(2012) 07 KAR CK 0070

In the Karnataka High Court

Case No : M.F.A. No. 9089 of 2007 (MV)

Umesh Shetty APPELLANT

Vs

Sathish Bhaktha and The United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 26-07-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2013) 2 KarLJ 363

Hon'ble Judges : S.N. Satyanarayana, J;N.K. Patil, J

Bench : Division Bench

Advocate : H. Pavana Chandra Shetty, for the Appellant; A.N. Krishna Swamy, Advocate for R2, for the Respondent

Judgement

N.K. Patil, J.—This appeal by the claimant is directed against the impugned common judgment and award dated 26th April 2007, passed in MVC No. 1003/2005, by the Principal Civil Judge (Sr. Dn) & Member, Additional Motor Accident Claims Tribunal, Udupi, (for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 1,27,000/- awarded in his favour as against his claim for Rs. 15,89,000/-, is inadequate. The appellant claims to be aged about 32 years and running a provision store, earning a sum of Rs. 500/- per day or Rs. 15,000/- per month. He was hale and healthy prior to the date of accident. That at about 9:00 P.M., on 29-05-2005, when the appellant was riding his Bajaj M 80 bearing Registration No. KA-20/ J-6843 from Athrady side towards side, near Kelaparkala on Udupi-Karkala road, a Car bearing Registration No. CRX-4777 came from wrong side, from Udupi towards Karkala side, being driven by its driver at high speed, in a rash and negligent manner and dashed against the Bajaj M-80. Due to the impact, he sustained grievous injuries and immediately he was shifted to KMC Hospital, Manipal, where he took treatment as an in-patient for a period of 19 days.

2. It is the case of the appellant that he has spent considerable amount towards conveyance, nourishing food and attendant charges including medical expenses

and other incidental expenses and therefore, he has to be compensated adequately.

3. On account of the injuries sustained in the accident, the appellant filed the claim petition u/s 166 of the Motor Vehicles Act, before the Tribunal, seeking compensation of a sum of Rs. 15.89 lakhs against the respondents. The said claim petition had come up for consideration before the Tribunal on 26th April 2007. Upon receipt of summons, the first respondent did not appear before the Tribunal and remained ex-parte. Respondent No. 2 - United India Insurance Company Limited, represented through its counsel and filed a detailed written statement, denying all the allegations made in the claim petition. Further, the second respondent/Insurer contended that the rider of the motor cycle, i.e. Bajaj-M-80 was riding the said vehicle in a rash and negligent manner and dashed against the Car bearing Registration No. CRX-4777 and therefore, the owner and the insurer of the said Car is not necessary party to the proceedings and therefore the claim petition filed by the appellant is bad for non-joinder of necessary parties. Further the Insurer contended that the driver of the Car was not holding an effective Driving Licence on the alleged date of accident and therefore, they are not liable to pay the compensation and prayed for dismissal of the claim petition.

4. On the basis of the pleadings available on file, the Tribunal framed necessary points for consideration which are follows:

1] Whether the petitioner proves that the accident in question was due to rash and negligent driving of the vehicle bearing Reg. No. CRX 4777 by its driver?

2] Whether 2nd Respondent proves that the accident occurred solely due to rash and negligent driving of the driver of vehicle bearing Registration No. KA-20/ J-6843?

3] Whether 2nd respondent proves that the driver of the vehicle bearing Reg. No. CRX-4777 had no valid and effective D.L. on the date and time of accident?

4] Whether the petitioners are entitled for compensation? If so to what amount and from whom?

5] What award or order?

To substantiate his case, the appellant examined three witnesses as PW1 to PW3 and got marked totally 16 documents, as Exs.P1 to P16, but the Insurer did not examine any witness and got marked Insurance Policy as Ex. R1. The Tribunal, after considering the relevant material available on file, after appreciation of the oral evidence of PWs 1 to 3 and documentary evidence of Ex. P1 to P16 and Ex. R1, and after hearing both sides, allowed the claim petition in part, awarding a sum of Rs. 35,000/- towards injury, pain and sufferings, Rs. 4,000/- towards conveyance, nourishing food and attendant charges, Rs. 69,000/- towards medical expenses, Rs. 9,000/- towards loss of income during treatment period and Rs. 10,000/- towards loss of amenities, discomfort and unhappiness, in all a sum of Rs. 1,27,000/- with interest at 6% per annum from the date of petition till the date of deposit. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant is in appeal before this Court, seeking enhancement of compensation.

5. We have heard learned Counsel for appellant and learned Counsel for second respondent/Insurance Company for considerable length of time.

6. Shri. H. Pavanachandra Shetty, learned Counsel appearing for appellant vehemently submits that the Tribunal grossly erred in not awarding reasonable compensation towards all the heads including medical expenses and disbelieving the evidence of the Doctor, who stated that the appellant has sustained 80% disability. Further he submits that the appellant is running a provision store and because of the amputation of his right leg, he has sustained future loss of income and therefore the Tribunal seriously erred in not awarding any compensation under the said head and also towards purchase of artificial limb. In support of his submission, he relied upon the judgment of the Division Bench of this Court dated 1st December 2008 rendered in M.F.A. No. 1764/2006 (Nagayya Gowda Vs. Sanjeeva and others), and the judgments of the Hon''ble Apex Court reported in 2010 ACJ 487 (S. Suresh Vs. Oriental Insurance Co. Ltd. and another) and 2012 AIR SCW 2892 (Santosh Devi Vs. National Insurance Company Ltd. and others) and submitted that the Hon''ble Apex Court has taken into consideration 100% disability for awarding compensation towards loss of future income. Therefore, he submits that the impugned judgment and award is also liable to be modified accordingly.

