(2015) 01 KAR CK 0488

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 7112 of 2011 and 2152 of 2012 (MV)

The Oriental Insurance Company Limited APPELLANT

Vs

R. Shivakumar and Others RESPONDENT

Date of Decision : 13-01-2015

Acts Referred:

Citation : (2015) 2 ACC 475 : (2015) 3 AKR 391 : (2015) 2 KarLJ 579

Hon'ble Judges : B. Sreenivas Gowda, J

Bench : Single Bench

Advocate : A. Ravishankar and A.S. Girish, for the Appellant

Judgement

B. Sreenivas Gowda, J.

1. MFA No. 7112 of 2011 is filed by the insurer of the offending vehicle challenging the quantum of compensation awarded by the Tribunal as excessive and seeking reduction. MFA No. 2152 of 2012 is filed by the claimant seeking enhancement. As these two appeals are arising out of a common judgment and award dated 26-3-2011 passed in MVC No. 1450 of 2009 on the file of the X Additional Judge, Member, MACT, Bengaluru, awarding a compensation of Rs. 18,35,225/- with interest at the rate of 6% p.a. from the date of petition till realisation, they are heard together and disposed of finally by this common judgment.

2. For the sake of convenience, the parties are referred to as they are referred to in the claim petition before the Tribunal.

3. As there is no dispute regarding injuries sustained by the claimant in a road traffic accident occurred on 9-1-2009 due to rash and negligent driving of the lorry bearing Registration No. MYS-5151 by its driver and liability of the insurer of the offending vehicle, the only point that arises for my consideration in the appeal is:

"Whether compensation of Rs. 18,35,225/- awarded by the Tribunal is just and reasonable or does it call for reduction or enhancement?"

4. After hearing the learned Counsel appearing for parties and perusing the judgment and award of the Tribunal, I am of the view that the compensation awarded by the Tribunal is not just and reasonable, it is on the lower side and hence it is required to be enhanced.

5. As per Exs. P. 4 and P. 5-wound certificates, the claimant had sustained the following injuries:

"(a) Degloving injury of right hand and distal forearm;

(b) A L.W. 20 X 10 cm. on popliteal region at degloving distal thigh and leg right;

(c) A CLW 10 x 3 cm. over medial aspect right foot, degloving injury of right hand, complete skin avulsion extending to elbow and posterior aspects forearm;

(d) Degloving right thigh with cut lacerated wound 10 x 3 cm. medial aspect of the right foot;

(e) Crush injury right hand with fracture of 2nd and 3rd proximal phalanx. Base with fracture Radial Styloid and Ulnar Styloid with severe;

(f) Crushing of 4th and 5th fingers."

The injuries sustained by the claimant are evident from Exs. P. 4 and P. 5-discharge summaries and supported by oral evidence of the claimant and two doctors, who were examined as P.Ws. 1 to 3 respectively. P.W. 2, who is working as Chief Medical Officer in Mallya Hospital, Bengaluru had deposed that the claimant has sustained the following injuries:

"(i) Degloving injury of right hand, complete skin avulsion extending to elbow and posterior aspects forearm;

(ii) Degloving right thigh with cut lacerated wound 10 x 3 cm. medial aspect of the right foot;

(iii) Crush injury right hand with fracture of 2nd and 3rd proximal phalanx. Base with fracture Radial Styloid and Ulnar Styloid with severe;

(iv) Crushing of 4th and 5th fingers."

P.W. 3-Dr. Ramesh, Orthopedic Surgeon at Victoria Hospital has deposed that the claimant had sustained following injuries:

"(i) crush injury of right forearm and hand; and

(ii) degloving injury of right thigh and calf region."

He has further stated that the claimant underwent several surgeries to right forearm and finally right forearm below elbow was amputated. Extensive debridement of right thigh and LAD application and SSG to right lower limb and further deposed that he has examined the claimant on 1-1-2011 for disability assessment and claimant has complained of pain in the right lower limb, inability to stand for long time, squatting, climbing upstairs, pain in right stump hump wound over stump hump and inability to do routine work with right upper limb. P.W. 3 has found the following disabilities:

"(i) walk with limp;

(ii) deformity of right lower limb;

(iii) joint line tenderness of right knee joint;

(iv) restriction of joint movement; right knee flexion 50 degree, normal 0-25 degree;

(v) inability to squat sits cross-legged;

(vi) difficult to climb upstairs and kneel;

(vii) below elbow amputation of right forearm; and

(viii) tenderness over stump wound over stump."

