

(1996) 11 KAR CK 0004
In the Karnataka High Court
Case No : MFA 298/92

Sri Ganesh Kanoba Waingankar

APPELLANT

Vs

Vithal Gouri Gourish Dovali

RESPONDENT

Date of Decision : 08-11-1996

Acts Referred:

Karnataka High Court (Amendment) Act, 1994 — Section 5, 5 (1)
Motor Vehicles Act, 1988 — Section 173

Citation : (1997) ILR (Kar) 1704

Hon'ble Judges : Harinath Tilhari, J

Bench : Single Bench

Advocate : V.P. Kulkarni, for the Appellant; M.U. Poonacha for R. No. 3, for the Respondent

Judgement

Harinath Tilhari, J.—This is a claimant's appeal from the judgment and order (Award) dated 27th September, 1991, delivered by Sri A.C. Patil, Motor Accident Claims Tribunal (District Judge, Uttara Kannada, Karwar) in M.V.C.No. a83 of 1988.

2. The Tribunal has awarded the compensation to the tune of Rs. 40,000/-. The claimant felt dissatisfied and therefore has come up in appeal.

3. The facts of the case in brief are that the claimant has been the victim of the Motor, vehicle accident that did take place on 18-4-1988 at about 8 p.m. in Vakkaikeri, Binaga Karwar, while he was proceeding to his residence on a bicycle along with his father. According to the claimant's case when the claimant reached Vakkaikeri along the National High way No. 17, on the date and at the time mentioned above, a lorry bearing Registration No. MYE 5778, belonging to respondent No. 2 in the claim petition as well as respondent No. 2 in the memo of appeal, which was being driven by respondent No. 1 Vithal Gouri, who came from behind from Karwar side driving it rashly and negligently and dashed against the claimant and his bicycle. According to the claimant's case, both father and son that is the claimant and his father were knocked down on the left

side of the road. They suffered bleeding from the nose, ear and mouth and had become unconscious. They were taken to the District Hospital Karwar and thereafter shifted to Government Medical College Hospital at Panaji in an ambulance belonging to Bilt factory, Binaga where petitioner's father died and petitioner was treated by Neuro Surgeon for head injuries for good long time. According to the claimant's case, the claimant could not fully recover and as a result of the head injury lost his capacity of hearing and his eyes were also damaged with the residue result of partial blindness. The claimant's case is that since the time of treatment, attendants have been attending him continuously and he is not in a position to move freely and his mental capacities also suffer depression i.e., it is not functioning normally. He has further alleged that he had been taken to Government Medical College Hospital Panaji atleast 6 times in a special car and that a sum of Rs. 35,000/- was spent for treatment of the claimant. Claimant further asserted that he had been registered as skilled contractor and was paying tax. The claimant has alleged that his bicycle was completely damaged and that he may require further treatment for a further period of 6 months from the date of petition. Both the eyes and the brain have been damaged to a lot. The claimant's case was that his legs were also injured. The claimant-appellant has made the claim in toto for the damages and compensation to the tune of Rs. 3,25,000/- under the head of General Damages as well as special damages, which have been indicated in the claim petition. The claimant has stated in the claim petition that his monthly income at the time of accident had been Rs. 4,000/ - per month and that he was an income tax payer. The claimant also stated in the claim petition that on account of the injuries on head and the physical disabilities of eyes and neck petitioner has not been able to do any work. He has stated that on account of loss of eyes or disability of his both eyes, the ears and the brain, his enjoyment and pleasure of life has been shortened.

