
(2017) 03 KAR CK 0283
KARNATAKA HIGH COURT
Case No: 24239 of 2009

SRI.KONE JAYANAGA
VENKATESHWARALU

APPELLANT

Vs

SRI. SOMAREDDY &
ANR.

RESPONDENT

Date of Decision: March 27, 2017

Acts Referred:

- Motor Vehicles Act, 1988, Section 173(1), Section 173(1) - Appeals

Hon'ble Judges: H.B.Prabhakara Sastry

Bench: SINGLE BENCH

Judgement

1. This appeal is filed under Section 173(1) of the Motor Vehicles Act, 1988, seeking enhancement of the compensation awarded by the Civil Judge (Sr.Dn.) and Member, MACT, Gangavathi (hereinafter referred to as "The Tribunal", for short), by its judgment and award dated 02.04.2009 in MVC No.151/2008.

2. The appellant/claimant in his memorandum of appeal has taken a contention that the compensation awarded by the Tribunal is a meager amount and that the Tribunal has not properly appreciated the evidence on record. The income of the injured was taken only at Rs.3,600/- per month, forgetting that the injured was a skilled labour. The fact that the claimant had sustained three grievous injuries and has undergone surgery also was not properly appreciated by the Tribunal. Stating that the compensation awarded under different heads are not reasonable, the appellant has claimed for enhancement of the compensation.

3. On notice being issued, respondent No.1 is served and unrepresented, respondent No.2 - Insurance Company has appeared through its learned Counsel Sri. Nagaraj C. Kolloori. The lower courts records were called for and the same are placed before me.

4. Heard the arguments from both sides and perused the memorandum of appeal, impugned judgment and the entire materials placed before this Court.

5. The point that arises for my consideration is:

"Whether the claimant has made out a ground for enhancement of compensation?

6. Since it is a claimant's appeal and the judgment under appeal has fixed the liability upon the respondents No.1 and 2, who are the owner and the insurer of the vehicle respectively and held them jointly and severally liable, and since the said judgment and award has not been challenged by any of the respondents, the question of occurrence of the accident in the manner arrived at by the Tribunal in its finding, has remained undisputed fact. As such, the question of occurrence of accident in the manner alleged and the liability of the respondents towards the claimant need not be analysed again. The only question involved in the appeal is with respect to the quantum of the compensation awarded. It has to be seen whether the quantum of compensation awarded by the Tribunal is a just compensation in the facts and circumstances of the case.

7. The appellant who was the claimant, has claimed compensation of Rs.10,00,000/- in his claim petition, whereas the Tribunal has awarded a total compensation of Rs.1,65,337/- with interest thereupon. In the alleged accident, said to have occurred on 10.01.2008, the appellant has claimed to have sustained multiple injuries including three fractures. The Tribunal, though has observed that the claimant has sustained both simple and grievous injuries, has awarded Rs.25,000/- as a compensation together for all the injuries. It has not assessed the nature of the injuries and the quantum of compensation to be awarded to them. This is the first major contention of the appellant as well the argument of the learned counsel for the appellant, that the said calculation made and arrived at by the Tribunal is erroneous.

8. Exhibits P6 and P7 are the wound certificates. However, Exhibit P6 is with respect to one injured Sri. Harikrishna, S/o. Pullayya, who admittedly is not the appellant/claimant. The wound certificate pertaining to the claimant is at Exhibit P7, according to which the claimant has suffered following three injuries:

i. Fracture Lt.Femur

ii. Fracture Lower pole of Lt. Patella

iii. Multiple abrasions all over the body

Further, the Tribunal has shown the wound certificate as at Exhibit P2, which is also not correct. The same ought to have been Exhibit P7. It appears that the Tribunal has considered both Exhibits P6 and P7 together and arrived at a conclusion that the claimant before it had sustained 3 grievous injuries and 6 simple injuries. The same is now proved to be not correct. As such, among the three injuries suffered by the claimant, injuries No.1 and 2 above are the grievous injuries and injury No.3 is only simple in nature.

9. The Tribunal has awarded a total compensation of Rs.25,000/- to all the injuries said to have been suffered by the claimant put together. In my view, for the fracture of left femur, the Court below ought to have awarded a compensation of Rs.25,000/-. Towards the fracture of lower pole of left Patella, it should have awarded another sum of Rs.20,000/- and towards the simple injuries, which is multiple abrasion, a sum of Rs.4,000/-, as such, all put together towards injuries suffered and pain and agony, the Tribunal ought to have awarded a total compensation of Rs.49,000/-, which is reasonable, but not Rs.25,000/-. As such, the same is required to be modified.

10. The discharge card at exhibit P11 shows that the injured claimant was inpatient in the hospital from 10.01.2008 to 26.01.2008 for a period of 16 days. The Tribunal has awarded a sum of Rs.7,200/- towards loss of earnings during medical treatment. To arrive at a figure, the Tribunal has observed that the injured must have taken at least two months for recovery. It is surprising that on what basis the Tribunal has arrived at such a conclusion. It is sheer opinion of the Tribunal without any reasoning or basis, when the medical records produced and marked at exhibits, they themselves speak the duration of the treatment. The Tribunal ought not to have gone beyond the same without attributing any cogent reasons for the same. As such, the period of treatment has to be confined only to 16 days as shown in the discharge card at Exhibit P11. For this period of 16 days, the injured is entitled for compensation towards loss of earnings and also towards attendant's charges. To calculate the loss of income, the monthly income of the claimant is required to be considered. The Tribunal has taken the said monthly income of the claimant at Rs.3,600/- per month. However, to arrive at that figure, it has not given any reasons. On the other hand, in several matters, the coordinate Benches of this Court are taking the income of a person, in the absence of any documents or proof, at Rs.4,250/- per month, in the year 2008. In the instant case, since the accident has occurred in the year 2008 and there are no documents to prove the monthly income of the claimant, his income is required to be taken at Rs.4,250/- per month. For 16 days towards loss of income, it comes to Rs.2,270/-. For the same period towards attendant's charges, at the rate of Rs.100/- per day, it comes to Rs.1,600/-. Thus, towards loss of earning during hospitalisation and attendant's charges, put together, the claimant is entitled for a compensation of Rs.3,870/-.

