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**(2011) 03 KAR CK 0255**

**In the Karnataka High Court**

**Case No :** Miscellaneous First Appeal No. 7194 of 2010

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Balbheem Joshi and Chandrashekar

RESPONDENT

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**Date of Decision :** 11-03-2011

**Acts Referred:**

**Citation :** (2011) 03 KAR CK 0255

**Hon'ble Judges :** B. Sreenivase Gowda, J

**Bench :** Single Bench

**Advocate :** A. Ravishankar and H.C. Lokeshwari, for the Appellant; R. Chandrashekar, for C/R. 1, for the Respondent

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## **Judgement**

B. Sreenivase Gowda, J.—This appeal is by the Insurer of the offending vehicle challenging the quantum of compensation awarded by the Tribunal.

2. Heard the learned Counsel appearing for the parties. The appeal is admitted and with the consent of learned Counsel appearing for the parties, it is taken up for final disposal.

3. For the sake of convenience parties are referred to as they are referred to in the claim petition.

4. Brief facts of the case as pleaded in the claim petition are:

That on 08.01.2009 when the claimant was walking on the left side of Attur main road, near Shanimahathma temple, Yelahanka New town, Bangalore a car bearing registration No. KA-04-MC-S828 came in high speed in a rash and negligent manner and dashed against him, as a result he sustained grievous injuries. Hence, he filed a claim petition before MACT, Bangalore seeking compensation of Rs. 6,00,000/- and the Tribunal has awarded a compensation of Rs. 2,50,800/- with interest at 8% p.a.

5. As there is no dispute regarding occurrence of accident, negligence and liability of the insurer of the offending vehicle to pay compensation, the only

point that remains for my consideration in the appeal is:

Whether the quantum of compensation awarded by the Tribunal is just, and reasonable or does it call for reduction?

6. After hearing the learned Counsel for the parties and perusing the award of the Tribunal, I am of the view that the quantum of compensation awarded by the Tribunal is not just and reasonable, it is on the higher side and it is to be reduced, therefore I re-assess the same and award the following compensation:

7. As per wound certificate Ex. P 4 the claimant has sustained the following injuries:

- i) Two punctured wound on right leg lower 1/3rd 1 ? 1 cm. and 1 ? 1 cm;
- ii) Cut lacerated wound on occipital 2 ? 1 cm;
- iii) Cut lacerated wound 5 ? 1 cm. on posterior aspect of right ankle;
- iv) X-ray NO. 695 dt: 9.2.2009 shows fracture of both bones of right leg on lower 1/3rd

Injuries 2 and 3 are described as simple and injury No. 1 is grievous in nature. Injuries sustained by him are also evident from discharge card Ex. P 6, OPD cards Ex. P 7 & P 11, X-rays Ex. P 10 & P 13, case record Ex. P 12 and supported by oral evidence of the claimant and the doctor examined as PWs 1 and 2 respectively PW 2 Dr. Rajanna. Orthopedic Surgeon of Bowring Hospital, Bangalore in his evidence has stated that on 09.01.2009 claimant came to the hospital with the history of RTA on 8.01.2009 and found the injuries indicated in the wound certificate. He was treated conservatively by closed reduction and above knee POP case application was done on 11.01.2009. He was discharged on 19.01.2009 with an advice of non weight bearing on the right lower limb. On his recent examination on 5.10.2009, claimant had following complaints:

- a) Pain in right leg.
- b) Deformity of right leg.
- c) Stiffness and weakness of right lower limb
- d) Inability to sit cross legged and squat.

On examination, he found:

- a) He walks with limp on the right side.
- b) Anterior bowing deformity of right leg.
- e) Shortening of right lower limb by 2.5 cm.
- d) Limitation of right knee movements by 30%.
- e) Limitation of right ankle movements by 40%.

- f) Muscle power around right knee is grade IV against Grade V.
- g) Muscle power around right ankle is grade IV against grade V.