He has stated that claimant has suffered permanent physical disability of 75% to right upper limb which has resulted in 25% disability to the whole body and permanent physical disability of 33% to right lower limb which has resulted in 16.5% disability to the whole body. Thus, claimant has suffered 41.5% disability to whole body.

6. Considering the nature of injuries, Rs. 1,50,000/- is awarded towards ''pain and suffering'' as against Rs. 50,000/- awarded by the Tribunal.

7. As Rs. 6,56,600/- awarded by the Tribunal towards ''medical expenses'' is based on the medical bills and prescriptions produced by the claimant, as such the same is just and proper and there is no scope for enhancement under this head.

8. The claimant was treated as inpatient for a period of 53 days in Mallya Hospital on 3 different occasions. Considering the duration of treatment, Rs. 50,000/- is awarded towards ''incidental expenses'' such as conveyance, nourishment and attendant charges as against Rs. 30,000/- awarded by the Tribunal.

9. Regarding income of the claimant, learned Counsel for the claimant submits that claimant himself was a Electrician and by doing electrical work and also working as an electrical contractor was earning Rs. 14,000/- p.m. and has produced income tax returns as per Exs. P. 15 and P. 16 and electrical contractor licence at Ex. P. 21. Learned Counsel therefore submits that the income taken by the Tribunal at Rs. 12,275/- p.m. is on the lower side. It should have taken his income at Rs. 14,000/- p.m.

10. Learned Counsel for the insurer of the offending vehicle submits that the

income tax returns at Ex. P. 16 was filed for the assessment year 2009-2010 and Ex. P. 15 was filed for the assessment year 2010-2011 and they do not indicate as to how much income the claimant was earning prior to the accident. Ex. P. 21-letter issued by KEB shows that the claimant had licence to do electrical contract work which was in force upto August 2009 and the same has been cancelled by the KEB. A perusal of Exs. P. 15 and P. 16 would show that they were filed in relation to income tax returns for the assessment years 2008-2009, 2009-2010 and 2010-2011. But the fact remains that claimant has not produced income tax returns for three years prior to the date of accident. The pass book produced at Ex. P. 17 shows that there has been remittance of about Rs. 3,40,000/- into his savings account, during the year 2008. All these documents do not indicate as to what was the actual income that the claimant was earning immediately prior to the accident. Therefore, considering his age i.e., 32 years, the year of accident 2009 and his avocation as an electrician and electrical contractor, justice would be met if his income is taken at Rs. 10,000/- p.m. as against Rs. 12,275/- taken by the Tribunal. Multiplier applicable to his age is 16.

11. As per the evidence of P.Ws. 2 and 3, in view of the disability on account of amputation of right hand below elbow and deep degloving injury to right leg, claimant has suffered 41% disability to the whole body. As per Schedule I, Part II of Employees'' Compensation Act, 1923, permanent partial disability towards amputation of upper limb is 70%. Considering the fact claimant has sustained amputation to right leg below knee, functional disability can be taken at 60%. Accordingly, loss of future income comes to Rs. 11,52,000/- (10000 x 60/100 x 16 x 12) and it is awarded as against Rs. 10,26,800/-awarded by the Tribunal.

12. Nature of injuries suggest that he must have taken treatment for a period of six months. Therefore a sum of Rs. 60,000/- is awarded towards loss of income during laid up period. Considering the disability stated by the doctor and an amount of discomfort and unhappiness the claimant has to undergo in his future life, a sum of Rs. 1,00,000/- is awarded towards loss of amenities. Thus, the claimant is entitled for the following compensation:

Accordingly, MFA No. 2152 of 2012 filed by the claimant is allowed in part. Consequently, MFA No. 7112 of 2011 filed by the insurer, seeking reduction of compensation does not survive for consideration and hence, it is dismissed.

The judgment and award passed by the Tribunal is modified to the extent stated herein above. The claimant is entitled for an additional compensation of Rs. 3,33,375/- with interest at 8% p.a. (however, excluding interest for the delay period of 196 days in filing MFA No. 2152 of 2012), from the date of claim petition till the date of realisation.

The Insurance Company is directed to deposit the additional compensation amount together with interest within two months from the date of receipt of a copy of this judgment, out of which, 75% of the amount with proportionate interest is ordered to be invested in fixed deposit in the name of claimant in any

Nationalised Bank/Scheduled Bank/Post Office for a period of 6 years renewable once in 2 years and with a right of option to withdraw interest periodically. Remaining amount with proportionate interest is ordered to be released in favour of the claimant.

No order as to costs.