

(2010) 01 KAR CK 0001
In the Karnataka High Court
Case No : M.F.A. No. 7281 of 2006

Sri. Nagaraj

APPELLANT

Vs

Sri. Harish, Sri. V.R. Murthy and The Branch Manager,
Oriental Insurance Co. Ltd.

RESPONDENT

Date of Decision : 19-01-2010

Acts Referred:

Citation : (2011) ACJ 1582 : (2010) ILR (Kar) 2190

Hon'ble Judges : N.K. Patil, J;B. Sreenivase Gowda, J

Bench : Division Bench

Advocate : C.M. Kempe Gowda, for the Appellant; B.C. Seetharama Rao, for R-3, for the Respondent

Final Decision : Allowed

Judgement

N.K. Patil, J.—This appeal by the claimant is directed against the judgment and award dated 7th February 2006, passed in M.V.C. No. 881/2003. on the file of the Civil Judge (Senior Division) & Member, Additional Motor Accident Claims Tribunal, Chitradurga, (for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 35,000/- awarded in favour of the claimant as against his claim for Rs. 4,60,000/-, is inadequate.

2. The appellant claims to be aged about 29 years, working as Driver, drawing salary of Rs. 3,000/-per month and Rs. 100/- per day as batta. That on 12-03-2003, at about 9:45 P.M., near Dhanalakshmi Lorry Office, Adivala Farm, within the limits of Hiriur Police Station, the appellant met with an accident on account of the rash and negligent driving by the driver of the Lorry bearing Registration No. KA-19/5763, which was coming from Bangalore Side. On account of the said accident, the appellant sustained injuries and he was immediately shifted to General Hospital, Hiriur for treatment and thereafter shifted to District Hospital, Chitradurga, where he took treatment as in-patient for a period of five days and thereafter, he took treatment at Pragathi Dental Clinic at Hiriur and eleven teeth were replaced. It is the case of the appellant

that he has spent considerable sum towards conveyance, nourishing food and attendant charges during the period of treatment and also for the medical expenses for replacement of eleven teeth.

3. On account of the Injuries sustained in the accident, the appellant filed the claim petition before the Tribunal, seeking compensation of a sum of Rs. 04.60 lakhs against the respondents. The said claim petition had come up for consideration before the Tribunal on 7th February 2006. 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. 35,000/- 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 the 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 Insurance Company.

5. Learned Counsel appearing for appellant submitted that, the Tribunal has committed error in not awarding reasonable compensation towards pain and sufferings, loss of amenities of life and discomfort, loss of income during the period of treatment and future medical expenses. Therefore, he submitted that, reasonable enhancement may please be made towards the said heads, to meet the ends of justice and modify the impugned judgment and award passed by Tribunal.

6. As against this, learned Counsel for Insurance Company sought to justify the impugned judgment and award passed by Tribunal stating that, the compensation awarded is just and reasonable and does not call for interference. However, he fairly submitted that, the compensation awarded by Tribunal towards pain and sufferings, loss of amenities and discomfort and income during treatment period appears to be inadequate and therefore, reasonable enhancement may be made under the said heads.

7. After consideration of the submission of the learned Counsel for the parties and after perusal of the judgment and award passed by Tribunal, it is seen that the occurrence of accident and the resultant injuries by the appellant are not in serious dispute. Admittedly, the appellant has taken treatment as inpatient for a period of five days and thereafter taken regular follow-up treatment for more than four months. When the appellant was examined at Government Hospital, Hiriya, the Doctor found a lacerated wound of 6 x 2 cms over face, below mouth with mobile teeth and bleeding gums, lacerated wound over forehead (2 x 1 cm), contusion of 4 x 4 cms over forehead, abrasion over left and right knee. The Dentist, who examined the appellant has stated that the appellant has suffered loss of one tooth from upper jaw, five teeth from lower jaw and one tooth was broken and he was advised for removal of tooth that was broken and further stated that, the appellant has suffered loosening of teeth because of blood

coming from the gums for which a flat surgery was conducted during November 2004 and after six months, he has put cap in respect of eleven teeth. This aspect of the matter has not been properly appreciated by the Tribunal. He was a young man of 29 years. Therefore, we are of the opinion that, the Tribunal is not justified in awarding only a sum of Rs. 12,000/- towards pain and sufferings. Taking all the relevant factors, stated above, we deem fit and proper to award a sum of Rs. 40,000/- towards pain and sufferings as against Rs. 12,000/-.

