

(2011) 09 KAR CK 0103
In the Karnataka High Court
Case No : M.F.A. No. 8067 of 2009 (MV)

The Manager, Oriental Insurance Co. Ltd.

APPELLANT

Vs

Sri. Gajendra Rao

RESPONDENT

Date of Decision : 16-09-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2011) 09 KAR CK 0103

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : S.V. Hegde Mulkhand, for the Appellant; T. Nataraju for Shri. V.N. Madhava Reddy, Advocate for R1; R2 served, for the Respondent

Final Decision : Allowed

Judgement

N.K. Patil

1. Though this matter is posted for admission, with the consent of the learned counsel for the parties, the same is taken up for final disposal.

2. This appeal by the Insurer is directed against the judgment and award dated 3rd August 2009, passed in M.V.C.No.67/2009 (Old No. 1449/2007), by the Civil Judge(Sr.Dn) and Motor Accident Claims Tribunal at. JMFC at Pandavapura, (for short. Tribunal"), awarding compensation of Rs. . 2,55,600/- in favour of the first respondent/claimant, on the ground that the quantum of compensation awarded by Tribunal is excessive, exorbitant and on the higher side and needs to be reduced.

3. The facts in brief are that, the first respondent/injured claimant had filed the claim petition u/s 166 of the Motor Vehicles Act, contending that at about 12:30 P.M. on 06-07-2007, he met with an accident, when he was going on his Hero Puch Motor cycle bearing No.KA-09/U-7490, in front of Raghavendra Farm towards Mysore, on account of rash and negligent driving by the driver of Hero Honda Motor cycle bearing No.KA-09/Y-5338. On account of the accident, he

sustained abrasion over right knee lower border measuring 5x3 cms., abrasion over right knee upper border measuring 2x1 cms. and swelling and tenderness over right knee with painful restricted movements and fracture of patella. Due to the injuries sustained, he took treatment in K.R. Hospital and also at Aravinda Poly Clinic at Mysore as in patient from II-07-2007 to 24-07-2007 and also underwent a surgery.

4. On account of the injuries sustained in the accident, the claimant filed the claim petition before the Tribunal, seeking compensation of a sum of Rs. .10.00 lakhs against the owner and the insurer of the offending vehicle. The said claim petition had come up for consideration before the Tribunal on 3rd August 2009. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of Rs. .2,55,600/- under different heads, with 6% interest per annum, from the date of petition till the date of deposit and directed the Insurer to satisfy the award. Being aggrieved by the quantum of compensation awarded by Tribunal, the Insurer is in appeal before this Court, seeking to modify the impugned judgment and award passed by Tribunal by reducing the compensation.

5. I have gone through the grounds urged in the memorandum of appeal and the impugned judgment and award passed by Tribunal and heard the learned counsel appearing for the appellant/insurer and the first respondent/claimant.

6. Learned counsel appearing for appellant Insurer submits that the Tribunal seriously erred in awarding exorbitant compensation of Rs. .70,000/- towards injury, pain and sufferings and Rs. .1,29,600/- towards loss of future income and hence, the same is liable to be reduced considerably and the impugned judgment and award is liable to be modified.

7. As against this, learned counsel appearing for first respondent claimant submits that the compensation awarded by Tribunal is just and reasonable and that the same is made after due assessment of the oral and documentary evidence available on file and hence, it does not call for interference.

8. After perusal of the impugned judgment and award passed by Tribunal and after hearing the learned counsel for both parties, I am of the view that, the Tribunal, after assessing the oral and documentary evidence available on file, has rightly awarded compensation of a sum of Rs. .1,29,600/- towards loss of future income, Rs. . 10,000/- towards medical expenses, Rs. . 12,500/- towards conveyance, nourishing food and attendant charges, and Rs. .13,500/- towards loss of income during treatment period. The Tribunal, after proper assessment of the oral and documentary evidence, has rightly assessed the monthly income of the claimant at Rs. 4,500/- per month, having regard to the age, avocation and the year of accident. It has also adopted proper multiplier and rightly assessed the whole body disability. Therefore, interference in the same is uncalled for.

9. However, so far as the compensation awarded by Tribunal towards injury pain

and sufferings and loss of amenities is concerned, I am of the considered view that the Tribunal has seriously erred in awarding higher compensation towards injury pain and sufferings and lesser compensation towards loss of amenities, discomfort and unhappiness. Admittedly, the doctor who has treated the claimant has assessed disability at 30%. Further, the claimant has also sustained fracture of patella and even if it is cured, it is opined that, since he is doing agricultural work, which involves physical movements, he may find it difficult in future to continue the same work. Further, claimant being aged only about 32 years as on the date of accident, has to bear, tolerate and endure this disability for the rest of his life. Therefore, I am of the view that, ends of justice would be met, if a sum of Rs. .20,000/- is awarded towards loss of amenities, discomfort and unhappiness as against Rs. .10,000/- awarded by Tribunal and award a sum of Rs. .40,000/- as against Rs. .70,000/- awarded by Tribunal towards injury, pain and sufferings. Thus, there would be reduction of total compensation of a sum of Rs. .20,000/-.

10. For the foregoing reasons, the appeal filed by Insurer is allowed in part.

The impugned judgment and award dated 3rd August 2009, passed in M.V.C.No.67/2009(Old No. 1449/2007), by the Civil Judge(Sr.Dn) and Motor Accident Claims Tribunal at JMFC at Pandavapura, is hereby modified, reducing the compensation by a sum of Rs. .20,000/-.

The appellant Insurer is directed to deposit the remaining compensation with interest as ordered by Tribunal, within a period of three weeks from the date of receipt of a copy of this judgment.

The apportionment of compensation ordered by the Tribunal gets proportionately reduced to the extent of reduction of compensation made by this Court.

Office is directed to transmit the amount, in deposit to the jurisdictional Tribunal, forthwith.

Office to draw the award, accordingly.