4. Respondents 1 and 2 inspite of service of notice did not appear and the proceedings in the case has gone exparte. The claimant-appellant's claim was contested by respondent No. 3 that is the concerned Insurance company. The respondent denied that the accident was due to rash and negligent driving of the motor vehicle or the truck by respondent No. 1. Respondent No. 2 took the plea that respondent No. 1 was not responsible for the accident. Respondent No. 3 did not admit the nature of injuries caused to the petitioner and the period of treatment. They denied any loss of income to the claimant. Respondent No. 3 also denied the case of any disability to the claimant. The respondent also denied the income of the claimant which had been asserted by the claimant to the not less than Rs. 4,000/- per month. Respondent has also denied the avocation of the petitioner as that of the contractor and asserted that the claim has been an exaggerated one. The insurance company admitted Vehicle MYE 5778 was insured but further took the plea that the liability of the insurance company, respond is governed by the terms and conditions of the insurance company.

5. On the basis of the pleadings of the parties, claims tribunal framed the

following issues :

1. Whether the petitioner proves that he had sustained injuries in a motor accident that occurred on 18.4.1988, at about 8 p.m., near" Vakkaikeri, Binga, Karwar due to rash and negligent driving of a truck bearing No. MYE 5778 when the petitioner was proceeding to his house on a bicycle?

2. What compensation the petitioner is entitled to and which respondent is liable to pay?

3. What order?

6. After having examined the evidence on record produced, the Tribunal held that the motor accident that had taken place on 18.4.1988 at about 8 p.m. at Vakkaikeri, Binaga was the result of rash and negligent driving of the Truck bearing No. MYE-5778 by respondent No. 1, when the petitioner was proceeding to his house on the bicycle. The Tribunal held that there has been permanent disability to the eyes to the extent of 5 to 10 per cent and the petitioner failed to establish by proper and cogent evidence, the total disability to the extent of 50 per cent including to the legs. The Tribunal after taking into consideration the age and other circumstances thought it fit to award the compensation of Rs. 20,000/- for disability. It also awarded compensation to the tune of Rs. 10,000/- towards the treatment which included cost of medicine, conveyance, diet and attendants charges and for pain and suffering the Tribunal assessed the damages and awarded compensation to the tune of Rs. 10,000/-. Thus in total, the Tribunal has made award of Rs. 40,000/- as compensation. The claimant felt dissatisfied with the award of Rs. 40,000/- only and has come up in appeal before this Court u/s 173 of the Motor Vehicles Act, 1988.

7. On behalf of the appellant I have heard Sri V.P. Kulkarni and Sri M.U. Poonacha for respondent No. 3 that is for the Insurance Company, None has put in appearance on behalf of other respondents.

8. The learned Counsel for the appellant submitted that the Tribunal has erred in taking the view that total disability was 5 to 10 per cent so far as eye is concerned. He further submitted that the Tribunal was wrong in taking the view that petitioner failed to establish by proper and cogent evidence, the total disability to the extent of 50 per cent, including legs. Sri V.P. Kulkarni invited my attention to the statement of P.W.2 and submitted that the Doctor's statement in paragraph-2 reveals that the loss or degree of disability is approximately fixed at 50 per cent in totality with reference to eyes and he submitted that Doctor has said that such a loss of vision cannot be rectified or improved by using spectacles. Learned Counsel further submitted P.W.2 the Doctor has not said that the loss or disability was only 5 to 10 per cent. Learned Counsel submitted that what P.W.2 has stated is that a margin may be drawn in this respect by 5 to 10 per cent one way or the other. He submitted that what Doctor appears to have said is that disability may run between 40 to 60 per cent, 10 per cent lower side and 10 per cent upper side in between the two the approximation of 50 per cent.

