

(2015) 06 KAR CK 0281

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 31875/2013 (MV)

Siddu

APPELLANT

Vs

Somnath Chimkode and Others

RESPONDENT

Date of Decision : 05-06-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 173(1), 187
Penal Code, 1860 (IPC) — Section 279, 338

Citation : (2015) 06 KAR CK 0281

Hon'ble Judges : C.R. Kumaraswamy, J

Bench : Single Bench

Advocate : Sanjeevkumar C. Patil, for the Appellant

Final Decision : Partly Allowed

Judgement

C.R. Kumaraswamy, J.

1. This Miscellaneous First Appeal is filed under Section 173(1) of MV Act, against the judgment and award dated 25.01.2011 passed in MVC No. 237/2009 on the file of Prl. Senior Civil Judge and MACT-II Bidar, partly allowing the claim petition and seeking enhancement of compensation.

2. With the consent of the learned counsel for the appellant as well as the learned counsel for respondent No. 2, this matter is heard on merits. The records of the Claims Tribunal were called for and I have perused the same.

3. The case of the claimant in the Claims Tribunal is as under:

"That on 02.06.2009 the claimant was travelling in a jeep bearing Reg. No. KA-28/1749 from Bidar to his village Khajapur. The driver of the jeep was driving the vehicle with care and caution. When the jeep came near Gadgi Chikmod road, at that time, a tractor trolley bearing Reg. No. KA-38/1813/T-1814 driven by respondent No. 1 with high speed dashed against the jeep, as a result of which claimant sustained injuries."

4. Respondent Nos. 1 and 2 have filed separate objection statements in the Claims Tribunal.

5. The Claims Tribunal relied on the evidence of PW-1 and also Ex. P1 copy of FIR, Ex. P2 complaint and Ex. P10 certified copy of charge sheet wherein its contents disclose that the driver of the Tractor Trolley was charge sheeted for the offences punishable under Sections 279, 338 of Indian Penal Code read with Section 187 of MV Act. The Tribunal considering the oral and documentary evidence and in the absence of evidence of the driver of the tractor, came to a conclusion that the driver of the tractor was driving the same in a rash and negligent manner.

6. The Claims Tribunal has awarded compensation as under:

7. Feeling aggrieved by the same, the claimant has preferred this appeal.

8. The learned counsel for the appellant submits that PW-3 doctor has stated in his evidence that the claimant has sustained permanent partial disability of both lower limb at 21% and right upper limb 60% and corresponding to both limb at 67%. He has also issued disability certificate. Learned counsel for the appellant further submits that the Claims Tribunal has assessed the disability at 30%. The disability assessed by the Claims Tribunal is on the lower side. Even the income of the claimant is assessed on the lower side. The claimant has examined PW-2 who is the employer/contractor of injured. Therefore, he submits that the income of the injured may be assessed at Rs. 6,000/-.

9. Learned counsel for the respondent No. 2 supports the impugned judgment and award. She further submits that the disability taken and the salary assessed by the Claims Tribunal are reasonable.

10. Ex. P11 is the wound certificate of the injured. He has sustained following injuries on 02.06.2009:

"i. clinically fracture of right femur and left femur

ii. C.A. of scalp 2" x 2"

iii. clinical fracture of right forearm"

Admitted to hospital on 02.06.2009 to 15.07.2009. Fracture of both femur. The doctor has opined that the injuries are grievous in nature.

11. The claimant has also produced prescription slips, X-rays before the Claims Tribunal and also the disability certificate. Ex. P8 discloses that the patient's name is Siddaram. He was admitted in Vydehi Institute of Medical Sciences Vydehi Hospital and Research Centre, Bangalore on 27.09.2010 and he was discharged on 06.10.2010. He was admitted District Hospital, Bidar. On perusal of the wound certificate and the discharge summary it is clear that the claimant has suffered about three fractures.

