

(2012) 08 KAR CK 0254

In the Karnataka High Court

Case No : M.F.A. No. 793 and 1476 OF 2009 (MV)

The Managing Director, KSRTC, K.H.Road, Shanthinagar,
Bangalore-27

APPELLANT

Vs

K.H. Hanumanthaiah @ Puttaswamy
 K.H.
Hanumanthaiah @ Puttaswamy Vs The Managing Director,
KSRTC, K.H. Road, Shanthinagar, Bangalore-27

RESPONDENT

Date of Decision : 14-08-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 08 KAR CK 0254

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

Bench : Single Bench

Advocate : P.M. Nawaz in M.F.A. No. 793 of 2009 MV and Sri Girimallaiah in M.F.A. No. 1476 of 2009 MV, for the Appellant; Girimallaiah, Advocate in M.F.A. No. 793 of 2009 (MV) and Sri P.M. Nawaz, Advocate in M.F.A. No. 1476 of 2009 (MV), for the Respondent

Final Decision : Allowed

Judgement

N.K. Patil

1. These two appeals by the Corporation and the claimant are directed against the same impugned judgment and award dated 04/08/2008 passed in MVC No. 7011/2006 by the XIX Additional Small Cause Judge and Motor Accident Claims Tribunal, Bangalore (SCCH-17), (for short Tribunal"). The Tribunal by its judgment and award, has awarded a sum of Rs. 1,85,280/-, with interest at 6% p.a. on Rs. 1,79,280/- from the date of petition till its realisation, fastening the liability on the Corporation, on account of the injuries sustained by the claimant in the road traffic accident.

2. In brief, the facts of the case are:

That on 6.10.2006 at about 7.45 p.m. on B.M. Road, Bidadi Town while the claimant was going by the side of the road in front of Narasimhaiah's house, at

that time, KSRTC bus bearing No. KA. 09.F.3503 came in a rash and negligent manner and dashed against him, due to which, he sustained fracture over left humerus and left ulna.

Immediately, he has been admitted to Sanjay Gandhi Hospital, where he has taken treatment as inpatient for 52 days on three different occasions, undergone surgery, implants were inserted and thereafter, bed rest and follow up treatment. It is the further case of the claimant that, he spent considerable amount towards medical and other incidental expenses. On account of the injuries sustained by claimant, he sustained permanent disability and Doctor has assessed the disability at 19.3% to the whole body. Therefore, claimant has filed a claim petition before the Tribunal u/s 166 of M.V. Act, claiming compensation against the Corporation. The said claim petition had come up for consideration before the Tribunal. The Tribunal, in turn, after appreciating the oral and documentary evidence and other material available on file, taking into consideration the nature of injuries sustained, the nature and duration of the treatment taken by the injured, has allowed the said claim petition in part, awarding a sum of Rs. 1,85,280/- with interest at 6% p.a., on Rs. 1,79,280/- from the date of petition till its realisation.

3. Being aggrieved by the said judgment and award, the Corporation has filed an appeal for reduction of compensation, on the ground that the compensation awarded by the Tribunal under all the heads is on higher side and the claimant has filed an appeal for enhancement of compensation, on the ground that the compensation awarded by the Tribunal is on lower side and it requires to be enhanced.

4. I have heard, Learned Counsel for Insurer and Learned Counsel for claimant and perused the impugned judgment and award passed by the Tribunal.

5. After hearing the Learned Counsel for both the parties and after careful perusal of the materials available on record, including the impugned judgment and award passed by the Tribunal, it emerges that, the occurrence of the accident and the resultant injuries sustained by the claimant are not in dispute. Further, it emerges that, the Tribunal, taking into consideration the nature of injuries sustained by the claimant, the nature and duration of the treatment taken by him, has awarded a sum of Rs. 30,000/- towards pain and sufferings, Rs. 33,000/- towards medical expenses as per the medical bills produced, Rs. 15,200/- towards conveyance, nourishing food and attendant charges, Rs. 6,000/- towards loss of future medical expenses and Rs. 82,080/- towards loss of future earnings, which is just and proper and therefore, interference by this Court is not called for.

6. However, the Tribunal has erred in not awarding reasonable compensation towards loss of income during the period of treatment and towards loss of amenities, discomforts and unhappiness and therefore, it needs to be modified. Admittedly, it is not in dispute that, on account of the injuries sustained by the

claimant, he has taken treatment in Sanjay Gandhi Hospital as inpatient for 52 days on different occasions, undergone surgery, implants were inserted and we presume that, on the advice of the doctor, he might have taken bed rest and follow up treatment for six months and during that period, he might have incurred financial loss as he could not have attended his work regularly. Due to the injuries sustained by the claimant, he has suffered permanent disability and the Doctor has assessed the disability to the extent of 19.3% to the whole body. Further, the Doctor has opined that, there is a restriction in the movements of left elbow which is permanent in nature and it would affect his happiness in future life. The Tribunal has taken the disability at 19% to the whole body and assessed the income of the claimant at Rs. 3,000/- per month and I accept the same. Therefore, taking all these facts into consideration, I award another sum of Rs. 9,000/- each towards loss of income during the period of treatment and towards loss of amenities, discomforts and unhappiness. In all, the claimant is entitled to the total compensation of Rs. 2,03,280/- instead of Rs. 1,85,280/-. There would be an enhancement of Rs. 18,000/- with interest at 6% p.a., from the date of petition till its realisation. For the foregoing reasons, the appeal filed by the Corporation is dismissed as devoid of merits and the appeal filed by the claimant is allowed in part.

The impugned judgment and award dated 04/08/2008 passed in MVC No. 7011/2006 by the XIX Additional Small Cause Judge and Motor Accident Claims Tribunal, Bangalore (SCCH-17), is hereby modified, awarding the compensation of Rs. 18,000/- with interest at 6% p.a., from the date of petition till its realization, in addition to the compensation awarded by the Tribunal.

The Corporation is directed to deposit the enhanced compensation of Rs. 18,000/- with interest at 6% p.a., from the date of the petition till its realization, within three weeks from the date of receipt of a copy of this judgment.

Immediately on such deposit by the Corporation, the entire enhanced compensation with interest shall be released in favour of the claimant.

Draw the award, accordingly.

The amount deposited by the Corporation shall be transmitted to the jurisdictional claims Tribunal immediately.