

(2014) 10 KAR CK 0069

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 4385/2006 (MV)

V. Shivakumar

APPELLANT

Vs

The Cholanandalama

RESPONDENT

Date of Decision : 07-10-2014

Acts Referred:

Citation : (2014) 10 KAR CK 0069

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : Bhushani Kumar, Advocate for the Appellant

Judgement

Aravind Kumar, J.—This is a claimant's appeal for enhancement of compensation not being satisfied with the quantum of compensation awarded by MACT, Bangalore in MVC No. 5605/2004 dated 06.02.2006.

2. I have heard the arguments of Smt. Bhushani Kumar, learned counsel appearing for claimant-appellant and Sri O. Mahesh, learned counsel appearing for respondent No. 1-Insurer. Notice to respondent No. 2 has been held sufficient vide order dated 13.09.2010.

3. Accident in question, injuries sustained by claimant as discussed by the Tribunal in its judgment and award, consequential disability suffered by claimant, are all undisputed facts, so also the issue regarding issuance of policy to the offending vehicle and as such, these facts are not delved upon in this appeal as it would be repetition of facts.

4. Smt. Bhushani Kumar, learned counsel appearing for the claimant contends that compensation awarded by the Tribunal under all heads is abysmally on the lower side and prays for enhancement.

5. Per contra, Sri O. Mahesh, learned counsel appearing for respondent No. 1 - Insurer would submit that compensation awarded by the Tribunal itself is on the higher side and does not call for enhancement.

6. Having heard the learned Advocates appearing for the parties and on perusal of judgment and award in question, as also records secured from the Tribunal, I am of the considered view that claimant would be entitled for enhancement of compensation under the following heads.

(i) Loss of future earning

(ii) Loss of amenities

(iii) Loss of income during laid up period

(iv) Medical expenses

FOR REASONS ASSIGNED HEREIN BELOW;

7. On perusal of records it would indicate that claimant had sustained comminuted compound fracture of lower and middle 1/3rd of left leg (fibula). Doctor who had operated claimant, has been examined as P.W.2. He has opined that whole body disability suffered by claimant is to an extent of 20% though left leg lower limb disability is to an extent of 50%. In view of this inconsistency namely, whole body disability cannot exceed 1/3rd of particular limb disability, Tribunal has construed the particular limb disability at 15%, which is just and proper. It is also noticed by the Tribunal in the background of evidence tendered by the doctor that wound at which the fracture had occurred, had not healed and there was formation of pus and same was oozing out and there was thickening of bone with sinus over fracture site. On account of same doctor has opined that claimant would be unable to walk long distance and would find difficulty in climbing the staircase and using the Indian toilet.

8. Tribunal while assessing the "loss of future income" has construed the monthly income of claimant @ Rs. 3,000/- per month. Income Tax returns for the years 2003-04 and 2004-05 produced at Ex. P-6 indicates yearly income of claimant was Rs. 50,000/-. Tribunal after considering the contents of Ex. P-6 was of the view that income of claimant can be construed at Rs. 3,000/- per month. Said records would disclose that claimant is a civil contractor. Tribunal has rightly excluded the income of claimant derived by way of rent for the purposes of computation of income towards "loss of future earning", since it does not get reduced by virtue of disability sustained by claimant. However, this Court cannot loose sight of fact that claimant being a civil contractor as evidenced from Ex. P-6, his mobility gets reduced on account of 15% disability to the whole body and as such, he requires to be suitably compensated both towards loss of "future income" and "loss of income during laid up period" by considering his income atleast @ Rs. 4,000/- per month. Accordingly, compensation requires to be recomputed under these two heads.

9. Tribunal having noticed that there is permanent physical disability to an extent of 15% to whole body and fracture is not united, has not awarded any compensation towards "loss of amenities" and no reasons are forthcoming from the award passed by Tribunal as to why compensation has not been awarded

under this head. Considering the nature of injuries sustained by claimant and consequential disability suffered, this Court is of the considered view that a sum of Rs. 20,000/- requires to be awarded towards "loss of amenities in life" to claimant and accordingly, it is hereby awarded.

10. Claimant was an inpatient at LNR Hospital for a period of 6 days as evidenced from discharge summary-Ex. P-3. He has undergone surgery as reflected in the discharge summary as well as case sheet of the said hospital, which came to be marked as Ex. P-8. Doctor, who had treated the claimant has also been examined as P.W.2 and he has also stated the nature of injuries sustained by claimant and surgery undergone by claimant. Towards the amounts expended by claimant for "medical expenses", he has produced the bills along with prescriptions (103 numbers), which came to be collectively marked as Ex. P-7. Tribunal though has accepted the bills, sum total of which would be Rs. 70,420/-, Tribunal has disallowed the claim to an extent of Rs. 20,420/-. The only reason that has been assigned by Tribunal in its award is that some of the bills are more than Rs. 10,000/- and it does not appear to be genuine. The basis on which this genuinity is disputed, is not supported by any reasons by the Tribunal. Merely because the bills produced by the claimant is more than Rs. 10,000/- (not all bills), genuineness or the authenticity of such bills cannot be doubted. In fact, claimant has also produced the corresponding prescriptions, which relates to the bills produced by him. In that view of the matter, this Court is of the considered view that Tribunal was not justified in disallowing the claim of Rs. 20,420/- towards medical bills and same requires to be awarded and accordingly, it is hereby awarded.

11. Since this Court has construed the income of claimant at Rs. 4,000/- per month, compensation that becomes payable towards "loss of income during laid up period" would be Rs. 12,000/- for three months in substitution to Rs. 9,000/- awarded by Tribunal, which was based on the income calculated @ Rs. 3,000/- p.m. The difference of same being Rs. 3,000/- requires to be awarded and same is hereby awarded.

12. Thus, in all claimant would be entitled to following enhancement:

13. For the reasons aforesaid, I proceed to pass the following:

JUDGMENT

(i) Appeal is hereby allowed-in-part.

(ii) Judgment and award passed by MACT, Bangalore in MVC No. 5605/2004 dated 06.02.2006, is hereby modified and an additional compensation of Rs. 70,420/- is hereby awarded, which shall carry interest @ 6% p.a. from date of petition till date of payment or deposit, whichever is earlier (excluding the period of delay)

(iii) Insurance company shall deposit the compensation amount with interest before the jurisdictional Tribunal within an outer limit of six (6) weeks from the

date of receipt of certified copy of the order.

(iv) Out of the enhanced compensation awarded, 50% of compensation with proportionate interest is ordered to be kept in a Fixed Deposit in any nationalized Bank for a period of three.

(3) years and claimant would be entitled to withdraw periodical interest. Balance 50% amount with proportionate interest is ordered to be paid to claimant on proper identification.

(v) Registry is directed to retransmit the records to jurisdictional tribunal forthwith.