

(2013) 08 KAR CK 0044

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1922 of 2010 (MV)

Smt. Prema Satyanarayana

APPELLANT

Vs

Mohananda Kumar and The New India Assurance Co. Ltd.

RESPONDENT

Date of Decision : 07-08-2013

Acts Referred:

Citation : (2013) 08 KAR CK 0044

Hon'ble Judges : B. Sreenivase Gowda, J

Bench : Single Bench

Advocate : R.M. Ramakrishna, for Sai Associates, for the Appellant; K. Suryanarayana Rao, for R2 and notice dispense with R1, for the Respondent

Final Decision : Partly Allowed

Judgement

B. Sreenivase Gowda, J.—This appeal is by the claimant seeking enhancement of compensation awarded by the Tribunal. Though the matter is listed in the orders list, with the consent of learned Counsel appearing for the parties, it is taken up for final disposal.

2. For the sake of convenience parties are referred to as they are referred to in the claim petition before the T

3. As there is no dispute regarding injuries sustained by the claimant in a motor traffic accident occurred on 02.12.2007 due to rash and negligent driving of Toyoto Innova car bearing registration No. KA-02-D-6254 by its driver and liability of the insurer of the said vehicle to pay compensation, the only point arises for consideration is:

Whether compensation awarded by the Tribunal is just and proper or does it call for enhancement?

4. As per Ex. P. 5 wound certificate claimant has sustained fracture of 3rd and 4th ribs of left side chest and fracture of L5 vertebra. Injuries sustained and treatment taken by her are also evident from Ex. P5(a) discharge summary and

supported by oral evidence of the claimant examined as PW 1. Claimant has not examined any doctor regarding disability.

5. Considering nature of injuries sustained by the claimant Rs. 40,000/- is awarded towards pain and suffering as against Rs. 30,000/- awarded by the Tribunal under this head.

6. Claimant has produced medical bills for Rs. 14,186/- She was treated as inpatient for 2 days in Columbia Hospital, Banglaore. Considering the same, Rs. 20,000/- awarded by the Tribunal towards medical and incidental expenses such as conveyance, nourishment and attendant charges is just and proper and there is no scope for enhancement under this head.

7. Claimant claims to have been earning Rs. 6,000/- p.m. by conducting Sangeetha classes, but it is not established by producing any document. In the absence of proof of income, considering her age as 65 years, year of accident as 2007 and her avocation as house wife her income could be assessed at Rs. 4,000/- p.m. Nature of injuries suggest that she must have been under treatment and rest at least for four months. Therefore a sum Rs. 16,000/- is awarded towards loss of income during laid up period.

8. Considering nature of injuries, disability stated by the doctor and an amount of discomfort and unhappiness which the claimant has to undergo for the rest of her life, Rs. 15,000/- awarded by the Tribunal towards loss of amenities is just and proper and there is no scope for enhancement under this head.

9. As the claimant has not examined the doctor regarding disability and its on future earning, awarding compensation towards loss of future income does not arise.

10. Considering the evidence of the doctor Rs. 25,000/- awarded by the Tribunal towards future medical expenses is just and proper and it does not call for interference.

11. Thus the claimant is entitled for the following compensation:

12. Accordingly the appeal is allowed in part and the Judgment and award of the Tribunal is modified to the extent stated herein above. The claimant is entitled for additional compensation of Rs. 26,000/- with interest at 6% p.a. from the date of claim petition till the date of realization but without interest for the delayed period of 216 days in filing the appeal. The Insurance Company is directed to deposit the additional compensation amount with interest, within two months from the date of receipt of a copy of this judgment, without interest for the delayed period of 216 days with in two months from the date of receipt of Judgment the same is ordered to be released.

No order as to costs.