 days on two occasions, undergone two surgeries with internal fixation. During that period, he might have undergone pain and agony and spent reasonable amount towards conveyance, nourishing food and attendant charges. Further it emerges that, on the advice of the Doctor he might have taken bed rest and follow up treatment and during the said period he would have incurred financial loss as he could not have attended his work regularly. Further, in view of the injuries sustained by the appellant, he has suffered permanent disability. The Doctor has deposed that, appellant has suffered disability at 15% to the whole body, it is permanent in nature, he has to suffer this disability through out his life and it would affect his happiness, comforts and amenities in future life. It is the case of the appellant that he is working as an Engineer in Hydroquifs and

Hydrolysis Pvt. Ltd. Bangalore and drawing the salary of Rs. 15,000 per month. To prove the same he has produced Ext. P10-salary certificate, which shows he was drawing the salary of Rs. 15,000 per month and we accept the same instead of Rs. 8,000 as assessed by the Tribunal. The Doctor has deposed that, appellant has to undergo one more operation for removal of implants and for that, he may require some reasonable amount. Taking all these aspects into consideration, we award a sum of Rs. 40,000 towards pain and suffering; Rs. 10,000 towards conveyance, nourishing food and attendant charges, Rs. 90,000 towards loss of income during treatment period for six months at the rate of Rs. 15,000 per month, Rs. 1,50,000 towards loss of amenities, comforts and happiness due to disability and Rs. 10,000 towards future medical expenses. Thus, in all, the appellant is entitled to the total compensation of Rs. 4,25,000 instead of Rs. 2,53,000 and the breakup is as follows:

Having regard to the facts and circumstances of the case, the appeal filed by the appellant is allowed in part. The impugned judgment and award dated 8th February, 2007 passed in M.V.C. No. 5762/2005 by the XII Additional Judge and Member, Motor Accident Claims Tribunal, Bangalore (SCCH-8), stands modified, awarding the compensation of Rs. 1,72,000 with interest at 6% p.a., from the date of petition till its realization, in addition to the compensation awarded by the Tribunal.

The Insurer is directed to deposit the enhanced compensation of Rs. 1,72,000 with interest at 6% p.a., from the date of petition till the date of realization, within three weeks from the date of receipt of a copy of this judgment.

Immediately on deposit by the Insurer, out of the enhanced compensation of Rs. 1,72,000, a sum of Rs. 1,00,000 with proportionate interest shall be invested in the Fixed Deposit in the name of the appellant in any Nationalized or Scheduled Bank, for a period of ten years and renewable by another ten years, with liberty reserved to him to withdraw the interest accrued on it, periodically.

The remaining sum of Rs. 72,000 with proportionate interest shall be released in favour of appellant immediately. Draw the award, accordingly.