

(2012) 01 KAR CK 0114

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 5273 of 2010 (MV)

Sri. Vijaykumar. P.

APPELLANT

Vs

IFFCO Tokio General Insurance Co. Ltd., Sri. Mohan Singh
and The Managing Director, K.S.R.T.C., K.H. Road,
Bangalore-560027

RESPONDENT

Date of Decision : 06-01-2012

Acts Referred:

Citation : (2012) 01 KAR CK 0114

Hon'ble Judges : A.S. Pachhapure, J

Bench : Single Bench

Advocate : D.L. Suresh, for the Appellant; H.S. Lingaraj, For R1, Sri. A. Nagaraja, for R3, for the Respondent

Judgement

A.S. Pachhapure

1. The appellant dissatisfied with the amount of compensation awarded by the Tribunal for the injuries sustained in a motor vehicle accident has filed this appeal seeking compensation. The facts reveal that on 24.7.2007 at about 11.30 p.m. on B.N.Road, near Harding Circle, Mysore, the appellant was an occupant of the Car bearing Reg.No. KA 02 MA-8874 driven by its driver and while taking a turn to the right side, the proper signal was given and at that time, a KSRTC Bus bearing Reg.No. KA-19 F-1973 driven in a rash and negligent manner came and hit the Car and thereby, the appellant sustained grievous injuries. He was treated at Gayathri Hospital and said to have suffered disability. He was working as a Contractor and in the circumstances, claimed compensation for the injuries sustained. The respondents have contested the claim.

2. During the enquiry, the appellant was examined as PW.1 and two witnesses PWs.2 and 3 and in their evidence got marked the documents Exs.P.1 to P.15. The respondents did not lead any evidence. The Tribunal after hearing and on appreciation of the material on record, held actionable negligence on the part of the driver of the Bus and granted compensation of Rs. 2,21,246-00 with interest

at 6% p.a. Dissatisfied with the amount of compensation, the present appeal has been filed.

3. I have heard the learned counsel for both the parties. The point that arise for my consideration is:

Whether the appellant is entitled to enhanced compensation ? If so. to what extent ?

4. The appellant admittedly has suffered fracture of right femur and the documents at Exs.P.6 and 7 confirm the said fracture. He was an inpatient in Gayathri Hospital from 25.07.2007 to 01.08.2007 and underwent surgery on 27.07.2007. Taking into consideration the nature of the fracture, the pain, suffering and mental agony undergone, the Tribunal has rightly granted compensation of Rs. 30,000/- under this head.

5. The appellant has suffered disability at 39.77% of the right lower limb. So adopting the general principle, the disability for the whole body would be 1/3 of it and giving margin to the possibility of exaggeration, I think it would be just and proper to consider the permanent disability at 12.5% to the whole body. But the Tribunal has assessed the disability to the whole body at 10% and it appears to be erroneous, Hence, taking into consideration the disability suffered and the unhappiness that he has to undergo including the loss of amenities, the compensation awarded at Rs. 15,000/- appears to be just and proper.

6. The appellant has not produced any documents to establish his income. Except his oral evidence, there is no material on record. Though he is a Contractor, his income is not proved. It is in these circumstances that the Tribunal assessed the income at Rs. 5,000/- and considering the possibility of assuming the normal duties from the date of three months of accident, it granted a sum of Rs. 15,000/- towards loss of earning during treatment period, which is just and proper.

7. As per the details produced, the Tribunal has granted Rs. 44,246/- towards the medical expenses and an amount of Rs. 5,000/- towards the incidental expenses like nourishment, conveyance etc., The future medical expenses at Rs. 10,000/- for removal of in-plants is also reasonable and proper.

8. The only head on which the compensation appears to be on the lower side is with regard to the loss of future earnings. The Tribunal has considered the disability at 10% and the income at Rs. 5,000/- and adopting the multiplier of 17, it granted Rs. 1,02,000/- as compensation for loss of future earnings. Taking into consideration that" the appellant has suffered disability at 12.5% and considering the income at Rs. 5,000/- adopting the multiplier of 17, the net loss of earning capacity would be Rs. 1,27,500/- . Therefore, the appellant is entitled to an additional amount of Rs. 25,500/- with interest at 6% p.a. from the date of petition till payment. In the circumstances, I answer the point in affirmative and proceed to pass the following:

ORDER

The appeal is allowed in part. In addition to the compensation awarded by the Tribunal, the appellant is entitled to a further sum of Rs. 25,500/- with interest at 6% p.a. from the date of petition till payment. The appellant is permitted to withdraw the amount enhanced with interest.

The counsel for Respondent No. 1 is permitted to file vakalath within fifteen days.