

(2010) 04 KAR CK 0145
In the Karnataka High Court
Case No : M.F.A. No. 1067 of 2005

S.H. Daraneshappa @ Dharanesh

APPELLANT

Vs

Gadageppa S. Gubbi @ Banakar and The Branch Manager
United India Insurance Company Limited

RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2010) 04 KAR CK 0145

Hon'ble Judges : N.K. Patil, J;H.S. Kempanna, J

Bench : Division Bench

Advocate : B.M. Siddappa, for the Appellant; U. Abdul Khader, for R-2, for the Respondent

Judgement

N.K. Patil, J.—The instant appeal is directed against the impugned common judgment and award dated 11.10.2004 passed in M.V.C. No. 1333/1998 on the file of the Addl. District Judge and MACT-II, Chitradurga (hereinafter referred to as the "Claims Tribunal" for brevity) seeking enhancement of compensation. The Claims Tribunal by its judgement and award has awarded a sum of Rs. 55,000/-, after deducting 30% towards contributory negligence on the part of appellant with interest at 6% p.a. from the date of petition till the date of payment. Being aggrieved, the appellant felt necessitated to present this appeal on the ground that the compensation awarded by the Claims Tribunal is inadequate and he is entitled for enhancement of compensation and to set aside the contributory negligence of 30% fixed against the appellant.

2. The brief facts of the case are that the appellant claims to be aged about 32 years at the time of accident and a driver by profession, getting salary of Rs. 3,000/- p.m. He was hale and healthy prior to the accident. The appellant contended that at about 8.30 a.m., on 28.2.1998, he was proceeding on a motor cycle bearing Reg. No. KA 16 H 2040. When he was near Modehalli by-pass road on NH-4, a mini lorry bearing Reg. No. KA-27/2134 came from Davanagere side

at high speed in a rash and negligent manner and dashed against the appellant, due to which the motor cycle and appellant were dragged to a distance of about 20 feet and he sustained grievous injuries to his head, left hand and other parts of the body. Immediately, he was shifted to District Hospital, Chitradurga. Thereafter, he was shifted to Bapuji Hospital, Davanagere, for better treatment where he was admitted as inpatient for one month and underwent an operation for his head injury. On account of the injuries sustained in the road traffic accident, he filed a claim petition u/s 166 of the M.V. Act against the respondents claiming compensation of Rs. 13,55,000/-. The said claim petition had come up before the Claims Tribunal for consideration on 11.10.2004. The Claims Tribunal, after careful evaluation of the oral and documentary evidence and other relevant material on record has allowed the claim petition in part and awarded compensation of Rs. 55,000/-, after deducting 30% towards contributory negligence on the part of appellant with interest at 6% p.a. from the date of petition till the date of payment.

3. Being aggrieved by the same, the appellant has presented the instant appeal claiming enhancement of compensation on the ground that the amount awarded by the Claims Tribunal is inadequate and the same requires enhancement and also to set aside the 30% contributory negligence fixed against appellant

4. As against this, learned Counsel for the second respondent - Insurance Company, inter alia, contends that the amount awarded by the Claims Tribunal is just and reasonable. The Claims Tribunal, after due consideration of the material on record and taking into consideration the nature of injuries sustained, has awarded reasonable compensation and therefore interference by this Court is not called for.

5. We have heard learned Counsel appearing for the appellant and learned Counsel appearing for the second respondent - Insurance Company for considerable length of time and gone through the grounds urged in the memorandum of appeal

6. After careful evaluation of the original records and after perusal of the judgment and award, we find that the Claims Tribunal has rightly, after assessing oral, documentary evidence and other material on record, at paras 11 and 12, has fixed contributory negligence of 30% against appellant. Hence, it does not call for interference.

7. However, the Claims Tribunal has erred in not awarding reasonable compensation towards "pain and sufferings", "conveyance, nourishing food and attendant charges", loss of income during laid up period", "loss of future income" and "loss of amenities, discomfort and unhappiness".

8. It is not in dispute that the appellant was aged about 32 years at the time of accident. He was working as a driver and was getting salary of Rs. 3,000/- p.m. apart from Rs. 50/- per day as be to. The Claims Tribunal, is not justified in taking the income of the appellant at Rs. 2,000/- p.m. and the same is on the

lower side. Having regard to the age and avocation of the appellant and since the accident occurred in the year 1998, we can safely re-assess the income of appellant at Rs. 3,000/- p.m. The Doctor has assessed disability at 22% to 25% to the whole body. But the Claims Tribunal has rightly assessed the disability of 10% to the whole body. He should have undergone pain and agony during treatment period. He must have spent reasonable amount towards "conveyance, nourishing food and attendant charges". The Claims Tribunal has not awarded compensation towards "loss of amenities" and "loss of income during laid up period". Taking into consideration, these aspects, we deem it proper to award a sum of Rs. 30,000/- towards "pain and sufferings" as against a sum of Rs. 25,000/- awarded by the Claims Tribunal, a sum of Rs. 5,000/- towards "conveyance, nourishing food and attendant charges" as against Rs. 2,500/-, a sum of Rs. 9,000/- (for a period of three months) towards "loss of income during laid up period" as against Rs. 3,000/-, a sum of Rs. 10,000/- towards "loss of amenities, discomfort and unhappiness".

9. The Claims Tribunal has erred in awarding only Rs. 36,000/- towards "loss of future income". It is not in dispute that the appellant has undergone treatment for 90 days in the hospital. The Claims Tribunal has assessed 10% permanent disability to the whole body. Taking his income at Rs. 3,000/- p.m and adopting the multiplier of "16", we award a sum of Rs. 57,600/- (Rs. 3,000/- x 12 x 10/100 x 16) towards loss of future income.

10. The Claims Tribunal is justified in awarding compensation of Rs. 15,000/- towards "medical treatment" and the same does not call for interference.

11. In the light of the facts as stated above, the instant appeal filed by the appellant is allowed in part. The impugned common judgment and award dated 11.10.2004 passed in M.V.C. No 1333/1998 on the file of the Addl. District Judge and MACT-II, Chitradurga is hereby modified and the breakup is as follows:

1) Pain and sufferings Rs. 30,000/- 2) Medical expenses Rs. 15,000/- 3) Conveyance, nourishing food, and attendant charges Rs. 5,000/- 4) Loss of amenities and discomfort Rs. 10,000/- 5) Loss of future income Rs. 57,600/- 6) Loss of earning during laid up period Rs. 9,000/- _____ Total Rs. 1,26,600/- _____

The appellant is entitled to total compensation of Rs. 1,26,600/- as against Rs. 78,500/- (total enhancement being Rs. 48,100/-). Out of which, if 30% is deducted towards contributory negligence, the net enhanced compensation comes to Rs. 33,670/- with interest @ 6% p.a. on the enhanced amount from, the date of petition till the date of realization.

The second respondent - Insurance Company is directed to deposit the enhanced compensation with interest within two weeks from the date of receipt of a copy of the judgement

The enhanced amount with interest shall be released in favour of the appellant

immediately on deposit of the amount by the Insurance Company.
Office is directed to draw the award accordingly.