

(2013) 07 KAR CK 0192

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1407 of 2010 (MV)

Sri. Santhosh Shetty

APPELLANT

Vs

T.S. Chandrashekar, Manjula Abhayachandra and National
Insurance Co. Ltd.

RESPONDENT

Date of Decision : 10-07-2013

Acts Referred:

Citation : (2013) 07 KAR CK 0192

Hon'ble Judges : B. Sreenivase Gowda, J

Bench : Single Bench

Advocate : Maheshkiran Shetty, for the Appellant; D. Manjunath, for M/s. M.M.
Law Chambers for R.3, 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 18-9-2005 due to rash and negligent driving of offending bus bearing registration No. KA-19-AD-9090 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.4-wound certificate, claimant has sustained the following injuries;

- 1) Type I open both bone fracture middle 1/3rd of right forearm.
- 2) Fracture distal 1/3rd of right clavicle.
- 3) Comminuted fracture shaft of 2nd metacarpal of right hand.
- 4) Haematoma over right cheek, forehead.
- 5) Abrasion over right arm, forearm all over the face.

Doctor has opined that injuries 1 and 3 are grievous injuries and others are simple injuries.

Injuries sustained and treatment taken by him are also evident from Ex. P.6-disability certificate, Ex. P.98-4 x-ray films with cover, Ex. P.99-treatment certificate, Ex. P.100-x-ray film with cover and supported by oral evidence of the claimant and doctors examined as P.Ws. 1, 2 and 3 respectively.

P.W.2-Dr. Vivek K.S. in his evidence has stated, claimant has suffered disability of 20% to right upper limb.

P.W.3-Dr. Sandeep Navad P. in his evidence has stated, claimant was admitted to Vijayashree Hospital, Kundapura on 18-9-05 and was discharged on 4-10-05 and thereafter, he has taken treatment as out patient about ten times. He has stated, claimant has suffered disability of 43% to upper limb. But Ex. P.97-medical file shows, he has suffered disability of 20% to right upper limb.

6. Considering two grievous injuries and three simple injuries sustained by the claimant, a sum of Rs. 45,000/- is awarded towards pain and suffering as against Rs. 41,000/- awarded by the Tribunal under this head.

7. As Rs. 64,596/- awarded by the Tribunal towards medical expenses is as per medical bills produced by the claimant for the said sum, the same is just and proper and there is no scope for enhancement.

8. He was treated as inpatient for 23 days in two private hospitals. Considering the same, a sum of Rs. 12,000/- is awarded towards incidental expenses such as conveyance, nourishment and attendant charges.

9. He claims to have been earning Rs. 4,500/- per month by working as a bus conductor and was on leave for six months. Neither salary certificate nor leave certificate is produced to establish the said contention. In the absence of proof of income, considering his age as 33 years, year of accident as 2005 and avocation as coolie, his income is assessed at Rs. 3,000/- per month. Nature of injuries suggest, he must have been under rest and treatment for a period of seven months. Considering the same, a sum of Rs. 21,000/- is awarded towards loss of

income during laid up period.

10. 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, Rs. 15,000/- awarded by the Tribunal towards loss of amenities is just and proper.

11. The Tribunal by assessing the income of the claimant at Rs. 3,000/- per month, taking multiplier as "15" and disability at 10% has awarded a sum of Rs. 54,000/- towards future losses of income. The same is just and proper and there is no scope for enhancement.

12. Rs. 6,000/- awarded by the Tribunal towards future medical expenses is just and proper.

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

Rounded of to Rs. 16,000/-

14. 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. 16,000/- 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 in favour of the claimant. It is made clear claimant is entitled for interest on the entire amount of compensation awarded by the Tribunal as well as additional compensation awarded by this Court.

No order as to costs.