
(2015) 03 KAR CK 0273

In the Karnataka High Court

Case No : M.F.A. Nos. 5206 and 7269 of 2013 (MV)

Shriram General Insurance Company Ltd. and Others

APPELLANT

Vs

Maresh Devadiga and Others

RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 03 KAR CK 0273

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

Bench : Division Bench

Advocate : H.N. Keshava Prashanth, for the Appellant; Maresh Shetty, Advocates for the Respondent

Judgement

N.K. Patil, J.—These two appeals by the Insurer and by the Claimant are directed against the same judgment and award dated 15/01/2013, passed in MVC No. 87/2011, by the Senior Civil Judge and Member, Additional Motor Accident Claims Tribunal, Kundapura, (hereinafter referred to as "Tribunal" for short).

2. The Tribunal by its judgment and award, has awarded a sum of Rs. 18,04,100/- with interest at 6% p.a., from the date of petition till its realization as against the claim of the claimant for a sum of Rs. 25,00,000/-, on account of the injuries sustained by him in the road traffic accident.

3. Aggrieved by the said judgment and award of the Tribunal, Insurer has preferred an appeal for reduction of compensation, on the ground that, the quantum of compensation awarded by the Tribunal is on the higher side and is liable to be reduced and whereas, claimant has filed an appeal seeking enhancement of compensation, on the ground that, the compensation awarded by the Tribunal and that the rate of interest awarded at 6% p.a. from the date of petition till its realization is on the lower side and is liable to be enhanced.

4. In brief, the facts of the case are:

"Claimant is aged about 23 years at the time of accident. He was hale and

healthy prior to the accident and working as Welder in Mangalore Body Builder Garage and earning Rs. 8,000/- per month. That at about 8.45 a.m. on 5.10.2010, the claimant was proceeding in a Motor cycle bearing Reg. No. KA.20.U.1500 from Jaladi side towards Trasi side and when he came near Arate bridge on NH No. 17, Hosadu, Kundapura Taluk, at that time, the driver of the bus bearing Reg. No. KA.20.A.7865 came in a very rash and negligent manner from behind and dashed to the motorcycle of the claimant and caused the accident. Due to which, claimant sustained major fracture and other injuries. Immediately, he was shifted to KMC Hospital, Manipal, where he took treatment as inpatient for 68 days on different dates, underwent surgeries and thereafter, on the advise of the Doctor, he has taken bed rest and follow up treatment." 5. It is the further case of the claimant that, he has spent considerable amount towards medical and other incidental expenses. On account of the injuries sustained by the claimant, he has suffered permanent disability and the Doctor has assessed the disability at 62% to the whole body. Therefore, claimant has filed a claim petition before the Tribunal under Section 166 of M.V. Act, claiming compensation against the owner and Insurer of the offending vehicle.

6. The said claim petition had come up for consideration before the Tribunal. The Tribunal, in turn, after appreciating the oral and documentary evidence and other materials available on file, has allowed the said claim petition in part, awarding the compensation of Rs. 18,04,100/- with interest at 6% p.a., from the date of petition till its realization.

7. Being aggrieved by the said judgment and award, the Insurer and the claimant have presented these appeals seeking appropriate reliefs, as stated supra.

8. We have heard learned counsel appearing for the Insurer and learned counsel appearing for claimant at considerable length of time.

9. The principal submission canvassed by the learned counsel appearing for Insurer, at the outset is that, the Tribunal has committed a grave error and irregularity resulting in miscarriage of justice in assessing the permanent disability at 100% contrary to the evidence of the Doctor, PW3, who has deposed that claimant has suffered permanent disability of 14% to his right leg and 48% to his right hand which comes to 62% to the whole body. Therefore, he submitted that 100% permanent disability assessed by the Tribunal cannot be sustained and is liable to be reduced, consequently, the quantum of compensation is also liable to be reduced by modifying the impugned judgment and award passed by the Tribunal.

10. It is the submission of the learned counsel appearing for claimant that, the Tribunal has erred in not awarding reasonable compensation towards injury, pain and sufferings, towards medical expenses, conveyance, nourishing food and attendant charges, towards loss of income during treatment period, towards loss of amenities, discomforts and unhappiness, towards loss of future earnings,

towards loss of marriage prospects and in not awarding any compensation towards future medical expenses and therefore, it requires to be enhanced reasonably. He further submits that, the Tribunal has assessed the income of the claimant at Rs. 5,850/- per month which is on the lower side and is liable to be enhanced atleast to Rs. 6,000/- per month on the ground that, claimant was aged about 23 years and accident had occurred on 5.10.2010. He has further submitted that, on account of the injuries sustained by the claimant, he has taken treatment as inpatient for 68 days on different dates and undergone surgeries and on account of grievous injuries sustained by him, he has suffered permanent disability. To prove the same, he has examined the Doctor, who after clinical examination has assessed the disability at 48% to the right hand and 14% to right leg and 65% and due to which, he has undergone lot of pain and agony, incurred loss during the treatment period, he has to suffer this disability through out his life and it would affect his future happiness and earning capacity and also affects his marriage prospects and therefore, the Tribunal has justified in assessing 100% disability. He further submits that, the Doctor has deposed that the claimant requires a sum of Rs. 1,00,000/- to Rs. 1,20,000/- towards future medical expenses including incidental expenses. But these aspects of the matter have not been considered or appreciated or awarded reasonable compensation by the Tribunal. Therefore, he submitted that the impugned judgment and award passed by the Tribunal is liable to be modified by enhancing the compensation reasonably.

