

(2012) 08 KAR CK 0113

In the Karnataka High Court

Case No : Miscellaneous First Appeal 7760 of 2011 (MV)

Salauddin

APPELLANT

Vs

Ahluwalla Contractors India Ltd Shafia Jung Enclave, New
Delhi Also: M/s Ahluwalla Contracts India Ltd HTL, Leela
Palace Extension 23/4, 6th Cross, Kodihalli Village Bangalore
and ICICI Lambord Insurance Co Ltd Regl. Office: SVR
Complex 89, Hosur Main Road, Madiwala Bangalore

RESPONDENT

Date of Decision : 02-08-2012

Acts Referred:

Citation : (2012) 08 KAR CK 0113

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : Muniyappa D. Naveen, for the Appellant; B. Pradeep, for R2, for the Respondent

Judgement

Huluvadi G. Ramesh

1. Appeal is by the claimant seeking enhancement of the compensation awarded by the MACT V. Bangalore in MVC 2158/2009 on 28.5.2011. On 3.1.2009 around 6.00 p.m., the claimant was proceeding near outer ring road near Hennur junction on the left side of the road near the signal, the driver of the car bearing No. KA 02 B 263 was also waiting for signal clearance. At that time, lorry bearing No. KA 53 1488 in a negligent manner dashed against the car from behind in turn, the car dashed against the claimant as such, he fell down and sustained grievous injuries. In the claim petition filed, Tribunal having held that the accident was due to the negligence of the driver of the lorry in question, awarded global compensation of Rs.40,000/-. Not satisfied with the same, claimant is before this Court.

2. Heard the counsel representing the parties.

3. According to the appellant's counsel, though the claimant sustained as many

as three grievous injuries i.e., three fractures, only a meagre amount has been awarded. Even though the doctor has been examined to assess the disability, the same has not been taken into consideration to award just compensation.

4. Counsel for the respondent insurer submitted, the doctor examined by the court is not the one who has treated the patient. No disability certificate is issued except the oral testimony of the doctor and the compensation awarded in the absence of any cogent evidence is just and proper.

5. The claimant, as per Exp6 - wound certificate which is supported by the X Ray, has sustained abrasion on the dorsum of the right foot and fracture of the lateral condyle of the tibia, fracture of the right fibula and fracture of the lateral right malleolus. He has taken treatment at Sathya Hospital, also at hospital at Madras, Chittoor and Bowring Hospital, Bangalore.

6. The amount awarded in a sum of Rs.40,000/- is taken as sufficient towards pain and suffering and towards incidental expenses. That apart, the claimant would be entitled to another Rs.20,000/- towards medical expenses; Rs.10,000/- towards loss of income during treatment period and Rs.25,000/- towards loss of amenities and enjoyment in life. In the absence of cogent evidence and the disability certificate being produced and the doctor who has treated the claimant has not been examined, on the head loss of income due to disability and also having regard to the nature of avocation that he was a Supervisor, claimant could be awarded another Rs. 10,000/- for the disability suffered.

7. Thus, in all, the claimant would be entitled to Rs.65,000/- over and above what has been awarded by the Tribunal with 6% interest from the date of petition till deposit. Insurer to deposit the amount in three months. Appeal is allowed in part.