

(2017) 10 KAR CK 0014
In the Karnataka High Court
Case No : 10027 of 2012 (MV)

Sri Dasappa S/o Sri Chennappa

APPELLANT

Vs

The Managing Director Bangalore Metropolitan Transport
Corporation (BMTC)

RESPONDENT

Date of Decision : 09-10-2017

Acts Referred:

Citation : (2017) 10 KAR CK 0014

Hon'ble Judges : B.A.Patil

Bench : SINGLE BENCH

Advocate : S.S. Mahendra, Kaleemullah Shariff

Final Decision : Allowed

Judgement

1. The present appeal has been preferred by the appellant-claimant assailing the judgment and award passed by the Court of Small Causes, Bengaluru City, (SCCH-12) in MVC No.2984/2010 dated 18.2.2012.

2. Though this case was posted for orders, with consent of learned counsel appearing for both the parties, it is taken up for final disposal.

3. The brief facts as averred in the petition are that on 15.2.2010 at about 6.00 p.m. petitioner Dasappa was standing in front of the Modi Hospital road opposite to Dr.Modi Signal waiting to cross the road, at that time, a BMTC bus bearing No.KA-01-F-1958 came with high speed rashly and negligently and dashed against the petitioner. As a result of the same he fell down and sustained the fracture and other grievous injuries. Immediately he was shifted to K.C. General Hospital, Malleshwaram, wherein he was admitted as an inpatient and subsequently he was shifted to Victoria Hospital and during the course of treatment operation was conducted and it is further contended that petitioner was working as welder and was earning Rs.10,000/- per month, because of the accidental injuries he has sustained both physical and financial loss and as such claim petition came to be filed.

4. After issuance of notice the respondent remained absent and he has been placed *exparte*. In order to prove the case of the petitioner, petitioner came to be examined as PW1 and examined another witness Dr.B.Ramesh as PW2 and got marked the documents Exs.P1 to P10 and after hearing the parties to the lis, the impugned judgment came to be passed where under an amount of Rs.71,720/- is awarded with interest at the rate of 6% per annum with costs. Being aggrieved by the said judgment and award the appellant-claimant is before this Court.

5. I have heard the learned counsel for the appellant as well as the learned counsel for the respondent.

6. The main grounds urged by the learned counsel for the appellant are that as per the records the appellant- claimant has sustained the lacerated wound over the dorsum of left foot expelling tender and fracture of distal end shaft of 4th and 5th metatarsal bone and he was admitted in the hospital from 18.2.2010 to 23.3.2010. Under the said circumstances, the compensation awarded under the various heads is on the lower side. He further contended that even though the alleged accident has taken place during 2010, the Tribunal has taken the notional income at the rate of Rs.4,000/- instead of Rs.5,550/- which will be the yardstick which is adopted even in settlement of case in Lok-Adalath. He further contended that even the compensation awarded under the head of loss of amenities and attendant charges also on the lower side. On these grounds he prayed for allowing the appeal by enhancing the compensation.

7. Per contra, the learned counsel appearing for the Corporation vehemently argued by supporting the judgment and award of the Tribunal. However, he fairly contended that a reasonable amount may be enhanced and prayed for disposal of the appeal.

8. The accident in question is not in dispute so also the vehicle insured with respondent Insurance Company. As could be seen from the judgment and award passed by the Tribunal, the appellant-claimant has sustained the following injuries:

1. Fracture of distal end shaft of 4th and 5th metatarsal bone.
2. Multiple abrasion over left foot.
3. Lacerated wound over dorsum of left foot expelling tender.

and the wound certificate Ex.P1 also discloses the fact that the appellant-claimant has sustained lacerated wound over the dorsum of left foot exposing tendons, fracture of distal end of 4th and 5th metatarsal bone and even the appellant has got examined PW2 doctor B.Ramesh and he has deposed that he has treated the appellant and noticed the following injuries

1. Scar over dorsal aspect of left foot.
2. Restriction of joint movement left ankle planter dorsiflexion 15 degree normal 0-70 degree difficulty to climb upstairs, squat.

