

(2017) 07 KAR CK 0044
In the Karnataka High Court
Case No : 200917 of 2017 (MV)

The Branch Manager, National Insurance Company Ltd.

APPELLANT

Vs

Anil Kumar S/o Rangappa, & Anr.

RESPONDENT

Date of Decision : 10-07-2017

Acts Referred:

Citation : (2017) 07 KAR CK 0044

Hon'ble Judges : B. A. Patil

Bench : SINGLE BENCH

Advocate : Shivananad Patil, Basavaraj Math

Judgement

1. The present appeal is by the Insurance Company assailing from the Judgment and award passed by the learned M.A.C.T. Raichur in M.V.C. No.212/2016 dated: 06-02-2017.

Though this appeal is posted for orders with the consent of the learned counsel for the parties heard on merit and disposed of by this order.

2. The brief facts of the case of the petitioner are that, on 19-07-2015 claimant was returning to his home at Yermas after attending his work at Raichur over his Bajaj Pulsar Motor cycle bearing Reg. No.KA- 36-EC/3891 at about 8.30 p.m., when he was coming. At that time, a lorry bearing Reg. No.AP-16/TX-7419 came in rash and negligent manner with high speed in a zig zag manner and dashed to the Bajaj Pulsar motor cycle on which the petitioner was coming. As a result of the same he fell down and suffered crush injuries over the lower end of right side humerus, multiple injuries and fracture over suterphological right wrist joint/II MC, right hand and grievous injuries over other vital parts of the body. Immediately he was hospitalized in M.K Bhandari hospital, Raichur and thereafter he was taken treatment at Sparsha hospital, Bangalore. For having sustained injuries, he filed claim petition for claiming compensation.

3. After issuance of the notice, respondent No.1 though notice was served, remained absent and was placed ex-parte. Respondent No.2 appeared has

appeared through its counsel and has filed objections by denying the contents of the petition. He would further contend that, the petitioner has filed a false criminal case against the said lorry. He would further contend that the petitioner suddenly came to the right side and approached the lorry and sustained simple injuries due to his own negligence. He would also further contend that the respondent has to furnish the particulars of police and the Driving License. He would also further contend that, the respondent No.2 is not liable to pay any compensation as the respondent No.1 has not handed over the possession of the vehicle to the driver who has got valid documents and he has not complied with the provisions of the M.V Act. On these grounds he prays for dismissal of the petition.

4. On the basis of the above pleadings, the Tribunal has framed the following issues:

ISSUES

1) Whether the claimant proves that on 19-07- 2015 at about 08.30 p.m., when he was proceeding in his Bajaj Pulsar motor cycle near Yermarus bus stop on Raichur - Hyderabad road, Yermarus, Raichur driver of respondent No.1 drove the lorry bearing No.AP-16/TX-7419 in great speed and in rash and negligent manner and dashed to the claimant, resulting in grievous injuries to him?

2) What compensation, if any, the claimant is entitled to and if so, from whom?

3) What order or award?

5. In order to prove the case of the petitioner, the petitioner got examined himself as PW.1, and got examined Medical Officer as PW.2 and got marked documents Ex.P.1 to Ex.P.106. On behalf of respondent No.2 R.W.1 was examined and got marked Ex.R.1 to Ex.R.3.

6. After closure of the evidence, the Tribunal has answered Issue No.1 in the affirmative and Issue No.2 partly in the affirmative and awarded compensation of Rs.6,75,720/- with interest at the rate of 6% per annum.

7. Being aggrieved by the said Judgment, respondent No.2 Insurance Company is before this Court in this appeal. The main grounds urged by the learned counsel appearing for the appellant/Insurance Company are that, the compensation awarded by the Tribunal on various heads is on the higher side. He would also further contend that, though there is no proper and effective documents, the Tribunal has assessed the income on the higher side and awarded compensation. On these grounds he prays for allowing the appeal by setting the aside the impugned order.

