
(2012) 03 KAR CK 0088
In the Karnataka High Court
Case No : M.F.A. No. 2339 of 2011 (MV)

Sri N. Chitty Babu Naidu

APPELLANT

Vs

Sri Krishna Murthy and Others

RESPONDENT

Date of Decision : 14-03-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 03 KAR CK 0088

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : Suresh M. Latur, for the Appellant; A.N. Krishna Swamy, for R2 and Notice to R1 Dispensed With, for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda

1. Delay of 161 days in filing the appeal has been satisfactorily explained. Hence, Misc. Cvl. No. 8520/2011 is allowed and delay condoned. On 13.1.2009, in a road traffic accident, appellant sustained grievous injury/fracture of left humerus L3 comminuted. He was aged about 40 years and was a painter. Claiming compensation, both pecuniary and non-pecuniary, he filed a claim petition under S.166 of the Motor Vehicles Act, 1988, against the respondents/owner and insurer of the offending vehicle, in the MACT. Claim petition was allowed in part and compensation of Rs. 1,22,600/- with interest at 6% from the date of filing of the petition till the date of deposit was ordered to be paid by the respondents. This appeal is by the claimant seeking enhancement.

2. Respondents have not questioned the impugned Judgment and award fastening the liability on them to pay assessed compensation.

3. learned counsel for the appellant contended that the Tribunal has committed error in taking the percentage of permanent disability suffered at 9% as against credible evidence of PW.2 who has deposed that there is 16% permanent

disability in relation to the whole body. Learned counsel further submitted that the claimant being a painter, was earning Rs. 8,000/- p.m. and there being credible evidence, the Tribunal has erroneously taken the income at Rs. 3,000/- p.m. and thus there is under assessment of loss. Learned counsel submitted that there is no just and reasonable award passed by the MACT.

4. Sri A.N. Krishnaswamy, learned counsel for respondent No. 2, on the other hand, would argue that there being no credible evidence with regard to the treatment obtained, disability suffered, avocation and income of the injured, Tribunal is justified in passing the award for Rs. 1,22,600/- with interest. Learned counsel submits that there being no ground for enhancement of compensation, the appeal may be dismissed.

5. The only point for consideration is, whether there is just and reasonable award by the MACT?

6. Ex.P6 is the wound certificate. Treatment has been obtained for the injuries sustained in the accident. PW.3 Dr. Ramachandra has deposed that there is comminuted fracture of shaft of left humerus, middle 1/3rd and surgery/close reduction and interlocking nailing of fracture shaft of left humerus was done on 2.2.2009. He has opined that there is 48.2% disability insofar as upper limb is concerned and in relation to the whole body at 16%. There being an exaggeration on the part of PW.3 with regard to the disability suffered in relation to the whole body, the permanent disability suffered to whole body can be taken at 12%.

7. Appellant aged about 40 years and a painter, the accident having taken place on 13.1.2009, he can be expected to earn Rs. 5,000/- p.m. The Tribunal, taking the percentage of disability otherwise and also the income at Rs. 3,000/- p.m. has under assessed the loss. In view of the findings recorded by MACT and the material evidence available on record of MACT, the just and reasonable compensation which the respondents have to pay to the appellant is as follows:

1.

Towards pain and suffering :

Rs. 30,000/-

2.

Towards medical expenses:

Rs. 12,808/-

3.

Incidental expenses:

Rs. 12,000/-

4.

Loss of income during laid off period Rs. 5000x 3

Rs. 15,000/-

5.

Loss of future earnings (Rs. 600x12x15) =

Rs. 1,08,000/-

6.

Loss of loss of amenities of life

Rs. 20,000/-

7.

Future Medical expenses:

Rs. 10,009/-

Total

Rs. 2,07,808/-

In the result, the appeal is allowed in part and the impugned judgment and award is modified. It is declared that the respondents shall pay the compensation of Rs. 2,07,808/- along with interest at 6% p.a. from the date of filing of claim petition till the date of deposit. Two months time is allowed for depositing the balance amount, in the MACT.

No order as to costs.