

(2017) 02 KAR CK 0196
In the Karnataka High Court
Case No : 30062 of 2012 (MVC)

Sameena W/o Raj Ahmed Bagawan

APPELLANT

Vs

Shivappa Shankrappa Kambale, & Ors.

RESPONDENT

Date of Decision : 09-02-2017

Acts Referred:

Citation : (2017) 02 KAR CK 0196

Hon'ble Judges : B. A. Patil

Bench : SINGLE BENCH

Advocate : Bapugouda Siddappa, Preeti Patil Melkundi

Final Decision : Allowed

Judgement

1. This appeal is by the appellant-claimant seeking enhancement of compensation, awarded by the VII Additional Claims Tribunal, Bijapur through its judgment and award dated 23.8.2011 in M.V.C.No.1660/2009.
2. Appeal is admitted. With the consent of the leaned counsels appearing for the parties, the appeal is heard finally and disposed of by this judgment.
3. Learned counsel for the appellant-claimant would submit that the compensation awarded by the Tribunal under various heads is on the lower side. He further contended that the income of the appellant-claimant taken by the Tribunal is very meager and thereby the compensation awarded towards loss of future income is also on the lower side. Hence, he prays for allowing the appeal by enhancing the compensation by the Tribunal.
4. Per contra, the learned counsel appearing on behalf of the second respondent-insurance company supports the impugned award and therefore she seeks for dismissal of the appeal.
5. The occurrence of incident in question and the injuries suffered by the appellant, offending vehicle insured with the second respondent-insurance company is not in dispute. As could be seen from the impugned judgment and

award, the Tribunal after taking into consideration the injuries suffered by the claimant has awarded an amount of Rs.12,000/- towards pain and agony, Rs.42,927/- towards medical expenses, Rs.10,000/- towards incidental and attendant charges, Rs.9000/- towards loss of income during laid up period, Rs.64,800/- towards loss of future earning capacity and Rs.5000/- towards loss of amenities, future and happiness.

6. In that light the Tribunal, in all awarded a total sum of Rs.1,43,727/- as compensation.

7. In the normal course, the method adopted by the Tribunal would be justified. But, in the absence of documentary evidence with regard to the income of the appellant, disability and other aspects, the Tribunal ought to have taken the notional income at the rate of Rs.5000/- p.m., which would be the yardstick to be adopted in Lok Adalath settlements. The multiplier applied by the Tribunal and the disability assessed is just and proper. Hence, the appellant-claimant is entitled to an additional compensation of Rs.37,800/- for future earning capacity and loss of future income. Even though, appellant-claimant has suffered injury to upper lip, lower lip, abrasion over the abdomen, right eye, missing of sixth teeth, fracture of anterior wall of frontal sinus. Keeping in view the above said injuries, the Tribunal has awarded an amount of Rs.10,000/- towards pain and agony, that also appears to be on the lower side, it ought to have awarded to Rs.30,000/-. In that light, the appellant is entitled to additional compensation of Rs.18,000/- towards pain and agony. So far as medical expenses is concerned, taking into consideration the extent of the medical expenses which has been meted out by the claimant, Tribunal has awarded an amount of Rs.42,927/-. The actual extent taken into consideration appears to be just and proper. So far as the laid up period is concerned, the appellant-claimant has been admitted as an in patient for a period of nine days. By taking into consideration the income at the rate of Rs.3000/- p.m., Rs.9000/- has been awarded. But, now in view of the income of the appellant having been taken at the rate of Rs.5000/-, the appellant is entitled to an additional amount of Rs.6000/- for loss of earning during the laid up period. Taking into consideration the injuries and other aspects, Tribunal has awarded an amount of Rs.5000/- towards loss of amenities, that also appears to be on the lower side and the claimant is entitled to additional compensation of Rs.10,000/- for loss of amenities and an additional amount of Rs.5000/- towards incidental and attendant charges. Whatever the amount now which has been awarded appears to be a just compensation, which would meet the ends of justice.

8. Thus, in all the appellant-claimant is entitled to an additional compensation of Rs.76,800/-(Seventy Six Thousand Eight Hundred Only) with interest at the rate of 6% p.a.

9. Accordingly, appeal is allowed in part and the Judgment and award passed by the Tribunal is modified to the extent as indicated above.

10. The Insurance Company shall deposit the additional amount of compensation awarded by this Court within six weeks from the date of receipt of the copy of this judgment.

11. The fixed deposits are to be made as per the award of the Tribunal.

Draw up the award accordingly.

No order as to costs.