

(2017) 11 KAR CK 0021
In the Karnataka High Court
Case No : 4715 of 2014

Sri Siddaraju

APPELLANT

Vs

Sri Somashekar

RESPONDENT

Date of Decision : 13-11-2017

Acts Referred:

Citation : (2017) 11 KAR CK 0021

Hon'ble Judges : B. Sreenivase Gowda

Bench : SINGLE BENCH

Advocate : K.Shantharaj, Venkatesh R.Bhagat

Judgement

1. This appeal is by the claimant seeking enhancement of compensation awarded by the Tribunal.
2. With the consent of learned counsel appearing for the parties, the appeal is heard and disposed of finally. Perused the judgment and award passed by the Tribunal.
3. As there is no dispute regarding certain injuries sustained by the claimant in a road traffic accident occurred on 08.06.2008 due to the rash and negligent riding of a motor cycle bearing registration No.KA-42-E- 9445 by its rider and liability of the insurer of the offending vehicle, the only point that remains for consideration in the appeal is: "Whether the compensation of Rs.91,700/- awarded by the Tribunal is just and reasonable or does it call for enhancement?"
4. As per Ex.P-4, wound certificate, the claimant had sustained the following injuries: (i) Two fractures one comminuted fracture on left clavicle
(ii) fracture on right foot third metatarsal bone. The injuries sustained and treatment underwent by the claimant are evident from Ex.P-5 case sheets and Ex.P-6 X-rays and are corroborated by the oral evidence of the claimant and the doctor who were examined as PW-1 and PW-2 respectively. PW-2, doctor in his affidavit has stated that he had examined the claimant and found the following

injuries:

- (i) Mal-united deformed fracture clavicle,
- (ii) Tenderness on the left clavicle and left Acromia Clavicular joints left shoulder,
- (iii) ROM of left shoulder restrict and painful. He has further stated that the claimant has suffered local disability at 27.2% and whole body disability at 9%.

5. Considering the nature of injuries sustained by the claimant, a sum of Rs.45,000/- is awarded towards "pain and suffering" as against Rs.25,000/- awarded by the Tribunal.

6. A sum of Rs.5,000/- awarded by the Tribunal towards "medical expenses" based on medical bills produced by the claimant, is just and proper and there is no scope for enhancement under this head.

7. The claimant was treated as in-patient for 5 days at Subhash Medical Centre, Bidadi. Considering the duration of treatment, a sum of Rs.3,000/- is awarded towards "incidental expenses, such as conveyance, nourishment and attendant charges as against Rs.500/- awarded by the Tribunal.

8. The claimant claims to have been earning wages of Rs.6,000/- p.m. excluding bata of Rs.100/- per day by working as lorry driver, but has not produced any documents including driving licence. In absence of proof of income, considering his age as 25 years, year of accident as 2008 and avocation as daily wager, his income is assessed at Rs.4,500/- p.m. The nature of injuries suggest that he must have been under rest and treatment for a period of four months and a sum of Rs.18,000/- is awarded under the head loss of income during the period of treatment as against Rs.8,000/- awarded by the Tribunal.

9. Now the income of the claimant is assessed at Rs.4,500/- p.m. Multiplier applicable to his age group is 18. As per the disability stated by PW-2 the doctor at 27.2% to the limb, the disability caused to the whole body would be 6.75% which is rounded off to 7%. If so, loss of future income would work out to Rs.68,040/- ($4500 \times 12 \times 18 \times 7 / 100$) and it is awarded as against Rs.43,200/- awarded by the Tribunal.

10. A sum of Rs.20,000/- is awarded towards "loss of amenities" as against Rs.10,000/- awarded by the Tribunal.

11. Thus the compensation awarded by the Tribunal is re-assessed as under:-

HEADS Rs.

Pain and sufferings 45,000

Medical Expenses 5,000

Incidental expenses 3,000

Loss of income during laid up period 18,000

Loss of future income 68,040

Loss of amenities 20,000

TOTAL 1,59,040

LESS: Compensation awarded by the Tribuna 91,700

BALANCE 67,340

12. Accordingly, the appeal is allowed-in-part. The judgment and award dated 08.03.2013 passed by the Additional Senior Civil Judge, Member Additional MACT, Ramanagara in MVC No.460/2008 stands modified. The claimant is entitled for an additional compensation of Rs.67,340/- with interest at 6% p.a. from the date of claim petition till the date of realisation.

13. The Insurance Company is directed to deposit the additional compensation amount together with interest within two months from the date of receipt of a copy of this judgment. The same is ordered to be released in favour of the claimant immediately after the deposit. No order as to costs.