11. In addition to the above, the claimant has also claimed compensation towards loss of future income. According to the learned counsel for the appellant/claimant, due to the injury sustained by him, the claimant has suffered 32% of permanent disability. As such, he has to be suitably compensated, whereas the compensation awarded by the Tribunal is far lower than what was to be given to him. On the other hand, learned counsel for the second respondent - Insurance Company, in his arguments submitted that the assessment of disability is on the higher side. The claimant has not produced any discharge summary to make out exactly the percentage of alleged disability. Though PW2 - doctor has been examined, but he has clearly admitted that he was not the treating doctor to the claimant. As such, the percentage of disability has been confined to 15% by Tribunal. Admittedly, in the instant case, the claimant has not produced any documents like discharge summary, to show the details of the effects of injuries suffered by him in the accident and also the description of the injuries in detail. Exhibit P11, except showing the date of his admission and discharge, has not explained the nature of ailments undergone by the claimant. PW2, the treating doctor, nowhere in his examination-in-chief, has stated that he has treated the patient from the date of the accident till his recovery. He has only stated that he has examined the patient radiologically and clinically, while under the consultation of the injured as an out patient and assessed the disability. He has stated that the percentage of disability is to the extent of 30-32% orthopaedically to the whole body. In this regard, he has issued disability certificate also as per exhibit P52. However, it is noteworthy that in his crossexamination from the Insurance Company side, very same doctor has clearly admitted, as an answer to a suggestion, that he has not provided any treatment to the claimant except subjecting him to the examination for ascertaining the physical impairment. It is also noteworthy that nowhere the doctor has stated that it is solely due to the injuries sustained by the claimant in the accident, he has sustained and suffering with such a percentage of disability to the extent of 30-32%. As such, the disability which is said to be permanent, cannot be taken to the extent of 30 or 32% as stated by PW2, but it is to be reduced. However, at the same time, reducing and confining it to 15% by the Tribunal also appears to be a little bit narrower. As such, considering the circumstances of the case, I am of the opinion that the said disability is to be taken at 20% to the whole body and is a permanent disability. By virtue of the fact that the claimant is suffering with permanent partial disability to the extent of 20% and he claiming to be a skilled worker doing electrical motor winding business, the said disability affects his earning capacity and may reduce his earning, resulting in loss of future income. As such, he is entitled for the compensation towards loss of future income. When monthly income of Rs.4,250/- of the claimant is multiplied by 12 and with the standard multiplier applicable to his age of 33 years, which is 16, 1/5th of the same i.e., 20% of the disability comes to Rs.1,63,200/-. The claimant is entitled for the compensation of the same amount towards loss of future income.

12. The claimant has been awarded with a compensation of Rs.32,937/- towards medical expenses incurred by him. Since the same is based upon the documents produced by him and marked at Exhibits P12 to P48, I do not want to interfere with the said amount.

13. It is further contended by the learned counsel for the appellant that the steel rod inserted in the femur of the claimant at the time of surgery, now requires to be removed, towards which he incurs expenses. As such, a reasonable amount is required to be awarded towards future medical expenses also.

14. Considering the nature of the injuries suffered by the claimant, I am of the view that the claimant may attract future medical expenses also. As such, towards the same, it is reasonable to award a sum of Rs.20,000/- to him.

15. The Tribunal has awarded a sum of Rs.3,000/- towards conveyance and nourishment, which I am not going to disturb.

16. Apart from the above, the claimant/appellant is not entitled for the compensation under any other heads.

17. The above sums when put in the form of a table, is depicted as under:

	Amount(Rs.)
Towards Injury Pain and Sufferings	49,000.00
Loss of earnings during hospitalization and attendant's charges	3,870.00
Loss of future earnings (Rs.4,250/- x 12 x 16 x 20%)	1,63,200.00
Medical expenses	32,937.00
Future medical expenses	20,000.00
Conveyance and nourishment	3,000.00
Total	2,72,007.00

18. Thus, the claimant is entitled for a total sum of Rs.2,72,007/-, rounded off to Rs.2,72,000/- (Rs.Two Lakhs Seventy Two Thousand Only) as compensation towards the injuries sustained by him in the alleged motor vehicle accident. Since the judgment and award passed by the Tribunal is a lower amount than what is the reasonable compensation is, appeal deserves to be partly allowed and the judgment and award under appeal requires to be modified.

19. Accordingly, I answer the above point partly in the affirmative and proceed to pass the following order:

The appeal is allowed in part.

The judgment and award passed by the Civil Judge (Sr.Dn.) and M.A.C.T at Gangavathi in MVC No.151/2008 dated 02.04.2009 is modified.

The compensation amount awarded by the Tribunal which is at Rs.1,65,337/- is modified and enhanced to Rs.2,72,000/- (Rs. Two Lakhs Seventy Two Thousand Only).

The rest of the order of the Tribunal with respect to the holding the respondents jointly and severally liable and directing the second respondent - Insurance Company to deposit the awarded amount, awarding the interest, its rate, terms regarding release of the amount awarded, shall remain unaltered.