Check X-ray dated 5.10.2009 shows old mal united fracture of both bones of lower 1/3rd of right leg. It is also stated that he needs to undergo another surgery for corrective osteotomy and fixation of fracture tibia with inter locking nail. He noticed the following disabilities:

- a) He can not walk without support.
- b) Cannot sit crossed leg and squat.
- c) Cannot stand and walk for long time.
- d) Cannot climb the stairs without support.
- e) Cannot lift any weight.
- f) Cannot do any hard work.

The doctor has assessed the permanent functional physical disability tot he extent of 46% in relation to right lower limb and 24% in relation to whole body

8. Considering the nature of injuries Rs. 50,000/-awarded by the Tribunal towards pain and suffering is just and proper and there is no scope for reduction under his heed.

9. The claimant has produced medical bills for Rs. 1,905/-. He was treated as inpatient in Bowring Hospital from 8.01.2009 to 19.01.2009 for about 11 days. Considering the same I award Rs. 15,000/-towards medical and incidental expenses such as conveyance, nourishment and attendant charges as against Rs. 25,000/- awarded by the Tribunal.

10. The claimant claims to have been earning Rs. 6.000/- p.m. by working as a helper in Geetha Engineering Works, Yalahanka but the same is not established. Considering the year of accident, his age and profession, his income could be easily at Rs. 3,500/- p.m. as against Rs. 3,000/- p.m. assessed by the Tribunal. Nature of injuries suggests that he must have been under treatment and rest at least for a period of four months and I award Rs. 14,000/- towards loss of income during treatment period as against Rs. 10,000/- awarded by the Tribunal.

11. Considering nature of injuries, disability stated by the doctor and an amount of discomfort and unhappiness the claimant has to undergo in his future life Rs. 25.000/- awarded by the Tribunal is just and proper and it does not require reduction.

12. The Tribunal having awarded Rs. 25.000/- towards loss of amenities is not justified in awarding Rs. 25.000/- towards loss of expectation of life that too considering the nature of injuries sustained by the claimants and therefore it is disallowed.

13. The doctor has stated there is permanent functional physical disability to the extent of 46% in relation to right lower limb and 24% in relation to whole body which is an exaggeration. 1/3rd of 46% disability to right lower limb could be the functional disability which comes to 15.33% rounded off to 16%. The claimant is aged about 44 years as on the date of accident. The multiplier applicable to his age group is 14. Accordingly loss of future income works out to Rs. 94,080A (Rs. 3,500/-  $\times$  16  $\times$  12  $\times$  14) and it is awarded as against Rs. 1,00,800/- awarded by the Tribunal.

14. Considering the evidence of the doctor Rs. 15,000/- awarded by the Tribunal towards future medical expenses is just and proper and it does not call for reduction.

15. Thus the claimant is entitled for the following compensation:

- i) Pain and suffering Rs. 50,000/-
- ii) Medical expenses & incidental expenses Rs. 15,000/-
- iv) Loss of income during Laid up period Rs. 14,000/-
- v) Loss of amenities Rs, 25,000/-
- vi) Loss of future income Rs. 94,080/-
- vii) Future medical expenses Rs. 15,000/-

Total Rs. 2,13,080/-

16. Accordingly the appeal is allowed in part. The judgment and award of the Tribunal is modified to the extent stated herein above. The compensation awarded passed by the Tribunal is reduced from Rs. 2,50,800/- to Rs. 2,13,080/- with interest at 8% as has been awarded by the Tribunal.

17. The Appellant is directed to deposit the compensation amount, after deducting the amount already deposited together with interest within two months from the date of receipt of a copy of this judgment. Out of the compensation amount 50% with proportionate interest is ordered to be invested in F.D. in the name of the claimant in any nationalized/scheduled bank or post office for a period of nine year renewable once in three years with an option to withdraw interest periodically and remaining amount is ordered to be disbursed in favour of the claimant.

18. The amount in deposit is ordered to be transferred to the Tribunal for disbursement.

No order as to costs.