
(2013) 06 KAR CK 0164

In the Karnataka High Court

Case No : M.F.A. No. 2911 of 2011 and M.F.A. No. 8929 of 2010 (MV)

Sri. Ramesh Naik

APPELLANT

Vs

Sri. Diwakar and The Manager Bajaj Allianz General
Insurance Company Ltd.
 Bajaj Allianz General
Insurance Company Ltd. Vs Ramesh Naik and Sri. Diwakar

RESPONDENT

Date of Decision : 20-06-2013

Acts Referred:

Citation : (2013) 06 KAR CK 0164

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : T. Mohandas Shetty, in M.F.A. No. 2911/2011 and Smt. H.R. Renuka, for MFA No. 8929/2010, for the Appellant; Harsha Mutalik, for R1 in M.F.A. No. 2911/2011 and for R2 in MFA No. 8929/2010 and Smt. H.R. Renuka, for R2 in M.F.A. No. 2911/2011 and Sri. T. Mohandas Shetty, for R1 in MFA No. 8929/2010, for the Respondent

Judgement

N. Ananda, J.—MFA No. 2911/2011 is filed by claimant for enhancement of compensation.

MFA No. 8929/2010 is filed by Insurance Company for reduction of compensation.

I have heard Sri. T. Mohandas Shetty, learned counsel for claimant and Smt. H.R. Renuka, learned counsel for Insurance Company. I have gone through evidence and the impugned judgment.

2. The claimant had suffered following injuries:-

1. Lacerated wound measuring 5 cms x 2 cms bone deep present over right eyebrow.
2. Lacerated wound measuring 1 cm x 0.5 cm skin deep present nasal apex
3. Lacerated wound measuring 5 cms x 1 cm skin deep present over upper lip.
4. Lacerated wound measuring 4 cms x 1 cm present over inner aspect of lower

lip.

5. Abrasion measuring 4 cms x 3 cms present on outer aspect of right eye
6. Abrasion measuring 1 cm x 1 cm present over right ala of nose.
7. Abrasion measuring 3 cms x 1 cm present over right angle of mouth.
8. Multiple abrasions over forehead and dorsum of right hand.
9. Fracture of mandible over right parasymphysial.
10. Loss of teeth in upper and lower jaw.
11. C-T Scan Brain: Multiple facial bone fracture seen as follows:

Anterio and postero lateral walls of right maxillary sinus, anterior medial and postero lateral walls of left maxillary sinus, left maxilla, bilateral lateral pterygoid plates, posterior aspect of bony nasal septum, lateral wall of left orbit, bilateral nasal bones, anterior aspect of ethmoid bone and cribriform plate of ethmoid. Bilateral maxillary and ethmoid and right frontal haemosinus noted.

3. The claimant was treated in Citi Hospital at Bangalore. Even after complete treatment, claimant suffers from permanent physical disability.

4. The Tribunal has awarded compensation of Rs. 3,77,400/- under following heads:-

5. On hearing learned counsel for parties and after going through the impugned award, I find that Tribunal has awarded compensation under several heads. The Tribunal has not taken into consideration nature of disability and its impact on normal activities of claimant, as also on his earning capacity.

6. The learned counsel for Insurance Company would submit that Tribunal should not have awarded compensation towards "loss of expectation of life", so also towards "loss of income".

7. The learned counsel for claimant would submit that compensation awarded by Tribunal under several heads is on the lower side.

8. It is not in dispute and cannot be disputed that claimant had suffered aforesaid injuries. The injuries have left residual effects (permanent physical disability), affecting normal activities of life, so also earning capacity of claimant. The claimant has stated that he was working as a Hotel Manager and earning income of Rs. 20,000/-, which in my considered opinion is highly exaggerated.

9. Therefore, I determine income of claimant at Rs. 5,000/- per month. The Tribunal has determined permanent physical disability vis-à-vis loss of earning capacity at 20%, which in my considered opinion cannot be termed as excessive, having regard to number of injuries and consequent residual effects of injuries. Therefore, claimant is entitled to compensation of Rs. 1,56,000/- (Rs. 5,000/- x 12 x 13 x 0.2) towards "loss of earning capacity & loss of future earnings". The

Tribunal has awarded compensation of Rs. 93,600/- towards "loss of earning capacity & loss of future earnings". Thus, claimant is entitled to additional compensation of Rs. 62,462/-, rounded off to Rs. 62,400/- towards "loss of earning capacity & loss of future earnings". Having regard to number of injuries and consequent pain and suffering, I award additional compensation of Rs. 15,000/- towards "pain & suffering". The Tribunal has awarded compensation of Rs. 10,000/- towards "loss of expectation of life", as if it was a case of death. Therefore, the same is deleted. The Tribunal has bifurcated and awarded compensation of Rs. 15,000/- towards "loss of teeth" and compensation of Rs. 25,000/- towards "fracture of multiple facial bone". Therefore, compensation awarded by Tribunal towards "loss of teeth" so also towards "fracture of multiple facial bone" is deleted. The Tribunal has awarded compensation of Rs. 50,000/- towards "loss of amenities & enjoyment of life". Having regard to nature of injuries, pain and inconvenience claimant has to suffer during rest of his life, I award additional compensation of Rs. 25,000/- towards "loss of amenities & enjoyment of life". The compensation of Rs. 10,000/- awarded towards "disfigurement" is confirmed. The Tribunal has not awarded compensation towards "loss of earnings during laid up period". Having regard to nature of injuries and duration of treatment, I award compensation of Rs. 30,000/- towards "loss of earnings during laid up period". Thus, claimant is entitled to additional compensation of Rs. 82,400/- and total compensation of Rs. 4,59,800/-. In the result, I pass the following:-

ORDER

MFA No. 2911/2011 filed by claimant is accepted in part. The impugned award is modified, compensation of Rs. 3,77,400/- awarded by Tribunal is enhanced to Rs. 4,59,800/-. The rest of the impugned award as it relates to rate of interest, period of accrual of interest, ratio of payment and investment is confirmed. MFA No. 8929/2010 filed by Insurance Company is dismissed. The amount deposited by Insurance Company shall be transferred to Tribunal.