(2013) 10 KAR CK 0269

In the Karnataka High Court

Case No : M.F.A. No. 3117 of 2009 (MV)

Sri. H. Lakshminarayan APPELLANT

Vs

M/s. United India Insurance Co. Ltd. and Mr. Arjun Mahanta RESPONDENT

Date of Decision : 31-10-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2013) 10 KAR CK 0269

Hon'ble Judges : N.K. Patil, J;Budihal R.B., J

Bench : Division Bench

Advocate : J. Sathish Kumar, for the Appellant; Harini Shivananda, Advocate for R1, for the Respondent

Judgement

N.K. Patil, J.—This is a claimant''s appeal against the impugned judgment and award dated 15/07/2008 passed in MVC No. 324/2006, by the XIV Additional Judge, Court of Small Causes and Motor Accident Claims Tribunal, Bangalore City (SCCH-10), (for short '' Tribunal''), for enhancement of compensation. By its judgment and award, the Tribunal has awarded a sum of Rs. 3,00,000/- under different heads with interest at 8% p.a., from the date of petition till the date of deposit as against the claim made by the appellant for a sum of Rs. 25,00,000/-, on account of the injuries sustained by him in the road traffic accident.

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

The appellant claims to be aged about 25 years at the time of the accident. He was hale and healthy prior to the accident and earning Rs. 8,500/- p.m. by doing Fitter work. That at about 5.00 a.m., on 22.11.2005, he was riding his motor cycle and when he was proceeding on Begur cross near Bommanahalli village, N.H. Road, at that time, the driver of the Tata Sumo bearing Reg. No. KA. 01. B. 2471 came in a rash and negligent manner with high speed and dashed against the motorcycle and caused the accident. Due to which, appellant sustained injures, namely, swelling right maxillary region, abrasion chin and fracture of left shaft femur, and other injuries. Immediately, he was shifted to NIMHANS and after first aid, he was shifted to Sagar Apollo Hospital, where he took treatment as inpatient from 22.11.2005 to 6.12.2005, undergone one surgery and on 6.12.2005 he was shifted to NIMHANS for further treatment. Thereafter, on the advise of the Doctor he has taken bed rest and follow up treatment.

3. It is the further case of the appellant that he spent considerable amount towards medical and other expenses and other incidental charges and on account of the injuries sustained by him as referred above, he has suffered permanent disability. The Doctor has assessed the disability at 37% to the left lower limb and at 13% to the whole body as per Ex. P35-Disability Certificate. Therefore, appellant has filed a claim petition before the Tribunal through his natural guardian, father, u/s 166 of M.V. Act, claiming compensation against the respondents.

4. The said claim petition had come up for consideration before the Tribunal. The Tribunal, 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. 3,00,000/- as compensation under different heads with interest at 8% p.a., from the date of petition till the date of deposit

5. Being dis-satisfied with the quantum of compensation awarded by the Tribunal, the appellant has presented this appeal through his natural guardian, father, seeking enhancement of compensation.

6. We have heard the learned counsel appearing for appellant and learned counsel appearing for Insurer.

7. Learned counsel appearing for the appellant submitted that, the Tribunal has erred in not assessing the income of the appellant considering his age and avocation. Further he submits that non production of the salary certificate by the father of the appellant will not take away his legitimate entitlement of compensation on account of the injuries sustained by him in the accident. Further, he submits that on account of the injuries sustained by the appellant, he has taken treatment as inpatient, undergone surgery, he has spent considerable amount towards medical expenses and other incidental charges and on the advice of the Doctor, he has taken bed rest and follow up treatment and on account of the injuries sustained, he has suffered permanent disability. But these aspects of the matter have not been considered or appreciated by the Tribunal while awarding compensation. Further he submits that the compensation awarded by the Tribunal under all the heads is inadequate and it requires to be enhanced and that the Tribunal has erred in not awarding any compensation towards loss of income during the period of treatment. Therefore, he submitted that the impugned judgment and award passed by the Tribunal is liable to be modified.

8. As against this, learned counsel for the Insurer, inter-alia, contended and submitted that the impugned judgment and award passed by the Tribunal is just and reasonable and after due appreciation of the oral and documentary evidence

available on file and therefore, it does not all for interference.

9. After hearing the learned counsel for the parties and after perusal of the materials available on record, including the impugned judgment and award passed by the Tribunal, the only point that arises for our consideration is:

Whether the compensation awarded by the Tribunal is just and reasonable?

10. The occurrence of the accident on 22.11.2005 and the resultant injuries sustained by the appellant are not in dispute. In the accident, appellant has sustained head injury, blunt injury chest and abdomen and fracture of femur in hypovolemic shock and undergone surgery and due to the grievous injuries sustained by him, he has filed a claim petition through his natural guardian, father. Further, it emerges that the Tribunal has failed to award reasonable compensation on account of the injuries sustained by the appellant and also failed to assess his income taking into consideration his age, occupation and year of the accident. It is the case of the appellant that, he was aged about 25 years, working as Fitter and earning Rs. 8,500/- per month. But to prove the same, appellant has not produced any credible documents. Non production of the certificate will not take away his legitimate entitlement of compensation on account of the injuries sustained by him. Taking all these factors into consideration, we assess the income of the appellant at Rs. 4,000/- per month.

11. Further it emerges from the material available on record that, on account of the injuries sustained by the appellant, he has taken treatment as inpatient for 40 days, under went one surgery. During that period, he has undergone lot of pain and agony, spent considerable amount towards conveyance and other incidental expenses and might have incurred financial loss as he could not attended his work regularly. Further, it emerges that, on account of the injuries sustained, appellant has suffered permanent disability and the Doctor has assessed the disability at 37% to left lower limb and at 13% to the whole body. Discomforts and unhappiness persists through out his life. Taking all these factors into consideration, we award a sum of Rs. 30,000/- towards injury, pain and sufferings instead of Rs. 25,000/-, Rs. 25,000/- towards conveyance, nourishing food and attendant charges instead of Rs. 17,000/-, Rs. 24,000/- towards loss of income during the period of treatment and Rs. 1,00,000/- towards loss of amenities due to disability instead of Rs. 50,000/- awarded by the Tribunal. However, a sum of Rs. 2,08,000/- awarded by the Tribunal towards medical expenses is just and proper and therefore, it does not call for interference.

12. Thus, in all, the appellant is entitled to the total compensation of Rs. 3,87,000/- instead of Rs. 3,00,000/- and the break-up is as follows:

Having regard to the facts and circumstances of the case, the appeal filed by the appellant is allowed in part. The impugned judgment and award dated 15/07/2008 passed in MVC No. 324/2006, by the XIV Additional Judge, Court of Small Causes and Motor

Accident Claims Tribunal, Bangalore City (SCCH-10), stands modified, awarding the compensation of Rs. 87,000/- with interest at 6% p.a., from the date of petition till its realization, in addition to the compensation awarded by the Tribunal.

The first respondent-Insurer is directed to deposit the enhanced compensation of Rs. 87,000/- with interest at 6% p.a., from the date of petition till the date of realization, within three weeks from the date of receipt of a copy of this judgment.

Immediately on deposit by the. Insurer, out of the enhanced compensation of Rs. 87,000/- with interest, 50? with proportionate interest shall be invested in Fixed Deposit in any Nationalized or Scheduled Bank, in the name of the appellant for a period of 10 years and renewable by another 10 years, with liberty reserved to the natural guardian, father of the appellant to withdraw the interest accrued on it, periodically.

The remaining 50% with proportionate interest shall be released in favour of the appellant through his natural guardian, father, immediately.

Draw the award, accordingly.

