

(2012) 08 KAR CK 0297
In the Karnataka High Court
Case No : M.F.A. NO. 10650 of 2007 (MV)

Sri. M.H. Venugopal Gowda

APPELLANT

Vs

Sri. M. Venugopal and The Branch Manager, M/s. United India Insurance Co., Ltd., Branch Office, Code No. 071602, No. 89/1, 2nd Floor, 11th Cross, Sampige Road, Malleswaram, Bangalore-3

RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 08 KAR CK 0297

Hon'ble Judges : S.N. Satyanarayana, J; N.K. Patil, J

Bench : Division Bench

Advocate : Suguna. R. Reddy, for the Appellant; C.M. Govinda Reddy, Advocate for R1; Shri. P.B. Raju, Advocate for R2, for the Respondent

Judgement

N.K. Patil, J.—This appeal by the claimant is directed against the impugned judgment and award dated 21st April 2007, passed in MVC No. 268/2004, by the Civil Judge (Sr. Dn) & CJM, Kolar, (for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 2,53,000/-, awarded in his favour as against his claim for Rs. 18,00,000/-, is inadequate. The appellant claims to be aged about 35 years and doing agriculture and also daily farming, earning a sum of Rs. 1,50,000/- to Rs. 2,00,000/- per annum. He was hale and healthy prior to the date of accident. That at about 7:00 P.M., on 30-03-2004, near Megani Gate on Thayalum-Mulbagal Road, when the appellant was going as a pillion rider, along with his friend, in the Motor cycle bearing Registration No. KA-02/S-9727, on the extreme left side of the road, he met with an accident, on account of rash and negligent driving by the driver of Car bearing Registration No. CAW-7007 Due to the impact, the appellant sustained grievous injuries. Immediately, he was shifted to the Hospital for treatment.

2. It is the case of the appellant that he has spent considerable amount towards conveyance, nourishing food and attendant charges including medical expenses

and other incidental expenses and therefore, he has to be compensated adequately.

3. On account of the injuries sustained in the accident, the appellant filed the claim petition u/s 166 of the Motor Vehicles Act, before the Tribunal, seeking compensation of a sum of Rs. 18.00 lakhs against the respondents. The said claim petition had come up for consideration before the Tribunal on 21st April, 2007. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of Rs. 2,53,000/- with interest at 6% per annum from the date of petition till the date of deposit-. Being dissatisfied with the quantum of compensation awarded by Tribunal, the appellant is in appeal before this Court, seeking enhancement of compensation.

4. We have heard learned counsel for appellant and learned counsel for second respondent/Insurance Company for considerable length of time.

5. It is the case of the appellant that on account of the road traffic accident, he sustained Open type 2B comminuted Fracture of middle 1/3rd of Right Tibia; traverse fracture of distal 1/3 on right fibula; injury measuring 6x3 cms. on the middle 1/3 of right leg exposing bone with bleeding and contamination; multiple injuries over the proximal aspect of right knee joint; and post traumatic open type 2 fracture of both bones of right leg comminuted. For treatment of the said injuries, he was in-patient in R.L. Jalappa Hospital, for a total period 84 days and therefore, he has to be awarded reasonable compensation.

6. After hearing learned counsel for the appellant and after perusal of the judgment and award passed by Tribunal including the original records placed before us, we are of the view that, the occurrence of accident and the resultant injuries sustained by appellant are not in dispute. It is also not in dispute that he was aged about 35 years and an agriculturist by profession. The Tribunal, after assessing the oral and documentary evidence available on file, has rightly awarded compensation of a sum of Rs. 80,000/- towards medical expenses, as per the medical bills and prescriptions and Rs. 40,000/- towards injury, pain and sufferings, Rs. 15,000/- towards conveyance, nourishing food and attendant charges and Rs. 10,000/- towards loss of income during treatment period. Hence, interference in the same is uncalled for.