On radiological examination, which revealed the fracture united, and petitioner is advised to active knee, quadriceps exercises.

9. During the course of evidence he has deposed that he assessed the disability on the guidelines of Manual for Social Justice and Empowerment Notification that the petitioner is suffering disability of 15% to the left lower limb and 7.5% to the whole body. But, the Tribunal taking into consideration the said aspect has come to the conclusion that the appellant has suffered 4% disability to the whole body and by taking into consideration the age of the petitioner as 48 and after applying the multiplier of "11" by fixing the notional income at the rate of Rs.4,000/- per month, has awarded an amount of Rs.21,120/- towards loss of future earnings.

10. Though under the normal circumstances the said award is justifiable, in the absence of documentary evidence with regard to the income of the claimant, the Tribunal ought to have taken notional income at the rate of Rs.5,500/- per month which would be the yardstick adopted in Lok-Adalath. In that light, if the income is taken at the rate of Rs.5,500/- per month and after applying the multiplier "11", the appellant-claimant is entitled to an amount of Rs.29,040/- towards loss of future earnings.

11. Even the records also indicates that the appellant-claimant was admitted in the hospital on 15.2.2010 and was discharged on 23.3.2010, and he has suffered the above said fractural injuries and he might have taken rest for a period of at least three months. During the said period he might have lost earnings. In that light, the Tribunal has awarded Rs.12,000/-, but when once this Court has come to the conclusion that the income ought to have been taken at the rate of Rs.5,500/-, in that light, the appellant-claimant is entitled for an amount of Rs.16,500/- towards loss of income during the laid up period.

12. By taking into consideration the injuries and the disability which has been suffered by the appellant- claimant, the compensation awarded on other heads also appears to be on the lower side. In that light, the re- assessed compensation to the appellant-claimant are as under:

Towards pain and sufferings Rs.50,000/-, towards loss of amenities Rs.25,000/-. Some attendant might have been attended during the laid up period and he might have used transportation and other conveyance for the purpose of attending the hospital and other duties and he might have spent some amount for nourishment and diet. In that light, he is entitled for an amount of Rs.15,000/- towards attendant charges, conveyance, nourishment and diet.

13. In so far as the medical expenses are concerned, as could be seen from the records by taking into consideration Ex.P3, the medical bills, the Tribunal has taken the said aspect and after considering all the aspects has awarded an amount of Rs.3,600/-. The same appears to be justifiable and it does not deserve to be interfered with.

14. Keeping in view the above said facts and circumstances, the appellant-claimant is entitled to a total compensation of Rs.1,39,140/- with interest at the rate of 6% per annum.

15. Since already the Tribunal has awarded an amount of Rs.71,720/- and after deducting the same, the

appellant is entitled to an additional compensation of Rs.67,420/- with interest at 6% per annum from the date of petition till realization.

16. During the course of argument the learned counsel for respondent-Corporation brought to my notice that he has filed an application for impleading the Manager, United India Insurance Company Limited, No.40, Lakshmi Complex, Bengaluru, in IA No.1/2014. As could be seen from the records this Court by order dated 9.2.2015 has dismissed the said application. However, the respondent has given an opportunity, if the vehicle in question is insured with the United India Insurance Company Limited, then under such circumstances, he can recover the said amount from the said Corporation without prejudice to his rights.

17. Accordingly, the appeal is allowed in part. The Judgment and Award passed by the Tribunal in MVC No.2984/2010 is modified as stated above.

18. The respondent is directed to deposit the compensation awarded by the Tribunal and additional compensation awarded by this Court within six weeks from the date of receipt of copy of this judgment and the same shall be released to the claimant as per the award of the Tribunal.

The Registry is directed to draw the award accordingly.

Send back the records forthwith to the jurisdictional Tribunal.

In view of the said order, memo for returning the LCR stands dismissed.