

(2013) 09 KAR CK 0318

Karnataka High Court

Case No: M.F.A. No. 1659 of 2009 (MV)

Sri. Ganapa

APPELLANT

Vs

Akbar Sherif and The Oriental
Insurance Co. Ltd.

RESPONDENT

Date of Decision: Sept. 20, 2013

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166

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

Bench: Single Bench

Advocate: Savitha Shetty, for the Appellant; Madhukar Nadig, Advocate for R1 and Shri. R. Rajagopalan, Advocate for R2, for the Respondent

Final Decision: Partly Allowed

Judgement

N.K. Patil, J.

This appeal by the claimant is directed against the judgment and award dated 9th January 2009, passed in MVC No. 62/2008, by the Principal Civil Judge(Sr. Dn.), Additional Motor Accident Claims Tribunal, Udupi, (for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 55,600/- with interest @ 8% p.a. awarded in favour of the claimant as against his claim for Rs. 3,25,700/-, is inadequate. The appellant claims to be aged about 45 years and hale and healthy prior to the date of accident. That the occurrence of accident of the appellant at about 7:45 P.M., on 27-08-2007, when the appellant was proceeding on his cycle, near supreme Feeds of Heroor village, due to rash and negligent driving by the driver of Lorry bearing Registration No. KA-25/B-823, is not in dispute. It is also not in dispute that the appellant sustained CLW of about 2x1x1/2 cm over right elbow and fracture T12 & L, spine and took treatment as inpatient for a period of three days.

2. It is his further case that, on account of the injuries sustained in the accident, he has undergone severe pain and agony and for the treatment of the said injuries, he has spent reasonable amount towards conveyance, nourishing food and attendant charges including medical expenses and other incidental expenses and therefore, he has to be compensated reasonably.

3. The learned counsel for appellant contends that, the Tribunal has erred in not awarding reasonable compensation towards conveyance, nourishing food and attendant charges and loss of amenities, discomfort and unhappiness and therefore, reasonable compensation may be awarded under all the heads by modifying the impugned judgment and award passed by Tribunal.

4. As against this, learned counsel appearing for Insurer, inter alia, contended and substantiated the impugned judgment and award passed by Tribunal, stating that the same is passed after due appreciation of the oral and documentary evidence available on file and hence, interference in the same is not called for.

5. On account of the injuries sustained in the accident, the appellant filed the claim petition u/s 166 of the Motor Vehicles Act, before the Tribunal, seeking compensation of a sum of Rs. 3,25,700/- against the respondents. The said claim petition had come up for consideration before the Tribunal on 9th January, 2009. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of Rs. 55,600/- under different heads, with interest at 8% per annum from the date of petition till the date of realization. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant is in appeal before this Court, seeking enhancement of compensation.

6. I have gone through the grounds urged in the memorandum of appeal and the impugned judgment and award passed by Tribunal and heard the learned counsel appearing for the appellant and also Insurer.

7. After careful perusal of the impugned judgment and award passed by Tribunal and after hearing the learned counsel appearing for appellant and Insurer, it can be seen that, the Tribunal, after assessing the oral and documentary evidence available on file, has erred in not awarding reasonable compensation. Admittedly, due to the road traffic accident, the appellant has sustained CLW of about 2x1x1/2 cm. over right elbow and fracture T12 and L, spine and because of the said injuries sustained in the accident, the appellant was inpatient in the Hospital for three days. During the treatment period, he would have spent reasonable amount towards conveyance nourishing food and attendant charges. Further, on the advise of the Doctor, he would have taken follow-up treatment. The appellant has not sustained any permanent disability. But because of the grievous injuries sustained in the accident, the appellant has lost some future amenities in life and also has to face future discomforts and unhappiness. Further, it can be seen that the Tribunal has failed to

award any compensation towards loss of income during treatment period. Therefore, having regard to the nature of injuries sustained, age, avocation of the appellant and nature and duration of treatment, and also the fact that he cannot to do his work as effectively as he was doing earlier, I deem it fit to award a global compensation of a sum of Rs. 20,000/-, with interest at 8% per annum, in addition to the compensation awarded by Tribunal. In the light of the facts and circumstances of the case, as stated above, the appeal filed by appellant is allowed in part. The impugned judgment and award dated 9th January 2009, passed in MVC No. 62/2008, by the Principal Civil Judge(Sr. Dn.), Additional Motor Accident Claims Tribunal, Udupi, is hereby modified, awarding compensation of a sum of Rs. 20,000/-, with interest at 8% per annum, from the date of petition till the date of realization, in addition to the compensation awarded by Tribunal.

The second respondent-Insurer is directed to deposit the enhanced compensation of Rs. 20,000/-, with interest thereon at 8% per annum, from the date of petition till the date of realization, within three weeks from the date of receipt of copy of the judgment.

On such deposit by the Insurer, the entire sum shall be released in favour of the appellant, immediately.

Office to draw award, accordingly.