

(2012) 08 KAR CK 0218
In the Karnataka High Court
Case No : M.F.A. No. 9187 of 2007 (MV)

Sri Subraya Bhat Rep. by G.P.A Holder A. Saraswathiamma	APPELLANT
Vs	
Annu Naika, Usman Beary and The Oriental Insurance Company Ltd.	RESPONDENT

Date of Decision : 08-08-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 08 KAR CK 0218

Hon'ble Judges : S.N. Satyanarayana, J;N.K. Patil, J

Bench : Division Bench

Advocate : Manmohan P.N, for the Appellant; Harini Shivanand, Advocate for R3 and R1 and R2 Served, for the Respondent

Judgement

N.K. Patil, J.—This appeal by the claimant is directed against the impugned judgment and award dated 12th January 2007, passed in MVC No.1554/2001, by the Motor Accident Claims Tribunal, Puttur, D.K., (for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of ` Rs. 1,88,480/-, awarded in his favour as against his claim for Rs. 10,00,000/-, is inadequate. The appellant claims to be aged about 46/48 years and a music teacher and also an agriculturist by profession, earning a total sum of Rs. 12,500/- per month from. He was hale and healthy prior to the date of accident. That at about 6:15 P.M., on 02-03-2001, when the appellant was riding his Bajaj M 80 bearing No.KA-19/E-8540 on NH-48 on Bedrodi of Bejathooru village, Puttur Taluk, a Lorry bearing No.CNG-5454, being driven by its driver, came at a high speed, in a rash and negligent manner and dashed against the motor cycle driven by appellant. Due to the impact, the appellant sustained grievous injuries. Immediately, he was shifted to the Hospital, where he was in-patient for a period of two days at the first instance and thereafter for another two days for his head injuries.

2. It is the case of the appellant that he has spent considerable amount towards

conveyance, nourishing food and attendant charges including medical expenses and other incidental expenses and therefore, he has to be compensated adequately.

3. On account of the injuries sustained in the accident, the appellant filed the claim petition u/s 166 of the Motor Vehicles Act, before the Tribunal, seeking compensation of a sum of Rs. 10.00 lakhs against the respondents. The said claim petition had come up for consideration before the Tribunal on 12th January, 2007. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of Rs. 1,88,480/- with interest at 6% per annum from the date of petition till the date of deposit. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant is in appeal before this Court, seeking enhancement of compensation.

4. We have heard learned counsel for appellant and learned counsel for third respondent/Insurance Company for considerable length of time.

5. It is the case of the appellant that on account of the injuries sustained in the road traffic accident, he has 50% disability and was in-patient on more than two occasions and also in coma for 40 days and therefore, he has to be awarded reasonable compensation towards conveyance, nourishing food and attendant charges, by modifying the impugned judgment and award passed by Tribunal.

6. After hearing learned counsel for the appellant and after perusal of the judgment and award passed by Tribunal including the original records placed before us, we are of the view that, the occurrence of accident and the resultant injuries sustained by appellant are not in dispute. It is also not in dispute that he was aged about 46/48 years and a Music Teacher and also giving music concerts. The Tribunal, after assessing the oral and documentary evidence available on file, has rightly awarded compensation of a sum of Rs. 66,000/- towards medical expenses, as per the medical bills and prescriptions and a sum of Rs. 25,000/- towards loss of amenities, discomfort and unhappiness. Hence, interference in the same is uncalled for.

7. However, so far as the compensation awarded under injury, pain and sufferings, loss of income during treatment period and loss of future income is concerned, the same is on the lower side and needs to be re-determined. Further, the Tribunal has failed to award any compensation towards conveyance, nourishing food and attendant charges. Admittedly, in view of the road traffic accident, the appellant has sustained lacerated wound measuring 6 cm x 7 cm left cheek and bilateral black eye present. X-ray showed fracture of left zygomatic bone. In support of the same, CW1, Neurosurgeon of KMC Hospital has deposed that the appellant has sustained. Further, the Doctor has assessed 50% functional disability, which comes to 16.66% towards whole body. The Tribunal has taken the said disability as it is. However, in the interest of justice and equity, we round it off to 17% for the purpose of awarding compensation

towards loss of future income. The appellant being aged about 46-48 years, has to endure this disability for the rest of his life. Because of the injuries sustained, he must have been away from work for a period of not less than six months. Further, the Tribunal erred in assessing the income of the appellant on only Rs. 2,500/- per month. The same is on the lower side. Having regard to the age, avocation, year of accident and various other factors, we re-assess the monthly income at Rs. 4,000/-, to meet the ends of justice. Since the appellant was aged between 46 and 48 years, the proper multiplier applicable is "13" as per the decision of the Hon'ble Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, Further, having regard to the age, avocation and the year accident, we reassess the monthly income of the appellant at Rs. 4,000/-, to meet the ends of justice. Further, it is stated that the appellant took treatment as in-patient on more than two occasions. During this period, he must have undergone lot of unsaid pain and agony and must have also spent reasonable sum towards conveyance, nourishing food and attendant charges apart from incidental expenses. Therefore, having regard to the age, avocation, nature of injuries, disability, and the facts and circumstances of the case on hand, we award a sum of Rs. 40,000/- towards injury, pain and suffering as against Rs. 30,000/-; Rs. 20,000/- towards conveyance, nourishing food and attendant charges; Rs. 24,000/- towards loss of income during treatment period, at the rate of Rs. 4,000/- per month for a period of six months as against Rs. 7,500/-; and Rs. 1,06,080/- (i.e. Rs. 4,000/- x 12 x "13" x 17/100) towards loss of future income as against Rs. 59,976/- awarded by Tribunal. In the light of the facts and circumstances of the case, as stated above, the appeal filed by appellant is allowed in part. The impugned judgment and award dated 12th January 2007, passed in MVC No. 1554/2001, by the Motor Accident Claims Tribunal, Puttur, D.K., is hereby modified, awarding a sum of Rs. 2,81,080/- as against Rs. 1,88,480/- awarded by Tribunal, with interest at 6% per annum on the enhanced sum, from the date of petition till the date of realization. The break-up is as follows:

Towards Pain and sufferings

Rs. 40,000/-

Towards Loss of amenities & enjoyment in life on account of disability

Rs. 25,000/-

Towards Medical Expenses

Rs. 66,000/-

Towards conveyance, nourishing food and attendant charges

Rs. 20,000/-

Towards Loss of earning during treatment period

Rs. 24,000/-

Towards loss of future earnings

Rs. 1,06,080/-

Total

Rs. 2,81,080/-

The third respondent/Insurance Company is directed to deposit the enhanced compensation of Rs. 92,600/-, with interest thereon at 6% per annum, within four weeks from the date of receipt of copy of the judgment and award.

On such deposit by the Insurance Company, a sum of Rs. 50,000/- with proportionate interest shall be invested in the name of the appellant, in Fixed Deposit, in any scheduled/Nationalized Bank, for a period of five years, renewable by another five years, with liberty reserved to him to withdraw the periodical interest.

Remaining sum of Rs. 42,600/- with proportionate interest shall be released in favour of the appellant, immediately.

Office to draw award, accordingly.