

(2015) 06 KAR CK 0064

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 200775/2014 (MV)

Suresh

APPELLANT

Vs

Global Logistics and Others

RESPONDENT

Date of Decision : 25-06-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 173(1)

Citation : (2015) 06 KAR CK 0064

Hon'ble Judges : C.R. Kumaraswamy, J.

Bench : Single Bench

Advocate : Sanganagouda V. Biradar, Advocate, for the Appellant

Final Decision : Partly Allowed

Judgement

C.R. Kumaraswamy, J.—This Miscellaneous First Appeal is filed under Section 173(1) of the MV Act against the judgment and award dated 18.02.2014 passed in MVC No. 1458/2011 on the file of the Court of Principal Senior Civil Judge and Motor Accident Claims Tribunal No. V at Bijapur, partly allowing the petition and seeking enhancement of compensation.

2. With the consent of the learned counsel for the appellant as well as the learned counsel for respondent No. 2, this matter was heard on merits. The materials placed before this Court is sufficient to dispose of this case.

3. The case of the claimant in the Claims Tribunal is as under:

That on 20.04.2011 at about 11.00 AM near Pasare Vasti, Tulajapur Road, Solapur, the claimant was riding motor cycle bearing Reg. No. MH-20/V-9654. At that time a truck bearing Reg. No. HR-55/K-6889 came and hit against the motor cyclist as a result of which he sustained injuries. Injured was aged about 40 years. He was earning Rs. 7,500/- per month from private service.

4. In the Claims Tribunal the respondent No. 1 was placed ex-parte. Respondent No. 2 filed objection statement.

5. The Claims Tribunal relied on the evidence of PW-1 and PW-2 and also Ex. P-1 FIR, Ex. P-2 complaint, Ex. P-3 spot panchanama, Ex. P6 charge sheet copy and came to a conclusion that the driver of the truck drove the same in a rash and negligent manner and caused this accident.

6. The Claims Tribunal has awarded compensation as under:

7. Feeling aggrieved by the same, the claimant has preferred this appeal.

8. Learned counsel for the appellant submits that the appellant injured has sustained compound fracture of lower end of right humerus, compound fracture of radius and ulna, crush injury to right foot and subtrochantnc of right femur. The Tribunal has not considered the evidence of the doctor in the right prospective. The income assessed by the Tribunal though injured was working as an Assembly Operator is on the lower side. Therefore, he seeks for enhancement of compensation.

9. Learned counsel for the respondent No. 2 supports the impugned judgment and award. He further submits that the injured has not produced any document to show that he was an Assembly Operator.

10. The translated version of the wound certificate reveals that the injured has sustained compound fracture of lower end right humerus with compound fracture radius + ulna right side sweep injury. Crush injury right foot. Subtrochantnc fracture of right femur. He was operated for the same injuries. He was discharged on 18.05.2011.

11. PW-2 Dr. Shantappa has deposed that injured has got difficulty in overhead lifting objects, placing and removing from overhead is difficult with 9%. Difficulty in grasp and hook and pinch is weak with 2% each. The muscle power around right elbow is reduced by 20% with 6% disability present. X-ray No. 1033 dated 06.02.2013 reveals that right arm with elbow and forearm shows united right humerus fracture with plate and screws (6) and I.M. nailing in right ulna present Fibrous union of right elbow joint. United femur right proximal fracture. I.M. interlokcing nail present, haizy knee joint with narrow space. The doctor is of the opinion that the permanent disability is about 30 to 35% related to right upper limb and 25 to 30% to the right lower limb. He referred to the guidelines for various disabilities and procedure for certification by office of the commissioner of disabilities.

12. It is the contention of the learned counsel for the appellant that the amount awarded under the head of pain and suffering is on the lower side since claimant has sustained three fractures and one crush injury. Therefore, in my opinion the compensation awarded under the head of pain and suffering has to be increased. Accordingly, it is increased to Rs. 70,000/-.

13. The Claims Tribunal has awarded a compensation of Rs. 1,00,800/- under the head of medical expenses. In my opinion it is just and reasonable.

14. The claimant was hospitalized for about more than 30 days. During hospitalization he required an attendant, good food besides he might have spent some amount towards conveyance charges. Therefore, it is just and reasonable to award a sum of Rs. 20,000/- under the head of attendant, conveyance and nourishment expenses.

15. The injured was working as an Assembly Operator. The date of accident is 20.04.2011. In this case the injured has not produced any document to show that he was working as an Assembly Operator. Therefore, considering the facts and circumstances of the case, the income of the injured can be assessed at Rs. 6,000/- per month. The injured was hospitalized for more than 30 days. Even after discharge from the hospital he has to take rest. Therefore, it is just and reasonable to award a sum of Rs. 24,000/- for the loss of income during laid up period.

16. The doctor has stated that injured has got permanent disability of about 30 to 35% related to right upper limb and 25 to 30% to right lower limb. The doctor has omitted to state the disability to the whole body. The record discloses that injured has suffered a crush injury to his right foot. Taking into consideration of his occupation and nature of injuries sustained by the claimant the functional disability of the claimant can be assessed at 22%. As stated earlier income is assessed at Rs. 6,000/- per month. The loss of income proportionate to the disability of 22% would be Rs. 1,320/- per month. So due to the reduced capacity of work the injured has lost income of Rs. $1,320 \times 12 = \text{Rs. } 15,840$ x 15 = Rs. 2,37,600/-.

17. The Claims Tribunal has awarded a compensation of Rs. 25,000/- under the head of future medical expenses. The compensation awarded under this head is reasonable.

18. The claimant is entitled for compensation on re-appreciation of evidence and materials placed before this Court as under:

The enhanced compensation amount shall bear interest at 7% per annum.

19. In view of the above discussion, I pass the following:

(i) This appeal is allowed in part.

(ii) The compensation is enhanced from Rs. 4,37,800/- as awarded by the Tribunal to Rs. 5,07,400/-.

(iii) The enhanced compensation amount will bear interest at 7% per annum from the date of petition till the date of payment.

(iv) Rest of the judgment and award is accepted.