He further invited my attention to the suggestion which was made to the Doctor where Doctor denied that any further or proper treatment will cure the disablement. On this basis learned Counsel submitted that the learned Tribunal erred in taking the loss of disability to be only to the extent of 5 to 10 per cent. Learned Counsel further invited my attention to the statement of Doctor V.N. Jindal and submitted that Dr. Jindal has also pointed out so far as legs are concerned that spasticity of both lower limbs due to functional impairment can be said to be equated with 50 per cent disability. He submitted that both the limbs were affected. He submitted that RW. 3 Dr. Jindal has stated that as per Exh,P-93, the disability of 50 per cent is with reference to the legs. He submitted that in view of disability caused to the ears and the legs which is 50 per cent, the claimant has almost become completely dependant on others and he is not able to work. He submitted that the evidence of Doctor supports the evidence of P.W.1 the injured or claimant and as such the evidence of disabled person should be relied. Sri Kulkarni further submitted that the claimant was prior to the occurrence working as the contractor and this fact is corroborated by statement of Sri K. Musheer Pasha-P.W.4. Sri Kulkarni submitted that the statement of P.W.1 that is the claimant is supported by P.W. 4 that the claimant was carrying on the business of contract. He submitted that the claimant has stated in the deposition that he was earning between Rs. 3,000/- to 4,000/- per month and that is not controverted and it should be accepted. In alternative he submitted that even if it be taken to be an exaggeration, then the lower side of the income stated in the statement to be taken as the income or whatever Court assesses on that basis including the possible exaggeration, but it cannot be less than Rs. 2,000/- per month. Sri Kulkarni therefore submitted that if the disability to be taken to be 50 per cent, the petitioner's income to be taken to the lowest as Rs. 2,000/- petitioner would have been entitled to something about Rs. 1,50,000/- as compensation for loss of income and not less than that. Sri Kulkarni further submitted that with reference to pain and suffering, the compensation has been awarded to the tune of Rs. 10,000/- that is also very low. He submitted that the claimant-appellant had to be in the Hospital for about 55 days and he had to be admitted in the hospital for 6 times even after discharge. He submitted that with reference to the pain and suffering the petitioner should have been awarded compensation more than Rs. 10,000/- He submitted that proper compensation for pain and suffering would be Rs. 30,000/- with Rs. 30,000/- and with reference to the medical expenses the claim for Rs. 35,000/- should have been awarded. Learned Counsel for the appellant also submitted that the rate of interest 9 per cent per annum was meagre. He submitted it should have been allowed at the rate prevalent namely atleast at the rate of 10 to 11 per cent.

9. On behalf of respondent the appellant's contentions have been hotly contested, firstly a preliminary objection has been raised by learned Counsel for the respondent that this appeal cannot be heard by this Court that is Single Judge and he submitted that as the claim was for Rs. 3,25,000/-, Division Bench should have heard this appeal. This contention of the respondents Counsel has

been hotly contested by the appellant's Counsel. Learned Counsel for the appellant submitted that the Division Bench of this Court has taken the view that as per Section 5 of the Karnataka High Court Act, as amended by Act No. 6/94, where the subject matter involved in the appeal is less than Rs. 3,00,000/- then the appeal can be heard by the single judge, irrespective of the fact that in the main claim petition, the claim had been made for Rs. 3,25,000/-. Learned Counsel submitted that there is no dispute about a sum of Rs. 40,000/- already awarded that is not the subject matter of appeal, but the claim for a amount of Rs. 2,85,000/- that is involved in the appeal will be the subject matter of appeal, so appeal is entertainable by the High Court.

10. That as regards the preliminary objection, it will be profitable to refer to Section-5 of the Karnataka High Courts Act. Section-5(1) of the Karnataka High Court Act reads as under:-

"5(i) all first appeals against a decree or order passed in a suit or other proceedings, the value of subject matter of which is rupees three lakhs or more shall be heard by a Bench consisting of not less than two Judges of the High Court and other First Appeals shall be heard by a Single Judge of the High Court.

