(2011) 04 KAR CK 0036

In the Karnataka High Court

Case No : M.F.A. No. 563 of 2010 (MV)

Sri. Prakash — APPELLANT

Vs

G.K. Renuka Murthy and Divisional Manager, Oriental Insurance Co. Ltd. — RESPONDENT

Date of Decision : 12-04-2011

Acts Referred:

Citation : (2011) 04 KAR CK 0036

Hon'ble Judges : H.S. Kempanna, J

Bench : Single Bench

Advocate : Asha B.L. and Sri. G. M. Ananda, for the Appellant; Harini Shivananda, for R-2, for the Respondent

Final Decision : Allowed

Judgement

H.S. Kempanna

1. This appeal is by the claimant seeking for enhancement of compensation in respect of the personal injuries which he has sustained in a motor accident that took place on 04.03.2007 at about 8 a.m. near Gejjalagere Bus Stand situated on Mysore-Bangalore road involving the Maruthi 800 Car bearing Regn. No. KA-05/M2608, owned by the first respondent and insured with the second respondent at the relevant point of time. In the impugned accident he sustained grievous injuries comprising of fractures for which he took treatment in the hospital for about 22 days during which period he also underwent one surgery. He spent huge money for the treatment of his injuries. Despite the same, he is not completely cured of his injuries. As such, he is unable to carry on his avocation which has resulted in loss of income to him. Accordingly, he sought for grant of compensation from the respondents.

After service of notice, the respondents who ore the owner and insurer appeared through their respective counsels. However, the first respondent-owner did not choose to file any statement. The second respondent contested the claim of the claimant. They contended that the accident in question has not taken place on account of the fault of the driver of the offending car, on the other hand, it was due to the negligence of the claimant himself. They further contended that the driver of the car did not possess valid and effective driving licence to drive the vehicle in question at the time of accident. As such, there is breach of terms and conditions of the policy committed by the owner. They also denied the averments made by the claimant in his petition and further contended that they are not liable to pay any compensation and accordingly, sought for dismissal of the petition as against them.

On the basis of the above pleadings the Tribunal framed in all four issues.

The claimant in support of his case, got himself examined as PW1 and the doctor who treated him as PW2. He produced in all 113 documents which came to be marked as Exs.P1-113.

On behalf of the respondents, they did not lead any oral evidence or got marked any documents in support of their case.

The Tribunal on going through the oral and documentary evidence on record held that the accident in question has taken place solely on account of the fault of the driver of the offending car and accordingly, the claimant has established actionable negligence. Further, the Tribunal looking to the evidence of the claimant, the doctor-PW2 who has examined him and the documents placed on record awarded total compensation of Rs. 1,74,800/- with interest at 6% p.a. from the date of the petition till realisation. It further saddled the liability of payment of compensation on the second respondent insurer.

The appellant-claimant being aggrieved by the quantum of compensation is in appeal before this Court.

2. Learned counsel appearing for the appellant-claimant submitted that the Tribunal has not awarded commensurate compensation to the claimant under all heads despite the claimant having placed clinching evidence supported with documents. Hence a case for enhancement is made out.

3. Per contra, Learned Counsel appearing for the contesting-insurer supported the impugned judgment and award passed by the Tribunal.

4. Taking the rival submissions into consideration and the papers that are made available, the point that arises for my consideration is:

Whether the appellant-claimant has made out a case for enhancement of the compensation?

5. The facts are not in dispute. The claimant having met with accident, injuries sustained, treatment that he has taken and the amount spent are not in dispute. The claimant in his evidence has stated that in the impugned accident he has sustained fracture of his left thigh bone and also pubic bone. He took treatment in the hospital for about 22 days during which period he also underwent one

surgery. His testimony is fortified from the evidence of PW-2 medical officer who has treated him and also the wound certificate which is at Ex.P4 place on record coupled with the discharge card which are at Exs.P5 and P6. A perusal of the evidence of PW2 Medical officer reveals that the claimant, has sustained fracture of his left femur bone and also fracture of left symphosis pubic which is confirmed from the x-ray taken. He has permanent functional disability of left lower limb to an extent of 50%. Taking all these aspects into consideration, the Tribunal has awarded a sum of Rs. 30,000/- towards injury, pain and suffering. Having regard to the nature of the fractures that, the claimant has sustained, I deem fit to award a further sum of Rs. 5,000/- in addition to Rs. 30,000/- awarded by the Tribunal towards injury, pain and suffering.

Further, the Tribunal has awarded a sum of Rs. 10,000/- towards loss of amenities. I have adverted to the nature and degree of the injuries which the claimant has sustained. As he has sustained fracture of his left thigh bone and also pubic bone and has functional disability of his left lower limb as per the evidence of PW2, it automatically follows that the claimant has to suffer discomfort and unhappiness in future. Taking the same into consideration I deem fit to award a further sum of Rs. 10,000/- in addition to Rs. 10,000/- awarded by the Tribunal towards loss of amenities.

