

(2017) 07 KAR CK 0056
In the Karnataka High Court
Case No : 31705 of 2010

Sunila S/o Lalasing Nayak

APPELLANT

Vs

Yasin S/o Sayeedrasual Mujawar & Anr.

RESPONDENT

Date of Decision : 11-07-2017

Acts Referred:

Motor Vehicles Act, 1988, Section 173(1),
Section 173(1) - Appeals

Citation : (2017) 07 KAR CK 0056

Hon'ble Judges : B. A. Patil

Bench : SINGLE BENCH

Advocate : Babu H. Metagudda, Preeti Patil

Judgement

1. These two appeals are by the appellants/claimants seeking enhancement of compensation awarded by the learned MACT-XII, Bijapur, in MVC Nos.803/2008 and 805/2008 dated 17.07.2010.

2. Brief facts leading to filing of the claim petitions are that on 21.05.2008 at about 12.00 noon when the claimants in MVC Nos.803/2008, 805/2008 and 1778/2008 were proceeding from Bharatagi L.T., to Gandhi Daba situated near Tidagundi to have meals in a Piaggio auto bearing registration No.KA-28/A-6730, the driver of the said auto drove the same rashly and negligently with great speed and when the said auto was proceeding on Bijapur-Tidagundi road at about 12.00 noon near a petrol pump situated near Gandhi Daba, driver of the auto lost control over the said auto and went out of the road and toppled down in a road side ditch and as a result of the same, claimants sustained injuries. Subsequently, they were taken to the hospital and there they took treatment. For the purpose of claiming compensation, they have filed claim petitions.

3. In pursuance of the notices, respondent Nos.1 and 2 appeared before the Tribunal and filed their written statement. Respondent No.1 filed written statement denying the averments made in the petition, he further contend that the said vehicle has been insured with respondent No.2 and the policy was valid

as on the date of the accident therefore, it is respondent No.2 who has to pay the compensation.

4. Respondent No.2 has also filed its objections by denying the averments made in the plaint. It has also contended that, owner of the auto has to prove RC, FC and permit of the vehicle and valid driving licence of the driver in order to fix up the liability. It is further contended that, its liability to pay compensation will be subject to terms and conditions of the policy, which has been issued. On these grounds, respondents prayed for dismissal of the claim petitions.

5. On the basis of the above pleadings, the Tribunal has framed the following issues: i. Whether the petitioners prove that, on 21.05.2008 at about 12.00 noon, petitioner along with his friends were proceeding from Bharatagi L.T., to Gandhi Daba situate near Tidagundi, a Piaggio auto bearing Reg.No.KA- 28/A-6730, the driver of the said auto was driving the same in rash and negligent by neglecting traffic rules at about 12.00 noon near a petrol pump situate near Gandhi Daba, he lost control over and it went off the road and toppled down in a road side. Due to this impact, petitioner and his friends sustained grievous injuries?

ii. Whether petitioners are entitled for compensation, if so what is quantum and from whom?

iii. What order or award?

6. The claimant in MVC No.803/2008 got examined himself as PW.1 and the claimant in MVC No.805/2008 got examined himself as PW.2 and they have also got examined the doctor as PW.4 and got marked the documents at Exs.P1 to P25.

7. After considering the pleadings and the evidence on record, the Tribunal answered issue No.1 in the affirmative and issue No.2 partly in the affirmative and awarded compensation of Rs.1,10,120/- and Rs.98,120/- respectively to the appellants.

8. Being aggrieved by the said judgment and award, the appellants/claimants are before this Court.

9. The learned counsel for the appellants submits that claimant in MVC No.803/2008 was working as driver and as per Ex.P8, he has sustained fracture of left foot, injury to left hand, fracture of left leg, fracture of ribs and injuries to all over the body. The doctor who has been examined as PW.4 has assessed the disability to the extent of 35% to 40% to the whole body. Though the claimant has contended that, he was working as driver, by taking notional income of Rs.4,000/- per month and by taking the disability at 8%, the Tribunal has awarded meager compensation. He would also contend that the Tribunal has not properly awarded compensation towards pain and suffering, medical expenses, conveyance charges and future unhappiness of life and other heads. He would further contend that the claimant in MVC No.805/2008 was working in Reliance

Communication and in order to substantiate the said fact, he has produced Ex.P12. He has also produced the documents to show that he was earning Rs.6,000/- per month in the said concern. He has further contended that the doctor has assessed the disability to the extent of 25% to 30%. But the Tribunal by taking the income of the claimant at Rs.4,000/- per month and the disability at 7% has awarded lower compensation towards loss of future earning. He would also contend that even the compensation awarded under other heads is on the lower side. On these grounds, he prays for allowing the appeals by enhancing the compensation.

