(2015) 04 KAR CK 0224

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 10790 of 2012 (MV)

Venkatesh N. APPELLANT

Vs

The National Insurance Co. Ltd. and Others RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 04 KAR CK 0224

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

Bench : Division Bench

Advocate : Shripad V. Shastri, for the Appellant; S. Srishaila, Advocates for the Respondent

Judgement

N.K. Patil, J.

1. Though this matter is posted today for orders on I.A., with the consent of learned counsel appearing for both the parties, the same is taken up for Final Disposal.

This appeal by the claimant-appellant for enhancement of compensation is directed against the impugned judgment and award dated 10.09.2012 passed in MVC No. 64/2010 on the file of the XVIII Addl. Judge, Court of Small Causes and Member MACT-4, Bangalore, (SCCH-4), (hereinafter referred to as ''Tribunal'' for short), on the ground that, a sum of Rs. 5,76,760/- awarded by the Tribunal with interest at 6% p.a., from the date of petition till the date of deposit, as against the claim of Rs. 40,00,000/-, on account of the injuries sustained by him in the road traffic accident is inadequate.

2. In brief, the facts of the case are:

"Appellant claims to be aged about 22 years at the time of the accident. He was hale and healthy prior to the accident. He was working as Lathe Machine Operator and earning Rs. 8,000/- per month. That on 6.9.2009 at about 8.40 a.m. appellant was riding the Motor Cycle bearing Reg. No. KA.02.HB.2499 and when he came near Danogipalya, Bangalore-Tumkur NH4 road, at that time, the driver of the Lorry bearing Reg. No. KA.05.AC.6888 came from opposite direction with high speed in a rash and negligent manner and dashed against him. Due to which, he sustained grievous injuries. Immediately, he was shifted to Harsha Hospital, where he took treatment as inpatient from 6.9.2009 to 11.9.2009. He has also taken treatment at Raksha Hospital from 25.9.2009 to 14.11.2009 and thereafter, on the advise of the Doctor, he has taken bed rest and follow up treatment."

3. It is the further case of the appellant that, he spent considerable amount towards medical expenses, conveyance and other incidental charges. On account of the injuries sustained by the appellant in the said accident, he has suffered permanent disability. The Doctor has assessed the physical disability at 65.73% and at 20.24% to the whole body. Therefore, appellant has filed a claim petition before the Tribunal under Section 166 of M.V. Act, claiming compensation against the respondents.

4. The said claim petition had come up for consideration before the Tribunal. The Tribunal, after hearing both sides and after assessing the oral and documentary evidence, has allowed the said claim petition in part and awarded a sum Rs. 5,76,760/- as compensation under different heads with interest at 6% p.a, from the date of petition till the date of deposit.

5. Being dis-satisfied with the quantum of compensation awarded by the Tribunal, the appellant has presented this appeal, seeking enhancement of compensation.

6. We have heard the learned counsel appearing for appellant and learned counsel appearing for Insurer.

7. The submission of the learned counsel Sri. Shripad V. Shastri, appearing for appellant, at the outset is that, the Tribunal has erred in assessing the income of the appellant at Rs. 3,000/- per month which is on the lower side and is liable to be enhanced reasonably, on the ground that, the accident has occurred on 11.6.2009, he was aged about 22 years, Lathe Machine Operator by profession and getting the income of Rs. 8,000/- per month. He further submits that the compensation awarded by the Tribunal towards injury, pain and sufferings, loss of income during treatment period, loss of amenities, discomforts and unhappiness, towards loss of future earnings and towards future medical expenses is on the lower side and is liable to be enhanced reasonably. To substantiate the said submission, he has submitted that, on account of the injuries sustained by the appellant, he has taken treatment as inpatient for 61 days on different dates in different hospitals and undergone surgery. He examined two Doctors as PWs 4 and 5. PW4, Urologist at Raksha Hospital, Bangalore, has stated that appellant is having 100% disability as far as sexual function is concerned. PW5, Plastic Surgeon at Raksha hospital has stated that appellant is having permanent physical impairment of the left lower limb at

65.73% and 20.24% to the whole body. But the Tribunal has not accepted the evidence of the Doctors solely on the ground that, the assessment of disability by the Doctors is vague and appears to be excessive and has taken the disability at 12% to the whole body contrary to the evidence on record. Therefore, he submitted that the percentage of disability may be re-assessed in the light of the evidence of the Doctors and that appellant is not in a position to do his work as he was doing earlier as he is a Lathe Machine operator. He further submits that, during the pendency of this appeal, appellant has undergone one more operation and spent reasonable amount towards medical and other incidental expenses and he has filed I.A. No. 1/2014 for production of additional documents along with medical bills which is allowed by a separate order. Therefore, he submitted that the impugned judgment and award is liable to be modified by enhancing the compensation reasonably.

