

(2012) 08 KAR CK 0267
In the Karnataka High Court
Case No : M.F.A. No. 5522 of 2009 (MV)

Sri. A. Shyamasundar

APPELLANT

Vs

Sri. Abdul Hameed and M/s. Cholamandalam Ms. General
Insurance Company Ltd.

RESPONDENT

Date of Decision : 10-08-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 08 KAR CK 0267

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : N. Gopalkrishna, for the Appellant; O. Mahesh, Advocate for R2 and
Notice to R1, for the Respondent

Judgement

N.K. Patil

1. This appeal by the claimant is directed against the judgment and award dated 25th November 2008, passed in MVC No. 5941/2007, by the IX Additional Judge, Member, Motor Accident Claims Tribunal-7, Court of Small Causes, Bangalore (SCCH-7), (for short, "Tribunal"), on the ground that, the compensation of Rs. 2,62,000/- with interest @ 8% p.a. awarded in favour of the appellant as against his claim for Rs. 15,00,000/-, is inadequate. The appellant claims to be aged about 42 years and was hale and healthy prior to the date of accident. That the occurrence of accident at about 3:30 P.M., on 03-02-2004, when the appellant was travelling in Auto rickshaw bearing Registration No. KA-05/B-8638 from Malur to Kolar as a loader and unloader, at Gangapura gate on Malur-Kolar Road, due to rash and negligent driving by the driver of the said Autorickshaw, is not in dispute. It is also not in dispute that the appellant has sustained multiple injuries and also crush injury to the right foot, resulting in fracture of metatarsal exposing of fracture and also degloving injury to the right foot and that the right foot was amputated at sub talar level. Due to the injuries sustained in the accident, he was shifted to the Hospital.

2. It is his further case that, on account of the accident, he sustained injuries as stated above and PW2, Doctor has, deposed in his evidence that the appellant has sustained crush injury to the right foot extending from ankle to toes and degloving injury to the left lower limb, lacerated wound over left knee. Further, he has deposed that symes amputation was done and that the appellant has suffered permanent disability to the extent of 50% to the right limb and 25% to the whole body and for the said treatment, he has spent considerable amount towards conveyance, nourishing food and attendant charges including medical expenses and other incidental expenses and therefore, he has to be compensated reasonably.

3. On account of the injuries sustained in the accident, the appellant filed the claim petition u/s 166 of the Motor Vehicles Act, before the Tribunal, seeking compensation of a sum of Rs. 15,00,000/- against the respondents. The said claim petition had come up for consideration before the Tribunal on 25th November, 2008. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of Rs. 2,62,000/- under different heads, with interest at 8% per annum from the date of petition till the date of realization. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant has filed the appeal before this Court, seeking enhancement of compensation.

4. I have gone through the grounds urged in the memorandum of appeal and the impugned judgment and award passed by Tribunal and heard the learned counsel appearing for the appellant and the Insurer.

5. Learned counsel appearing for appellant submits that the compensation awarded by Tribunal is on the lower side and hence, reasonable enhancement may be made under all the heads and the impugned judgment and award may be modified accordingly.

6. After hearing the learned counsel appearing for the appellant and after going through the impugned judgment and award passed by Tribunal, I am of the view that, the Tribunal, after assessing the oral and documentary evidence available on file, has rightly awarded compensation of Rs. 60,000/- towards pain and sufferings, Rs. 15,000/- towards loss of income during treatment period, Rs. 40,000/- towards loss of future amenities, Rs. 10,000/- towards future medical expenses and Rs. 20,000/- towards medical expenses, conveyance, nourishing food and attendant charges. Therefore, interference in the same is uncalled for.

7. However, the Tribunal grossly erred in not awarding reasonable compensation towards loss of future earnings. The appellant has sustained multiple injuries and also crush injury to the right foot, resulting in fracture of metatarsal exposing of fracture and also degloving injury to the right foot and that the right foot was amputated at sub talar level. Further, PW2, Doctor has deposed that symes amputation was done and that the appellant has suffered permanent disability to

the extent of 50% to the right limb and 25% to the whole body. The appellant being aged about 42 years, has to endure this disability for the rest of his life and he cannot do his work as effectively as he was doing earlier. The Tribunal has rightly accepted the whole body disability at 25% and I accept the same. But, the Tribunal grossly erred in assessing the monthly income at only Rs. 3,000/- per month. The appellant was working as a loader in the vehicle and the accident has occurred in the year 2004. Therefore, having regard to the facts and circumstances of the case, age, avocation, year of accident, I re-assess the monthly income of the appellant at Rs. 3,500/-, to meet the ends of justice. The proper multiplier applicable for the age of the appellant being 42/45 years, is "14" as per the decision of the Hon'ble Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, as against "13" adopted by Tribunal, for calculating the loss of future income. Accordingly, I award a sum of Rs. 1,47,000/- (i.e. Rs. 3,500/- x 12 x "14" x 25/100), towards loss of future income as against Rs. 1,17,000/- awarded by Tribunal. Thus, there would be enhancement of Rs. 30,000/- with interest at 6% per annum. In the light of the facts and circumstances of the case, as stated above, the appeal filed by claimant/appellant is allowed in part. The impugned judgment and award dated 25th November 2008, passed in MVC No. 5941/2007, by the IX Additional Judge, Member, Motor Accident Claims Tribunal-7, Court of Small Causes, Bangalore (SCCH-7), is hereby modified, awarding compensation of a sum of Rs. 30,000/-, with interest at 6% per annum, from the date of petition till the date of realization, in addition to the compensation awarded by Tribunal.

The second respondent - Insurer is directed to deposit the enhanced compensation, with interest thereon at 6% per annum, from the date of petition till the date of realization, within three weeks from the date of receipt of copy of the judgment and award.

Immediately on such deposit, the same shall be released in favour of the appellant, immediately.

Office to draw award, accordingly.