

(2014) 10 KAR CK 0074

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 30682 of 2011 [MV]

Yallappa

APPELLANT

Vs

Basavantraya N. Ibrahimpur

RESPONDENT

Date of Decision : 13-10-2014

Acts Referred:

Citation : (2014) 10 KAR CK 0074

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

Bench : Single Bench

Advocate : Babu H. Metagudda, Advocate for the Appellant; Preeti Patil, Advocate for the Respondent

Judgement

A.S. Pachhapure, J.—The appellant dissatisfied with the amount of compensation granted by the Tribunal for the injuries sustained in the motor vehicle accident has filed this appeal, seeking enhancement.

2. The facts reveal that on 25.01.2007 at about 1.30 p.m., the appellant was travelling in Mahindra pickup van bearing reg. No. KA-28/9835 with the agricultural produce. The said vehicle was driven by its driver in a rash and negligent manner and in turn the vehicle met with an accident. The appellant suffered grievous injuries and was admitted in the hospital for treatment. He is said to have suffered disability and therefore, made a claim for compensation.

The appellant was examined as P.W. 1 and the doctor P.W. 2. In their evidence, Exs. P1 to 12 were marked. On behalf of the respondents, Ex. R1-Insurance Policy was admitted in the evidence with consent.

The Tribunal has granted a sum of Rs. 41,550-00 as compensation with interest at 6%. Dissatisfied with the amount of compensation, this appeal is filed.

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

4. The point that arises for my consideration is;

Whether the appellant is entitled to enhancement of compensation? If so, to what extent?

5. Learned counsel for the appellant would submit that the appellant had suffered fracture of inferior rhymes of right pubic bone in addition to swelling in the leg. He has suffered disability, which has been stated by P.W. 2-doctor at 20 to 25% and therefore, he submits that assessment of the disability is on the lower side. It is also his submission that the income assessed by the Tribunal is meagre and the compensation granted on this head is liable to be enhanced. On these grounds, he has sought for enhancement of compensation.

Learned counsel for the insurer supports the Judgment and Award of the Tribunal and submits that the evidence is insufficient to prove the fracture and grant of compensation is reasonable and no interference is called for by this Court in the appeal.

6. The perusal of the injury certificate at Ex. P5 reveals that the appellant had suffered lacerated wound on the right knee 2 cm. x skin deep and tenderness over the right knee. X-ray No. 672 dated 25.01.2007 was taken and no fracture is found in the said X-ray. This endorsement has been made in Ex. P5-injury certificate. The appellant was admitted in the hospital on 25.01.2007 and after the admission, X-ray was taken. The appellant has not produced the MLC register to show the number of injuries suffered on the body except the certificate at Ex. P5. Anyhow, the doctor on examination has certified that the injuries are simple in nature.

7. As could be seen from the allegations in the complaint, which has been produced at Ex. P1, there is no-where any reference about the injuries suffered by the appellant on different parts. Anyhow, the appellant was admitted in the hospital of Dr. Nayak and discharge certificate is produced at Ex. P8. Except the discharge certificate, no other documents have been produced. That apart, though Dr. Nayak is said to have certified that the appellant has suffered fracture of inferior rhymes of right pubic bone, X-ray relating to this fracture taken by Dr. Nayak and referred to in Ex. P8-Discharge Certificate has not been produced. No reasons are offered for non-production of the X-ray, which was taken by Dr. Nayak after the appellant was discharged on 29.01.2007 i.e., after 4 days after his admission in the Government Hospital. Dr. Nayak has also not been examined the appellant before the Tribunal. Furthermore, for the first time, the appellant was examined by Dr. A.A. Magi, for assessment of disability and a certificate as per Ex. P11 was obtained, which is dated 02.06.2010. According to P.W. 2, the appellant had suffered fracture of the hip joint and they reveal the healed fracture of inferior rami of right pubic bone. P.W. 2 has certified that there is disability to the extent of 20 to 25% to the right lower limb. P.W. 2 is not the doctor who treated the appellant. But, Dr. Nayak, who treated the appellant is not examined. That apart, the fracture, which has been mentioned in Exs. P8 and 11 are not disclosed at the earliest point of time and X-ray obtained earlier have not been produced. Reasons for non-production of these documents have not

been assigned by the appellant. It is for this reason that the Tribunal did not accept the evidence of P.W. 2 to assess the disability at 20 to 25%. It has considered the disability only at 3% and granted compensation. To prove that the appellant has suffered fracture, except the evidence of P.W. 2, there is no material worth acceptance. Anyhow, the insurance company has not filed any appeal against the Award of the Tribunal.

8. The Tribunal has granted a sum of Rs. 8,000-00 towards pain, suffering and mental agony, Rs. 13,550-00 towards medical expenses and a sum of Rs. 3,000-00 towards loss of earning during the period of treatment and Rs. 17,000-00 towards permanent disability suffered. Taking into consideration the aforesaid facts and circumstances, as there is unacceptable evidence regarding the fracture suffered by the appellant and the overall compensation granted by the Tribunal, I do not find any justifiable grounds to interfere with the impugned Judgment and Award. If the compensation awarded is taken into consideration, in the context of the simple injuries suffered and the fact that the fracture has not been proved, the question of enhancing the compensation on each of the heads does not arise as the total compensation even for the simple injuries appears to be just and reasonable. Therefore, the point is answered in negative.

Consequently, the appeal is accordingly dismissed.