11. That originally Section-5 (unamended) of the Karnataka High Court Act provided that all the first appeals shall be heard by a Bench consisting of not less than two Judges of the High Court. The First appeals from the judgment and decree of the subordinate Courts and Tribunals above valuation of one lakh lie to the High Court, but where the subject matter of original suit is less than rupees one lakh, the appeal lies to the District Court. So far as the two Courts are concerned - High Court and the District Court, they are different forums of appeal and they stand on different footing and subject matter of the suit is to determine the forum of the appeal. The appeal when in the matters of above one lakh is filed before the Court, how it is to be disposed of - by one Judge or two Judges, whether it is to be disposed and is of by one Judge or two Judges, it is to be disposed of and decided by High Court. The forum is High Court not Bench. The amendment has been made with an object to make early disposal of the case pending in the High Court as well and to avoid delay in disposal of the matters by the High Court. If all the matters of whatsoever value or value of subject matter in appeal are to be kept pending for decision by Division Bench, it may not be easy to dispose of the appeals at the earliest possible to obviate this difficulty and to make early disposal of first appeals. The Legislature amended the law and provided that first appeals may also be decided by the Single Judge, exercising the jurisdiction and power of the High Court to dispose of the appeal, so that instead of two judges deciding the appeal many appeals may be disposed of by making them disposable by Single Judges of the High Court. Keeping this object in view the provision has to be interpreted particularly when there is possibility of two interpretations. The interpretation of expression" value of subject matter of which used in Section 5(1) of the Act as subject matter of suit or value of claim in suit or proceeding before original form, as governing the

forum for decision of appeal will not help in obviating or getting rid of the problem, nor can the object be achieved, instead object of amendment will be frustrated. That as such if we read the expression "the value of which" refers to the first appeal, that is the value of the subject matter in dispute or involved in the appeal is to govern determination of question whether first appeal is to be heard and decided by Single Judge or Division Bench. Such an interpretation may be said to be purpose oriented interpretation which may fructify the very object or help in fructifying the very object of the amendment. It is one of the settled principles of law relating to interpretation of statute that if there are two possible interpretations of law and particularly the law has been amended, the one which fructifies and helps in making effective the purpose of amendment should be adopted. See - the reference in the regard may be made to the case of *FRASTER & CO., v. REVENUE MEMBER* 1949 AC 24 (PC) : AIR 1949 PC 120 ; *State of Uttar Pradesh Ors. Vs. Radhey Shyam Nigam and Others*,

12. Keeping this principle in view I am also of the opinion that the first appeals where subject matter of claim in first appeal or the value of the subject matter of the claim in the first appeal is less than rupees three lakhs, those appeals can be heard by Single Judge, but where value of subject matter of dispute in appeal is 3 lakhs or more those have to be heard and disposed of by Division Bench. For the view I have taken above, I find support from the Division Bench decision of this Court in the case of *Special Land Acquisition Officer Vs. Gopal*, . It will be profitable to quote the following observations from the decision of the Division Bench referred to above-

"It is well accepted principle that ordinarily it is the value in the original proceedings that determines the jurisdiction of the Court and not the amount which may be found or decreed by the Court against which the appeal is preferred. But the tenor of the amended provision of Section 5 appears to lay emphasis on the value of the subject matter in the First Appeal and not the value of the subject matter in the suit or other proceedings. If we were to hold that the value of the subject matter in "a suit or other proceedings" is pivotal for determining in the forum it may defeat the very purpose of the amendment. To illustrate, in a money suit for recovery of a sum of Rs. 3 lakhs, if the suit were to be decreed say for Rs. 2,99,000-00 and if the plaintiff were to prefer appeal against the said judgment and decree as against the dismissal of his suit for the balance sum of Rs. 1000/-, the same has to be heard by a Bench consisting of not less than two Judges of this Court."

13. Accordingly, we hold that First Appeals the value of subject matter of which is three lakhs or more shall be heard by a Bench consisting of not less than two Judges of this Court and other First Appeals shall be heard by a Single Judge in terms of the amended provisions of Section-5 of the Act.

14. Thus considered in my opinion preliminary objections raised by the learned Counsel for the respondent is without substance and is rejected.

