

(2012) 01 KAR CK 0021

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2824 of 2010 MV

Veeranarayanareddy

APPELLANT

Vs

Narashimhappa and The Manager, Royal Sundaram General
Insurance Co. Ltd.

RESPONDENT

Date of Decision : 05-01-2012

Acts Referred:

Citation : (2012) 01 KAR CK 0021

Hon'ble Judges : A.S. Pachhapure, J

Bench : Single Bench

Advocate : M.C. Umadevamma, for the Appellant; O. Mahesh, for R2. R1
dispensed with V.C.O. dt. 03-01-12], for the Respondent

Final Decision : Allowed

Judgement

A.S. Pachhapure

1. Though the matter is posted for admission, with the consent of the counsel, it is taken up for final disposal. The appellant dissatisfied with the amount of compensation awarded for the injuries sustained in a motor vehicle accident has filed this appeal, seeking enhancement.

2. The facts reveal that on 18.06.2008 at about 7.30 p.m., the appellant was proceeding on his two wheeler bearing reg. No. KA AP-04-4312 near Balanapalli cross, Gorantala, Andhra Pradesh District. At that time, a tractor bearing reg. No. AP 02-V-6737 and 6738 came from hind side in high speed, driven in rash and negligent manner and hit the appellant, who sustained grievous injuries. He was shifted to Hindupur Hospital for treatment and then to NIMHANS hospital and other hospitals at Bangalore. In the circumstances, he has claimed compensation for loss of earning capacity, medical expenses, conveyance charges, etc.

The 2nd respondent/insurance company appeared before the Tribunal and contested the claim. During the enquiry, the appellant was examined as P.W. 1 and a witness P.W. 2 and in their evidence got marked the documents Exs. P1 to

13. The respondent did not lead any evidence. The Tribunal after hearing the counsel and on appreciation of the material on record has granted compensation of Rs. 3,69,100-00 with interest at 6% p.a. and dissatisfied with the amount of compensation, the present appeal has been filed.

3. I have heard the learned counsel for the parties.

4. The points that arise for my consideration are:

1) Whether the appellant is entitled to the enhanced compensation? If so, to what extent?

2) What Order?

5. The appellant has sustained the fracture of right femur and fracture of both bones of right leg. The injury was infected while he was taking treatment in Victoria Hospital. Amputation above the knee was done on 02.07.2008. Later, skin grafting was also done. He was discharged from the hospital on 29.07.2008. The doctor who examined the appellant assessed the permanent disability at 80% of the particular limb and 40% to the whole body.

6. Taking into consideration the fact that there is amputation above the knee, the functional disability is material to assess the percentage. Hence, I am of the opinion that it is proper to assess the disability for the whole body at 40%.

7. The learned counsel for the insurer contends that the appellant was discharged against the medical advice and it is due to his negligence there was infection, which ultimately resulted in amputation of leg. The appellant is a vegetable vendor. He must have incurred expenses for his treatment and may be he was facing financial problem.. No person desires that his infection would continue and there may be other compelling circumstances for the appellant having not taken the treatment and in such circumstances, I do not think that negligence of the appellant in not taking immediate treatment would be of any consequence so far as the reduction of functional disability is concerned.

8. The appellant had sustained fracture of right femur and also fracture of both bones of the right limb. There was infection and ultimately the leg was amputated. In these circumstances, the award of compensation of Rs. 60,000/- for pain, suffering and mental agony appears to be just and reasonable.

9. The Tribunal has granted a sum of Rs. 30,500/- as medical expenses. It has considered the total medical bills and on the basis of the same has awarded the compensation for medical expenses and the same appears to be no reason to interfere with the compensation on this head.

10. So far as the assessment of income is concerned, it is in the evidence of the appellant that he was a vegetable vendor. The accident occurred in the year 2008. The Tribunal has assessed the income of the appellant at Rs. 3,000/- per month. Even the Apex Court in respect of an accident of the year 2001 has considered the wages of a labour/a coolie at Rs. 100/- per day. So taking into

consideration this aspect and the high prices and also decrease in the wages, I think it is just and proper to consider the income of the appellant at Rs. 3,750/- per month.

11. The appellant was aged about 28 years at the time of the accident. Therefore, the multiplier of 17 has to be adopted. So considering the wages at Rs. 3,750/- and the disability at 40%, the net loss of earning capacity would be as under;

$$\text{Rs. } 3,750 \times 12 \times 17 \times 40/100 = \text{Rs. } 3,00,000/-$$

The appellant, is entitled to the said sum towards loss of earning capacity.

12. Apart from the fracture of the femur and also both the bones of the lower leg, there was infection and in such circumstances, the appellant may not have in a position to resume the normal duties atleast for a period of three months, hence, I think it is just and proper to award a sum of Rs. 11,250/- towards loss of income during the period of treatment. The Tribunal has considered the just compensation, so far as the loss of amenities and future happiness is concerned, it has also awarded reasonable compensation for attendant charges, diet and conveyance charges. So far as the cost of artificial limb is concerned, the Tribunal has granted a sum of Rs. 10,000/- and I think that it is just and proper to award an amount of Rs. 25,000/- in total towards the cost of artificial limb. Due to the amputation suffered, the marriage prospects are reduced. The appellant was aged about 28 years at the time of the accident. Considering this aspect, I think it would be just and proper to award a sum of Rs. 25,000/- towards loss of marriage prospects. Thereby, the appellant is entitled to the compensation enumerated below:

(a)

Pain, suffering and mental agony

Rs. 60,000/-

(b)

Loss of income during the period of laid up

Rs. 11,250/-

(c)

Loss of earning capacity

Rs. 3,06,000/-

(d)

Loss of amenities

Rs. 50,000/-

(e)

Cost of artificial Limb

Rs. 25,000/-

(f)

Loss of marriage prospectus

Rs. 25,000/-

(g)

Medical Expenses

Rs. 30,500/-

Thereby, the appellant is entitled to total compensation of Rs. 5,07,750/- with interest at 6% per annum from the date of petition till its payment.

In the circumstances, I answer the point in the affirmative and proceed to pass the following:-

ORDER

The appeal is allowed in part modifying the judgment and award passed by the tribunal. The compensation is enhanced to Rs. 5,07,750/- with interest at 6% per annum from the date of petition till its payment.