
(2013) 07 KAR CK 0194

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 3577 of 2010 (MV)

Sri. K.M. Bache Gowda

APPELLANT

Vs

Sri. Murstafa Ali Khan, The Managing Director and The
Deputy Manager

RESPONDENT

Date of Decision : 10-07-2013

Acts Referred:

Citation : (2013) 07 KAR CK 0194

Hon'ble Judges : B. Sreenivase Gowda, J

Bench : Single Bench

Advocate : G.M. Srinivasareddy, for the Appellant; D. Vijayakumar, for R. 2 and
Sri. M.U. Poonacha, for R. 3, for the Respondent

Final Decision : Partly Allowed

Judgement

B. Sreenivase Gowda, J.—This appeal is by the claimant seeking enhancement of compensation awarded by the Tribunal. Heard. The appeal is admitted and with the consent of the learned Counsel appearing for the parties, it is disposed of finally.

2. For the sake of convenience parties are referred to as they are referred to in the claim petition before the Tribunal.

3. As there is no dispute regarding injuries sustained by the claimant in a road traffic accident occurred on 01-11-2007 due to rash and negligent driving of offending APSRTC bus bearing registration No. AP-02-W-7300 by its driver and liability of the insurer of the offending vehicle, the only point that remains for my consideration in the appeal is:

Whether compensation awarded by the Tribunal is just and proper or does it call for enhancement?

4. After hearing the learned Counsel for the parties and perusing the judgment and award of the Tribunal, I am of the view that the compensation awarded by

the Tribunal is not just and reasonable, it is on the lower side and therefore, it is deserved to be enhanced.

5. As per Ex. P.2-wound certificate, claimant has sustained the following injuries;

- 1) Abrasion on the right leg
- 2) Fracture of shaft of both bones of right leg
- 3) Sutured lacerated wound over left occipital region.

Injuries sustained and treatment taken by him are also evident from Ex. P.5-discharge summary, Exs. P.6 to 20-RTC, Ex. P.21-CT scan film, Ex. P.22 and P.25-6 x-rays, Ex. P.23-case sheet, Ex. P.24-OPD card and supported by oral evidence of the claimant and doctor examined as P.Ws. 1 and 2 respectively.

P.W.2-Dr. R. Yatish in his evidence has stated, claimant has suffered disability of 25% to whole body.

6. Considering two major fractures and other injuries sustained by the claimant, a sum of Rs. 35,000/- is awarded towards pain and suffering as against Rs. 25,000/- awarded by the Tribunal under this head.

7. As Rs. 54,300/- awarded by the Tribunal towards medical expenses is as per medical bills produced by the claimant for the said sum, the same is just and proper and there is no scope for enhancement.

8. He was treated as inpatient for 22 days in KIMS Hospital, Bangalore. Considering the same, a sum of Rs. 8,000/- is awarded towards incidental expenses such as conveyance, nourishment and attendant charges.

9. He claims to have been earning Rs. 8,000/- per month by doing agriculture and has produced RTC extracts at Ex. P.6 to P.20. Considering his age as 65 years, year of accident as 2007 and his avocation as agriculturist, his income is assessed at Rs. 4,000/- per month. Nature of injuries suggest, he must have been under rest and treatment for a period of five months. Considering the same, a sum of Rs. 20,000/- is awarded towards loss of income during laid up period.

10. Considering nature of injuries, disability stated by the doctor and an amount of discomfort and unhappiness which the claimant has to undergo for the rest of his life, a sum of Rs. 20,000/- is awarded towards loss of amenities.

11. He is aged about 65 years. Multiplier applicable to his age group is "7" His income is assessed at Rs. 4,000/- per month. Disability stated by the doctor to whole body is 25%, but he has not stated what is the disability caused to limb. Considering two fractures sustained by the claimant, disability caused to whole body can be easily taken at 15%. So, loss of future income works out to Rs. 50,400/- (Rs. 4,000/- x 12 x 15/100 x 7) and it is awarded as against Rs. 33,600/- awarded by the Tribunal.

12. Considering nature of injuries sustained by the claimant a sum of Rs. 10,000/- is awarded towards future medical expenses.

13. Thus the claimant is entitled for the following compensation:

14. Accordingly the appeal is allowed in part and the Judgment and award of the Tribunal is modified to the extent stated herein above. The claimant is entitled for additional compensation of Rs. 64,800/- with interest at 6% p.a. from the date of claim petition till the date of realisation, excluding interest for the delayed period of 122 days in filing the appeal.

15. The Insurance Co. is directed to deposit the additional compensation amount with interest, but excluding interest for the delayed period of 122 days in filing the appeal, within two months from the date of receipt of a copy of this judgment, from which 75% with proportionate interest is ordered to be deposited in FD in the name of the claimant in any nationalised or scheduled Bank for a period of 3 years, with a right of option to withdraw interest periodically and the remaining amount is ordered to be released in his favour. The Tribunal while releasing 25% of the compensation is also directed to issue F.D. slip to the claimant to enable him to withdraw the amount on its maturity without approaching the Tribunal once again. The Bank in which the deposit is made is also directed to release the F.D. amount on its maturity without insisting for an order from the Tribunal.

No order as to costs.