10. The learned counsel appearing for Insurance Company submits that the Tribunal after taking into consideration the evidence of Doctor who has been examined as PW.4 as he is not a treated Doctor and he has not specifically stated on what basis the disability has been assessed has given disability certificate. In the absence of such material the Tribunal after taking into consideration the disability at the rate of 8% and 7% respectively and the notional income at the rate of Rs.4,000/- has awarded just compensation. She would contend that the compensation awarded on the other heads is par with the existing rates during the said period. She would further contend that the claimants have been awarded just compensation and the order of the Tribunal requires to be confirmed. On these grounds, she prayed for dismissal of the appeals.

11. The accident in question is not in dispute, so also the involvement of the offending vehicle insured with the respondent-Insurance Company.

12. As could be seen from the Judgment and award of the Tribunal, the Tribunal after taking into consideration the injuries sustained by the claimant in M.V.C. No.803/2008 and as the Doctor who has been examined as PW.4 is not a treated Doctor, though he assessed the disability to the extent of 30% to 45% the Tribunal has taken the disability of the claimants/appellant to the extent of 8% and by taking the notional income of Rs.4,000/- has awarded the compensation of Rs.69,120/- towards loss of future earning.

13. It is the case of the appellants/claimants that he was working as a driver and he was driving the lorry and getting Rs.9,000/- per month and he has also produced xerox copy of the driving license. Under the said circumstances, the assessment of the disability as well as the notional income taken by the Tribunal appears to be on the lower side. When the claimant/appellant is working as lorry driver and has sustained fracture of left leg, fracture of ribs and other injuries, then under such circumstances the Tribunal ought to have taken the disability of the claimants/appellants at the rate of 12% to the whole body and by taking into consideration the driving license as the claimant/appellant was driving heavy goods vehicle/lorry then under such circumstances the income should have been taken at the rate of Rs.5,500/- per month. If that amount is taken and the disability is taken at 12% after applying the multiplier of 18 as the age of the claimant/appellant was about 22 years at the time of alleged incident, then under such circumstances the claimant/appellant is entitled to an amount of

Rs.1,42,560/- towards loss of future earnings. (Rs.5,500/- X 12 X 12% X 18 = Rs.1,42,560/-)

14. Even as could be seen from the award the compensation awarded on the other heads also appears to be on the lower side. In that light, the reassessed compensation will be Rs.40,000/- towards pain & suffering, Rs.10,000/- towards Medical expenses and incidental conveyance charges, Rs.50,000/- towards loss of future unhappiness and discomfort and Rs.16,500/- towards the loss of earning during laid up period. The records also indicates that an implant has been inserted in the leg and in order to remove the same, he requires some future medical expenses. In that regard, an amount of Rs.15,000/- has been also awarded. In all, the appellant/claimant in MVC No.803/2008 is entitled to a total compensation of Rs.2,74,060/-. Since already the Tribunal has awarded an amount of Rs.1,10,120/-, after deducting the same, the appellant/claimant is entitled to additional compensation of Rs.1,63,940/- with interest at the rate of 6% per annum.

15. As could be seen from the Judgment and award of the Tribunal in M.V.C. No.805/2008 the claimant/appellant has sustained fracture of patella with asteroarthritic changes of knee joint and there is limitation of flexion of right knee joint to the extent of 90%. After considering all the aspects the Doctor PW.4 has assessed the disability to the extent of 25% to 30% and 20% to the whole body, but the Tribunal after taking into consideration the fact that the P.W.4 is not a treated Doctor, had assessed the disability to the extent of 7% and awarded the compensation of Rs.57,120/- by taking the notional income of Rs.4,000/- per month. But the claimant/appellant has produced Ex.P.12, pay slip issued by Reliance communication. The Reliance communication is considered to be a prestigious company and issued Ex.P.12 whereunder the claimant was drawing gross pay of Rs.6,000/- per month it ought to have been considered and could have been taken for the purpose of assessing loss of future income. If the income is taken at Rs.6,000/-, if the disability is taken at 10% then under such circumstances the claimant/appellant is entitled to an amount of Rs.1,22,400/- (6,000x12x10%x17) towards loss of future earnings. In that light, the reassessed compensation will be Rs.40,000/- towards pain & suffering, Rs.50,000/- towards loss of future unhappiness and discomfort and Rs.18,000/- towards the loss of earning during laid up period. A sum of Rs.6,000/- awarded by the Tribunal towards medical expenses and incidental and conveyance charges remains undisturbed. In all, the claimant/appellant is entitled to a total compensation of Rs.2,36,400/-. Since already the Tribunal has awarded compensation of Rs.98,120/-. After deducting the same, the claimant/appellant in M.V.C No.805/2008 is entitled to an additional compensation of Rs.1,38,280/- with interest at the rate of 6% per annum.

16. Accordingly both the appeals are allowed in part. The Judgement and award passed by the Tribunal in M.V.C Nos.803/2008 and 805/2008 are modified as indicated above.

17. The respondent/Insurance company is directed to deposit the compensation awarded by the Tribunal and additional compensation awarded by this Court within six weeks from the date of receipt of copy of this Judgment and the same shall be disbursed to the claimants as per the award of the Tribunal. Registry is directed to draw the award accordingly.