

(2010) 04 KAR CK 0126
In the Karnataka High Court
Case No : M.F.A. No. 4488 of 2009

Thimmegowda

APPELLANT

Vs

H.S. Basavaraju and The Divisional Manager, Oriental
Insurance Co. Ltd.

RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Citation : (2010) 4 KarLJ 373

Hon'ble Judges : B. Sreenivase Gowda, J

Bench : Single Bench

Advocate : M.Y. Sreenivasan, for the Appellant; Ashok N. Patil, for R-2, for the Respondent

Judgement

B. Sreenivase Gowda, J.—This appeal is by the claimant seeking enhancement of compensation awarded by the Tribunal.

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

3. The brief facts of the case:

On 09.06.2006, when the claimant was proceeding as a pillion rider in Hero Honda bearing registration No. KA-11-K-6567, met with an accident due to rash and negligent riding of motorcycle by its rider, as a result, he fell down and sustained injuries. Hence, he filed a claim petition before the MACT, Malavalli seeking compensation of Rs. 5,62,500/- The Tribunal awarded him a sum of Rs. 1,97,400/- with interest at 6% p.a.

4. As there is no dispute regarding injuries sustained by the claimant in a motor road accident and the liability of the Insurance Company, the only point that arises for my consideration in the appeal is:

whether the compensation awarded by the Tribunal just and reasonable or does it call for enhancement?

5. The learned Counsel appearing for the claimant submits that considering the nature of the injuries sustained by the claimant and duration of treatment undergone by him, the compensation awarded by the Tribunal is on the lower side and therefore he prays for allowing the appeal by enhancing the compensation.

6. Per contra, the learned Counsel appearing for the insurance Company submits that the compensation awarded by the Tribunal is just and reasonable and there is no scope for enhancement and therefore he prays for dismissal of the appeal.

7. After hearing the learned Counsel for the parties and perusing the judgement and award of the Tribunal, I am of the view that the compensation awarded by the Tribunal is not just and proper, it is on the lower side therefore deserved enhanced. 8. The claimant has sustained fracture to the left thigh and left hand. He was treated as inpatient at J.S.S, Hospital, Mysore for about 18 days. He underwent surgery and IMIL rod was inserted to the left femur. The injuries sustained by the claimant are evident from the Wound Certificate (Ex.P-5) and are supported by the oral evidence of the claimant and the doctor, examined as PWs-1. and 2 respectively.

9. Considering the nature of injuries, Rs. 25,000/ awarded by the Tribunal towards "pain and suffering" is just and proper and it does not call for enhancement.

10. As Rs. 35,000/- awarded by the Tribunal towards medical expenses is based on the medical bills produced by the claimant, there is no scope for enhancement under this head.

11. The Tribunal committed an error in awarding Rs. 15,000/- towards "loss of earning, attendant and travelling expenses". The claimant was treated as inpatient for about 18 days. Considering the duration of treatment, it is just and proper to award a sum of Rs. 10,000/- towards "conveyance, nourishment and attendant charges".

12. The nature of injuries suggest that the claimant must have been under bed rest and treatment for a period of 5 months and his income was assessed at Rs. 3,000/- per month by the Tribunal and accordingly he is awarded a sum of Rs. 15,000/- towards "loss of income during laid up period".

13. Despite, awarding "future loss of income", the claimant has to bear with certain amount of inconvenience, discomfort and unhappiness in his future life. The Tribunal has not awarded any amount towards "loss of amenities". Considering the nature of injury and disability stated by the doctor at 53% disability caused to the limb and 20% to the whole body, it is just and proper to award a sum of Rs. 15,000/- towards "loss of amenities".

14. It has come in the evidence of the doctor that the claimant trader went fracture to the left thigh and left hand and the IMIL rod inserted and it is required to be removed but no amount is awarded by the Tribunal towards

"future medical expenses" and therefore it is just and proper to award a sum of Rs. 5,000/- under this head.

15. As the compensation awarded by the Tribunal towards future "loss of income" is based on the disability stated by the doctor, there is no scope for enhancement under this head.

16. Thus, in all the claimant is entitled for an additional/enhanced compensation of Rs. 30,000/- with an interest of 6% p.a. from the date of the claim petition till the date of realisation.

17. The Insurance Company is directed to deposit the enhanced compensation within four weeks from the date of receipt of a copy of the judgement and award.

18. Out of the enhanced compensation, 50% of the amount with proportionate interest is ordered to be invested in fixed deposit in any Nationalised Bank/ Scheduled Bank/Post Office for a period of 7 years. Remaining 50% is ordered in be released in favour of the claimant after the deposit.

19. Accordingly, the appeal is allowed in part. The judgment and award passed by the Tribunal is modified to the extent stated hereinabove. No order as to costs.