

(2013) 06 KAR CK 0083

In the Karnataka High Court

Case No : M.F.A. No's. 2171 of 2011 (MVC) and 6166 of 2010 (MVC)

The New India Assurance Co. Ltd.

APPELLANT

Vs

Sri. S.P. Vinay Kumar and M/S. S.R.S. Travels
 Vinay
Kumar S.P. Vs The New India Assurance Co. Ltd. and M/S.
S.R.S. Travels

RESPONDENT

Date of Decision : 27-06-2013

Acts Referred:

Citation : (2013) 06 KAR CK 0083

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : C.R. Ravishankar and Sri. Shripad V. Shastri, for the Appellant;
Shripad V. Shastri, Advocate for R1, Sri. K.T. Satheesh, Sri. L.C. Niranjana
Murthy, Advocates for R2 and Sri. C.R. Ravishankar, Advocate for R1, for the
Respondent

Final Decision : Partly Allowed

Judgement

N. Ananda, J.—The matters are listed for admission. The lower court records are received. With consent of learned Counsel for parties, they are taken up for final disposal. M.F.A. No. 6166/2010 is filed by the claimant for enhancement of compensation and M.F.A. No. 2171/2011 is filed by the Insurance Company for reduction of compensation.

2. The claimant had suffered compound fractures of both tibia and fibula and lacerated wound over the upper 1/3rd of the right lower limb. The claimant was under prolonged treatment. Even after complete treatment his condition has not improved. The claimant is before the Court. I have observed the present condition of claimant. His right lower limb below the knee is in a deformed state. The right knee joint is dislocated. The movements of right knee joint and the right ankle joint are restricted. On the upper 1/3rd of the right lower limb there is loss of cough muscles near the dorsum of knee joint. The lower 1/3rd of the right lower limb is swollen. The claimant walks with the help of a crutch. He

cannot squat or sit with crossed legs. The claimant is aged about 25 years.

3. The tribunal has awarded compensation of Rs. 5,15,000/- under the following heads:

4. The learned counsel for claimant would submit that tribunal has not awarded compensation towards loss of earning capacity. The compensation awarded by the tribunal towards pain and suffering and towards loss of amenities is on the lower side. The claimant requires substantial amount for future medical expenditure.

5. The learned counsel for Insurance Company would submit that claimant had received a sum of Rs. 1,88,760/- under the Mediclaim Policy, notwithstanding this the tribunal has awarded compensation of Rs. 2,00,000/- towards medical expenditure. Therefore, there is no scope for further enhancement of compensation and grant of compensation under other heads amounts to duplication of compensation.

6. As could be seen from medical bills the claimant has incurred expenditure over and above what has been reimbursed under the Mediclaim Policy. The tribunal has not made any provision for future medical expenditure. Even if tribunal has awarded excess compensation towards medical expenses and the same is offset by the compensation disallowed under the head future medical expenditure.

7. The claimant was aged about 21 years at the time of accident. He had suffered compound fracture of both bones of right leg. He had undergone multiple operations. Therefore, I award additional compensation of Rs. 30,000/- towards pain and suffering.

8. The claimant is rather handicapped. He cannot walk without the support of crutches. He cannot sit or squat. He has to depend upon others to walk from place to place. The claimant has to bear these sufferings during the rest of his life. Therefore, I award additional compensation of Rs. 60,000/- towards loss of amenities. Thus, the claimant is entitled to an additional compensation of Rs. 90,000/- and total compensation of Rs. 6,05,000/-.

9. In view of the above discussion, the appeal filed by the Insurance Company for reduction of compensation is dismissed and the appeal filed by the claimant is accepted.

10. In the result, I pass the following order:

The appeal M.F.A. No. 6166/10 filed by the claimant is accepted in part and the appeal M.F.A. No. 2171/11 filed by the Insurance Company is dismissed. The impugned award is modified, compensation of Rs. 5,15,000/- awarded by the tribunal is enhanced to Rs. 6,05,000/-. The rest of the impugned award relating to rate of interest, period of accrual of interest is confirmed.

11. The compensation enhanced in terms of this judgment shall be invested in the name of the claimant in Fixed Deposit in any nationalized bank initially for a

period of 5 years and later it shall be renewed. The claimant shall be authorised to withdraw the periodical interest.

12. The amount in deposit shall be transferred to the tribunal. Sri C R Ravishankar, learned counsel is permitted to file vakalath in M.F.A. No. 6166/10 within two weeks from today.