
(2013) 11 KAR CK 0127
In the Karnataka High Court
Case No : M.F.A. No. 13072 of 2006 (MV)

Sripal	Vs	APPELLANT
Mahaveer M. Patil and United India Insurance Co. Ltd.		RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Citation : (2013) 11 KAR CK 0127

Hon'ble Judges : B. Manohar, J

Bench : Single Bench

Advocate : Muttaraj D. Patil, for the Appellant; S.S. Koliwad, Adv for Sri. B.C. Seetharama Rao, for R2 and SD - R1, for the Respondent

Final Decision : Partly Allowed

Judgement

B. Manohar, J.—Appellant is the claimant being unsatisfied with the quantum of compensation awarded in MVC No. 1829/2004, dated 07.10.2006 by the Motor Accidents Claims Tribunal, Belgaum (hereinafter referred to as "the Tribunal" for short) filed this appeal seeking for enhancement of compensation. In the claim petition, it was contended that on 3-5-2004 at about 6.00 p.m., while he was going on his bicycle from Belgaum to Alarwad on the left side of the road, near Alarwad Cross, a motor cycle bearing registration No. KA-22/L-8126 came from hind side in a rash and negligent manner and dashed against the bicycle, due to which, the claimant sustained injuries. He was admitted to the District Hospital and taken treatment therein. In the accident he has sustained bimalleolar fracture of right ankle joint and other injuries to his body. He was inpatient for a period of 20 days. The doctor has assessed the disability to an extent of 35% to his right ankle and foot. Hence, sought for compensation.

2. The respondents entered appearance. The first respondent owner of the motor cycle filed statement of objections contending that the accident was not due to the rash and negligent driving by the rider of the motor cycle, and there is no such accident as alleged by the claimant and sought for dismissal of the claim petition.

3. The second respondent-Insurer also filed objections denying the accident and contended that the compensation claimed is highly exorbitant. They also denied the income of the claimant and sought for dismissal of the claim petition.

4. The Tribunal after considering the oral and documentary evidence adduced by the parties and also taking into consideration the wound certificate, copy of. FIR, copy of complaint, MVI report, Spot panchanama and charge sheet, held that the accident had occurred due to the rash and negligent driving of the motor cycle by its rider and the claimant is entitled for compensation. With regard to quantum of compensation is concerned, in the accident, the claimant has suffered disability to an extent of 35% to the right ankle and foot, he was aged about 30 years. The claimant was working as mason and earning Rs. 3,000/- p.m. Since the disability of 35% is to right ankle and it 1/3 was taken, it would be less than 5%. Hence, the Tribunal had refused to award compensation towards disability. Taking into consideration that the claimant was inpatient for a period of 20 days and has sustained a fracture of right ankle joint, the Tribunal has awarded a sum of Rs. 20,000/- towards pain and suffering, Rs. 25,000/- towards loss of amenities in life, Rs. 3,000/- towards medical expenses, Rs. 6,000/- towards loss of earning during the laid up period and Rs. 4,000/- towards attendant charges and special diet. In all, the Tribunal. has awarded a sum of Rs. 58,000/- with interest at 6% p.a. from the date of petition till realization. Being dissatisfied with the quantum of compensation, the claimant has filed this appeal, seeking enhancement of compensation.

5. Sri. Mutturaj D. Patil, learned Counsel appearing for the appellant contended that the compensation awarded by the Tribunal is on the lower side. In the accident, the claimant has sustained bimalleolar fracture of right ankle. The claimant was a mason and due to the fracture, he is unable to do the work of mason. He was earning a sum of Rs. 4,500/- p.m. Due to the accident, he has suffered huge monetary loss. Even though the claimant has suffered permanent disability, the Tribunal has awarded very less compensation and has erred in not awarding compensation towards future loss of earning. Hence, sought for enhancement of compensation.

6. On the other hand, Sri. S.S. Koliwad, learned Counsel appearing for the respondent-Insurer argued in support of the judgment and award passed by the Tribunal and contended that the accident had occurred on 3-5-2004. Taking into consideration the injuries he has sustained in the accident, the Tribunal has awarded just and fair compensation and the same does not warrant interference. Hence sought for dismissal of the appeal.

7. I have carefully considered the arguments addressed by the learned Counsel for the parties and perused the oral and documentary evidence let in by the parties and the judgment and award passed by the Tribunal. The records clearly disclose that the claimant has sustained injuries in the road traffic accident occurred on 3-5-2004 due to the rash and negligent riding of the motor cycle bearing Registration No. KA-22/L-8126. In the accident, he has sustained

bimalleolar fracture of right ankle and other injuries. He was inpatient for a period of 20 days and he has undergone operation. The doctor after examining the claimant stated that there is disability to an extent of 35% to the right ankle and foot. However, no compensation has been awarded towards future loss of income. The claimant was a mason by profession and in view of the accident, he is unable to perform the work of mason. Hence, the claimant is entitled for compensation towards future loss of income. Taking the income of the appellant at Rs. 3,000/- p.m., assessing the disability to an extent of 10% and adopting the multiplier of 17, the claimant is entitled to compensation of Rs. 61,200/- towards future loss of income. With regard to compensation awarded towards attendant charges and special diet is concerned, the claimant was inpatient for a period of 20 days, and he might have spent some considerable amount towards attendant charges and special diet. But, the Tribunal has awarded a very meager sum of Rs. 4,000/- towards the same. Hence, I am inclined to award another sum of Rs. 8,800/- under the head, attendant charges and special diet. In all, the claimant is entitled to enhanced compensation of Rs. 70,000/-. Accordingly, I pass the following:

ORDER

The appeal is allowed in part. The judgment and award dated 7-10-2006 in MVC No. 1829/2004 passed by the Motor Accident Claims Tribunal, Belgaum is modified and the claimant is entitled to enhanced compensation of Rs. 70,000/- with interest at the rate of 6% p.a. from the date of petition till realization.