Further, the Tribunal has awarded a sum of Rs. 20,000/- towards medical expenses relying upon the medical bills produced by the claimant which are at Exs.P7 to P96. The Tribunal accepting the genuineness of the bills has awarded a sum of Rs. 20,000/- towards medical expenses. No grievance in respect of the same was also made before this court. Therefore, the same does not call for any modification.

Further, the Tribunal has awarded only a sum of Rs. 5,000/- towards conveyance, nourishing food and attendant charges. The material oh record reveals that the claimant has taken treatment in the hospital for 22 days during which period he has undergone one surgery and thereafter he must have taken follow-up treatment for the injuries sustained. The accident has occurred on 4.3.2007. Taking these factors into consideration, the Tribunal has awarded Rs. 5,000/- towards conveyance, nourishing food and attendant charges. The same in the facts and circumstances, in my view, does not call for any modification.

The next question that dwells upon for consideration is the determination of the income of the claimant, the compensation that is to be awarded towards loss of income during laid up period and loss of future income. The claimant has claimed that he is aged 38 years, mason by profession earning more than Rs. 6,000/- p.m. However, the claimant has not placed any clinching material to support his claim in respect of the income. In the absence of the same, the Tribunal has determined his income at Rs. 3,000/- p.m. The accident has taken place on 4.3.2007. He is aged 38 years. Therefore, in my view, it can safely be taken he would have earned a sum of Rs. 100/- to Rs. 125/- per day. Taking the same into consideration, I deem it fit to determine the income of the claimant at. Rs.

3,500/- p.m. as against Rs. 3,000/- determined by the Tribunal.

Further, having regard to the nature of injury sustained by the claimant in my view, he could not have attended his work for at least four months for which period he should be compensated towards loss of income during laid-up period. Therefore, for four months at the rate of Rs. 3,500/- p.m. the claimant is awarded a sum of Rs. 14,000/- towards loss of income during laid-up period as against Rs. 9,000/- awarded by the Tribunal.

The next question that falls for consideration is loss of future income. The claimant is aged 38 years. It is not disputed. Therefore, the proper multiplier that, becomes applicable to the facts of the ease would be 15. Coming to the question of disability, the evidence of PW2 medical officer reveals that the claimant has functional disability to the left lower limb to an extent of 50%. However, his evidence does not reveal what is the permanent disability that the claimant, has suffered when compared to the whole body. Taking the functional disability of 50% to his left lower limb, if one-third is taken, it comes to nearly about 17% which we can safely round it off to 20% and that has been rightly done by the Tribunal. Therefore, taking the permanent physical disability at 20%, applying the multiplier of 15, the claimant would be entitled to Rs. 1,26,000/- (Rs. 3,500 x 12 x 15 x 20/100) towards loss of future income as against Rs. 1,08.000/- awarded by the Tribunal.

Further, PW2-medical officer has stated that the fractures that have been sustained by the claimant has been set right by fixing plates and screws which at situ which deserves to be removed. The Tribunal has not considered this aspect of the case. Having regard to the testimony of PW2 in the facts and circumstances, I deem fit to award Rs. 5,000/- towards future medical expenses for removal of implants which are in situ.

Thus, in all the appellant/claimant is entitled to total compensation of Rs. 2,25,000/- with interest at 6% p.a. from the date of the petition till realisation as against Rs. 1,74,800/- with interest at 6% p.a. from the date of the petition till realisation awarded by the Tribunal. Accordingly, the appeal has to succeed in part. The break up of compensation is as follows :-

1

Towards injury, pain and suffering

Rs. 35,000/-

2

Towards Medical expenses

Rs. 20,000/-

3

Towards conveyance, nourishing Food and attendant charges

Rs. 5,000/-

4

Towards loss of amenities, discomforts & unhappiness

Rs. 20,000/-

5

Towards loss of income during laid up period

Rs. 14,000/-

6

Towards Loss of future income

Rs. 1,26,000/-

7

Towards future medical expenses

Rs. 5,000/-

Total

Rs. 2,25,000

6. In the result for the foregoing reasons, I proceed to pass the following:

ORDER

1) Appeal is allowed in part.

2) The impugned judgment and award of the Tribunal is modified and the appellant is awarded a total compensation of Rs. 2,25,000/- with interest at 6% per annum from the date of petition till realisation as against Rs. 1,74,800/- with interest at 6% per annum from the date of petition till realisation awarded by the Tribunal. The enhanced compensation comes to Rs. 50,200/- with interest at 6% per annum from the date of petition till realisation.

3) The second respondent herein-Insurer shall deposit the entire enhanced compensation of Rs. 50,200/- with interest at 6% per annum from the date of petition till realisation before the Tribunal within four weeks from the date of receipt of the copy of the judgment and award.

4) On deposit of the enhanced compensation with interest, a sum of Rs. 30,000/- with proportionate interest is ordered to be deposited in the name of the appellant/claimant in any nationalized/ scheduled bank for a period of five years renewable for a farther period of five years. He is entitled to withdraw the interest accrued on the said deposit periodically. The balance of Rs. 20,260/- with proportionate interest is ordered to be released in favor of the appellant/

claimant.

Office to draw the award accordingly.

