

(2011) 11 KAR CK 0219

In the Karnataka High Court

Case No : M.F.A. No. 4406 of 2006 (MV) A/W M.F.A. Crob. No. 4 of 2010 (MV)

Sri. Mohammed Zabiullah

APPELLANT

Vs

Mr. Mukesh Kumar and The Divisional Manager, Oriental Insurance Co.. Ltd. Divisional Office No. 2.
 The Divisional Manager, M/s. The Oriental Insurance Company Limited Vs Mohammed Zabiullah @ Zabiullah and Mukesh Kumar

RESPONDENT

Date of Decision : 08-11-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2011) 11 KAR CK 0219

Hon'ble Judges : V. Suri Appa Rao, J;N.K. Patil, J

Bench : Division Bench

Advocate : Sunitha. B.H. for Sri. Suresh. M. Latur in M.F.A. No. 4406 of 2006 MV and Sri. B.S. Umesh in M.F.A. Crob. No. 4 of 2010 MV, for the Appellant; B.S. Umesh, Advocate for R2 in M.F.A. No. 4406 of 2006 (MV) and Smt. Sunitha. B.H, for Sri. Suresh. M. Latur, Advocate for R1 in M.F.A. Crob. No. 4 of 2010 (MV), for the Respondent

Final Decision : Allowed

Judgement

V. Suri Appa Rao

1. This appeal by the claimant and the Cross objection by the Insurer are directed against the same judgment and award dated 14/10/2005 passed in MVC No.5237/2002 on the file of the II Addl. Judge and Member, Motor Accident Claims Tribunal, Bangalore (SCCH-13), (hereinafter referred to as " Tribunal" for short).

2. The Tribunal by Us judgment, and award, has awarded a sum of Rs. .57,190/- with interest at 6% p.a., from the date of petition till its payment on account of the injuries sustained by him in the road traffic: accident.

3. in brief, the facts of the case are:-

The claimant was aged about 26 years as on the date of the accident and hale and healthy prior to the accident. That. at. about. 6.00 p.m., on 21.10.2002 claimant was going in a Yamaha vehicle bearing Reg.No. KA.02.X.8582 as pillion rider and was proceeding near Arakere Cross, at that time, the rider of the offending vehicle drove the same in a rash and negligent manner, lost his control and dashed against the road side stone, due to which, he fell down and sustained fracture of left. hand, fracture of leg and Injury over right hand thumb and other injuries all over the body, Immediately, he was shifted to Sushrutha Nursing Home, bangalore, wherein he has taken first aid and then he was shifted to Bowring Hospital for further treatment. It. is the further case of the claimant that, he has spent reasonable amount, towards medical expenses, conveyance and other incidental charges, he has suffered permanent disability on account of the injuries sustained by him and the Doctor has assessed the disability at 30% on the left lower limb and 30% on left upper limb and 25% on his whole body and it is permanent in nature. Therefore, claimant has filed a claim petition before the Tribunal u/s 166 of M.V. Act, claiming compensation. The said claim petition had come up for consideration before the Tribunal. The Tribunal, after hearing both sides and after assessing the oral and documentary evidence, has allowed the said claim petition in part, awarding a sum Rs. .57,190/- as compensation under different, heads with interest at 6% p.a., from the date of petition till its payment. Being aggrieved by the said judgment and award, the claimant has filed an appeal contending that, the compensation awarded by the Tribunal is on lower side and it requires to be enhanced and the Insurer has filed a Cross objection contending that the compensation awarded by the Tribunal is on higher side and that the policy is an Act policy and therefore, it is not liable to be satisfy the award.

4. We have heard learned counsel appearing for the claimant and learned counsel for the Insurer-Cross objector.

5. After hearing the learned counsel for both the parties and after careful perusal of the impugned judgment and award passed by the Tribunal, it emerges that, the Tribunal after assessing the oral and documentary evidence available on file, is justified in awarding a sum of Rs. . 3, 190/- towards medical expenses and therefore, interference by this Court is un called for.

6. However, the Tribunal has erred in not awarding reasonable compensation towards injury, pain and sufferings, towards loss of income during the period of treatment, towards conveyance, nourishing food and attendant charges, towards loss of amenities, discomforts and unhappiness and therefore, it needs to be modified. It is not in dispute that, on account of the injuries sustained by the claimant., he has taken treatment as inpatient for 15 days in the hospital, thereafter, bed reset and follow up treatment for two months and during the said period he might have underwent pain and agony, spent reasonable amount towards conveyance and other incidental charges and sustained financial loss as he could not have attended his work. But all these aspects of the matter have

not been looked into or considered by the Tribunal while awarding compensation. The Tribunal has assessed the income of the claimant at Rs. . 2,400/- per month which is on lower side and it needs to be enhanced. Taking into consideration the age, occupation and the year of the accident, we re-assess his income at Rs. . 3,000/- per month Therefore, taking all these factors into consideration, we award a sum of Rs. . 40.000/- towards pain and sufferings, Rs. . 10.000/- towards conveyance, nourishing food and attendant charges, Rs. . 9.000/- towards loss of" income during the period of treatment for three months at the rate of Rs. . 3,000/- per month and. Rs. . 40.000/- towards loss of amenities, discomforts and unhappiness. In all, the claimant is entitled to a compensation of Rs. . 1,02,190/- as against a sum of Rs. . 57.190/- and the break- up is as follows.

Towards pain and sufferings

Rs. . 40,666/-

Towards medical expenses.

Rs. . 3,190/-

Towards conveyance, nourishing food and attendant charges

Rs. . 10,000/-

Towards loss of income during the period of treatment

Rs. .09,000/-

Towards loss of amenities of life

Total

Rs. . 40,000/-

Rs. . 1,02,190/-

7. For the foregoing reasons, the appeal filed by the claimant is allowed in part and the Cross Objection filed by the insurer is dismissed as devoid of merits.

The impugned judgment and award dated 14th October 2005 passed by the Tribunal in MVC No. 5237/2002 is hereby modified, enhancing the compensation from Rs. . 57,190/- to Rs. . 1,02,190/-. There shall be an enhancement of Rs. . 45.000/- with interest at 6% p.a., from the date of the petition till its realization.

The Insurer is directed to deposit the enhanced compensation with interest, within a period of three weeks from the date of receipt of a copy of this judgment and award and recover the same from the owner of the offending vehicle.

On such deposit, by the Insurer, the same shall be released in favour of the claimant immediately.

The deposit made by the Insurer shall be transmitted to the jurisdictional

Tribunal immediately.

Draw the award, accordingly.