12. Therefore, considering the nature of injuries suffered by the claimant, the

compensation awarded under the head of pain and suffering is on the lower side. Therefore, it is just and reasonable to award a sum of Rs. 40,000/- under the head of pain and suffering.

13. Due to the injuries sustained by the claimant, there is curtailment of enjoyment of life to the claimant. Therefore, it is just and reasonable to award a sum of Rs. 20,000/- under the head of loss of amenities.

14. The claimant has taken treatment at District Hospital, Bidar and thereafter at Vydehi Hospital, Bangalore. He has also produced medical bills for having spent about Rs. 79,766/-. Therefore, it is just and reasonable to award a sum of Rs. 80,000/- under the head of medical expenses.

15. The injured was hospitalized for about 59 days. During hospitalization he needs nourishing food. Therefore, it is just and reasonable to award a sum of Rs. 10,000/- under the head of nourishment expenses.

16. The claimant as stated earlier, was hospitalized for 59 days. During his hospitalization he needs an attendant. Therefore, it is just and reasonable to award a sum of Rs. 9,000/- under the head of attendant charges.

17. The claimant is a resident of Bidar and he has taken treatment at Vydehi Hospital, Bangalore. He has traveled from Bidar to Bangalore. Therefore, it is just and reasonable to award a sum of Rs. 10,000/- under the head of conveyance charges.

18. PW-2 has stated in his evidence that the injured was working as an electrician. He is a skilled labour. Therefore, it is just and reasonable to fix the income of the injured at Rs. 5,000/- per month. The claimant was hospitalized for about 59 days. Even after discharge from the hospital, he has to take rest. Therefore, under the head of loss of earning during laid up period for three months, a sum of Rs. 15,000/- is awarded.

19. In the instant case, doctor has stated in his evidence that claimant has sustained segmental fracture of right forearm (both bones) and both femur shaft. The claimant was unable to do the daily activities. He cannot squat, walk, climb stairs, sit cross legged and do his profession work. He has relied on the guidelines of issued by Government of India, Ministry of Social Justice and Empowerment, New Delhi dated 28.08.1998 and came to a conclusion that the claimant has sustained permanent partial disability of both lower limb at 21% and right upper limb at 60% and corresponding to the body at 67%.

20. Though the doctor has referred to the guidelines, he has not specifically stated the details mentioned in the guidelines as to how he arrived at 21% to both limb and right limb 61%. This Court has to assess the disability of the injured taking into consideration of his occupation. The assessment of disability is not based on the physiological point of view but from the utility point of view. This utility of the part injured has to be considered in relation to the part it plays in performing the function which comprises the wage earning capacity. Functional

assessment is the only correct way of assessing disability. It should also be realised that disability cannot be equated with the percentage of total disability of the whole body. This means a part cannot mean a mathematical portion either on area or position basis. Its relation can, though not always, only be equated with wage earning capacity by virtue of its cardinal function. In the instant case, the injured has suffered 21% disability to the lower limb and 60% to the right upper limb. He is a skilled worker. He is an electrician. Therefore, considering the nature of injuries and also his occupation, the functional disability of the claimant can be assessed at 40%. As stated earlier the income is assessed at Rs. 5,000/- per month. The loss of income proportionate to the disability of 40% would be Rs. 2,000/- per month. So due to the reduced capacity of work, the claimant has lost income of Rs. 4,32,000/- (Rs. 2,000/- x 12 = Rs. 24,000/- x 18). In all the claimant is entitled for compensation as under:

21. In view of the above discussion, I pass the following:

ORDER

"(i) This appeal is allowed in part.

(ii) The compensation is enhanced from Rs. 3,61,800/- as awarded by the Claims Tribunal to Rs. 6,16,000/-.

(iii) For the period of delay of 460 days, the claimant is not entitled for interest. However, the claimant is entitled for interest at 6% per annum on the enhanced compensation amount except for the delayed period.

(iv) Rest of the judgment and award is accepted."