

(2012) 03 KAR CK 0150
In the Karnataka High Court
Case No : M.F.A. No. 7896 of 2010 (MV)

S.P. Jayarma

APPELLANT

Vs

Bangarappa and The Manager Bajaj Allianz General Insurance
Co. Ltd.

RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Citation : (2012) 03 KAR CK 0150

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : Ko. Vijayakumar, for the Appellant; R. Shashidhara, for R. 1 Sri
Srishaila, for R. 2, for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda

1. With consent of learned counsel on both sides, appeal is taken up for final hearing. Claimant in the MACT, dissatisfied with the award for Rs. 1,46,231/- with interest, has filed this appeal seeking enhancement.

2. Perused the record, Grievance of the appellant is that the Tribunal has committed error in taking the income at Rs. 3,000/- p.m. and the permanent disability suffered in relation to whole body at 15% and as a result has not correctly assessed the loss and that there is an award for paltry sum. According to the appellant-claimant, just and reasonable compensation has not been awarded by the MACT.

3. The judgment and award passed by the MACT directing the respondents to pay the compensation noticed supra, has not been questioned by the respondents. Hence, only point for consideration is, "whether there is a just and reasonable award by the MACT?"

4. Ex. P-6 is the wound certificate, Claimant appellant has obtained treatment as

is evident from Exs. P-8 to P-158. Discharge card is at Ex. P-7. The disability certificate is at Ex. P-159. Photographs of the claimant appellant is at Exs. P-160 to P-161. Dr. R.T. Chandrashekar has been examined as PW.2. Ex. P-5 reveals that the petitioner sustained compound and comminuted fracture of lower third of right femur Ex. P-6, certificate issued by the medical officer P.H.C., Mustalgummi, Challakere Taluk, shows that the injuries 1 and 5 are grievous in nature. Treatment was taken at S.S.I. and Rs. 31,831/- was spent towards medical expenses.

5. Claimant was aged about 30 years at the time of accident. He was an agriculturist. In the absence of credible proof with regard to the income, Tribunal has taken the income at Rs. 3,000/- p.m. or Rs. 36,000/- p.a.

6. Accident having taken place on 18.05.2007, an agricultural coolie could be expected to earn Rs. 4,000/- p.m. or Rs. 48,000/- p.a. The Tribunal by taking the income at Rs. 36,000/- p.a. has committed a mistake. In view of the disability certificate, as at Ex. P-159 and the evidence of PW.2, the permanent disability suffered in relation in the whole body ought to have been taken at 20% as against 15%. In view of the injuries sustained in the road traffic accident, resulting in permanent disability, there is loss of future earnings to the appellant to an extent of 20% i.e., Rs. 1,53,600/- (800 x 12 x 16), as against which the Tribunal has awarded Rs. 86,400/-. Thus, the award passed by MACT does not reflect just compensation. Keeping in view the record of the case and the findings recorded by the MACT, there being permanent disability suffered in relation to whole body to an extent of 20%, the just and reasonable compensation which the respondents have to pay to the claimant-appellant is as follows:

1.

Pain & Suffering

Rs. 25,000/-

2.

Medical expenses as per bills

Rs. 31,831/-

3.

Incidental expenses conveyance, nourished diet, attendant charges

Rs. 10,000/-

4.

Loss of income during laid off period (4000 x 3)

Rs. 12,000/-

5.

Loss of future earnings (800 x 12 x 16)

Rs. 1,53,600/-

6.

loss of amenities of life

Rs. 20,000/-

Total

Rs. 2,52,431/-

In the result, appeal is allowed in part and impugned judgment and award is modified. Compensation payable by the respondents is determined at Rs. 2,52,431/- with interest at 6% p.a. from the date of filing of claim petition till date of deposit.

Two months time is allowed for the respondents to deposit the balance amount in the MACT. No order as to costs.