

(2012) 06 KAR CK 0081
In the Karnataka High Court
Case No : M.F.A. No. 2854 of 2011 (MV)

Sri. G. Nagaraju

APPELLANT

Vs

Sri. B. Ravindra and The Manager, New India Assurance Co.,
Ltd.

RESPONDENT

Date of Decision : 01-06-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 06 KAR CK 0081

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

Bench : Single Bench

Advocate : A. Sreenivasaiiah, for the Appellant; M. Narayanappa, Advocate for R2; R1 served, for the Respondent

Judgement

N.K. Patil

1. This appeal by the claimant is directed against the common judgment and award dated 13th October 2010 passed in MVC No. 5132/2009 by the XVIII Additional Judge and Court of Small Causes, Member, Motor Accident Claims Tribunal-4, Bangalore, (for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 1,60,400/- with interest @ 6% p.a. awarded in favour of the claimant as against his claim for Rs. 6,00,000/-, is inadequate. The appellant claims to be aged about 37 years and hale and healthy prior to the date of accident. That the occurrence of accident of the appellant at about 2:00 P.M, on 01-04-2009, near Hotel Palamaner- Bangalore Road, Chitoor District, A.P. due to rash and negligent driving by the driver of Hyundai Car bearing No. AP-21/P-9779, is not in dispute. It is also not in dispute that the appellant has sustained lacerated wound on occiput measuring 7 x 2 x 1 cm. Lacerated wound over right elbow measuring 3 x 1 cm. And deformed left leg and x ray shows fracture of shaft of both bones of left leg lower 1/3rd. He has also underwent a Surgery to set right fracture of his left leg long bone fracture and interlocking tibia for fracture of both bones of left leg. Due to the said

injuries sustained in the accident, he was shifted to the Hospital, where he took treatment as in patient.

2. It is his further case that, on account of the injuries sustained in the accident, he has undergone severe pain and agony and for the treatment of the said injuries, he has spent reasonable amount towards conveyance, nourishing food and attendant charges including medical expenses and other incidental expenses and therefore, he has to be compensated reasonably.

3. The learned counsel for appellant contends that the Tribunal erred in not awarding reasonable compensation under all the heads and therefore, the impugned judgment and award passed by Tribunal may be modified and reasonable compensation may be awarded.

4. On account of the injuries sustained in the accident, the appellant filed the claim petition u/s 166 of the Motor Vehicles Act, before the Tribunal, seeking compensation of a sum of Rs. 4,60,000/- against the respondents. The said claim petition had come up for consideration before the Tribunal on. 13th October, 2010. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of Rs. 1,60,400/- under different heads, with interest at 6% per annum from the date of petition till the date of realization. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant is in appeal before this Court, seeking enhancement of compensation.

5. I have gone through the grounds urged in the memorandum of appeal and the impugned judgment and award passed by Tribunal and heard the learned counsel appearing for the appellant and also Insurer.

6. After careful perusal of the impugned judgment and award passed by Tribunal, it can be seen that, the Tribunal, after assessing the oral and documentary evidence available on file, has erred in not awarding reasonable compensation. The Tribunal has not awarded compensation towards conveyance, nourishing food and attendant charges. Admittedly, due to the injuries sustained in the accident, the appellant was inpatient in the Hospital for some period. During the treatment period, he would have spent reasonable amount towards conveyance nourishing food and attendant charges apart from incidental. expenses. The appellant has sustained lacerated wound on occiput measuring 7 x 2 x 1 cm. Lacerated wound over Left elbow measuring 3 x 1 cm. And deformed left leg and x ray shows fracture of shaft of both bones of left leg lower 1/3rd. He has also underwent a surgery to set right fracture of his left leg long bone fracture and interlocking tibia for fracture of both bones of left leg.. The doctor has opined that the appellant has to undergo three more operations and accordingly, assessed the disability of 58.5% in respect of the right lower limb and 29% towards whole body. But, the Tribunal, after assessing the oral and documentary evidence available on file. has re-assessed the whole body disability at 15%. The

same is on the lower side. The appellant being aged about only 37 years, has to endure the disability for the rest of his life and it would be difficult for him to perform his day to day activities, as earlier. Therefore, having regard to the nature of injuries sustained, age and avocation of the appellant and nature and duration of treatment, operations undergone, and also the fact that he cannot to do his work as effectively as he was doing earlier, I deem it fit to award a global compensation of a sum of Rs. 75,000/-, with interest at 6% per annum, in addition to the compensation awarded by Tribunal. In the light of the facts and circumstances of the case, as stated above, the appeal filed by appellant is allowed in part. The impugned common judgment and award dated 13th October 2010 passed in MVC No. 6132/2009 by the XVIII Additional Judge and Court of Small Causes, Member, Motor Accident Claims Tribunal-4, Bangalore, is hereby modified, awarding compensation of a sum of Rs. 75,000/-, with interest at 5% per annum, from the date of petition till the date of realization, in addition to the compensation awarded by Tribunal. The second respondent - Insurer is directed to deposit the enhanced compensation of Rs. 75,000/-, with interest thereon at 6% per annum, from the date of petition till the date of realization, within three weeks from the date of receipt of copy of the judgment and award.

On such deposit by the Insurer, the entire sum shall be released in favour of the appellant, immediately.

Office to draw award, accordingly.