

(2013) 07 KAR CK 0064
In the Karnataka High Court
Case No : M.F.A. No. 12188 of 2011 (MV)

Sri. Balakrishna Shetty

APPELLANT

Vs

Sri. Sunil Shetty and United India Insurance Co., Ltd.

RESPONDENT

Date of Decision : 26-07-2013

Acts Referred:

Citation : (2013) 07 KAR CK 0064

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

Bench : Single Bench

Advocate : P. Karunakar, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Patil, J.—This appeal by the claimant is directed against the judgment and award dated 15th April 2011, passed in MVC No. 761/2007, by the Principal District Judge, Motor Accident Claims Tribunal, Dakshina Kannada, Mangalore, (for short, "Tribunal") on the ground that the compensation awarded is on the lower side and is liable to be enhanced. Along with the appeal, learned counsel appearing for appellant has also filed I.A. 1/2011, seeking condonation of delay of 138 days in filing the Appeal.

2. The delay of 138 days in filing the appeal has been explained at paragraphs 4 and 5 of the affidavit filed in support of the application, I.A. 1/2011. In the said affidavit, it is stated that the impugned judgment is passed by the Court below on 14th April, 2011 and the certified copy was applied on 23rd April, 2011 and the copy was ready on 12th May, 2011. Thereafter, at paragraph 5, it is stated that the Advocate advised the claimant that there is 138 days time to file, the above appeal and that he was in deep financial crisis and after mobilizing the money from his friends and well wishers, he could prefer the above appeal. Therefore, he could not prefer the appeal well in time and he has stated that the said delay in filing the above appeal is not intentional, but the same is for aforesaid reasons and that if the delay in filing the above appeal is not condoned,

he would be put to irreparable injury and hardship, but, on the other hand, no hardship or injury would be caused to the other side, if the delay is condoned.

3. I have heard the learned counsel appearing for appellant and perused the statements made in the affidavit, accompanying the application, I.A. 1/2011.

4. After going through the statements made in the affidavit filed in support of the application, I am of the considered view that the inordinate delay of 138 days in filing the appeal has not been explained satisfactorily by assigning valid and cogent reasons. The explanation offered is in a very casual manner. Except making bald statements, no credible or trustworthy reasons are assigned for explaining the delay of 138 days in filing the appeal. Whenever there is inordinate delay, the party is bound to explain each days delay in filing the appeal by setting out the dates and events. Further, it can be seen that at paragraph 4, the date of the judgment mention is wrong and it ought to have been 15-04-2011 instead of 14-04-2011. Further, at paragraph 5, it is stated that the Advocate advised the claimant that there is 138 days time to file the appeal. The said statement is totally baseless and cannot be sustained at all and it shows sheer non application of mind while drafting the delay application. Hence, in view of non explanation of inordinate delay in filing the appeal, in a proper manner, I am 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. 1/2011 is dismissed as misconceived.

5. However, in the interest of justice and equity, I have gone through the impugned judgment and award passed by Tribunal. After perusal of the same, it is seen that, the appellant has sustained comminuted fracture of shaft of left humerus at lower third and hospitalized for five days and also underwent an operation. It is stated that the appellant was working as Auto rickshaw driver, earning a sum of Rs. 6,000/- per month. But, the Tribunal, after evaluation of the oral and documentary evidence available on file, having regard to the age, "avocation and the year of accident, being 2007, has assessed the income of the appellant at Rs. 4,000/- per month. The same is just and proper. Further, after critical evaluation of the entire material available on file, having regard to the facts and circumstances of the case, age, avocation, year of accident, nature of injuries sustained, nature and duration of treatment and also other relevant aspects of the matter, the Tribunal has, in all, awarded compensation of Rs. 71,000/- for the injuries sustained by the appellant in the road traffic accident, i.e. a sum of Rs. 20,000/- towards injury, pain and sufferings, Rs. 19,500/- towards medical expenses, Rs. 8,000/- towards loss of earning during treatment period, Rs. 3,500/- towards conveyance, nourishing food and attendant charges including the incidental expenses, Rs. 10,000/- towards future medical expenses and Rs. 10,000/- towards loss of amenities, discomfort and unhappiness. The same is just and proper having regard to the nature of injuries sustained and it does not call for interference. Therefore, the appeal filed by appellant is liable to be dismissed. For the foregoing reasons, the appeal filed by appellant is

dismissed both on the ground of delay and laches as also on merits.