15. After disposing of the preliminary objection raised by learned Counsel for the respondent, I proceed to consider the matter on merits. The finding as regard the occurrence or accident that had taken place due to the rash and negligent driving of the Lorry in question by respondent No. 1, has not been challenged by any of the parties and it has become final. The only question that remains for consideration is whether compensation that has been awarded is reasonable and just or the claimant-appellant is entitled to enhancement of compensation as claimed and sought by the appellant. Exh.P1 is the Wound Certificate. The injury is shown to be contused lacerated wound on the left frontal eminence horizontal 3" x 1/2" bone deep. Bleeding present; contused lacerated wound on left outer angle of left eye 1/2" x 1/2", Bone deep bleeding present; Bleeding from mount; Hips Swollen, and bleeding present. Injury No. 1 has been mentioned as potentially dangerous. Two Doctors have been examined in this case namely P.W. 2 and 3. P.W. 2 Dr. Pradeep G. Naik has stated that he is an Ophthalmotist. According to his statement on the date of examination, the vision of the patient was by 6/9 right eye, 6/9 left eye. The Doctor stated his vision was restricted to half the field of vision in each eyes and this was due to the damage to the nerves connecting to the patient. He stated that the vision of the patient cannot be improved and that disablement was permanent. The Doctor states that the degree of disability is approximately fixed at 50 per cent of the totality. Such loss of vision cannot be improved by using spectacles. The Doctor further states in the course of cross examination that margin of loss of vision may be 5 to 10 per cent regarding disability. If this statement of Doctor is read, which he has made in the cross examination, along with statement made in the course of examination in chief he per se indicates that the degree of disability has been given in approximation to be 50 per cent. It may be more of loss, but the margin on both the sides may be of 5 to 10 per cent. This statement of Doctor which he has made in the cross examination was wrongly been read by the Tribunal as indicating the totality of the disability. This statement really means that by approximation the Doctor has given the degree of disability in the eye sight to be 50 per cent it may be 55 per cent or it may be 60 per cent on the higher side or the disability may be on the lower side 40 or 45 per cent. When the suggestion was made to the Doctor, whether on a proper treatment the disablement can be cured, the Doctor has denied it and said that the suggestion is wrong, he cannot agree with the suggestion. This statement of the Doctor per se reveals that so far as the disability with respect to the eye sight or vision is concerned, it really shows that disability was about 50 per cent and in no case less than 40 per cent and in no case more than 60 per cent disability. The Doctor fixed it at 50 per cent.

16. As regard the lower limbs and the disability thereto, it will be profitable to, refer to the statement of Dr. V.N. Jindal, P.W.3. Dr. Jindal states at page 29 of the record, in conclusion the patient had following disabilities as a sequel of head injury.

1. The spasticity of both lower limbs, resulting in slow gait.

2. Usual disturbance.

17. spasticity of both lower limbs due to functional impairment can be equated with para paretic and percentage of disability is 50 per cent. In course of cross examination, the Doctor Jindal stated 50 per cent disability shown in Exh. P93 is with regard to the legs. He again states that 50 per cent disability shown in Exh. P93 is only with regard to the legs. Dr. Jindal stated that this certificate related to disability of 50 per cent disability shown is with respect to disability in the legs and he has stated vision disturbance certificate is to be taken from Orthopaedic Department. This is also mentioned in Exh. P-93 as well.

