

(2011) 04 KAR CK 0151

In the Karnataka High Court

Case No : M.F.A. No. 3060 of 2009 (MV) C/W M.F.A. No. 3061 of 2009 (MV) in
MFA 3060 of 2009

Sri Manjegowda @ Manchegowda

APPELLANT

Vs

K.V. Basavaraju and The Manager, The Oriental Insurance Co.
Ltd.. Divisional Office, S.V. Nilaya, BM Road, Hassan

RESPONDENT

Date of Decision : 12-04-2011

Acts Referred:

Citation : (2011) 04 KAR CK 0151

Hon'ble Judges : Sreenivase Gowda, J

Bench : Single Bench

Advocate : A.R. Sharadamba, for the Appellant; K. Sridhar, for R. 2. R. 1 notice
dispensed with, for the Respondent

Final Decision : Allowed

Judgement

B. Sreenivase Gowda

1. These appeals are by the claimants seeking enhancement of compensation awarded by the Tribunal.
2. As these appeals are arising out of a common judgment and award of the Tribunal, they are heard together, admitted and with the consent of learned Counsel appearing for the parties, they are taken up for final disposal.
3. For the sake of convenience parties are referred to as they are referred to in the claim petition before the Tribunal.
4. As there is no dispute regarding injuries sustained by the claimants in a road traffic accident occurred on 23.12.2004 while they were walking on the left side of the road, near Reliance Petrol Bunk at Tharikere due to rash and negligent driving of Goods Auto Rickshaw bearing registration No. KA-13-822.1 by its driver and liability of the insurer of the offending vehicle, the only point that remains for my consideration in the appeals is:

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

5. 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 proper, it is on the lower side and therefore it is deserved to be enhanced.

In MFA 3060/2009 (MVC 758/2005)

6. Claimant is one Manjegowda @ Manchegowda aged about 30 years. As per wound certificate Ex. P 4 he has sustained the following injuries:

1) Contusion on the left wrist joint 5 x 5 cm.

2) Fresh abrasion over the middle of the forehead 1 x 1 cm.

X-ray shows fracture of lower end of left radius.

Injuries sustained by him are also supported by oral evidence of the claimant and the doctor examined as PWs 2 and 3 respectively. PW 3 Dr. Ravi H.S. in his evidence has stated that on 23.12.2004 he examined the claimant at Government Hospital, Hassan. He was operated and fixed with rush nail and he was discharged on 11.01.2005. He has further stated that on recent examination he found that fracture was mal united and there is restriction in the movements of the wrist and it is painful for the claimant to hold and work with left hand for long time and he has assessed 22 % disability to left hand.

7. Considering the nature of injuries, Rs. 15,000/-awarded by the Tribunal towards pain and suffering is just and proper and it does not call for enhancement.

8. In the absence of production of documents regarding amount spent towards medical and hospital charges Rs. 2,000/- awarded towards medical expenses and Rs. 5,000/- awarded towards incidental expenses such as conveyance, nourishment and attendant charges are just and proper and they do not call for enhancement.

9. Considering the disability stated by the doctor and an amount of discomfort and unhappiness the claimant has to undergo in his future life Rs. 10,000/- awarded by the Tribunal towards loss of amenities is just and proper and it does not call for enhancement.

10. Considering the year of accident, age of the claimant and his profession as agriculturist his income assessed by the Tribunal at Rs. 1,500/- p.m. is on the lower side and I assess it at Rs. 3,000/- p.m. Nature of injuries suggests he must have been under treatment and rest at least for a period of two months and I award Rs. 6,000/- towards loss of income during laid up period.

11. The Tribunal has rightly taken the functional disability at 7 % and multiplier applicable to the age group of the claimant is 17. If so, loss of future income

works out. to Rs. 42,840/- (Rs. 3,000/- x 7 % x 12 x 17) and it is awarded against Rs. 21,420/- awarded by the Tribunal.

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

1)

Pain and suffering

Rs.

15,000/-

2)

Medical expenses

Rs.

2,000/-

3)

Incidental expenses

Rs.

5,000/-

4)

Towards loss of income during laid up period

Rs.

6,000/-

5)

Towards loss of amenities

Rs.

10,000/-

6)

Future loss of income

Rs.

42,840/-

Total

Rs.

