

(2013) 07 KAR CK 0035
In the Karnataka High Court
Case No : M.F.A. No. 1703 of 2013 (MV)

S.B. Harish

APPELLANT

Vs

S.S. Lingadevaru and United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 19-07-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2013) 07 KAR CK 0035

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : K.R. Ramesh, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Patil, J.—This appeal by the claimant is directed against the judgment and award dated 29th December 2012, passed in MVC No. 98/2010, by the Additional Senior Civil Judge, Motor Accident Claims Tribunal-XI, Tumkur, (for short, "Tribunal"), for enhancement of compensation on the ground that, the compensation of Rs. 1,05,000/- with interest @ 6% p.a. awarded in favour of the claimant as against his claim for Rs. 5,00,000/-, is inadequate. The appellant claims to be aged about 22 years and hale and healthy prior to the date of accident. That the occurrence of accident at about 2:30 P.M., on 22-11-2009, when the appellant was proceeding on his Hero Honda Motor cycle, bearing Registration No. KA-06/R-1107, near Nehru Circle, Shettikere gate, due to rash and negligent driving by the driver of the Tractor bearing Registration No. KA-44/T-412, is not in dispute. It is also not in dispute that the appellant has sustained deformity present over right thigh lower side, wound over nasal bridge, fracture shaft of right femur lower half. As per Wound Certificate, Ex. P4, the appellant has sustained gross deformity present over right thigh lower side and abrasion wound present over nasal bridge. Due to the injuries sustained in the accident, he was shifted to Government Hospital, Chikkanayakanahalli.

2. It is his further case that, on account of the accident, he sustained injuries

stated above for the treatment of the said injuries, he has spent reasonable amount towards conveyance, nourishing food and attendant charges including medical expenses and other incidental expenses and therefore, he has to be compensated reasonably.

3. On account of the injuries sustained in the accident, the appellant filed the claim petition u/s 166 of the Motor Vehicles Act, before the Tribunal, seeking compensation of a sum of Rs. 5,00,000/- against the Insurance Company and another. The said claim petition had come up for consideration before the Tribunal on 29th December, 2012. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of Rs. 1,05,000/- under different heads, with interest at 6% per annum from the date of petition till the date of realization. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant has filed the appeal before this Court, seeking enhancement of compensation.

4. I have gone through the grounds urged in the memorandum of appeal and the impugned judgment and award passed by Tribunal and heard the learned counsel appearing for the appellant.

5. The submission of Shri K.R. Ramesh, learned counsel appearing for appellant at the outset is that, the compensation awarded by Tribunal under all the heads is on the lower side and hence, reasonable enhancement may be made under all the heads, particularly towards loss of amenities, as the Doctor has assessed the disability at 26%. He submits that the Tribunal has not looked into this aspect of the matter nor awarded reasonable compensation for the injuries sustained by the appellant and hence, the impugned judgment and award may be modified accordingly.

6. After perusal of the impugned judgment and award passed by Tribunal and after hearing the learned counsel for appellant, it can be seen that, occurrence of accident and the resultant injuries sustained by appellant are not in dispute. Admittedly, the appellant has sustained deformity over right thigh lower side, wound over nasal bridge, fracture shaft of right femur lower half. As per Wound Certificate, Ex. P4, he has sustained gross deformity present over right thigh lower side and abrasion wound present over nasal bridge. Due to the injuries sustained in the accident, he was shifted to Government Hospital, Chikkanayakanahalli. Further, PW 2, Doctor, in his evidence, has stated that the appellant has sustained 26% disability, but no supportive material are produced. It can be seen that the Doctor, PW 2, at Government Hospital, Chikkanayakanahalli. As per his evidence, the appellant has sustained fracture of shaft of right femur. For the said injury and another abrasion, the Tribunal has awarded a sum of Rs. 40,000/-. In fact, the said sum awarded is a bit on the higher side.

7. Further, it can be seen that PW 2, Doctor has stated in his evidence that there

is shortening of leg by 4%, which means that the claimant is required to live with discomfort for the rest of his life. Therefore, the Tribunal has awarded a sum of Rs. 30,000/-. The same is just and proper having regard to the fact that the appellant is only aged about 22 years and he has to pull on the said difficulty for remaining part of his life and he finds difficulty in his day to day activities.

8. Further, it can be seen that on the basis of the evidence of the Doctor, the Tribunal has awarded a sum of Rs. 25,000/- towards future medical expenses. Since the appellant has sustained fracture of shaft of right femur, Doctor has opined that there needs to be an implant removal surgery, costing about Rs. 25,000/-. The Tribunal has awarded the entire expenses towards future medical expenses. Therefore, interference in the same is also not called for.

9. Therefore, having regard to totality of the case on hand, I am of the view that the quantum of compensation awarded by Tribunal is just and proper and the same is in consonance with the injuries sustained and hence, it does not call for interference. For the foregoing reasons, the appeal filed by the claimant is liable to be dismissed as devoid of merits. Accordingly, it is dismissed.

Office to draw award, accordingly.