

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 18TH DAY OF SEPTEMBER 2014

BEFORE

THE HON'BLE DR.JUSTICE K.BHAKTHAVATSALA

M.F.A.NO.163/2012 (MV)

BETWEEN:

SRI RAMESH
S/O.KRISHNAPPA
AGED ABOUT 29 YEARS
R/AT 1ST STREET
NEAR PANCHAYATH OFFICE
JANATHA COLONY
BIDADI – 562 109
RAMANAGARA TALUK & DISTRICT.

... APPELLANT

(BY SRI K.SHANTHARAJ, ADV.)

AND:

1. SRI D.S.NAGARAJU
S/O.D.S.SIDDALINGAPPA
MAJOR, R/AT NO.13/5
1ST FLOOR, K.P.N.EXTENTION
BANGALORE – 560 057.

2. THE MANAGER
ICICI LOMBARD CO. LTD.,
PRESTIGE CORNISHE
NO.62/1, SECOND FLOOR
RICHMOND ROAD
BANGALORE – 560 025.

...RESPONDENTS

(BY SRI H.C.VRUSHABHENDRAIAH, ADV. FOR R-2
NOTICE TO R-1 DISPENSED WITH)

THIS MFA FILED U/S.173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 19.8.2011 PASSED IN MVC NO.252/2009 ON THE FILE OF THE ADDITIONAL CIVIL JUDGE (SR.DN.), MEMBER, ADDITIONAL MACT, RAMANAGAR, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY, THE COURT DELIVERED THE FOLLOWING:-

J U D G M E N T

Though the appeal is listed for admission, with the consent of learned counsel for the parties, the matter is heard for final disposal.

2. Learned counsel for the appellant submits that the claimant sustained grievous injuries and resulted in permanent disablement to the extent of 62% to his right lower limb and the Medical Officer/PW-2 has deposed that the claimant has to go for replacement of hip joint, but the Tribunal has not awarded adequate compensation. He prays for enhancement of compensation fixing the income of claimant at Rs.10,000/- p.m.

3. Learned counsel for the second respondent - Insurance Company submits that the Tribunal has awarded adequate compensation and there is no good ground for enhancement of compensation.

4. It is the case of the claimant that he was 26 years old, agriculturist and also supplying milk to dairy and earning Rs.10,000/- p.m. He filed a claim petition against the owner and insurer of lorry claiming compensation of Rs.5.00 lakhs towards personal injury sustained by him in the motor accident that occurred on 17.11.2008, due to rash and negligent driving of the lorry bearing Reg. No.KA-01-B-8862 by its driver. In support of the case of the claimant, he got himself examined as PW-1 besides examining P.W.2/Dr.S.N.Narasimha Murthy and got marked Exs.P-1 to P-8. The respondents have not adduced rebuttal evidence.

5. The Tribunal fixed the income of claimant at Rs.3,000/- p.m., permanent disablement at 20% of the whole body, applied multiplier of '17' while awarding compensation towards 'loss of future earning' and awarded compensation in favour of the claimant as under:

Pain and suffering	-	Rs. 30,000/-
Loss of income	-	Rs. 4,200/-
Attending charges	-	Rs. 1,350/-
Loss of future income	-	Rs.1,22,400/-
Loss of amenities	-	Rs. 10,000/-
Medical expenses	-	Rs. 62,000/-
Future medical expenses	-	Rs. 15,000/-
Total		<hr/> Rs.2,44,950/- <hr/>

6. According to Ex.P-4, the Wound Certificate, the claimant had sustained comminuted inter trochanteric fracture with subtrochantric extension right femur and contusion over the right chest wall.

The medical officer/PW-2 has opined that both the injuries are grievous in nature. The claimant was treated as inpatient in Subhash Medical Centre at Bidadi. According to Ex.P-7, the case sheet, the claimant was treated as inpatient in the above said hospital from 17.11.2008 to 14.12.2008, during which period, on 19.11.2008, he underwent surgery. The claimant has undergone surgery to right hip region with DHS implantation. PW-2 has suggested that the claimant has to undergo surgery for removal of implants and debridement, later on for total hip replacement, if necessary, and would cost around Rs.50,000/-.

7. Keeping in view the accident occurred in the year 2008 and the claimant is a resident of sub urban, Bangalore and aged about 26 years, even if he is treated as a coolie, he would have earned Rs.6,000/- p.m. The Tribunal has rightly fixed the permanent disablement at 20% of the whole body.

8. Keeping in view, the nature of injury, period of treatment, removal of implants in the hip joint, it requires four months time to take treatment and rest. In my view, the claimant is entitled for compensation as under:

Pain and suffering	-	Rs. 50,000/-
Loss of earning during the period of treatment (6,000 x 4)	-	Rs. 24,000/-
Attendant, conveyance, special diet & incidental expenses	-	Rs. 10,000/-
Loss of amenities	-	Rs. 30,000/-
Medical expenses (as awarded by the Tribunal)-		Rs. 62,000/-
Future medical expenses (as awarded by the Tribunal)-		Rs. 15,000/-
Loss of future earning (1,200 x 12 x 17)	-	Rs.2,44,800/-
Total		Rs.4,35,800/-
Less compensation awarded by the Tribunal		Rs.2,44,950/-
Balance		Rs.1,90,850/-

9. In the result, I pass the following order:

Appeal is partly allowed holding that the claimant is entitled to additional compensation of Rs.1,90,850/- along with costs and interest at 6% p.a. from the date of petition till realisation. Accordingly, the impugned judgment and award are modified.

The respondents 1 and 2 are directed to deposit the additional compensation along with interest with the Tribunal within two months.

Out of the additional compensation, a sum of Rs.1.00 lakh shall be kept in Fixed Deposit in the name of the appellant/claimant for a period of 5 years during which period he shall be at liberty to draw the periodical interest that accrues on the deposit.

Sd/-
JUDGE

nas.