7. Per contra, Shri. A.N. Krishna Swamy, learned Counsel appearing for second respondent Insurer, submits that the appellant has not made out any case nor produced any substantive material to show that the appellant has sustained 100% disability and also to show that on account of the disability he has suffered loss of future income. Therefore, he submits that the claimant/appellant is not entitled to any compensation towards loss of future income. If at all he is entitled, he is entitled towards purchase of artificial limb as he has suffered amputation of right leg and that the compensation awarded under all other heads is just and proper and does not call for interference.

8. After hearing learned Counsel for the parties and after perusal of the judgment and award passed by Tribunal including the original records placed before us, it can be seen that, the occurrence of accident and the resultant injuries sustained by appellant are not in dispute. It is also not in dispute that he was aged about 32 years and running a provision store. The Tribunal, after assessing the oral and documentary evidence available on file, has rightly awarded compensation of a sum of Rs. 9,000/- towards loss of income during treatment period and Rs. 69,000/- towards medical expenses. Hence, interference in the same is uncalled for.

9. However, so far as the compensation awarded under injury, pain and

sufferings, conveyance, nourishing food and attendant charges, loss of amenities, discomfort and unhappiness on account of disability is concerned, the same is on the lower side and needs to be re-determined. Further, it can be seen that the Tribunal also grossly erred in not awarding any compensation towards loss of future income and for purchase of artificial limb. Admittedly the appellant has sustained the injuries, viz. fracture shaft of (R) femur with cut wound (3 x 2 cm) on (R) thigh; fracture of shaft (R) tibia, fracture of shaft (R) fibula, laceration over right elbow injury on right leg, deep laceration over right chest and cut wound 2 x 2 cm on right iliac crest region. Further, it is also not in dispute that he has undergone amputation of right leg and complained of regular pain over the right wrist. PW3, Doctor has assessed the disability at 80%. But, the Tribunal has entirely disbelieved the evidence of PW3 and not awarded any compensation towards loss of future income as no substantive material was placed before it. But, it must be noted that, amputation of the right leg of the appellant is not disputed. The Tribunal, having regard to the facts and circumstances of the case, coupled with the nature of injuries sustained, and permanent physical disability, ought to have reassessed the whole body disability atleast at 50%, to meet the ends of justice. Therefore, we are of the opinion that the Tribunal grossly erred in not taking 50% as the whole body disability for calculating the loss of future income. Having regard to the age, avocation, nature of injuries sustained, evidence of Doctor, amputation of leg, etc. we re-assess the whole body disability at 50% and accept the monthly income assessed by the Tribunal at Rs. 3,000/-. The appellant being aged about only 32 years at the time of accident, has to go through this ordeal for the rest of his life. Further, we can easily presume that the appellant would find it difficult to carry on his day-to-day activities with the permanent physical disability he has suffered. Accordingly, taking into consideration all the above aspects, we re-determine compensation by awarding a sum of Rs. 1,00,000/- towards injury, pain and sufferings as against Rs. 35,000/-, Rs. 10,000/- towards conveyance, nourishing food and attendant charges as against Rs. 4,000/-; Rs. 50,000/- towards loss of amenities, discomfort and unhappiness as against Rs. 10,000/- awarded by Tribunal; Rs. 25,000/- towards future medical expenses/purchase of artificial limb and Rs. 2,88,000/- (i.e. Rs. 3,000/- x 12 x ''16'' x 50/100) towards loss of future income, adopting the multiplier of ''16'' as the appellant was aged about 32 years, at the time of accident. In the light of the facts and circumstances of the case, as stated above, the appeal filed by appellant is allowed in part. The impugned common judgment and award dated 26th April 2007, passed in MVC No. 1003/2005, by the Principal Civil Judge (Sr. Dn) & Member, Additional Motor Accident Claims Tribunal, Udupi, is hereby modified, awarding a sum of Rs. 5,51,000/- as against Rs. 1,27,000/- awarded by Tribunal, with interest at 6% per annum on the enhanced sum, from the date of petition till the date of realization. The break-up is as follows:

The second respondent/Insurance Company is directed to deposit the enhanced compensation of Rs. 4,24,000/-, with interest thereon at 6% per annum, within four weeks from the date of receipt of copy of the judgment and award.

On such deposit by the Insurance Company, a sum of Rs. 4,00,000/- with proportionate interest shall be invested in the name of the appellant, in Fixed Deposit, in any scheduled/Nationalized Bank, for a period of ten years, renewable by another ten years, with liberty reserved to him to withdraw the periodical interest.

Remaining sum of Rs. 24,000/- with proportionate interest shall be released in favour of the appellant, immediately.

Office to draw award, accordingly.