

(2010) 04 KAR CK 0113
In the Karnataka High Court
Case No : MFA No. 288 of 2005

Sri G. Suresh

APPELLANT

Vs

Sri R. Krishna Murthy, Sri K.A. Keshava Murthy and The
Oriental Insurance Company Ltd.

RESPONDENT

Date of Decision : 08-04-2010

Acts Referred:

Citation : (2010) 04 KAR CK 0113

Hon'ble Judges : N.K. Patil, J;H.S. Kempanna, J

Bench : Division Bench

Advocate : H. Nagarajaiah, for the Appellant; K.K. Vasanth, for R3 and C.G. Sundar, for R-2, for the Respondent

Final Decision : Allowed

Judgement

N.K. Patil, J.—This is claimant's appeal for enhancement of compensation against the impugned judgment and award dated 22.11.04 passed in MVC No. 2013/2000 on the file of the XV Addl. Judge and Member, MACT, Court of Small Causes, Mayo Hall Unit, Bangalore (SCCH-19) (hereinafter referred to as Tribunal" for short).

2. By its judgment and award, the Tribunal has awarded a sum of Rs. 1,18,300/- with interest at 8% from the date of petition till its realisation as against the claim made by the appellant for a sum of Rs. 4,09,673/-on account of the injuries sustained by him in the road traffic accident. Being aggrieved by the said judgment and award, the appellant has presented this appeal, seeking enhancement, on the ground that, the amount awarded by the Tribunal is inadequate.

3. In brief, the facts of the case are:

The appellant claims that he was aged about 28 years, an Electrician by profession, earning Rs. 3,000/-p.m. at the time of accident. He was hale and healthy prior to the accident. That, at about 12.30 a.m. on 22.2.2000, when the

appellant and respondent No. 1 were proceeding to go to Thirupathi in a Motor Cycle bearing No. CAR 7552 and when they came near Irannanapalya near Kempegowda tower, on right road, Hebbal, Bangalore, due to the rash and negligent driving of the motorbike in high speed by respondent No. 1, the vehicle skidded and the appellant who was the pillion rider in the vehicle fell down along with respondent No. 1 and the appellant sustained the injuries such as right frontal traumatic intra cerebral hematoma and left temporo parietal extra dural hematoma and left frontal large hemorrhagic contusion. The expert neurological doctor has assessed the neurological disability at 50%. On account of this disability he has been admitted in the hospital for more than three months both as inpatient and outpatient. He underwent two surgeries and implants has been inserted. Taking all these relevant factors into consideration, the appellant has filed a claim petition before the Tribunal claiming compensation against the respondents. The said claim petition had come up for consideration before the Tribunal, which in turn, after hearing both sides and after assessing the oral and documentary evidence, has allowed the said claim petition in part and awarded a sum Rs. 1,18,300/- as compensation under different heads with interest at 6% p.a., from the date of petition till the date of deposit. Being aggrieved by the said judgment and award the appellant has presented this appeal, seeking enhancement of compensation.

4. After perusal of the grounds urged in the memorandum of appeal and hearing the learned Counsel for the appellant for considerable length of time, what emerges is that the appellant aged about 28 years, an electric by profession, earning Rs. 3,000/- p.m. has suffered injuries due to the accident that occurred on 22.2.2000. He has undergone three months treatment in the hospitals and underwent three surgeries. The doctor has assessed the permanent disability at 50%. The Tribunal has rightly awarded Rs. 70,000/- towards medical expenses, conveyance, nourishing food and attendant charges and Rs. 20,000/- towards future medical expenses.

5. However, the Tribunal is not justified in granting compensation towards pain and sufferings, loss of income during laid up period, loss of amenities, discomforts and unhappiness. On account of the injuries suffered by the appellant in the road traffic accident, he might have taken bed rest and for follow-up treatment atleast for a period of six months. We accept the income of the appellant at Rs. 3,000/-p.m. as rightly assessed by the Tribunal. Therefore, we deem it fit to award just and reasonable compensation towards pain and sufferings at Rs. 30,000/- as against Rs. 25,000/-; towards loss of income during laid up period at Rs. 18,000/- (Rs. 3000 x 6 months) as against Rs. 3,300/- and Rs. 25,000/- towards loss of amenities and discomforts and unhappiness.

6. Having regard to the facts and circumstances of the case as stated above, the impugned judgment and award passed by the Tribunal is liable to be modified. The total compensation payable comes to Rs. 1,63,000/-and the break-up is as follows:

1. Towards pain and sufferings Rs. 30,000/- 2. Towards medical expenses, conveyance, nourishing food and attendant charges Rs. 70,000/- 3. Towards loss of income during Laid up period Rs. 18,000/- 4. Towards loss of amenities Rs. 25,000/- 5. Towards future medical expenses Rs. 20,000/- Total Rs. 1,63,000/-

11. Accordingly, the appeal is allowed in part and the impugned judgment and award passed by the Tribunal in MVC No. 2013/2000 stands modified, granting a compensation of Rs. 1,63,000/- instead of Rs. 1,18,300/ (enhanced compensation comes to Rs. 44 700/-)

The insurer is directed to deposit the enhanced compensation of Rs. 44,700/- with interest at 6% p.a. from the date of petition till the date of realisation, within three weeks from the date of receipt of the copy of this judgment and award.

Out of the enhanced compensation of Rs. 44,700/-, 50% with proportionate interest shall be invested in the Fixed Deposit in any Nationalized or scheduled bank, in the name of the appellant for a period of five years renewable by another five years, with liberty to him to withdraw the interest accrued on it, periodically.

The remaining 50% of the enhanced compensation with proportionate interest shall be released in favour of the appellant, immediately, on deposit by the insurer.

Draw the award, accordingly.