

(2012) 01 KAR CK 0317
In the Karnataka High Court
Case No : M.F.A. No. 14687 of 2007 MV

Sri Malhari Mahadev Mannolkar

APPELLANT

Vs

Sri Maruth: Babaji Patil and The Divisional Manager New
India Assurance Co. Ltd.

RESPONDENT

Date of Decision : 11-01-2012

Acts Referred:

Citation : (2012) 01 KAR CK 0317

Hon'ble Judges : K. Govindarajulu, J

Bench : Single Bench

Advocate : Sanjay S. Katageri, for the Appellant; Laxman B. Mannoddar for R2,
for the Respondent

Final Decision : Allowed

Judgement

K. Govindarajulu

1. The claimant in MVC.No. 1713/2003 on the file of the Additional MACT - Belgaum is the appellant. The parties will be referred according to their ranking before the MACT for convenience.

2. The facts necessary for the consideration of the appeal are as under:

The case of the claimant is that on 30.08.2002, he was moving in a scoter bearing registration number KA22/K.9625 along with his wife to Majagaon, then the driver of the M80 bearing registration number KA24 E 3774 has driven the M80 rashly and negligently and hit the claimant, it resulted in accident and he sustained injuries. For the pain, suffering and agony seeks for compensation.

3. The Insurance Company has entered appearance filed objections denying the claim pleaded by the claimant, called upon the claimant to prove the accident, its impact, contend that the claim is exaggerated, plead for dismissal of the claim petition. Further, plead that the liability is strictly in accordance with the terms of the policy, seek for dismissal of the claim application.

4. After framing of issues, the learned Member of the Tribunal has permitted the parties to lead evidence, P.W.1 examined is the claimant P.W.2 is the Doctor, P.W.1 has narrated about the accident having occurred on account of negligent driving of Bajaj M 80 scooter, P.W.2 has certified the disability about the different parts of the body of P.W.1. The learned Member of the Tribunal has assessed the disability of the whole body at 15%, assessed the compensation at Rs. 1.75,300/- and held that since the claimant was also negligent, quantified it as 50% and half of the compensation fixed is awarded.

5. The learned Advocate for the claimant vehemently contended that the FIR produced by the claimant is proved, that the police have recognized the case of the claimant of the negligent driving by the Bajaj M 80 scooter driver. No rebuttal evidence is placed by the owner of the Bajaj M 80 scooter. So, the approach of the learned Member of the Tribunal in quantifying the contributory negligence is not called for. So, pray for setting aside the same.

6. The next contention of the learned Advocate for the claimant is when the medical evidence proves that there is 15% disability to the whole body, compensation awarded in regard to the accident of 2002 assessing the income of the injured @ Rs.3000/- per month is on a lower side so seek for enhancement of compensation.

7. The learned Advocate for the Insurance Company on the other hand supports the reasoning of the learned Member of the Tribunal submit that there is evidence brought out through the evidence of P.W.1 that P.W.1 while driving his two wheeler/scooter was talking to his wife, who was the pillion rider so he did not have concentration on the traffic, so, it is he who was also negligent in driving the scooter. So, the approach of the learned Member of the Tribunal is proper in quantifying the negligence. So also, there being no evidence of actual income, the assessment based upon the year of accident, assessing the earning capacity @ Rs.3000/- is proper, so pray for dismissal of the appeal.

8. The submissions probablize accident is admitted. In regard to the assessment of the contributory negligence, a point is urged. It has to be decided by the Court. The next point urged is in regard to the assessment of the earnings of the injured and the compensation arrived by the Tribunal.

9. The respondent no. 1 is the owner of Bajaj M 80 scooter has filed objections. In the objections, he contends that he has sold the vehicle, this probablize that there is an admission of the accident pleaded by the claimant The best witness in the situation to rebut/challenge the version of P.W.1 is R-1. R-1 having not entered the witness box, complaint is against respondent no. 1, the version of PW.1 goes unchallenged. So, the finding recorded that there is contributory negligence by the petitioner if accepted would amount to any driver driving the two wheeler should drive the two wheeler without, talking, it is absolutely not possible. So, the submission of the learned Advocate for the claimant that the Tribunal erred in quantifying the contributory negligence is accepted. The

contributory negligence fixed is set aside. The Court holds that it is the driver of the Bajaj M 80 scooter that is negligent.

10. In regard to the quantum of compensation, the learned Member of the Tribunal has awarded the compensation in his finding at paragraph 26. The break up are as follows:

i

Pain and Suffering

Rs. 60,000-00

ii

Medical Expenses

Rs. 17,300-00

iii

Medical attendant charges

Rs. 1,000-00

iv

Extra Nourishment

Rs. 2,000-00

v

Conveyance

Rs. 3,000-00

vi

Loss of income during treatment

Rs. 6,000-00

vii

Loss of amenities

Rs. 5,000-00

viii

Loss of future earning Capacity

Rs. 81,000-00

Total

Rs. 1,75,300-00

The income of the injured is the criteria to assess the quantum of compensation. No document is produced by the claimant to prove the income. A sum of Rs.3,000/- is taken for the assessment, it is a notional income. Best material evidence is not placed by the claimant to probablize his occupation and to support his earning in private service in a sum of Rs.4500/-, the approach of the learned Member of the Tribunal cannot be found faulted. So, the submission that the income assessed is on a lower side is rejected. The disability being 15%, the income being Rs.3,000/-, compensation awarded under the head of loss of earning capacity do not require interference. Under the head loss of income during the laid up period, there is a fracture, assessment for a period of two months requires interference. So, an additional sum of Rs.6,000/ is awarded under the head loss of income during the laid up period. There being in-patient treatment, including the fracture having resulted in mal union, a further sum of Rs.5,000/- is awarded under the head of attendant, nourishment and conveyance. A sum of Rs.5,000/- alone is awarded under the head of loss of amenities, a further sum of Rs. 15,000/- is awarded under the head of loss of amenities. "

A sum of Rs.87,650/- assessed under the head contributory negligence which is disallowed is taken into consideration and the same is granted. So additional compensation works out as under:-

i. Loss of income during the laid up period

Rs. 6,000/-

ii. Nourishment and attendant charges

Rs. 5,000/-

iii. Loss of Amenities

Rs, 15,000/-

iv. Assessed, disallowed by Lower Court under the Head of contributory negligence.

Rs.87,650/-

Total

RS. 1,13,650/-

As the compensation is fixed after a span of nearly nine years, the entire compensation with interest shall be paid to the claimant.

Hence, in all, the claimant is entitled for an additional compensation of Rs. 1,13,650/- Accordingly, the appeal is allowed in part. The claimant is entitled to interest on the additional compensation at 6% interest per annum from the date of application till deposit.