(2015) 02 KAR CK 0063

In the Karnataka High Court

Case No : M.F.A. No. 10438 of 2011 (MV)

Susheela APPELLANT

Vs

The Divisional Manager, The Oriental Insurance Co. Ltd. and Others RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:

Citation : (2015) 02 KAR CK 0063

Hon'ble Judges : B. Sreenivas Gowda, J.

Bench : Single Bench

Advocate : I.M. Devaiah and Nanaiah N.S., Advocates, for the Appellant; K.N. Srinivasa, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

B. Sreenivas Gowda, J.—This appeal is by the claimant seeking enhancement of compensation awarded by the Tribunal.

2. Heard, the appeal is admitted and with the consent of learned counsel appearing for parties, it is taken up for final disposal.

3. For the sake of convenience, the parties are referred to as they are referred to in the claim petition before the Tribunal.

4. As there is no dispute regarding certain injuries sustained by the claimant in a road traffic accident occurred on 18.02.2010 due to rash and negligent riding of a motor cycle bearing registration No. KA-01-EC-2928 by its rider, the only point that arises for my consideration in the appeal is:

"whether quantum of compensation awarded by the Tribunal is just and reasonable or does it call for enhancement?"

5. After hearing the learned counsel appearing for the parties and perusing the judgment and award of the Tribunal, I am of the view that the compensation awarded by the Tribunal is not just and reasonable, it is on the lower side and

hence it is required to be enhanced.

6. As per Ex. P-6 wound certificate, the claimant has sustained following injuries;

"(1) Interotrochateric fracture left femur,

(2) Undisplaced fracture lateral malleolus right ankle"

Injuries sustained and treatment taken by the claimant also evident from Ex. P-7 Discharge Summary, Ex. P-11 Inpatient record and corroborated by oral evidence of the claimant and doctor who treated the claimant and examined as PW-1 and PW-2 respectively. Considering the nature of injuries, a sum of Rs. 60,000/- is awarded towards ''pain and suffering'' as against Rs. 50,000/- awarded by the Tribunal.

7. The claimant has produced medical bills for Rs. 81,786/- as per Ex. P-8 and they are not disputed. If that is so, the Tribunal is not justified in awarding Rs. 65,000/- towards medical expenses. Therefore, a sum of Rs. 82,000/- is awarded towards ''medical expenses'', as per medical bills. He was treated as an inpatient for six days at Columbia Hosmat Hospital. Considering the duration of treatment as inpatient and follow up treatment. Rs. 10,000/- awarded by the Tribunal towards incidental expenses such as conveyance, nourishment and attendant charges is just and proper and there is no scope for enhancement.

8. In the absence of proof of income, considering the age of the claimant as 52 years, year of accident as 2010 and her avocation as daily wager, her income is assessed at Rs. 5,000/- per month as claimed by her. The nature of injuries suggests that she must have been under rest for a period of five months. Therefore, a sum of Rs. 25,000/- (Rs. 5,000 x 5) is awarded towards ''Loss of income during laid up period''.

9. Considering the nature of injuries sustained, disability stated by the doctor and an amount of discomfort and unhappiness the claimant has to undergo in her future life, a sum of Rs. 30,000/- is awarded towards loss of amenities'' as against Rs. 10,000/- awarded by the Tribunal.

10. The claimant is aged about 52 years at the time of accident, and the multiplier applicable to her age group is 11. Her income is assessed at Rs. 5,000/- per month. The doctor has stated that she has suffered disability of 10% to the whole body. Therefore, the loss of future income'' works out to Rs. 66,000/- (5,000 x 11 x 12 x 10/100) and it is awarded as against Rs. 40,000/- awarded by the Tribunal. A sum of Rs. 10,000/- awarded by the Tribunal towards ''future medical expenses''. The same is just and proper and does not call for interference.

11. Thus, the claimant is entitled for the following compensation:--

12. Accordingly, the appeal is allowed-in-part. The judgment and award passed by the Tribunal is modified to the extent stated herein above. The claimant is entitled for an additional compensation of Rs. 1,00,000/- with interest at 6% p.a.

from the date of claim petition till the date of realisation.

13. The Insurance Company is directed to deposit the additional compensation amount excluding interest for the delayed period of 206 days within two months from the date of receipt of a copy of this judgment. From which, 70% of the amount with proportionate interest is ordered to be invested in fixed deposit in the name of claimant in any Nationalised Bank/Scheduled Bank/Post Office for a period of three years. Remaining amount with proportionate interest is ordered to be released in favour of the claimant.

The Tribunal while releasing 30% of the amount is also directed to issue FD slip to the claimant so as to enable him to withdraw FD amount on it''s maturity with approaching the Tribunal once again the Bank in which the amount is kept in FD is also directed to release FD amount on maturity without insisting for an order from the Tribunal.

No order as to costs.