

(2013) 07 KAR CK 0193

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1858 of 2010 (MV)

Sri. P. Palani

APPELLANT

Vs

Sri. B.C. Srinivasan and The Divisional Manager

RESPONDENT

Date of Decision : 10-07-2013

Acts Referred:

Citation : (2013) 07 KAR CK 0193

Hon'ble Judges : B. Sreenivase Gowda, J

Bench : Single Bench

Advocate : Sunitha B.H., for Sri. Suresh M. Latur, for the Appellant; Harini Shivananda, for R.2, for the Respondent

Final Decision : Partly Allowed

Judgement

B. Sreenivase Gowda, J.—This appeal is by the claimant seeking enhancement of compensation awarded by the Tribunal. Heard. The appeal is admitted and with the consent of the learned Counsel appearing for the parties, it is disposed of finally.

2. For the sake of convenience parties are referred to as they are referred to in the claim petition before the Tribunal.

3. As there is no dispute regarding injuries sustained by the claimant in a road traffic accident occurred on 03-07-2008 due to rash and negligent driving of offending autorickshaw bearing registration No. KA-05-D-8949 by its driver and liability of the insurer of the offending vehicle, the only point that remains for my consideration in the appeal is:

Whether compensation awarded by the Tribunal is just and proper or does it call for enhancement?

4. After hearing the learned Counsel for the parties and perusing the judgment and award of the Tribunal, I am of the view that the compensation awarded by the Tribunal is not just and reasonable, it is on the lower side and therefore, it is

deserved to be enhanced.

5. As per Ex. P.6-wound certificate, claimant has sustained the following injuries;

- 1) Tenderness and swelling over right leg
- 2) Fracture of tibia right leg
- 3) Fracture of neck of right fibula

Injuries sustained and treatment taken by him are also evident from Ex. P.7-discharge summary, Ex. P.8-case sheet, Ex. P.9-out patient card and Ex. P.10-x-ray and supported by oral evidence of the claimant and doctor examined as P.Ws. 1 and 2 respectively.

P.W.2-Dr. Rajanna in his evidence has stated, claimant has suffered disability of 36% to right lower limb and 16% to whole body.

6. Considering two fractures and other injuries sustained by the claimant, Rs. 50,000/- awarded by the Tribunal towards pain and suffering is just and proper and there is no scope for enhancement under this head.

7. Claimant has produced medical bills for Rs. 50/- and he was treated as inpatient for 12 days. Considering the same, Rs. 25,000/- awarded by the Tribunal towards medical and incidental expenses is just and proper and there is no scope for enhancement.

8. He claims to have been earning Rs. 9,000/- per month by working as a mason. But it is not established by producing any documents. In the absence of proof of income, considering his age as 26 years and year of accident as 2008, his income is assessed at Rs. 4,000/- per month. Nature of injuries suggest, he must have been under rest and treatment for a period of four months. Considering the same, a sum of Rs. 16,000/- is awarded towards loss of income during laid up period.

9. Considering nature of injuries, disability stated by the doctor and an amount of discomfort and unhappiness which the claimant has to undergo for the rest of his life, a sum of Rs. 20,000/- is awarded towards loss of amenities.

10. He is aged about 26 years. Multiplier applicable to his age group is 17". His income is assessed at Rs. 4,000/- per month. Disability stated by the doctor at 36% to right lower limb comes to 12% to whole body. So, loss of future income works out to Rs. 97,920/-(Rs. 4,000/- x 12 x 12/100 x 17), whereas Tribunal has awarded Rs. 1,10,160/- awarded by the Tribunal. Therefore, there is no scope for enhancement.

11. Thus the claimant is entitled for the following compensation:

12. Accordingly the appeal is allowed in part and the Judgment and award of the Tribunal is modified to the extent stated herein above. The claimant is entitled for additional compensation of Rs. 20,000/- with interest at 6% p.a. from the

date of claim petition till the date of realisation. The Insurance Co. is directed to deposit the additional compensation amount with interest, within two months from the date of receipt of a copy of this judgment, and the same is ordered to be released favour of the claimant.

No order as to costs.