

(2011) 07 KAR CK 0180

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 7540 of 2009 (MV)

Sri Dilip Kumar V.J.

APPELLANT

Vs

Sri V. Ravi Kumar and Bajaj Allianz General Insurance
Company Limited

RESPONDENT

Date of Decision : 22-07-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2011) 07 KAR CK 0180

Hon'ble Judges : K. Bhakthavatsala, J

Bench : Single Bench

Advocate : M.B. Chandrachooda, for the Appellant; P. George Lazarus, for R-1 and Sri O. Mahesh, for R-2, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Dr. Justice K. Bhakthavatsala

1. Learned Counsel for the appellant submits that though the claimant sustained grievous injuries and resulted in permanent disablement, the Tribunal has not awarded adequate compensation. He also submits that the claimant was 16 years old at the time of accident and he was working as a Helper and earning Rs. 3,000/- per month, but the Tribunal has not awarded compensation towards loss of earning during the period of treatment and rest and loss of future earning. He prays for enhancement of compensation.

2. Perused the LCR.

3. Since the claimant was 16 years old at the time of accident, he filled a claim petition u/s 166 of the Motor Vehicles Act, 1988, through his natural father and guardian claiming compensation of Rs. 5,00,000/- from the owner and insurer of the motor cycle. It is submitted that during the pendency of the claim petition, the claimant attained majority and this present Appeal is filed by the appellant himself. In support of the case of the claimant, his natural father and guardian-

Janardhana Babu, was examined as P.W.1 besides examining Dr. S. Rajanna add Lingappa as. P.Ws.2 and 3, respectively, and got marked Exs. P1 to P21. The respondents have not adduced rebuttal evidence. Copy of insurance policy has been marked as Ex. R1 it is pertinent to mention that in the Annexure to the judgment, under the head list of witnesses examined on behalf of the petitioner, name of P.W.1 has been wrongly mentioned as Ravikumar instead of Janardhana Babu. The Tribunal has allowed the claim petition partly holding that the claimant is entitled for compensation of Rs. 1,30,000/- and awarded interest at the rate of 6% per annum on Rs. 1,10,000/- from the date of Petition till realization, holding that respondent Nos.1 and 2 are jointly and severally liable to pay compensation. As per Ex. P5/wound certificate, the claimant sustained in all three injuries. X-ray of left leg revealed fracture of both bones of upper 1/3rd of left tibia and fracture of medial malleolus left apart from abrasion on the left thigh and right side of the ankle. At Ex. P6 series, the claimant had produced medical prescriptions. The claimant has produced medical bills all amounting to Rs. 73,520/-. The claimant was treated in Basappa Memorial Hospital at Mysore and KIMS Hospital and Research Centre at Bangalore. In K I M S Hospital, the claimant was treated as inpatient from 14.5.2007 till 16.6.2007. At Ex. P9 series, the claimant has produced X-ray films that the claimant was operated and fracture was set with implants and the implants still exist in the left leg. Ex. P15 is the medical record pertaining to the case of the claimant as maintained in K I M S Hospital at Bangalore. Ex. P16 to P21 are also X-ray films of KIMS Hospital at Bangalore. P.W2/Dr. S. Rajanna, Orthopedic Surgeon of Bowring Hospital at Bangalore, has deposed that he has treated the claimant on 23.5.2008 and he examined the claimant on 31.10.2008 and found disablement to the extent of 34% with reference to the left lower limb and 17% to the whole body. It is also stated that as per the X-ray film taken on 31.10.2008, fractures of left tibia with IL Nail and screw fixation in situ are united. The Tribunal has awarded compensation in favour of the claimant as under:

(in Rs.)

(i) Pain and suffering

40,000-00

(ii) Medical expenses

60,000-00

(iii) Loss of amenities

20,000-00

(iv) Loss of future earning

10,000-00

Total

1,30,000-00

4. In para-15 of the impugned judgment, the Tribunal has observed that the claimant was aged about 16 years and he has just completed SSLC examination. If the claimant had any such permanent disablement, he could have personally appeared before the Tribunal and deposed on oath regarding the disablement. But for the reasons best known to the claimant, he did not adduce evidence, but his father was examined. PW2 has deposed that fractures are well united. There is no material on record to presume that the claimant has got any permanent disablement and the same would affect his future income. Therefore, the Tribunal has not awarded compensation towards loss of future earning. So as to render justice, the Tribunal could have directed the claimant to be present before the Tribunal. No doubt, P.W.2/Medical Officer has not treated the claimant, but he is not incompetent to assess permanent disablement. According to P.W.2, the claimant has got permanent disablement to the extent of 17% of the whole body. The claimant has undergone operation on account of fracture of both bones of left leg. Implants still exist in left tibia and fibula with tension wire bend in left medial. P.W.2 had deposed that, the claimant has got permanent disablement to the extent of 17% of the whole body. No doubt the claimant was aged about 16 years at the time of accident. But, after attaining age of majority, he would have either prosecuted the studies or taken employment. The accident occurred in the year 2007. The claimant is a resident of Bangalore. As per the SSLC certificate of the claimant, he was born on 16.9.1991. The claimant attained the age of majority on 16.9.2009. Even if he had worked as a Coolie, he would have earned a sum of Rs. 4,200/- per month. Since the claimant was minor, parents have attended the claimant, reasonable compensation has to be awarded towards attendant, conveyance, special diet and incidental expenses. The claimant has to incur expenses for removal of the implants. Perused the medical bills. The Tribunal has awarded a sum of Rs. 60,000/- towards medical expenses though the claimant has produced bills for Rs. 71,000/-. In my view, the appellant/claimant is entitled for compensation as under:

(in Rs.)

(i) Pain and suffering

50,000-00

(ii) Medical expenses

71,000-09

(iii) Attendant, conveyance, special diet and incidental expenses for 4 months

20,000-00

(iv) Taxi charges

5,100-00

(v) Future medical expenses

20,000-00

(vi) Loss of future earning (Rs. 4,200/-x17%x12x18)

1,54,224-00

(vii) Loss of amenities

30,000-00

Total

3,50,324-00

Less Compensation awarded by the Tribunal

1,30,000-00

Balance

2,20,324-00

In the result, the Appeal is partly allowed, holding that the appellant/claimant is entitled for additional compensation of Rs. 2,20,324/- along with costs and interest at the rate of 6% per annum from the date of Petition till realization.

Respondent No.2/Insurance Company is directed to deposit the additional compensation amount along with costs and interest with the Tribunal within 3 months from today.

Eighty percent of the additional compensation amount along with costs and interest shall be kept in Fixed Deposit for a period of 5 years, during which period the claimant is at liberty to draw periodical interest that accrues on the deposit.