8. Per contra, learned counsel appearing for insurer, inter-alia, contended and submitted that the compensation awarded by the Tribunal is just and reasonable and after due appreciation of the oral and documentary evidence available on file and therefore, it does not call for interference. However, after going through the evidence on record and having regard to the nature of injuries sustained and the mental pain and agony suffered by the appellant, learned counsel appearing for Insurer has fairly submitted that, the same has to be compensated reasonably including the future medical expenses in accordance with law after re-appreciation of the oral and documentary evidence available on file.

9. After careful consideration of the submissions made by learned counsel appearing for both the parties and after perusal of the materials available on record, including the impugned judgment and award passed by the Tribunal, the only point that arises for our consideration is:

Whether the compensation awarded by

the Tribunal is just and reasonable?

10. The occurrence of the accident and the resultant injuries sustained by the appellant as per Ex. P6-wound certificate are not in dispute. It is the case of the appellant that, he was aged about 22 years, working as Lathe Machine Operator and earning Rs. 8,000/- per month. The Tribunal has assessed the income of the appellant at Rs. 3,000/- per month which is on the lower side and it needs to be enhanced. Having regard to the age, occupation, year of the accident, we re-assess the income of the appellant at Rs. 5,500/- per month. The appropriate multiplier applicable is 18 since appellant was aged about 22 years as rightly adopted by the Tribunal. As per the evidence of the Doctors, appellant suffers from permanent physical disability at 65.73% to left lower limb and 100% disability as far as sexual function. We accept the evidence of the Doctors and reassess the whole body disability at 25% instead of 12% as assessed by the Tribunal. Discomforts and unhappiness persists through out his life and it would affect his happiness in future life including marital life and also affects his earning

capacity.

11. Further, it emerges that, during the course of treatment, appellant might have undergone pain and agony, he might have sustained financial loss, as he could not have attended his work regularly as he has taken bed rest and follow up treatment for six months and the disability is permanent in nature and it would affect his marital life as per the evidence of the Doctors.

Further, it is the case of the learned counsel appearing for appellant that, during the pendency of this appeal, appellant has undergone one more operation and spent reasonable amount towards medical and other incidental expenses. He has filed I.A. No. 1/2014 for production of additional documents along with medical bills and the same is allowed by a separate orders. Taking all these aspects into consideration, we award a sum of Rs. 75,000/- towards injury, pain and suffering instead of Rs. 40,000/-, Rs. 33,000/- towards loss of income during the period of treatment for six months at the rate of Rs. 5,500/- per month instead of Rs. 9,000/-; Rs. 1,00,000/- towards loss of amenities, discomforts and unhappiness including marital discomforts instead of Rs. 20,000/-, Rs. 2,97,000/- (Rs. 5,500 x 12 x 18 x 25%) towards loss of future earnings instead of Rs. 77,760/-, Rs. 1,00,000/- towards future medical expenses instead of Rs. 20,000/-.

12. However, a sum of Rs. 4,10,000/- awarded by the Tribunal towards medical expenses including conveyance and other incidental expenses is just and reasonable and after due appreciation of the medical bills produced by the appellant and therefore, it does not call for interference.

In all, the appellant is entitled to the total compensation of Rs. 10,15,000/- instead of Rs. 5,76,760/- and the break- up is as follows:

13. Having regard to the facts and circumstances of the case, the appeal filed by the appellant is allowed in part. The impugned judgment and award dated 10.09.2012 passed in MVC No. 64/2010 on the file of the XVIII Addl. Judge, Court of Small Causes and Member MACT-4, Bangalore, (SCCH-4) stands modified, awarding the compensation of Rs. 10,15,000/- instead of Rs. 5,76,760/-. There would be an enhancement of Rs. 4,38,240/- with interest at 6% p.a., from the date of petition till its realization.

The Insurer is directed to deposit the enhanced compensation of Rs. 4,38,240/- with interest at 6% p.a., from the date of petition till the date of realization, within three weeks from the date of receipt of a copy of this judgment and award.

Immediately on such deposit by the Insurer, out of the enhanced compensation of Rs. 4,38,240/-, a sum of Rs. 3,00,000/- with proportionate interest shall be invested in the Fixed Deposit in any Nationalized or Scheduled Bank in the name of the appellant for a period of 10 years and renewable by another 10 years, with liberty reserved to him to withdraw the interest accrued on it, periodically.

The remaining sum of Rs. 1,38,240/- with proportionate interest shall be released in favour of the appellant, immediately.

Draw the award, accordingly.

