

(2012) 03 KAR CK 0107
In the Karnataka High Court
Case No : M.F.A. No. 10973 of 2008 (MVC)

Sri Venkatesh

APPELLANT

Vs

Mr. D.V. Ramesh Shetty and The Oriental Insurance Co. Ltd.

RESPONDENT

Date of Decision : 15-03-2012

Acts Referred:

Citation : (2012) 03 KAR CK 0107

Hon'ble Judges : B. Sreenivase Gowda, J

Bench : Single Bench

Advocate : K.T. Gurudeva Prasad and Sathyapal, for the Appellant; Harini Shivanand, for R-2, for the Respondent

Final Decision : Allowed

Judgement

B. Sreenivase Gowda

1. 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 taken up for final disposal.

2. For the sake of convenience, the 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 19.8.2006 due to rash and negligent driving of the mobile crane bearing registration No. KA-02-2-4380 by its driver and liability of the insurer of the offending vehicle, the only point that arises for my consideration in the appeal is:

whether compensation of Rs. 2,71,600/- awarded by the Tribunal is just and reasonable or does it call for enhancement?

4. After hearing the learned counsel appealing 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

hence it is required to be enhanced.

5. The claimant has sustained extensive degloving injury to the right lower limb with loss of skin and loss of tendons and loss of soft tissues. The injuries sustained by the claimant are evident from the wound certificate Ex.P-3, discharge summary Ex. P-6, X-rays Exs. P-9, photos with negatives Ex.P-11 and supported by oral evidence of the claimant and doctor, who were examined as PWs-1 and 2 respectively. PW-2, doctor in his evidence has stated that the claimant has suffered disability of 45% to the limb and 15% to the whole body.

6. Considering the nature of injuries, Rs. 50,000/- awarded by the Tribunal towards "pain and suffering" in on the lower side and it is deserved to be enhanced by another Rs. 10,000/- and I award Rs. 60,000/- under this head.

7. The medical bills produced by the claimant works out to Rs. 1,58,000/- and the same has been reimbursed by his employer excluding the medical bills of Rs. 15,075/-. The claimant was treated as inpatient for a period of 60 days in Mathru Nursing Home. Considering the same, a sum of Rs. 35,000/- is awarded towards "medical and incidental expenses" as against Rs. 25,000/- awarded by the Tribunal.

8. The claimant claims to be working as a cleaner in Mobile Crane van and earning & sum of Rs. 3,000/- per month. The nature of injuries suggest that he must have been under rest and treatment for a period of 6 months and therefore a sum of Rs. 18,000/- is awarded towards "loss of income during laid up period" as against Rs. 12,000/- awarded by the Tribunal.

9. Considering the disability stated by the doctor and an amount of discomfort and unhappiness the claimant has to undergo in his future life, a sum of Rs. 50,000/- is awarded towards "loss of amenities" as against Rs. 15,000/- awarded by the Tribunal.

10. The contention of the claimant that he could not resume to work permanently is not supported by producing any termination letter or by examining his employer. PW-2, doctor in his evidence has stated that the claimant has suffered disability of 45% to the limb and 15% to the whole body. The Tribunal assessing the functional disability at 20% has rightly awarded a sum of Rs. 1,29,600/- towards loss of future income" and there is no scope for enhancement under this head.

11. Considering the nature of injuries, a sum of Rs. 40,000/- awarded by The Tribunal towards "future medical expenses" is just and proper and there is no scope for enhancement under this head.

12. Thus, the claimant is entitled for the following compensation:-

HEADS

Rs.

1

Pain and sufferings

60,000

2

Medical and incidental expenses

35,000

3

Loss of income during laid up period

18,000

4

Loss of amenities

50,000

5

Loss of future income

129,600

6

Future medical expenses

40,000

TOTAL

3,32,600

LESS: Compensation awarded by the Tribunal

2,71,600

BALANCE

61,000

13. Accordingly, the appeal is allowed in part. The judgment and award passed by the Tribunal is modified to the extent stated herein above. The claimant is entitled for an additional compensation of Rs. 61,000/- with interest at 6% p.a. from the date of claim petition till the date of realisation. 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. From which, Rs. 40,000/- with proportionate interest is ordered to be invested in fixed deposit in the name of claimant in any Nationalised Bank/

Scheduled Bank/Post Office for a period of 6 years renewable once in 2 years and with a right of option to withdraw interest periodically. Remaining amount with proportionate interest is ordered to be released in favour of the claimant immediately after the deposit.

No order as to costs.