

(2013) 12 KAR CK 0151

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 7692 of 2009 (MV)

Venkataramanappa

APPELLANT

Vs

The Oriental Insurance Co. Ltd. and M.S. Muniraju

RESPONDENT

Date of Decision : 16-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0151

Hon'ble Judges : B.S. Indrakala, J

Bench : Single Bench

Advocate : K. Vishwanatha, for the Appellant; Harini Shivananda, Advocate for R-1, for the Respondent

Final Decision : Allowed

Judgement

B.S. Indrakala, J.—Though the matter is posted for further orders, with the consent of the learned Counsel for both parties, the same is taken up for final disposal. This appeal is preferred against the judgment and award dated 22.8.2007 passed in MVC No. 7836/2006 on the file of the 14th Addl. Judge, MACT, Court of Small Causes (SCCH No. 10), Bangalore.

2. The brief facts leading to the filing of the said case are that on 3.10.2006 at about 11.00 AM while the claimant was proceeding on the motorcycle as a pillion rider bearing Regn. No. KA-04-ED-1158 on Sonnappalli near Kumbara Nareppa's land, Rayalapadu Hobli, Srinivasapura Taluk, the jeep bearing Regn. No. KA-07-4510 being driven by its driver in rash manner came from opposite direction and dashed against the motorcycle in which the claimant was traveling and caused the accident; in the said accident, he sustained grievous injuries; he spent huge amount towards treatment despite which he is having disability. Further, it is contended that prior to the accident, he has hale and healthy, an agriculturist by profession and was earning Rs. 10,000/- per month and on account of the injuries, he sustained loss of income etc. and hence, sought compensation from the owner and insurer of the said jeep which was involved in the accident.

3. Respondent No. 2 - insurer in its statement of objections while denying the allegations made by the claimant on all material aspects, specifically pleaded that the liability, if any, is subject to the terms and conditions of the policy.

4. To prove his case, the claimant got himself examined as PW 1 and also chose to examine the medical officer who assessed his disability as PW 2 and got marked documents Exs. P. 1 to P. 15. On behalf of the respondents no evidence is adduced.

5. The tribunal by considering the said evidence so placed on record, deemed it fit to award a sum of Rs. 1,17,000/- with interest at the rate of 6% p.a. on Rs. 1,07,000/- i.e., excluding the amount of Rs. 10,000/- awarded towards future medical treatment from the date of petition till realisation.

6. Aggrieved by the said judgment and award, the claimant is in appeal inter alia contending amongst other grounds that the amount of compensation so awarded is inadequate and seeks enhancement of the same.

7. Learned counsel appearing for the appellant submitted that the amount awarded under various heads is on the lower side, though the medical bills amounting to Rs. 49,082/- were produced and got marked as Ex. P. 9, the tribunal for want of prescription has awarded Rs. 25,000/- which is not proper.

8. Secondly, learned counsel for the appellant submitted that the tribunal has also erred in not granting any amount towards disability; the amount awarded under loss of amenities is very low and seeks enhancement of the same.

9. Per contra, learned counsel appearing for the respondent/insurer submitted that the amount awarded in the facts and circumstances of the case is just and proper and the same does not call for any interference.

10. Thus, the cause of accident as well as the claimant sustaining certain injuries in that accident are not in dispute.

11. Ex. P. 5 - the wound certificate discloses that the claimant sustained the following injuries:

(1) Wound about 2 x 3 c.m. over the medial malleolus - right foot

(2) Tenderness over medial malleolus right foot

(3) Fracture talus and medial malleolus with medial dislocation of ankle joint.

12. Further, it is seen that the claimant was hospitalized from 6.10.2006 to 9.10.2006 and from 22.2.2007 to 7.3.2007 and in all he was hospitalized for 35 days. In the circumstances, considering the said aspect and also the nature of injuries sustained by the claimant, the tribunal deemed it fit to award Rs. 40,000/- towards pain and suffering which is just and proper.

13. With regard to the medical bills, though the claimant filed bills amounting to Rs. 49,082/-, the tribunal considering the nature of injuries suffered by the

claimant, thought that the claimant might not have spent so much and awarded Rs. 25,000/-, which is not proper. Considering the bills which is got marked as exhibit it is proper to award the amount claimed as per bills produced i.e., Rs. 49080/- which is rounded off to Rs. 49,100/-.

14. Considering the number of days of hospitalization and also the follow-up treatment, it is reasonable to award Rs. 15,000/- towards incidental expenses like attendant's charges, transportation, food and nourishment etc.

15. The tribunal by considering the income of the claimant at Rs. 4,000/- per month awarded Rs. 16,000/- towards loss of income during laid-up period which is also just and proper and the same does not call for any interference.

16. Admittedly, the claimant has not filed any documents disclosing about his loss of income. No-doubt the doctor - who is examined as PW 2 has deposed that the claimant suffered 45% disability in relation to the particular injury but, the tribunal by observing that such assessment of disability by the medical officer is exorbitant and as the claimant failed to establish any functional disability, deemed it fit not to award any amount towards loss of income on account of disability.

17. However, the tribunal has awarded a sum of Rs. 20,000/- towards loss of amenities. In this regard, it is to be seen that considering the percentage of disability as assessed by the medical officer, even if it is considered the same as exorbitant one, by taking into consideration the nature of injuries suffered and the number of days of hospitalization, it is reasonable to award Rs. 50,000/- towards loss of amenities as well as disability in the absence of any proof of loss of income on account of disability.

18. The tribunal has also awarded Rs. 10,000/- towards future medical treatment which is proper. Thus, the claimant in all is entitled to be compensated as hereunder:

In all, the claimant/appellant is awarded Rs. 1,80,100/- as against Rs. 1,17,000/- awarded by the tribunal. Hence, the following:

ORDER

The above appeal is allowed modifying the judgment and award dated 22.8.2007 passed in MVC No. 7836/2006 on the file of the 14th Addl Judge, MACT, Court of Small Causes (SCCH. 10), Bangalore.

The appellant/claimant is entitled for Rs. 1,80,100/- with interest at 6% p.a. from the date of petition till realisation as against Rs. 1,17,000/- awarded by the tribunal. However, the claimant is not entitled for interest on the amount awarded towards future medical expenses of Rs. 10,000/- and for 632 days of delay caused in filing the appeal which is condoned vide order dated 16.12.2013 passed in Misc. Cvl. 19736/2009.

The respondent - insurance company shall deposit the said enhanced amount

within eight weeks from the date of receipt of copy of this order and on such deposit a sum of Rs. 30,000/- with proportionate interest shall be deposited in fixed deposit in the name of the claimant in any nationalized bank of his choice for a period of 10 years with liberty to withdraw the interest as and when the same accrues. Balance amount of Rs. 33,100/- with proportionate interest shall be released in favour of the claimant for his immediate necessities.

Office to draw the award accordingly.