
(2013) 11 KAR CK 0107
In the Karnataka High Court
Case No : M.F.A. No. 22489 of 2009 (MV)

Sri. Mallappa

APPELLANT

Vs

Aminsab and The New India Assurance Company Ltd., Div.
Manager

RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Citation : (2013) 11 KAR CK 0107

Hon'ble Judges : B. Manohar, J

Bench : Single Bench

Advocate : Hanamant R. Latur, for the Appellant; S.G. Kadadakatti for R1 and Sri V.R. Datar, for R2, for the Respondent

Final Decision : Partly Allowed

Judgement

B. Manohar, J.—Appellant is the claimant, being unsatisfied with the quantum of compensation awarded in MVC No. 2961/2007, dated 02.03.2009 by the Motor Accidents Claims Tribunal, Gokak (hereinafter referred to as "the Tribunal" for short) filed this appeal seeking for enhancement of compensation. In the claim petition, the claimant has contended "that on 11-10-2007 at about 6.00 p.m. while the claimant was proceeding in his bicycle on the left side of the road towards Mamadapur, a Cruiser bearing registration No. KA-49/M-578 came from opposite direction in a rash and negligent manner in high speed and lost control over the vehicle and dashed against the bicycle of the claimant, due to which, the claimant sustained grievous injuries. He had taken treatment in the hospital and spent huge money. Hence, sought for compensation.

2. The respondents entered appearance. The first respondent filed objection statement denying the averments made in the claim petition and also contended that the petition filed by the claimant is false, frivolous and not tenable in the eye of law. It is contended that the vehicle in question is insured with respondent No. 2 and the policy was in force and valid as on the date of the accident, further the driver of the vehicle had possessed the valid and effective driving license.

Hence, sought for dismissal of the claim petition as against the first respondent.

3. The second respondent-Insurance company also filed statement of objection denying the averments made in the claim petition and also contended that the quantum of compensation claimed by the claimant is excessive. Further the driver of the offending vehicle did not possess the valid and effective driving license at the time of. accident. Hence, sought for dismissal of the claim petition " as against the Insurer.

4. The Tribunal after considering the oral and documentary evidence and taking into consideration the FIR, spot panchanama, IMV report and charge sheet, held that due to the rash and negligent driving of the offending vehicle by its driver, the accident has occurred and the claimant is entitled for compensation. With regard to quantum of- compensation is concerned, the Tribunal taking into consideration the age of the claimant as 19 years, his income at Rs. 2,500/- p.m., the disability to an extent of 6% and applying the multiplier of 18, awarded a sum of Rs. 32,400/- towards loss of future earning capacity and a sum of Rs. 15,000/- towards pain and suffering, Rs. 5,560/- towards medical expenditure, Rs. 500/- towards attendant charges, Rs. 3,000/- towards nutrition, incidental and travelling and a sum of Rs. 5,000/- towards loss of amenities and happiness In. all, a sum of Rs. 66,460/- was awarded with interest at 6% p.a. from the date of petition till realization. Being dissatisfied with the quantum of compensation awarded, the claimant has filed this appeal.

5. Sri. Hanumant R. Lathur, learned Counsel appearing for the appellant contended that the compensation awarded by the Tribunal is very meager. Though the doctor who has treated the claimant has assessed the disability to an extent of 30% to the whole body, the Tribunal has taken only 6% which is on the lower side. Hence, sought for enhancement of compensation.

6. On the hand, Sri. Datar, learned Counsel appearing for the second respondent argued in support of the judgment and award passed by the Tribunal and contended that the compensation awarded by the Tribunal is just and fair and sought for dismissal of the appeal.

7. I have carefully considered the arguments addressed by the learned Counsel for the parties, perused the oral and documentary evidence let in by the parties and the judgment and award passed by the Tribunal. The records clearly disclose that the claimant has sustained injuries in the road traffic accident occurred on 11-10-2007 due to the actionable negligence on the part of the driver of the offending vehicle. The Police have registered a case against the driver of the offending vehicle With regard to quantum of compensation is concerned, the compensation awarded by the Tribunal is inadequate. The claimant is aged about 19 years and his earning taken at Rs. 2,500/- p.m. by the Tribunal is very. much on the lower side. Hence, the income of the claimant has to be taken at Rs. 3,000/- p.m. With regard to disability is concerned, though the doctor has assessed the disability to an extent of 30% to the whole body, the Tribunal has

taken only 6% which is also on the lower side. According to me, the injury sustained is compression fracture L4 vertebra and other two injuries. Fracture of L4 vertebra is grievous in nature and other two injuries are simple in nature. Hence, the Tribunal ought to have taken the disability to an extent of 12%. Due to the accident, the claimant has suffered huge loss. Hence, Rs. 15,000/- awarded towards pain and suffering is on the lower side. Taking into consideration the income of the claimant as Rs. 3,000/- p.m., the physical disability to an extent of 12% to the whole body and applying the appropriate multiplier of 18, the claimant is entitled for compensation of Rs. 77,760/- towards loss of future earning capacity as against Rs. 32,400/- awarded by the Tribunal. Further, the claimant is entitled for another sum of Rs. 10,000/- towards pain and suffering and Rs. 5,000/- towards attendant charges and the claimant is entitled to Rs. 10,000/- towards loss of amenities. Hence, the claimant is entitled to enhanced compensation of Rs. 70,360/- with interest at the rate of 6% p.a. from the date of petition till realization. Accordingly, I pass the following:

ORDER

The appeal is allowed in part. The judgment and award dated MVC No. 2961/2007, dated 02.03.2009 by the Motor Accidents Claims Tribunal, Gokak is modified. The claimant is entitled to enhanced compensation of Rs. 70,360/- with interest at 6% p.a. from the date of petition till realization.