

(2017) 07 KAR CK 0004
In the Karnataka High Court
Case No : 201680 of 2016

Shivaji s/o Dhaku @ Thaku Rathod

APPELLANT

Vs

Chandrakanth S/o Madan Rathod & Anr.

RESPONDENT

Date of Decision : 03-07-2017

Acts Referred:

[Motor Vehicles Act, 1988](#), [Section 173\(1\)](#) /
[Section 173\(1\)](#) - Appeals

Citation : (2017) 07 KAR CK 0004

Hon'ble Judges : B. A. Patil

Bench : SINGLE BENCH

Advocate : Sanjeev Patil, Rahul R. Asture

Judgement

1. This appeal is by the claimant-appellant seeking enhancement of compensation awarded by the learned I Addl. Senior civil Judge and MACT Kalaburagi in MVC No.1013/2011 dated : 4.3.2016.
2. Heard. Appeal is admitted and with the consent of the leaned counsel appearing for the parties, it is taken up for final disposal.
3. The brief facts of the case of the petitioner are that, on 26.6.2011 at about 8.00 p.m., petitioner was moving for attending the nature's call, at that time, a Cruiser Jeep bearing Regn.No.KA-32/B-0590 came rashly and negligently and dashed to the claimant as a result of the same, he sustained injuries and he got admitted in District Hospital, Gulbarga from 26.6.2011 to 28.6.2011 and thereafter he got admitted in Dr. P.G. Shah Orthopaedic Hospital, Gulbarga from 28.6.2011 to 8.7.2011 and there he underwent operation for the said injuries he filed the claim petition.
4. The learned counsel for the appellant submits that, the injured has sustained permanent disability to the extent of 25% because of the fractures. The tribunal only by taking into consideration the permanent disability to the extent of 8% has awarded the compensation of Rs.92,160/- towards loss of future income

which is on the lower side. He would further contend that, the compensation awarded on other heads is also on the lower side. On these grounds he prays for enhancement of the compensation.

5. The learned counsel appearing for the respondent-insurance company has contended that the Tribunal after taking into consideration the disability to the extent of 8% and by taking monthly income of Rs.6,000/- has rightly awarded the just compensation and thereby, he prays for dismissal of the appeal by confirming the judgment and award passed by the Tribunal.

6. The accident in question is not in dispute, so also, the involvement of the offending vehicle insured with the respondent-insurance company. As could be seen from the judgment and award of the Tribunal, the Tribunal after taking the notional income of the injured, at the rate of Rs.6,000/- per month and as the appellant has sustained fracture of pubic ram pelvis right, fracture of shaft ulna, left middle third grievous injuries over the upper arm, over left side hip joint and the evidence of P.W.2 Doctor, it assessed the disability to the extent of 8% to the whole body and has awarded Rs.92,160/- towards loss of future income. But, as could be seen from the evidence of P.W.2 - Doctor, he has deposed that the claimant is having disability to the left upper limb to the extent of 50% and to the whole body 25%. The tribunal without any basis only by holding that the disability assessed by P.W.2 is on higher side and has taken 8% disability to the whole body, the same is not justifiable. By taking into consideration the nature of injuries and the other disabilities, it ought to have been 50% of the disability to the whole body. In that light, if the disability is taken at 13%, then under such circumstances, the claimant - appellant is entitled to an amount of R.1,49,760/- towards loss of future income ($6000 \times 12 \times 13\% \times 16$). Even the compensation awarded under other heads appears to be on the lower side. When the claimant - appellant has sustained so many fractures, then under such circumstances, he might have suffered and as such he is entitled to an amount of Rs.40,000/- towards pain and sufferings and an amount of Rs.20,000/- towards diet, nourishment and attendant charges and an amount of Rs.30,000/- towards loss of amenities and enjoyment in the life and an amount of Rs.18,000/- towards loss of income during the laid up period. The reassessed compensation is as under:

- 1 Towards pain and suffering Rs. 40,000/-
- 2 Towards medical expenses Rs. 10,986/-
- 3 Towards special diet and attendant charges
Rs. 20,000/-
- 4 Towards loss of income during laid up period
Rs. 18,000/-
- 5 Towards loss of income due to disability

Rs. 1,49,760/-

6 Towards loss of amenities Rs. 30,000/-

Total Rs. 2,68,746/-

7. Since the Tribunal has awarded Rs.1,67,146/- after deducting the same, the claimant/appellant is entitled to an additional compensation of Rs.1,01,600/- with interest at 6% per annum.

8. Accordingly, the appeal is allowed in part. The judgment and award passed by the Tribunal in MVC No.1013/2011 is modified as stated above.

9. The respondent-insurance company is directed to deposit the compensation awarded by the Tribunal and additional compensation awarded by this Court within six weeks from the date of receipt of a copy of this judgment and the same shall be distributed to the claimants as per the award of the Tribunal.

10. The Registry is directed to draw the award accordingly.