
(2011) 01 KAR CK 0081
In the Karnataka High Court
Case No : M.F.A. No. 326 of 2010

Sri M.E. Prasanna

APPELLANT

Vs

Sri K.R. Somashekar Gowda and National Insurance Co. Ltd.

RESPONDENT

Date of Decision : 20-01-2011

Acts Referred:

Citation : (2011) 01 KAR CK 0081

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : Shripad V. Shastri and K.V. Naik, for the Appellant; A.M. Venkatesh, for R 2, for the Respondent

Judgement

A.S. Bopanna, J.—The claimant is before this Court in this appeal seeking enhancement of compensation as against the sum awarded by the Tribunal and also assailing that portion of the finding of the Tribunal fastening 20% negligence on the claimant.

2. Heard the learned Counsel for the parties and perused the appeal papers.

3. During the course of the arguments, only two points have arisen for consideration in this appeal. Firstly, as to whether the Tribunal was justified in fastening the negligence of 20% on the rider of the motor cycle viz., the claimant. The second aspect is with regard to the appropriate disability and income to be reckoned and consequently the compensation thereof.

4. With regard to the negligence, the Tribunal no doubt has considered this aspect in detail, more particularly, in para-8 of the judgment. While arriving at the said conclusion, the Tribunal has taken note of the copy of FIR, the copy of the mahazar and report of the motor cycle Inspector. In addition, the charge sheet filed against the driver of the car is also taken into consideration and the said documents were marked as Exhs.P1 to 3 and 5. What is to be noticed is, in the instant case, the spot sketch is not available and therefore, the aspect relating to the negligence would have to be noticed keeping in view the mahazar

which has been marked before the Tribunal. In this regard, the undisputed aspect is that the motor cycle ridden by the claimant was proceeding from the east to west direction while the car in question was proceeding from west to east. If this aspect of the matter is taken note and the mahazar is perused, the same refers to the width of the road as 32 feet and also the spot at which the motor cycle was located after the accident which was closer to the foot path on the left side. If this is kept in view and the spot is pictured, it would be seen that the car was on the right side of the road, though the motor cycle was proceeding on the left side. It is no doubt true, as contended by the learned Counsel for the Respondent/Insurance Company, that even if that is the position, there was sufficient space left on the left side of the road. In a matter of this nature, that alone cannot be held against the motor cyclist since in any event he was proceeding in an appropriate manner and merely because there was some space, the negligence cannot be fastened on the rider of the motor cycle. Hence, I am of view that the Tribunal was not justified and the finding with regard to the negligence to the extent of holding the rider of the motor cycle negligent to the extent of 20% is set aside and it is held that the driver of the car was wholly negligent in causing the accident. Hence, the claimant would be entitled to the entire compensation that has been determined by the Tribunal and also to the extent of enhancement to be considered by this Court.

5. With regard to the quantum of compensation, the nature of the injuries as suffered by the claimant is not in dispute. The doctor was examined as PW.2 and the nature of injuries was stated to. The disability in such circumstance keeping in view the nature of injuries in the instant case would have to be taken into consideration. The disability certificate coupled with the photographs have been marked before the Tribunal and the relevant documents are available at Exhs.P4, P8 and P11 and 13 which would indicate that the claimant had suffered injuries to his right upper limb. The fact that the claimant was working as a driver is not in dispute. Therefore, if this aspect is kept in view, the disability would definitely come in the way of his working as a driver and the appropriate disability to be reckoned in the instant case would be 15%.

6. Insofar as the income, considering that the incident had occurred in the year 2007 and further taking note of the fact that the claimant was working as a driver, even on a conservative estimate including the daily allowance, the income could be taken at Rs. 130/-per day i.e., Rs. 3,900/- per month. The appropriate multiplier is 18. If the said parameters are kept in view the total compensation towards loss of future earning would be in a sum of Rs. 1,26,360/-. The Tribunal in fact has awarded a sum of Rs. 20,000/- under the head of constraint in carrying out his avocation which in fact was towards loss of future earning. Therefore, the said amount would have to be deducted from the compensation arrived at by this Court. Therefore, the balance would be in a sum of Rs. 1,06,360/-. Though the said amount could have been awarded, the learned Counsel for the Respondent/Insurance Company would point out that under the other heads, the compensation awarded is at a higher quantum which calls for

reduction. Taking an overall view, the enhancement of compensation is limited to the round figure of Rs. 1.00,000/-. The said amount of Rs. 1,00,000/- shall carry interest at the same rate and in the manner as awarded by the Tribunal. The enhanced amount shall be deposited by the Insurance company within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the amount shall be disbursed to the claimant.

In terms of the above, the appeal stands disposed of. No order as to costs.