

(2013) 12 KAR CK 0146
In the Karnataka High Court
Case No : M.F.A. No. 11056 of 2011 (MV)

Sri. Annaiah

APPELLANT

Vs

Sri Sharavan Kumar and The Oriental Insurance Co. Ltd.

RESPONDENT

Date of Decision : 16-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0146

Hon'ble Judges : N.K. Patil, J; Budihal R.B., J

Bench : Division Bench

Advocate : C.M. Kempe Gowda, for the Appellant; M.S. Sriram, Advocate for R2 and R1 served, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—This is claimant's appeal against the impugned judgment and award dated 13/08/2010 passed in MVC No. 46/2009, by the Senior Civil Judge and Motor Accident Claims Tribunal, Channarayapatna, (for short "Tribunal"), for enhancement of compensation. Along with the appeal, appellant has also filed LA. 1/2011, seeking condonation of delay of 385 days in filing the appeal.

2. Heard learned counsel appearing for appellant.

3. The delay of 385 days in filing the appeal has been explained in paragraphs 2 and 3 of the affidavit dated 1.12.2011 accompanying the application, which reads thus:

2. I submit that due to accident I have sustained injuries and I am unable to work properly. I submit that I am the resident of Kerechikkanahally, Channarayapatna Taluk, Hassan District and I have no job and no earnings. Under these circumstances I am unable to come to Bangalore and give instructions to my Advocate to file the appeal before this Hon'ble Court in time. Hence there is a delay in filing the accompanying appeal before this Hon'ble Court.

3. I submit that if the accompanying application is not allowed I will be caused great hardship and injustice. On the other hand no hardship will be caused to other side if the above application is allowed.

4. After hearing the learned counsel appearing for the appellant and after perusing the statements made in the affidavit filed in support of the application, it emerges that, there is an inordinate delay of 385 days in filing the appeal. The said delay has not been explained satisfactorily by the appellant by assigning cogent and valid reasons. The explanation offered is in a very casual manner. Even the appellant has failed to give dates and events as to on what date he has applied for the certified copy of the judgment, on what date he has received the same and on what date, he has instructed his counsel to file this appeal. Except making bald statements, no credible or trustworthy reasons are assigned for explaining the said delay. As there is an inordinate delay of 385 days in filing the appeal, the appellant is bound to explain each day's delay in filing the appeal by assigning cogent and valid reasons. Much credibility cannot be given to the explanation offered by the appellant for condoning the said delay. Hence, in view of non explanation of inordinate delay in filing the appeal, in a satisfactory manner, we are of the view that delay cannot be condoned nor the appellant has made out a good case to condone the delay. Hence, for the foregoing reasons, I.A. No. I/2011 is liable to be dismissed as misconceived and accordingly, it is dismissed.

5. However, in the interest of justice, we have perused the judgment and award passed by the Tribunal. The Tribunal, after taking into consideration the oral and documentary evidence available on file, taking into consideration the nature of injuries sustained by the appellant, the nature and duration of treatment and during the said period, the percentage of disability suffered by him and that he might have spent reasonable amount towards medical expenses, conveyance and other incidental expenses, has justified in awarding a sum of Rs. 60,000/- towards pain and sufferings, Rs. 40,000/- towards medical expenses, conveyance and attendant charges, Rs. 20,000/- towards loss of amenities in his life, Rs. 9,000/- towards loss of income, Rs. 1,29,600/- towards future loss of income and in all, Rs. 2,58,600/- with interest at 6% p.a. from the date of petition till its realization. The said compensation awarded by the Tribunal is just and reasonable. Nor we find any error or arbitrariness in the same and therefore, interference is not called for. Taking all these factors into consideration, the appeal filed by the appellant is dismissed on the ground of delay and laches as also on merits. Ordered accordingly.