

(2012) 11 KAR CK 0011

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 8473 of 2009 (MV)

Siddaraju @ Siddu

APPELLANT

Vs

The Manager, The Oriental Insurance Co. Ltd., D.O.12,
Jayalakshmi Mansion, 2nd Floor, 1001/56, Dr. Rajkumar
Road, Rajajinagar 4th Block, Bangalore-10 and M.S. Manjula
Murthy

RESPONDENT

Date of Decision : 02-11-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 166

Citation : (2012) 11 KAR CK 0011

Hon'ble Judges : Ravi Malimath, J

Bench : Single Bench

Advocate : Prakash M.H, for the Appellant; K.K. Vasanth, Advocate for R1 and R2, for the Respondent

Judgement

Ravi Malimath

1. The case of the claimant is that on 12.10.2005 at about 11.00 a.m., when the claimant was traveling as a pillion rider in the motor bike bearing No. KA 05 EL 3680 on Bangalore-Kanakapura road, near KNS Circle, a Tata Sumo bearing No. KA 05 P 9911 came in a rash and negligent manner and dashed against him. As a result of the same, he fell down and sustained grievous injuries. On a claim petition being filed u/s 166 of the Motor Vehicles Act, it was partly allowed by awarding compensation of Rs. 2,70,200/-. On an appeal, the same was remanded for fresh consideration. Thereafter, by the impugned judgment and award, the Tribunal awarded additional compensation of Rs. 1,87,408/- along with interest @ 6% p.a. from the date of the petition till its realisation. Seeking enhancement, the present appeal is filed. The Tribunal awarded compensation as follows:-

2. PW-1 is the doctor who has examined the claimant on the first occasion. He has assessed the disability of the claimant at 50%. Thereafter, amputation took

place to the right leg below the knee. PW-3 is the second doctor who has examined the claimant after the amputation. He has stated that there is a permanent disability of 75% to the limb. However, the Tribunal held the disability at 25%. I'am unable to accept the percentage of disability as attributed by the Tribunal. The doctor who has examined the claimant has stated that there is a 75% disability. There is no sustainable reason given by the Tribunal to disbelieve the same. The right limb below the knee of the claimant has been amputated. PW-3 has further deposed that the claimant is unable to walk or stand without support and is not able to attend to his normal routine work. Under these circumstances, the doctor assessed the permanent disability as 75% of the limb and 25% disability to the whole body. The claimant is said to be a mechanic. His right leg below the knee has been amputated. He would not be in a position to walk or stand. What can a man do without his leg. He is crippled. In view of the evidence of PW-2 and PW-3, I'am of the considered view that the disability of the claimant should be necessarily held at 90%.

3. Sri. K.K. Vasanth, the learned Counsel for respondent No. 1 contends that the 25% disability held by the Tribunal is appropriate.

4. So far as income, the Tribunal held the same at Rs. 3,750/- p.m. The claimant by relying on his salary certificate vide Ex. P15 contends that he was earning Rs. 5,000/- p.m. The employer has not been examined. Hence, the Tribunal disbelieved the same.

5. The Hon'ble Supreme Court in the case of Sri Ramachandrappa Vs. The Manager, Royal Sundaram Alliance Insurance Company Limited, held that the monthly income of a daily wage coolie could be taken at Rs. 4,500/- per month for an accident that occurred in the year 2004. The present accident is of the year 2005. Hence, applying the judgment, it would be just and proper to hold the income of the claimant at Rs. 5,000/- p.m. He was aged about 23 years at the time of the accident. Hence, the appropriate multiplier is "18". Hence, the loss of future earning capacity is worked out as follows:-

$\text{Rs. } 5,000 \times 12 \times 18 \times 90\% = \text{Rs. } 9,72,000/-$

6. Towards pain and sufferings, a sum of Rs. 40,000/- is awarded. The same is further enhanced by a sum of Rs. 25,000/-. Towards loss of amenities and happiness, a sum of Rs. 20,000/- is awarded. The right leg of the claimant has been amputated. Hence, the same is enhanced to Rs. 1,00,000/-. Towards medical and incidental charges, a sum of Rs. 1,25,000/- has been awarded. It is in tune with the bills produced. Hence, the same is undisturbed. Towards medical and incidental charges incurred after the amputation, a sum of Rs. 25,000/- is awarded. The same is undisturbed. For loss of earning during the period of treatment and in view of the subsequent operations, he would require atleast a period of one year to recover. Hence, a sum of Rs. 60,000/- (Rs. 5,000 x 12 months) is awarded towards the loss of income during the period of treatment.

7. Accordingly, the compensation enhanced stands as follows:-

In the result, the appeal is allowed in part. In all, the claimant is entitled for a compensation of Rs. 13,47,000/-. Therefore, the amount of compensation stands enhanced by a further sum of Rs. 8,89,392/- (Rs. 13,47,000/- less Rs. 4,57,608/-). The same shall carry interest @ 6% per annum from the date of petition till realisation. The insurer to satisfy the award within a period of four weeks from the date of receipt of a copy of this order.