11. After hearing the learned counsel for both parties and after perusal of the materials available on file, including the impugned judgment and award passed by the Tribunal, the only point that arises for our consideration is:

"Whether the quantum of compensation awarded by the Tribunal is just and reasonable?" 12. It is the specific case of the claimant that, he was aged about 23 years at the time of the accident, Welder by profession and hale and healthy prior to the accident that occurred on 5.10.2010. As per Ex. P4-Wound certificate and the evidence of Doctor, PW3, claimant has sustained open fracture of right femur, degloving injury with open comminuted fracture of right humerus, fracture of ulna, right radius, bilateral superior and inferior pubic rami fracture with bladder injury pneumothorax. The PW3 after clinical examination of the claimant, has assessed the disability at 14% to the right leg and 48% to the right hand and in all 62% to the whole body and we accept the same instead of 100% disability as assessed by the Tribunal.

13. On account of the grievous injuries sustained by the claimant, he has taken treatment as inpatient for 68 days on different dates, underwent surgeries and during the said period, he might have undergone lot of pain and sufferings and spent considerable amount towards medical expenses, conveyance and other incidental charges and we presume that, on the advise of the Doctor, he might have taken bed rest and follow up treatment atleast for 12 months and during the said period, he might have incurred financial loss as he could not have

attended his work regularly. Discomforts and unhappiness persists throughout his life on account of 62% disability suffered by him and he is bound to pull on with the said disability. The disability would affect his future earning capacity and happiness in his life and also affects his marriage prospects. As per the evidence of the Doctor claimant requires Rs. 1,00,000/- to Rs. 1,20,000/- towards future medical expenses as per Exs. P176 and 178 including incidental expenses. Having regard to the age, occupation of the claimant and the year of the accident, we reassess his monthly income at Rs. 6,000/- and the proper multiplier applicable is "18" since the claimant was aged about 23 years as on the date of the accident. Taking all these aspects into consideration and after re-appreciation of the oral and documentary evidence available on file, we award a sum of Rs. 1,50,000/- towards injury, pain and sufferings instead of Rs. 1,25,000/-, Rs. 50,000/- towards conveyance, nourishing food and attendant charges instead of Rs. 40,000/-, Rs. 3,00,000/- towards medical expenses instead of Rs. 2,76,500/-, Rs. 72,000/- towards loss of income during treatment period for 12 months at the rate of Rs. 6,000/- per month instead of Rs. 54,000/-, Rs. 1,00,000/- towards loss of amenities, discomforts and unhappiness instead of Rs. 10,000/-, Rs. 8,03,520/- (Rs. 6,000 x 12 x 18 x 62%) towards loss of future earnings instead of Rs. 12,63,600/-, Rs. 1,50,000/- towards loss of marriage prospects instead of Rs. 25,000/- and Rs. 1,00,000/- towards future medical expenses.

Thus, the claimant is entitled to the total compensation of Rs. 17,25,520/- instead of Rs. 18,04,100/- as awarded by the Tribunal and the break up is as under:

14. Further, it is the submission of the learned counsel appearing for the claimant that the rate of interest awarded by the Tribunal at 6% p.a., from the date of petition till its realization is on the lower side and is liable to be enhanced since the accident is of the year 2010. We find some substance in the said submission. Therefore, in the light of the judgment of the Apex Court and this Court, we award the rate of interest at 8% per annum from the date of petition till its realization.

15. For the foregoing reasons, the appeal filed by the Insurer and the appeal filed by the claimant are allowed in part.

The impugned judgment and award dated 15/01/2013, passed in MVC No. 87/2011, by the Senior Civil Judge and Member, Additional Motor Accident Claims Tribunal, Kundapura, is hereby modified, by reducing the compensation from Rs. 18,04,100/- to Rs. 17,25,520/- and by enhancing the rate of interest from 6% per annum to 8% per annum, from the date of petition till its realization. There would be a reduction of compensation of Rs. 78,580/-.

The Insurer is directed to deposit the compensation amount of Rs. 17,25,520/- with interest at 8% p.a., from the date of petition till its realization, after deducting whatever amount deposited by it as on date, within three weeks from

the date of receipt of a copy of this judgment.

The apportionment and the manner of disbursement shall get proportionately reduced to the extent of reduction made by this Court.

The amount deposited by the Insurer shall be transmitted to the jurisdictional Tribunal forthwith.

Draw the award, accordingly.