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Court : Karnataka Kalaburagi

Decided On : Jun-04-2015

Judge : C.R. Kumaraswamy

Appeal No. : Miscellaneous First Appeal No. 30019 of 2011 (MV)

Appellant : Shankar

Respondent : Chandrashekhar and Others

Judgement :

(Prayer: This Miscellaneous First Appeal is filed under Section 173(1) of MV Act, against the judgment and award dated 01.10.2010 passed in MVC No 372/2009 on the file of the I Addl. Civil Judge (Sr.Dn) and MACT at Gulbarga, partly allowing the claim petition and seeking enhancement of compensation.)

1. This Miscellaneous First Appeal is filed under Section 173.(1) of MV Act, against the judgment and award dated 01.10.2010 passed in MVC No.372/2009 on the file of the I Addl. Civil Judge (Sr.Dn) and MACT at Gulbarga, partly allowing the claim petition and seeking enhancement of compensation. *f*

2. With the consent of the learned counsel for the appellant as well as the learned counsel for respondent No.2, this matter is heard on merits. The material placed before this Court is sufficient to dispose of this case.

3. The case of the claimant in the Claims Tribunal is as under;

That on 2-1 1.2.2008 at about 1.00 p.m. the claimant was proceeding as a pedestrian on the extreme left side of the road, near KEB office. Old Jewargi road, Panchasheel Nagar, Gulbarga, at that time the driver of a Chavarlet Spark Car bearing No.KA- 32/M-7016 came in a rash and negligent manner and hit against him. Consequently, he sustained injuries.

4. The owner of the vehicle has filed objection statement in the Claims Tribunal denying the accident.

5. The respondent No.2 has filed objection statement in the Claims Tribunal. *f*

6. Ex.P.6 is the certified copy of the plea recorded in CC No.130/2009, Ex.P.7 is the certified copy of the order sheet m CC No. 130/2009. These two documents reveal that the driver of the car has admitted the guilt before the criminal Court

7. The Claims Tribunal has awarded compensation as under;

1.	Pain and suffering	Rs.15,000/-
2.	Medical expenses	Rs. 5,628/-
3.	Attendant charges, nursing extra nourishment charges and conveyance charges	Rs. 16,000/-
4.	Loss of future earnings	Rs. 43,200/-
5.	Loss of income during treatment Period	Rs. 6,000/-
6.	Loss of amenities	Rs. 10.000/-
	Total:	Rs. 95,828/-
	Rounded off to	Rs. 95,800/-

8. Not satisfied with the award amount, the claimant has preferred this appeal seeking for enhancement of compensation.

9. Finding recorded by the Claims Tribunal in respect of rash and negligent driving is based on evidence. *f*

10. Ex.P.8-wound certificate discloses that the claimant has sustained fracture of right ankle. The Claims Tribunal has awarded a compensation of Rs.15,000/- under the head of pain and suffering, which is on the lower side. Therefore, under the head of pain and suffering a sum of Rs.25,000/- is awarded.

11. Under the head of medical expenses, the Claims Tribunal has awarded a sum of Rs.5,628/-. Considering the nature of injuries and also vouchers produced by the claimant, the compensation awarded by the Claims Tribunal under the head of medical expenses is on the lower side. Therefore, under this head a sum of Rs.10,000/- is awarded.

12. The claimant has sustained fracture, due to which there is curtailment of enjoyment of life. Therefore, the Claims Tribunal has awarded a sum of Rs.10,000/- under the head of loss of amenities. This is on the lower side. Hence, Rs.15,000/- is awarded under the head of loss of amenities. *f*

13. The Claims Tribunal has awarded a global compensation of Rs. 16,000/- under the head of attendant charges, nursing and extra nourishment and conveyance charges. The amount awarded by the Claims Tribunal under the above head is also reasonable.

14. One of the contentions raised by the learned counsel for the appellant1 is that the income assessed by the Claims Tribunal is on the lower side. The claimant is a Mason. Accident occurred in the .year 2008. Therefore, the income of the claimant can be assessed at Rs.4250/- per month. Therefore, under the head of loss of earning during laid up period, a sum of Rs.8,500/- is awarded

15. x.P.13- disability certificate discloses that the claimant has sustained disability to the extent of 15% to the lower limb and to the whole body also 15%. No proper data has been spoken by the doctor as to how the whole body disability is 15% when the disability to the lower limb is also 15%. However, taking into consideration of the evidence and also the material placed on record, in my view,

the disability to the whole body of the claimant can be assessed at 6%. The suitable multiplier applicable in this case is 15 since the age of the claimant is 39 years as per Ex.P.9 discharge card as on the date of accident. The loss of income proportionate to the disability of 6% would be Rs.255/-. So due to reduced capacity of work, the claimant has lost income of Rs.45,900/- (Rs 255x12=3060x15=45,900). Hence, the claimant is entitled for compensation as under;

1.	Pain and Suffering	Rs.25,000/-
2.	Loss of amenities	Rs. 15,000/-
3.	Medical Expenses	Rs. 10,000/-
4.	Attendant charges, nursing extra nourishment charges and conveyance charges	Rs. 16,000/-
5.	Loss of earning during laid up period.	Rs. 8,500/-
6.	Loss of earning capacity	Rs. 45,900/-
	Total	Rs. 1,20,400/-

In all the claimant is entitled for compensation of Rs.1,20,400/-. The enhanced compensation will bear interest @ 6% per annum from the date of petition till the date of payment.

16. In view of the above discussion, I pass the following;

ORDER

i. This Miscellaneous First Appeal is allowed in part. The compensation is enhanced from Rs.95,800/-, as awarded by the Claims Tribunal to Rs. 1,20,400/- with interest @ 6% per annum from the date of petition till the date of payment.

ii. Rest of the judgment and award is accepted.

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