8. The Tribunal is not justified in awarding only a sum of Rs. 2,000/- towards loss of income during treatment period. The appellant was hospitalized for five days. Thereafter, it has come on record that he has taken follow-up treatment regularly. Having regard to the age and avocation of the appellant, assessing the income of the appellant at Rs. 3,000/- per month, we award a sum of Rs. 12,000/- under this head.

9. The Tribunal is also not justified in awarding only a sum of Rs. 10,000/- towards loss of amenities of life on account of permanent disability. The appellant has taken treatment as in-patient for a period of five days and has undergone a flat surgery during November 2004. He has suffered loss of six permanent teeth and plastic teeth have been fixed. The appellant, having lost the permanent teeth at this young age, will definitely face difficulty in cutting food from his front teeth and would suffer lot of inconvenience. The Tribunal has not properly appreciated all these aspects in a proper perspective. Therefore, having regard to all these aspects, we deem it fit and appropriate to award a sum of Rs. 30,000/- towards loss of amenities on account of permanent disability as against Rs. 10,000/- awarded by Tribunal.

10. Further, it can be seen that, the Tribunal has failed to award any compensation towards conveyance, nourishing food and attendant charges. Having regard to the nature of injuries, number of days the appellant was hospitalized and the period and nature of treatment, we award a sum of Rs. 10,000/- towards conveyance, nourishing food and attendant charges.

11. The Tribunal is also not justified in awarding only a sum of Rs. 3,000/- towards future medical expenses. As stated in the preceding paragraphs, the appellant has suffered loss of several teeth at this young age. He has to lead his life with the artificial teeth in place of the permanent teeth which are lost in the accident. The wear and tear will be there continuously for the rest of his life. Therefore, having regard to the magnitude of the injuries suffered and the age and avocation of the appellant, we award a sum of Rs. 15,000/- towards future medical expenses and other incidental charges.

12. However, a sum of Rs. 8,000/- awarded by Tribunal towards medical and incidental expenses is just and reasonable and does not call for interference.

13. 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 common judgment and award dated 7th February 2006, passed in M.V.C. No. 881/2003 on the file of the

Civil Judge (Senior Division) & Member, Additional Motor Accident Claims Tribunal, Chitradurga, is hereby modified, awarding a sum of Rs. 1,15,000/- as against Rs. 35,000/- 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 &	Rs.	30,000/-	enjoyment	in		life
-----					Towards	Medical
Expenses	Rs.					08,000/-
-----					Towards	Loss of
earning during	Rs.	12,000/-	treatment			period
-----					Towards	future
medical	expenses		Rs.			15,000/-
-----					Towards	conveyance,
nourishing	Rs.	10,000/-	food and	attendant		charges
-----					Total	Rs. 1,15,000/-

The Insurance Company is directed to deposit the enhanced compensation of Rs. 80,000/-, with interest thereon at 6% per annum, within three weeks from the date of receipt of copy of the judgment and award.

Immediately on such deposit by the Insurance Company, a sum of Rs. 50,000/- with proportionate interest shall be kept in Fixed Deposit in the name of the appellant, in any Nationalized or Scheduled Bank, for a period of five years and renewable by another five years with liberty reserved to him to withdraw the periodical interest on the said fixed deposit.

The remaining sum of Rs. 30,000/- with proportionate interest shall be released in favour of the appellant.

Office to draw award, accordingly.