80,840/-

13. The claimant is entitled for a total compensation of Rs. 80,840/- as against Rs. 53,420/- awarded by the Tribunal with interest, at 6 % p.a. on the enhanced compensation of Rs. 27,420/- from the date of claim petition till the date of realization.

14. Out of Rs. 27,420/-, Rs. 20,000/- with proportionate interest, is ordered to be invested in F.D. in nationalized/scheduled bank for a period of three years and remaining amount is ordered to be released in favour of the claimant.

In MFA 3061/2009 (MVC 759/2005)

15. Claimant is one Manju @ Ganesh aged about 23 years. As per wound certificate Ex P 2 he has sustained the following injuries:

1) Contusion over the lumbar region on back side 5 x 5 cm.

X-ray shows fracture of L-3 and L-4 vertebra

Injuries sustained by him are also supported by oral evidence of the claimant and the doctor examined as PWs 1 and 4 respectively. PW 4 Dr. Ravi H.S. has stated in his evidence that on 23.12.2004 he examined the claimant at Government Hospital, Hassan and found the injuries mentioned in the wound certificate. He further stated that claimant was treated conservatively and he was discharged on 16.03.2005. He has further stated that on recent examination with check X-rays he found compressed L-3 and L-4 vertebra and it is very painful for the claimant to sit or stand for a long time and he could not carry weight or work for a long time and has stated the claimant has suffered 30 % disability to whole body.

16. Considering the nature of injuries, Rs. 20,000/-awarded by the Tribunal towards pain and suffering" is on the lower side and it is deserved to be enhanced by another sum of Rs. 10,000/- and I award Rs. 30,000/-under this head.

17. In the absence of production of documents regarding amount spent towards medical and hospital charges Rs. 3,000/- awarded towards medical expenses by the Tribunal is just and proper and it does not call for enhancement.

18. Claimant was treated as inpatient in the hospital for 82 days. Considering the same Rs. 8,000/- awarded towards incidental expenses such as conveyance, nourishment and attendant charges is on the lower side and I award Rs. 20,000/- under this head.

19. Considering the year of accident, age of the claimant and his profession as agriculturist his income assessed by the Tribunal at Rs. 1,500/- p.m. is on the lower side and I assess it at Rs. 3,000/- p.m. Nature of injuries suggests he must have been under treatment and rest at least for a period of five months and I award Rs. 15,000/- towards loss of income during laid up period.

20. Considering the disability stated by the doctor and an amount of discomfort

and unhappiness the claimant has to undergo in his future life Rs. 15,000/- awarded by the Tribunal towards loss of amenities is on the lower side and I award Rs. 25,000/- under this head.

21. The doctor has stated there is 30 % disability to whole body. Considering the same functional disability could be taken as 1.5 % as against 10 % taken by the Tribunal, The multiplier applicable to the age group of the claimant is 18. if so, loss of future income works out to Rs. 97,200/- (Rs. 3,000/- x 15 % x 12 x 18) and it is awarded against Rs. 30,600/- awarded by the Tribunal.

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

1)

Pain and suffering

Rs.

30,000/-

2)

Medical expenses

Rs.

3,000/-

3)

Incidental expenses

Rs.

2.0,000/-

4)

Towards loss of income during laid up period

Rs.

15,000/-

5)

Towards loss of amenities.

Rs.

25,000/-

6)

Future loss of income

Rs.

97,200/-

Total

Rs.

1,90,200/-

23. The claimant is entitled for a total compensation of Rs. 1,90,200/- as against Rs. 76,600/- awarded by the Tribunal with interest at. 6 % p.a. on the enhanced compensation of Rs. 1,13,600/- from the date of claim petition till the date of realization.

24. Out of Rs. 1,13,600/-, Rs. 1,00,000/- with proportionate interest is ordered to be invested in F.D. in the name of the claimant in any nationalized/scheduled bank for a period of nine years with an option to renew the same from time to time and withdraw interest periodically and remaining amount is ordered to be released in favour of the claimant.

25. Accordingly the appeals are allowed in part and the Judgment and awards of the Tribunal are modified to the extent stated herein above. The claimant in MFA 3060/2009 is entitled for an additional compensation of Rs. 27,420/- and claimant in MFA 3061/2009 is entitled for an additional compensation of Rs. 1,13,600/- with interest at 6 % p.a. from the date of claim petition till the date of realization.

26. The Insurance Company is directed to deposit the enhanced compensation amount with interest within two months from the date of receipt of a copy of this judgment.

No order as to costs.