
(2013) 09 KAR CK 0287

Karnataka High Court

Case No: M.F.A. No. 231 of 2012

Mr. Puttaswamy. H.T.

APPELLANT

Vs

M/s. United India
Insurance Co. Ltd. and
The Managing Director

RESPONDENT

Date of Decision: Sept. 13, 2013

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166

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

Bench: Single Bench

Advocate: G.K. Sreevidya, for the Appellant;

Final Decision: Dismissed

Judgement

N.K. Patil, J.

This appeal by the claimant-appellant is directed against the impugned judgment and award dated 22/08/2011 passed in MVC No. 7432/2010, by the XII Additional Small Causes Judge and Member, Motor Accident Claims Tribunal, Bangalore, (hereinafter referred to as "Tribunal" for short) for enhancement. The Tribunal, by its impugned judgment and award, has awarded a sum of Rs. 43,200/- with interest at 6% p.a., from the date of petition till its realization, after deducting 10% towards contributory negligence, on account of the injuries sustained by him in the road traffic accident.

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

The appellant claims to be aged about 45 years and was hale and healthy prior to the accident. That on 26.8.2010 at about 10.00 a.m. when the appellant was standing at the bus stop on K.R. Road, in front of Sri. Venkateswara Temple near Bangalore Medical College, Circle, at that time, the driver of the BMTC bus bearing No. KA. 01.FA. 1380 came through A.V. Road from Kalasipalya and took a turn towards southern side on K.R.

Road with high speed in a rash and negligent manner and violently dashed against him. Due to which, he fell down on the road and the left front wheel of the said bus ran over his right foot and thereby he sustained crush injuries and other injuries as per Ex. P7. Immediately, he was taken to Kaveri Specialty Hospital, Hosur Main road, Bangalore and thereafter, he was shifted to Rajarajeshwari Medical College and Hospital, Mysore road, Bangalore, wherein he took treatment as inpatient and thereafter, on the advice 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. Therefore, appellant has filed a claim petition before the Tribunal u/s 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. 43,200/- as compensation under different heads, after deducting 10% towards contributory negligence, with interest at 6% p.a. from the date of petition till the date of realization. Being dissatisfied with the quantum of compensation awarded by the Tribunal and fixing the contributory negligence at 10% on the part of the appellant, he has presented this appeal.

5. I have heard the learned counsel appearing for appellant.

6. The submission of the learned counsel appearing for appellant is that, the Tribunal has erred in fixing contributory negligence at 10% on the part of the appellant and the same cannot be sustained and is liable to be set aside. Further, he submits that, the income of the appellant assessed by the Tribunal at Rs. 4,000/- per month is on lower side and it needs to be enhanced, since the accident had occurred on 26.1.2010 on account of the rash and negligent driving by the driver of the BMTC bus and therefore, the Tribunal ought to have assessed the income of the appellant reasonably. Further, he submits that the Tribunal has erred in not awarding any compensation towards loss of amenities, loss of future earnings and loss of happiness and therefore, it needs to be awarded. Therefore, he submitted that the impugned judgment and award passed by the Tribunal is liable to be modified.

7. After hearing the learned counsel for the appellant and after perusal of the impugned judgment and award passed by the Tribunal, it emerges that, the occurrence of the accident and the resultant injuries sustained by the appellant are not in dispute. Further, it emerges that, the Tribunal, after considering the material available on record, and after assigning valid reasons in paras 9 and 10 of its judgment, has justified in fixing the contributory negligence at 10% on the part of the appellant which is just and reasonable and it does not call for interference.

8. So far as the submission of the learned counsel for the appellant that, the Tribunal has erred in not awarding any compensation towards loss of amenities, discomforts and unhappiness and loss of future earnings is concerned, the said submission cannot be sustained and is liable to be dismissed, for the reason that, appellant has not adduced any independent evidence to ascertain the physical disability in him due to accidental injuries interfering with his function or avocation and therefore, he is not entitled to any compensation under these heads as rightly observed by the Tribunal in its judgment. Therefore, the said submission of the learned counsel for appellant is dismissed. Further, it is significant to note that, the Tribunal, taking into consideration the nature of injuries sustained by the appellant, the nature and duration of the treatment taken by him, and also taking into consideration his age and occupation, has awarded a sum of Rs. 20,000/- towards injury, pain and sufferings, Rs. 16,000/- towards medical and incidental expenses and Rs. 12,000/- towards loss of income during laid up period, and in all, Rs. 48,000/- and awarded a sum of Rs. 43,200/- after deducting 10% towards contributory negligence with interest at 6% p.a., from the date of petition till its realization. The said compensation awarded by the Tribunal is just and reasonable and therefore, it does not call for interference. Nor I find any good grounds or justification as such made out by the appellant to entertain the relief sought in this appeal. Hence, the appeal filed by the appellant is dismissed as devoid of merits. Ordered accordingly.