18. The evidence on record then indicates that the claimant suffered 50 per cent disability as regards the lower limbs namely the legs, which has been caused on account of the accident and loss of vision has also been established by the statement of Dr. Pradeep the Ophthalmologist and according to him the loss of vision and the disability regarding thereto is approximately 50 per cent of the totality and it cannot be cured. These two injuries together no doubt indicate that the learned subordinate Court, that is the Tribunal was mistaken in taking the permanent disability of eye sight to have only 5 to 10 per cent. The evidence on record establishes that disability to be 50 per cent. The finding of the Court below that petitioner failed to establish the total disability of 50 per cent is incorrect and it is hereby held that the claimant-appellant has established his total disability eye sight to the extent of 50 per cent. The margin may be put on either side and the disability or loss may range in the higher side - 60 per cent and in the lower range 50 per cent. So on an average 50 per cent loss is established, but in no case it is less than 40 per cent. The claimant-appellant has been a young man aged about 25 years at the time of occurrence. The evidence of P.W.4 clearly shows that he was working as a Contractor and he might have been working as a Contractor for 2 to 3 years. P.W. 4 has stated that the injured that is the claimant was a registered contractor and he was doing the contract work for the Municipality even before his taking the charge. This statement was recorded on 20.12.1990. P.W. 4 states that he has been Commissioner for the last 3 years. It means some times in 1986 or beginning of 1986 or end of 1987. If his statement is taken, it may be that petitioner might be working as a Contractor from 1986-87. Petitioner had long span of life, ordinarily if the span of life is taken to be 60 years on the higher side. Longevity of the persons is to be taken as 60 years normally. There is also possibility of the claimant to have improved in his business with the passage of time had this accident not taken place. We have to keep all this in view. The claimant has given his income to be in between 3 thousand to 4 thousand. When the claimant was working as a Contractor, definitely he must be having some income and must be earning something. No documentary evidence has been filed to show the extent of income. May be that there might be some exaggeration in the quantum of monthly income stated in the evidence as well as in the claim petition. The petitioner's monthly income on an average might be taken to be running atleast between 1000 to 1500 and not less than that. But for the present I take it, as Rs.

1200/- per month at that time. The future aspect of the life has to be taken. The loss of future amenities and the pleasure of future life and its loss. But as the disability is 50 per cent, so loss of earning capacity may be taken to be loss of 50 per cent in that capacity. Keeping that in view the future prospects he would have had in life, which he may be deprived because of 50 per cent loss of vision, hearing and 50 per cent loss of legs, has to be considered.

19. If the monthly income is taken to be Rs. 1200/- per month, definitely petitioner's yearly income would be about Rs. 14,400/- a year. Considering the loss of prospects of petitioner's life and future progress in the earning, it would be proper to apply the multiplier of "15" to the yearly income and as the claimant has suffered the disability to the extent of 50 per cent to compensate that the figure may be brought out as under :

1200
X
12
X
15
?
2"
=
14.400 x 15 x 1
=
1 ,08,000
1 1 1 2

Thus the loss of income in future comes to Rs. 1,08,000/- and in my opinion petitioner as such is entitled to and deserve to be awarded the compensation for the loss of income, amenities, happiness etc., of future life to the tune of Rs. 1,10,000/- in round figures.

20. As regards pain and suffering, the petitioner has been awarded damages to the tune of Rs. 10,000/- which is meagre figure. I think it would be proper to increase it to Rs. 20,000/-. As regards the medical expenses and expenses towards the conveyance, diet and attendant charges, in my opinion the compensation awarded by the Tribunal to the tune of Rs. 10,000/- does not call for any interference and it is maintained as awarded by the tribunal.

21. Thus the appeal is partly allowed and it is hereby ordered as under :

(A)

Disability and loss of benefit, future earning capacity, amenities, future prospects of life

Rs.1,10,000/-

(B)

Towards, medical treatment, conveyance, diet, attendant charges etc., as ordered by the Tribunal

Rs. 10.000/-

(C)

Damages for pain and suffering

Rs. 20.000/-

_____ Rs. 1,40,000/- _____

Thus in total, the petitioner will be entitled to get the compensation to the tune of Rs. 1,40,000/-. As regards the compensation with regard to the rate of interest, in my opinion the interest has been granted at the rate of 9 per cent. This is justified and does not call for interference. Interest on the damages will be payable at the rate of 9 per cent from the date of claim petition on the entire amount, as directed by the Tribunal and be payable till the date of payment thereof.

The appeal is thus finally allowed in part as above with proportionate costs of this appeal.