

(2011) 02 KAR CK 0057
In the Karnataka High Court
Case No : M.F.A. No. 7130 of 2009

Sri. C. Prasanna Kumar

APPELLANT

Vs

Oriental Insurance Co. Ltd. and Team Thermo Formins Allieds

RESPONDENT

Date of Decision : 18-02-2011

Acts Referred:

Citation : (2011) 02 KAR CK 0057

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : K.R. Muralikrishna, for the Appellant; R. Gunashekar, for the Respondent

Judgement

N. Ananda, J.—This is a claimant's appeal for enhancement of compensation.

2. I have heard Sri. K.R. Muralikrishna, learned Counsel for claimant, and Sri. R. Gunashekar, learned Counsel for insurance company.

3. As result of accident, claimant had suffered fracture of right femur at its lower 1/3rd and condyles. The claimant was treated in North side Hospital at Bangalore. He underwent operation for reduction of fracture. As the fracture did not unite properly, he had repeated admissions.

4. At the time of accident, the claimant was aged about 2, 3 years. He had contended that he was driver by occupation however, he has not produced the driving license. Yet the fact remains, he was sustaining by manual work. The accident took place during 2004. The Tribunal has determined his income at Rs. 8,000/- per month which in my opinion, does not call for interference. As per evidence of P.W. 2 Dr. K.S. Swamy, even after complete treatment, the claimant suffers from restricted movements of right hip joint and right knee joint. He suffers from 50% permanent physical disability of left lower limb and 17% of permanent physical disability of whole body. Having regard to the nature of injuries, consequent disability, I determine the permanent physical disability vis-a-vis loss of earning capacity at 17%.

5. The Tribunal without considering the severity of injuries, consequent pain and suffering the claimant had to suffer during the rest of his lifetime has awarded a sum of Rs. 1,85,300/- under following heads:

I Pain and agon - Rs. 20,000 II Medical expenses - Rs. 43,550 III Conveyance, nourishment and Incidental charges - Rs. 10,000 IV Loss of amenities - Rs. 10,000 V Loss of future income - Rs. 91,800 VI Loss of expectation of life - Rs. 10,000 Total - Rs. 1,85,350

6. On reconsideration of the matter, I find that compensation awarded by the Tribunal under several heads is inadequate. The Tribunal has not awarded compensation towards loss of earning during laid up period. The Tribunal has not made provision for "future medical expenditure. Therefore, compensation awarded by the Tribunal is modified as follows:

I Pain and sufferi - Rs. 30,000 II Loss of amenities - Rs. 30,000 III Medical expenses - Rs. 44,000 IV Loss of earning during laid up period - Rs. 12,000 (Rs. 3,000 x 4) V Attendant charges, conveyance And Nourishment - Rs. 10,000 VI Future medical expenditure (For removal of implants) - Rs. 20,000 VII Loss of earning capacity and Future loss of earning (Rs. 3,000 x 12 x 18 x .17) - Rs. 1,10,160 Total - Rs. 2,56,160 Rounded off to - Rs. 2,56,000 Thus, claimant is entitled to total compensation of Rs. 2,56,000/-.

7. In the result, I pass the following:

ORDER

(i) Appeal is accepted in part.

(ii) The impugned award is modified by enhancing compensation of Rs. 1,85,350/- awarded by tribunal to Rs. 56,000/-.

(iii) The rest of the award as it relates to rate of interest, period of accrual of interest and liability of Respondent No. 1 is confirmed.

(iv) The payment and investment shall be in the ratio evolved by the tribunal.

Parties to bear their costs.