(2013) 11 KAR CK 0160

In the Karnataka High Court

Case No : M.F.A. No. 2125 of 2006 (MV)

Sri. Victor Manoharan — APPELLANT

Vs

Sri. Chandrashekaran and M/s. Oriental Insurance Co. Ltd. — RESPONDENT

Date of Decision : 25-11-2013

Acts Referred:

Citation : (2013) 11 KAR CK 0160

Hon'ble Judges : N.K. Patil, J;Budihal R.B., J

Bench : Division Bench

Advocate : S.V. Hegde Mulkhand, Advocate for R2, for the Respondent

Final Decision : Partly Allowed

Judgement

N.K. Patil, J.—This is a claimants appeal against the impugned judgment and award dated 11/10/2005 passed in MVC No. 2183/2000, by the II Additional Judge and Member, Motor Accident Claims Tribunal, Bangalore, (for short ''Tribunal''), for enhancement of compensation. By its judgment and award, the Tribunal has awarded a sum of Rs. 57,910/- under different heads with interest at 6% p.a., from the date of petition till its payment as against the claim made by the appellant for a sum of Rs. 6,00,000/-, on account of the injuries sustained by him in the road traffic accident.

2. In brief, the facts of the case are:

The appellant claims to be aged about 35 years at the time of the accident. He was hale and healthy prior to the accident. That at about 4.30 p.m., on 2.6.2000, while appellant was proceeding from Bangalore to Mysore with his friend by name Nagarajan in Tata Esteem car bearing Reg. No. KA.03.N.581 which was driven by one Ashok and when the said car came near Dasappa Doddi, Bidadi on B.M. Road, at that time, the driver of the car drove the same in a rash and negligent manner and dashed against the road side tree. As a result, appellant has sustained grievous injuries and the car was badly damaged. Immediately, he was shifted to Bidadi Government Hospital, after first aid, he was shifted to

Sharavathi Nursing Home, Vijayanagar, Bangalore, for treatment where he took treatment as inpatient for 7 days, undergone surgery of left arm by transplanting bone from hip and implants were fixed and thereafter, on the advise of the Doctor he has taken bed rest and follow up treatment.

3. It is the further case of the appellant that, he spent considerable amount towards medical and other expenses and on account of the injuries sustained by him as referred above, he has suffered permanent disability. The Doctor has assessed the disability at 60% to the left upper limb and at 30% to the whole body. Therefore, appellant has filed a claim petition before the Tribunal under. Section 166 of M.V. Act, claiming compensation against the respondents.

4. The said claim petition had come up for consideration before the Tribunal. The Tribunal, after hearing both sides and after assessing the oral and documentary evidence, has allowed the said claim petition in part and awarded a sum Rs. 57,910/- as compensation under different heads with interest at 6% p.a., from the date of petition till its payment.

5. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant has presented this appeal, seeking enhancement of compensation.

6. We have perused the grounds urged by the appellant and heard the learned counsel for Insurer.

7. It is the case of the appellant, party in person as per the memorandum of appeal that, he was aged about 35 years, Advocate by profession and earning Rs. 5,000/- to Rs. 7,000/- per month, hale and healthy prior to the accident and on account of the injuries sustained by him in the accident that occurred on 2.6.2000, he took treatment as inpatient for 7 days, underwent surgery and on account of the injuries, he has suffered permanent disability and spent considerable amount towards medical end other incidental charges and he has suffered financial loss as he could not have attended his work and the disability will come in the way of his future earnings. But these aspects of the matter has not been considered or appreciated by the Tribunal while awarding compensation. Therefore he prayed that the impugned judgment and award is liable to be modified by enhancing the compensation reasonable.

8. As against this, learned counsel appearing for the Insurer, inter-alia, contended and substantiated that the impugned judgment and award passed by the Tribunal is just and proper and after due appreciation of the oral and documentary evidence, taking into consideration the nature of injuries sustained by the appellant and therefore, it does not call for interference. Further, he submits that, since the Policy is an Act policy and therefore, Insurer is not liable to indemnify the enhanced amount, if any, and the same may be considered in accordance with law.

9. After perusing the grounds urged by the appellant-party-in-person in the memorandum of appeal, after hearing the learned counsel for the insurer and

after perusal of the materials available on record, including the impugned judgment and award passed by the Tribunal, it emerges that, the occurrence of the accident and the resultant injuries sustained by the appellant are not in dispute. It is also not in dispute that, appellant was aged about 35 years and Advocate by Profession. Further, it emerges that, the Tribunal, after assessing the oral and documentary evidence available on file, particularly, the medical bills produced, has justified in awarding a sum of Rs. 17,910/-towards medical expenses and therefore, it does not call for interference.

10. However, the Tribunal has failed award reasonable compensation towards injury, pain and sufferings, loss of income during treatment period, conveyance, nourishing food and attendant charges, towards loss of amenities due to disability and in not awarding reasonable compensation towards future medical expenses. Admittedly, on account of the injuries sustained by the appellant, he has taken treatment as inpatient for 7 days, underwent surgery, implants were inserted. During the said period, he might have undergone lots of pain and agony, might have spent reasonable amount towards conveyance and other incidental charges and suffered financial loss as he could not have attended his work regularly. Further, it emerges that, on account of the injuries sustained by the appellant, he has suffered permanent disability and to prove the same, he has examined the Doctor as PW 2, who has assessed the disability at 60% to the left upper limb and at 30% to the whole body which is little exaggeration and 1/3rd of 60%, 20% would be the whole body disability. It is permanent in nature, he has to suffer this disability though out his life and it would affect his future happiness in life and he has to undergo one more operation for removal of implants and for that he may require some amount.

11. Further, it emerges that the income of the appellant assessed by the Tribunal at Rs. 4,000/- per month is on lower side. Having regard to the age, occupation and year of the accident, we reassess his income at Rs. 5,000/- per month. Taking all these factors into consideration, we award a sum of Rs. 25,000/- towards pain and sufferings instead of Rs. 20,000/-, Rs. 5,000/- towards conveyance, nourishing food and attendant charges instead of Rs. 2,000/-, Rs. 15,000/- towards loss of income during treatment period instead of Rs. 8,000/-, Rs. 50,000/- towards loss of amenities, discomforts and unhappiness due to disability instead of Rs. 10,000/- and Rs. 5,000/- towards future medical expenses. In all, the appellant is entitled to the total compensation of Rs. 1,17,910/- instead of Rs. 57,910/- and the break-up is as follows:

12. So far as the submission made by learned counsel for Insurer that, the Insurance company is not liable to indemnify the enhanced amount is concerned, the same cannot be accepted and is liable to be rejected, for the reason that, as on the date of the accident the policy was in force and Insurance Company is liable to be indemnify the award amount. Hence, the above submission of the learned counsel for the Insurer is rejected. Having regard to the facts and circumstances of the case, the appeal filed by the appellant is allowed in part.

The impugned judgment and award dated 11/10/2005 passed in MVC No. 2183/2000, by the II Additional Judge and Member, Motor Accident Claims Tribunal, Bangalore, stands modified, awarding a sum of Rs. 60,000/- with interest at 6% p.a., from the date of petition till its realization, in addition to the compensation awarded by the Tribunal.

The Insurer is directed to deposit the enhanced compensation of Rs. 60,000/- with interest at 6% p.a., from the date of petition till the date of realization, within three weeks from the date of receipt of a copy of this judgment.

Immediately on deposit by the Insurer, the entire enhanced compensation with interest shall be released in favour of appellant.

Draw the award, accordingly.