

(2009) 07 KAR CK 0023

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 4643 of 2008

Sri. S.R. Channappa Gowda

APPELLANT

Vs

Sri. Devendrappa and The Oriental Insurance Co. Ltd.

RESPONDENT

Date of Decision : 31-07-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2009) 07 KAR CK 0023

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : K.T. Gurudeva Prasad, for the Appellant; B.C. Seetharama Rao, for R2, for the Respondent

Judgement

A.N. Venugopala Gowda, J.—This is a claimant's appeal. Claim petition filed u/s 166 of Motor Vehicle Act 1988, was allowed in part. Compensation of Rs. 32,493/- with Interest at 6% p.a. was awarded Dissatisfied with the amount awarded and contending the same to be not just, this appeal has been preferred for awarding just compensation.

2. Claimant has deposed as PW.1. Dr. Sharathkumar Rao is PW.2. Exs.P1 to P13 have been marked. For respondents RW.1 was examined and Exs.R1 to R8 were marked. On appreciation of the evidence, it was found by the Motor Accident Claims Tribunal that, the claimant has sustained injuries on account of actionable wrong on the part of the driver of the offending vehicle and hence, the said compensation was awarded.

3. Finding of the tribunal on Issue No. 1 has not been questioned by filing cross appeal or cross objection by the respondents. They have accepted the liability to pay the compensation as awarded by the tribunal. In the circumstances, it is unnecessary to re-consider the finding with regard to actionable negligence. The only point for consideration is:

Whether the compensation awarded by the tribunal is just?

4. While awarding compensation, though tribunal has noticed Ex.P6, but has not awarded the amount of medical expenses incurred thereunder. Ex.P6 is the inpatient bill issued by Kasturba hospital. There is no dispute that, claimant after sustaining injuries in the accident, was admitted in Kasturba hospital on 28.12.2001 and after treatment was discharged on 14.1.2002. He has paid Rs. 32,876/-. Non awarding of the amount paid under Ex.P6 thereunder by the tribunal is erroneous. The appellant is entitled for reimbursement of the amount spent under Ex.P6.

5. The amount awarded under the heads, special diet and attendant charges, is meager. Claimant was a resident of village in Thirthahalli Taluk and he has taken treatment at Manipal. He was an inpatient for 17 days which is evident from Ex.P6. He could not have managed himself while he was in the hospital as an inpatient. He has necessarily taken the assistance of an attendant, for whom expenditure must have been incurred towards maintenance and travel. Even for travelling to Manipal to take treatment and to come back to his native place, he must have incurred expenses. In the circumstances, he is entitled to be awarded a further sum of Rs. 10,000/- thereunder.

6. It is evident from the record that, the appellant had to take future medical treatment for removal of implants. No amount has been awarded for the said purpose. Hence, it is just to award a sum of Rs. 10,000/- to meet the expenditure relating to future medical expenses.

7. Appellant was an agriculturist. Evidence on record discloses that he has suffered permanent disability. Evidence of PW.2 discloses that there is permanent disability to the extent of 34%. However, record shows that, the appellant had met with an accident earlier and the present injuries have also added to the discomfort. In the circumstances, it would be reasonable to take percentage of permanent disability arising out of present accident at 7% which reduced his future earning capacity. Consequently, he is entitled to be awarded a sum of Rs. 37,800/- under the head, reduction in earning capacity/loss of future Income i.e., $(Rs. 3,000 \times 12 \times 15 \times 7/100 = Rs. 37,800/-)$. The appellant has taken treatment as an inpatient for 17 days and he must have necessarily taken some more time to recover himself, to attend to work. It is reasonable to hold that, atleast 3 months time must have been spent from the date of accident till recovery, during which period there is loss of Income at Rs. 3,000/- p.m. Hence, towards loss of income during the period of treatment, he is entitled to be awarded at Rs. 9,000/-.

8. The accidental injuries have deprived the comforts of life and there is loss of amenities. Hence, the appellant Is entitled to be awarded a sum of Rs. 15,000/- thereunder.

9. The tribunal without correctly noticing the evidence and appreciating the same to assess the loss, has failed to award the just compensation and in the manner assessed supra.

In the result, in modification of the Judgment and Award passed by Motor Accident Claims Tribunal, while allowing the appeal in part, it is held that, the appellant is entitled to be awarded an additional compensation of Rs. 1,14,676/- which is rounded off to Rs. 1,14,700/- which shall carry interest at 6% p.a. from the date of petition till deposit into the Motor Accident Claims Tribunal by the 2nd respondent/Insurance Company, which is granted 3 months time. No costs.

Registry to draw the modified award.