

(2014) 01 KAR CK 0196

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 20217 of 2011 (MV)

Sri. Channa Basava

APPELLANT

Vs

Sathish Kumar B. and The Branch Manager, Bajaj Allianz
General Insurance Co. Ltd.

RESPONDENT

Date of Decision : 17-01-2014

Acts Referred:

Citation : (2014) 01 KAR CK 0196

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : Y. Lakshmikanth Reddy, for the Appellant; M.K. Soudagar, for R2, for the Respondent

Final Decision : Partly Allowed

Judgement

Aravind Kumar, J.—Claimant's appeal for enhancement being aggrieved by judgment and award passed by Motor Accident Claims Tribunal-IX, Bellary, in M.V.C. No. 1024/2008 dated 02.01.2010. Heard learned advocates appearing for the parties. Perusal of judgment and award would indicate that Tribunal has allowed the claim petition in part and has awarded a total sum of Rs. 1,21,800/- under the following heads:

It is this judgment and award which is assailed in the present appeal by the claimant contending inter alia that compensation awarded under all heads is abysmally on the lower side and prays for enhancement of compensation.

2. Per contra, Sri M.K. Soudagar, learned counsel appearing for 2nd respondent-Insurance Company would vehemently contend that what has been awarded by the Tribunal is just and reasonable and it does not require any enhancement whatsoever and as such, he prays for dismissal of appeal with costs.

3. Having heard the learned advocates appearing for the parties and on perusal of the judgment and award passed by the Tribunal, it would indicate that claimant was aged about 25 years as on the date of accident and was working as

a welder. Though, he has not produced any material in this regard, Tribunal has rightly accepted the said version of claimant inasmuch as persons working in unorganized sectors cannot be expected to place any documentary evidence in proof of their avocation. Hence, acceptance of the contention of claimant regarding his avocation by the Tribunal requires to be affirmed.

4. Accident in question had occurred on 24.04.2008 and even if claimant had been working as a coolie or a hamali he would have been paid a sum of Rs. 140/- to Rs. 150/- per day as wages during the said period. Hence, if wages of the claimant is considered at Rs. 150/- per day, it would be just and reasonable and as such, award of the Tribunal insofar as granting compensation towards "loss of future income" and "loss of income during laid up period" requires to be re-computed by considering the monthly income of the claimant at Rs. 4,500/-.

5. Though Mr. Lakshmikanth Reddy would contend that Tribunal committed a serious error in construing the whole body disability at 10% and it ought to have been taken as 25%, he would fairly hasten to add that doctor who is examined on behalf of the claimant has not specifically stated in his evidence as to whether disability suffered by the claimant is to the whole body or to the upper limb. Undisputedly, fractures sustained by the claimant was tibia and fibula right. Though it has mal-united, it cannot be construed that the whole body disability would be to an extent of 25%. Doctor's evidence in this regard being silent, Tribunal has taken note of the fact that fracture sustained by the claimant would result in 10% to the whole body disability. Said finding of the Tribunal is just and proper and does not suffer from any infirmity calling for interference.

6. Undisputedly, claimant has undergone surgery and was an inpatient at VIMS Hospital, Bellary, for 11 days and compensation awarded towards medical expenses, attendant charges, food nourishment and conveyance is just and reasonable and it does not call for enhancement.

7. However, compensation awarded towards loss of amenities is abysmally on the lower side. On account of mal-union of fracture, claimant will have to put up with the disability throughout his life and lose certain comforts in life which requires to be compensated by awarding just and reasonable compensation. Even compensation awarded towards pain and suffering is marginally on the lower side. Tribunal has awarded a sum of Rs. 30,000/- on account of claimant having sustained two fractures which are undisputedly malunited. A marginal increase by awarding additional sum of Rs. 10,000/- would meet the ends of justice. Accordingly, it is hereby awarded.

8. In view of the finding recorded hereinabove that income of the claimant is to be construed at Rs. 4,500/-, compensation towards loss of future income requires to be recomputed accordingly. The medical evidence and records would indicate that claimant has been operated upon and implants have been inserted which requires to be removed and compensation awarded towards future medical expenses requires to be enhanced marginally by awarding additional

compensation of Rs. 7,000/- and it is accordingly awarded.

9. Claimant in all would be entitled to an additional compensation of Rs. 79,900/- as computed herein below:

Thus, the claimant would be entitled to additional compensation of Rs. 79,900/- which is rounded off to Rs. 80,000/-. Hence, the following:

ORDER

a. Appeal is hereby allowed in part,

b. Judgment and award dated 02.01.2010 passed by the MACT, Bellary, in M.V.C. No. 1024/2008 is hereby modified and an additional compensation of Rs. 90-80,000/- is hereby awarded which shall carry interest at the rate of 6% from the date of petition till date of payment or deposit whichever is earlier.

c. 60% of the enhanced compensation is ordered to be kept in a fixed deposit in any nationalized bank or scheduled bank of claimant's choice for a period of three years and he would be entitled to withdraw periodical interest.

d. Balance 40% with proportionate interest is ordered to be paid to the claimant on proper identification.

e. Insurer is directed to deposit enhanced compensation with interest before the jurisdictional Tribunal within six weeks from the date of receipt of certified copy of this order.