

(2011) 03 KAR CK 0173
In the Karnataka High Court
Case No : M.F.A. No. 3642 of 2009

T. Mallesh

APPELLANT

Vs

National Insurance Company Ltd. and Sri. Harishkumar V.
Rao

RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

Citation : (2011) 03 KAR CK 0173

Hon'ble Judges : H.S. Kempanna, J

Bench : Single Bench

Advocate : Vikas I. Dhundasi, for H.B. Somapur, for the Appellant; M. Narayanappa, for R-1, for the Respondent

Judgement

H.S. Kempanna, J.—Though this matter is listed for admission, with consent of learned Counsels for respective parties as records have also been received, it is taken up for final disposal.

2. This is claimant's appeal seeking for enhancement of compensation in respect of the injuries which he has sustained in a motor accident.

3. The Appellant-claimant has sustained fractures of lower end of right radius and nasal bone. This is fortified from the evidence of P.W. 2, the medical officer. The Tribunal taking into account, the nature of injuries, treatment that he has taken, amount that he has spent, the income and avocation of the claimant and the percentage of disability that he has suffered, has awarded total compensation of Rs. 1,46,800/- with interest at 6% p.a. from the date of the petition till realisation. Being aggrieved of the quantum of compensation, the Appellant is in appeal before this Court.

4. The learned Counsel for the Appellant submitted that the tribunal has not awarded just and reasonable compensation towards loss of amenities and it has also not awarded any compensation towards conveyance, nourishing food and attendant charges. He further submitted that the Tribunal without appreciating

the evidence of the claimant has fixed his income arbitrarily at Rs. 3,000/- p.m. though the claimant claimed that he was aged 35 years, a coolie by profession earning more than Rs. 6,000/- p.m. Hence a case for enhancement is made out.

5. Per contra, the learned Counsel appearing for the contesting insurer supported the impugned judgment and award of the Tribunal.

6. The Appellant claimant having sustained the injury in the impugned accident, the amount that he has spent, the treatment that he has taken are not in dispute. The Tribunal taking into account the evidence of the claimant the amount that he has spent for treatment, the period for which he was in the hospital and the percentage of disability suffered by him, has awarded just compensation under all other heads except towards loss of income during laid-up period and loss of amenities. Further it has also not awarded any compensation towards conveyance, nourishing food and attendant charges. The claimant is a coolie aged about 35 years. The accident has taken place on 7.2.2007. The Tribunal has fixed his income at Rs. 3,000/- p.m. Having regard to the age, the date of accident, it can be safely held that the claimant would earn Rs. 4,000/- p.m. and accordingly, his income per month is determined at Rs. 4,000/-. Having regard to the nature of fractures that he has sustained, he could not have attended to his work atleast for a period of three months. Having determined his income at Rs. 4,000/- p.m., he is awarded a sum of Rs. 12,000/- for three months to-wards loss of income during laid-up-period (Rs. 4,000 x 3 = Rs. 12,000/-).

Further, the Tribunal has not awarded just and reasonable compensation towards loss of amenities. It has awarded only Rs. 10,000/- under the said head. Having regard to the nature of fractures that he has suffered, the period for which he was in the hospital as he has to undergo the discomforts in future, in the facts and circumstances, he should be awarded further sum of Rs. 5,000/- in addition to Rs. 10,000/- towards loss of amenities.

The claimant has claimed that he was in the hospital for 6 days and after his discharge, having regard to the nature of injuries, he must, have taken some follow-up treatment. For this he must have spent amount. Therefore, the Tribunal without considering this aspect has not awarded any compensation. Therefore in the circumstance, the claimant should be awarded a sum of Rs. 5,000/- towards conveyance, nourishing food and attendant charges.

Further, the claimant has suffered fracture of right radius and nasal bone. The Tribunal has awarded a sum of Rs. 25,000/- towards injury, pain and suffering. In view of the fractures that he has suffered, he deserves to be awarded a further sum of Rs. 5,000/- towards injury, pain and suffering in addition to Rs. 25,000/- awarded by the Tribunal. Thus, the claimant in all would be entitled to a total compensation of Rs. 1,67,800/- the break-up of which is as follows:

1. Towards pain and sufferings Rs. 30,000/-

2. Towards Medical expenses Rs. 5,000/-
3. Towards conveyance, nourishing food and attendant charges Rs. 5,000/-
- 4 Towards loss of income during laid up period Rs. 12,000/-
5. Towards loss of amenities, discomforts and unhappiness Rs. 15,000/-
6. Towards Loss of future income Rs. 1,00,800/-
- Total Rs. 1,67,800/-

Thus, the claimant is entitled to total compensation of Rs. 1,67,800/- as against Rs. 1,46,800/- with interest at 6% p.a. from the date of the petition till realisation. The enhanced compensation comes to Rs. 21,000/-. Accordingly, the appeal has to succeed in part.

7. In the result, for the foregoing reasons, I proceed to pass the following:

ORDER

- i) The appeal is allowed in part;
- ii) The impugned judgment and award of the Tribunal is modified and the Appellant is awarded a total compensation of Rs. 1,67,800/- with interest at 6% p.a. from the date of the petition till realisation as against Rs. 1,46,800/- with interest at 6% p.a. from the date of the petition till realisation awarded by the Tribunal. The enhanced compensation comes to Rs. 21,000/- which carries interest at 6% p.a. from the date of the petition till realisation.
- iii) The first Respondent-insurer shall deposit the entire enhanced compensation with interest before the Tribunal within four weeks from the date of receipt of the copy of the judgment and award:
- iv) On deposit the entire compensation with interest is ordered to be released in favour of the Appellant/claimant.

Office to draw the award accordingly.