(2013) 12 KAR CK 0443

In the Karnataka High Court

Case No : M.F.A. No. 9288 of 2011 (MV)

Smt. Sujatha APPELLANT

Vs

B.V. Suresha and The Oriental Insurance Co. Ltd. RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0443

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : G.V. Narasimhamurthy, for the Appellant; M. Narayanappa, for R2, for the Respondent

Final Decision : Partly Allowed

Judgement

S. Abdul Nazeer, J.—This appeal by the claimant is directed against the judgment and award in MVC No. 65/2010 dated 8.6.2011 on the file of the Fast Track Court and Additional MACT, Hassan, whereby the Tribunal has awarded total compensation of Rs. 93,000/- with interest at 6% p.a. from the date of the petition till the date of deposit. Learned counsel for the appellant/claimant submits that the claimant had sustained grievous injuries in the accident. She was hospitalized for 17 days. His right lower limb was fractured in the accident. She had suffered 28.43% permanent disability. However, the Tribunal has taken permanent disability at 7% to the whole body. The claimant was doing agriculture and earning more than Rs. 6,000/- per month. However, the Tribunal has taken her income at Rs. 4,000/- per month. It is further argued that the award of compensation under all other heads is inadequate.

2. On the other hand, learned advocate appearing for the respondent - insurance company has sought to justify the impugned judgment and award.

3. I have carefully considered the arguments made at the Bar and the materials placed on record.

4. There is no dispute as to the occurrence of the accident and liability of the

insurance company to pay the compensation. Having regard to the contentions urged, the only question for consideration is whether the award of compensation by the Tribunal is adequate?

5. The accident had occurred on 1.12.2008. The claimant was aged 36 years at the time of accident. The claimant contends that she was earning Rs. 6,000/- per month by doing agriculture. However, no documents is produced to substantiate her contention. Therefore, it is just and proper to notion-ally fix her income at Rs. 4,500/- per month. The doctor in his evidence opined that the claimant had sustained permanent disability to the right lower limb at 28.43%. Therefore, it is just and proper to assess permanent disability at 9% to the whole body. By taking the income of the claimant at Rs. 4,500/- per month with 9% permanent disability to the whole body and with application of multiplier 15, the compensation payable towards loss of future earning comes to Rs. 72,900/-.

6. The claimant is entitled for a sum of Rs. 20,000/- towards pain and suffering. The award of medical expenses and loss of amenities in a sum of Rs. 6,000/- and 15,000/- respectively is reasonable. She is entitled for a sum of Rs. 10,000/- towards food, conveyance and nourishment etc. She is also entitled for a sum of Rs. 13,500/- (three months earning) towards loss of income during the laid up period.

7. Thus, the compensation payable to the claimant is reassessed as under:

8. The Tribunal has totally awarded Rs. 93,000/-, which has to be deducted from the aforesaid amount. Thus, the claimant is entitled for a balance compensation of Rs. 44,400/-. In the result, the appeal succeeds and allowed in part. The respondent-insurance company is directed to deposit a sum of Rs. 44,400/- with interest at 6% p.a. from the date of the application till the date of deposit within a period of eight weeks from the date of receipt of copy of this order. The claimant is permitted to withdraw the said amount on its deposit. No costs.

