

(2017) 04 KAR CK 0060
KARNATAKA HIGH COURT
Case No: 6216 of 2012

Sri. Rajappa

APPELLANT

Vs

The Principal

RESPONDENT

Date of Decision: April 12, 2017

Hon'ble Judges: B.Manohar

Bench: SINGLE BENCH

Advocate: Suresh M. Latur, L. Sreekanta Rao

Judgement

1. The appellant who is the claimant being not satisfied with the quantum of compensation awarded in the judgment and award dated 09.12.2011 passed in M.V.C.No.8664/2010 by the 11th Addl.MACT, Bengaluru (hereinafter referred to as "the Tribunal" for short), has filed this appeal seeking enhancement of compensation.

2. The appellant filed the claim petition contending that on 15.08.2010 at about 6.45 p.m., while he was proceeding in his motor cycle bearing registration No.KA-53/J-5183, near Hosadimballi gate, Sulibele Hobli, Hoskote taluk, a Car bearing registration No.KA-01 ME-7817 driven by its driver in a rash and negligent manner and dashed against the motor cycle. Due to which, the claimant fell down and sustained grievous injuries. Immediately, he was shifted to the Nandagudi Government Hospital. After first-aid treatment, he was shifted to NIMHANS and thereafter he was shifted to Sanjay Gandhi Hospital, Bengaluru. In the accident, he has sustained fracture of shaft of left femur, head injury and injuries to other parts of the body. Prior to the accident, he was working as a bar bender and earning a sum of Rs.10,000/- per month. In view of the injuries sustained, he cannot do the work which he was doing prior to the accident. As the offending vehicle was insured with the 2nd respondent and owned by the 1st respondent, both are jointly and severally liable to pay the compensation and sought for compensation of Rs.8 lakhs.

3. In response to the notice issued by the Tribunal, though the owner of the car was served with notice, he remained unrepresented. Respondent No.2 filed the written statement and they have denied the averments made in the claim petition and also disputed the rash and negligent driving of the car.

4. After trial, the Tribunal held that due to rash and negligent driving of the car, the accident occurred and claimant sustained injuries and therefore, the claimant is entitled for compensation. With regard to the quantum of compensation is concerned, in view of the fracture of the shaft of left femur, the Doctor has assessed the disability to the extent of 16% to the whole body. Though the claimant has claimed that he was doing bar bending work and earning a sum of Rs.10,000/- per month. No documents have been produced to substantiate the same. Hence, the Tribunal has taken the monthly income of Rs.4,000/- per month and taking into consideration the disability to the extent of 8% to the whole body, as the claimant was aged about 40 years, applying the multiplier 15, awarded a sum of Rs.57,600/- towards future loss of income, Rs.25,000/- towards pain and sufferings, Rs.12,000/- towards loss of income during laid up period, Rs.19,500/- towards medical expenses, Rs.10,000/- towards loss of amenities, Rs.5,000/- towards attendant charges, conveyance, nourishment and diet etc., and Rs.8,000/- towards future medical expenses. The Tribunal awarded compensation in all a sum of Rs.1,37,100/- with 6% interest per annum. Since the insurance policy of the offending vehicle was in force as on the date of the accident, the liability was fastened on the insurance company to compensate the claimant. Being not satisfied with the quantum of compensation, the claimant has preferred this appeal.

5. The learned counsel appearing for the claimantappellant contended that the quantum of compensation awarded by the Tribunal is too meager. The accident occurred in the year 2010. The monthly income of Rs.4,000/- taken by the Tribunal is on the lower side. Though the Doctor has assessed the disability to an extent of 16% to the whole body, the Tribunal has taken the disability to the extent of 8% and the claimant has to undergo one more surgery for removal of implants. Hence, the compensation awarded by the Tribunal under all the heads needs to be enhanced.

6. On the other hand, learned counsel for the Insurance company argued in support of the judgment and award passed by the Tribunal and contended that the Tribunal has awarded just and fair compensation for the injuries he has sustained and sought for dismissal of the appeal.

7. I have carefully considered the arguments advanced by the learned counsel for the parties and perused the judgment and award passed by the tribunal and oral and documentary evidence on record.

8. The dispute in this appeal is only with regard to the quantum of compensation is concerned.

9. The occurrence of accident and injuries sustained by the claimant is not in dispute. In the accident, he has sustained fracture of shaft of left femur and head injury. The injury sustained to the head is not grievous in nature. For the fracture of shaft of left femur, the claimant has undergone surgery at Sanjay Gandhi Hospital. In view of the same, he was out of employment for a period of 3 months. The claimant in the claim petition asserted that he was a bar bender by profession and he was aged about 40 years. In the evidence also, he has clearly stated that he was a bar bender. Though, he was cross-examined with regard to profession, nothing contrary is elicited in the cross-examination. The income of Rs.4,000/- per month taken by the Tribunal is on the lower side. Hence, taking the income of the claimant at Rs.6,000/- per month and taking into consideration the disability to the extent of 15% to the whole body, as he was aged about 40 years, applying the multiplier 15, the claimant is entitled to the compensation of Rs.1,62,000/- as against Rs.57,600/- awarded by the Tribunal. Further, the claimant is also entitled to another sum of Rs.6,000/- towards loss of income during the laid up period. A sum of Rs.10,000/- awarded towards loss of amenities of life is on the lower side. As the claimant has to lead the remaining life with the disability of 16%, he is entitled to another sum of Rs.10,000/- towards loss of amenities of life. Hence, the claimant is entitled for a sum of Rs.1,20,400/- in addition to Rs.1,37,100/- awarded by the Tribunal.

10. Accordingly, I pass the following order:-

(i) Appeal is allowed in part.

(ii) The judgment and award dated 09.12.2011 passed in MVC No.8664/2010 is modified.

(iii) The claimant is entitled to enhanced compensation of Rs.1,20,400/-, in addition to Rs.1,37,100/- awarded by the Tribunal with 6% interest per annum.