7. However, so far as the compensation awarded under loss of earning capacity is concerned, the same is on the lower side and needs to be re-determined. Further, Tribunal has erred in not awarding any compensation towards loss of amenities, discomfort and unhappiness on account of disability and future medical expenses. Admittedly, in view of the road traffic accident, the appellant has sustained Open type 2B comminuted Fracture of middle 1/3rd of Right Tibia; traverse fracture of distal 1/3 on right fibula; injury measuring 6x3 cms. on the middle 1/3 of right leg exposing bone with bleeding and contamination; multiple injuries over the proximal aspect of right knee joint; and post traumatic open

type 2 fracture of both bones of right leg comminuted. PW2, Doctor has on examination, noticed that the appellant has sustained a cut lacerated wound measuring 6x3 cms. over middle 1/3rd of right leg, exposing the bone-bleeding present, contamination present and on examination of right leg deformity present, tenderness present, abnormal mobility present, crepitus present and active toe movement present. Further, he has deposed that on 31-03-2004, emergency external fixation of the right tibia was done and on 28-04-2004 split skin grafting was done on the raw area over the leg, split skin grafting is taken. Further, he deposed that the appellant was admitted as inpatient on 17-06-2004 for treatment of fractures of both bones of right leg with external fixator in situ for implant removal. Further, he deposed that there is deformity of right leg at the fracture site and abnormal mobility at the fracture site on application of stress. Right ankle joint stiff, plantar flexion and dorsiflexion is restricted about 10-15 degree; there is shortening of the right lower limb about 2 cms. As per X-ray taken on 10-11-2006, the right tibia and fibula are not united. In view of the same, the appellant has to undergo another surgery and implants have to be fixed at fracture site. But, the Tribunal has not awarded any compensation towards future medical expenses. The Doctor assessed functional disability at 60% in respect of right lower limb and 20% towards whole body. But, the Tribunal, relying upon the oral and documentary and other material available on file, re-assessed the whole body permanent disability at 15%. The same, in our opinion is on the lower side. Having regard to the age, nature of injuries sustained, nature and duration of treatment and the evidence of Doctor, we accept the whole body disability of 20% assessed by Doctor. The appellant has to endure this ordeal for the rest of his life. It is stated that the appellant was aged about 35 years, at the time of accident. But, the Tribunal, after appreciation of the oral and documentary evidence available on file, has assessed the age of the appellant as 38 years. We accept the same. A sum of Rs. 3,000/- per month assessed by Tribunal is on the lower side. Having regard to the age, avocation and the year accident, we re-assess the monthly income of the appellant at Rs. 4,000/-, to meet the ends of justice. Since the appellant was aged about 38 years at the time of accident, the proper multiplier applicable is "15" as per the decision of the Hon"ble Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, as against "14" adopted by Tribunal. Therefore, having regard to the age, avocation, nature of injuries, disability, and the facts and circumstances of the case on hand, we award a sum of Rs. 1,44,000;/-. (i.e. Rs. 4,000/- x 12 x "15" x 20/100) towards loss of future income as against Rs. 1,08,000/-, awarded by Tribunal; Rs. 20,000/- towards loss of amenities, discomfort and unhappiness; and Rs. 10,000/- towards future medical expenses. In the light of the facts and circumstances of the case, as stated above, the appeal filed by appellant is allowed in part. The impugned judgment and award dated 21st April 2007, passed in MVC No. 268/2004, by the Civil Judge (Sr. Dn) & CJM, Kolar, is hereby modified, awarding a sum of Rs. 3,19,000/- as against Rs. 2,53,000/- awarded by Tribunal, with interest at 6% per annum on the enhanced sum, from the date of petition till the date of

realization. The break-up is as follows:

Towards Pain and sufferings

Rs. 40,000/-

Towards Loss of amenities & enjoyment in life on account of disability

Rs. 20,000/-

Towards Medical Expenses

Rs. 80,000/-

Towards conveyance, nourishing food and attendant charges

Rs. 15,000/-

Towards Loss of earning during treatment period

Rs. 10,000/-

Towards loss of future earnings

Rs. 1,44,000/-

Towards future medical expenses

Rs. 10,000/-

Total

Rs. 3,19,000/-

The second respondent/Insurance Company is directed to deposit the enhanced compensation of Rs. 66,000/-, with interest thereon at 6% per annum, within four weeks from the date of receipt of copy of the judgment and award.

On such deposit by the Insurance Company, the entire sum shall be released in favour of the appellant, immediately.

Office to draw award, accordingly.