8. The learned counsel for the appellant vehemently argued and contend that, the injuries sustained by the claimant / petitioner have been considered and P.W.2 Doctor has stated that, he has sustained 20% of the disability to the whole body. The Tribunal only by taking into consideration the permanent disability to

the extent of 10% has awarded the compensation of Rs.6,75,720/-. He would further contend that, the claimant /petitioner has sustained crush injuries and there is a mal-union and by taking into consideration the said aspect the Tribunal has awarded just compensation and as such there is no need to interfere with the order of the trial Court. He would also further contend that, the compensation awarded on loss of future earning is also on the lower side. He would also further contend that, taking into consideration the injury by itself the compensation awarded on other heads equalize with the compensation and in that ground the income is considered to be just and proper. He further contend that though claimant- Respondent has not filed appeal, he can urge for enhancement of the compensation. On these grounds he prays for enhancement of the compensation.

9. The accident in question is not in disput, so also the involvement of the offending vehicle insured with the respondent No.2 Insurance-Company.

10. As could be seen from the judgment and award of the Tribunal, the Tribunal by taking into consideration the evidence of P.W.1 and P.W.2 , after considering the disability certificate at Ex.P.7 and the injuries, has awarded compensation on various heads on following grounds:

1 For pain and suffering Rs. 1,50,000/-

2 For medical expenses Rs. 1,60,120/-

3 For nourishment, attendant expenses, nutrition food and diet & transportation Rs. 1,50,000/-

4 For loss of earnings during the period of treatment for a period of 6 months at the rate of Rs.6,000/- per month. Rs. 36,000/-

5 For loss of future earning due to the permanent disability to the extent of 10% for the whole body. Rs. 1,29,600/-

6 For loss of amenities & inconvenience Rs. 50,000/-

Total Rs. 6,75,720/-

11. It is the specific contention of the learned counsel appearing for the appellant/Insurance Company that, the Tribunal while awarding the compensation has excessively awarded an amount of Rs.1,50,000/- towards pain and suffering and Rs.1,50,000/- towards nourishment, attendant expenses, nutrition food, diet and transportation. He would also further contend that, the amount awarded for the loss of earning during the treatment laid up period and on the loss of amenities is also on the higher side.

12. As could be seen from the records, the accident in question has taken place on 19-07-2015 . During the said period in the absence of any document about the income, the notional income which will be taken into consideration is in between Rs.7,500/- to Rs.8,000/-, which will be yardstick taken even in Lok-

Adalat settlements. But the Tribunal has taken the income of the injured at the rate of Rs.6,000/- per month, it appears to be on the lower side. Though P.W.2 has stated that the disability which has been sustained by the claimant/respondent is 20% to the whole body, but the Tribunal has taken 10% and as the Doctor who has given the disability certificate is not a treated Doctor, under such circumstances and by considering the crush injury and other injuries, the disability taken by the Tribunal appears to be just and proper. If the income of the injured if it is taken at Rs.7,500/- per month and the disability is taken at 10%, the loss of future income for permanent disability will be Rs.1,62,000/-. By taking into consideration the crush injury ten days hospitalization, he might have sustained and some attendant might have attended on him and he will be losing his income during laid up period. In that light the reassessed compensation, is as under:

1 Towards pain and suffering Rs. 90,000/-

2 Towards medical expenses Rs. 1,60,120/-

3 Towards nourishment and attendant expenses etcRs. 50,000/-

4 Towards loss of earning during the period of treatment or the for the laid up period for a period of three monthsRs. 22,500/-

5 For loss of future earning due to the permanent disability to the extent of 10% for the whole body. Rs. 1,62,000/-

6 Towards loss of amenities Rs. 50,000/-

Total Rs. 5,34,620/-

13. In all the claimant/appellant is entitled to compensation of Rs.5,34,620/- with interest at 6% per annum.

14. By taking into consideration the above aspects, the compensation awarded by the Tribunal appears to be little bit on the higher side. In the light of the above discussion and reassessing of the facts and compensation claimant/respondent is entitled to a compensation as stated above.

Accordingly, the appeal is allowed in part. The judgment and award passed by the Tribunal in MVC No.212/2016 on the file of MACT at Raichur, is modified as indicated above.

15. The respondent-insurance company is directed to deposit the remaining compensation amount before the Tribunal within six weeks from the date of receipt of a copy of this judgment and the same shall be distributed to the claimant as per the award of the Tribunal.

16. The Registry is directed to draw the award accordingly.

17. In view of the above order I.A.No.2/2017 for withdrawal of the amount which has been filed by the claimant/respondent does not survive for consideration as

such it is dismissed and the Registry is directed to transmit the amount if any in deposit before this Court, to the concerned Tribunal forthwith.