

Balbheem Vs. Sudhip and Another

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Court : Karnataka Kalaburagi

Decided On : Apr-05-2017

Judge : B. Veerappa & B.A. Patil

Appeal No. : MFA No. 201929 of 2014 (MV)

Appellant : Balbheem

Respondent : Sudhip and Another

Advocate for Def. : Sri. Shivanand Patil

Advocate for Pet/Ap. : Sri. Sanjeev Patil

Judgement :

(Prayer: This Miscellaneous First Appeal is filed under Section 173(1) of M.V. Act against the judgment and award dated 02.09.2014 passed in M.V.C.No.1007/2013 on the file of III Addl. Senior Civil Judge and MACT, Gulbarga, partly allowing the claim petition and seeking enhancement of compensation.)

B. Veerappa, J.

1. Though the matter is listed for admission, with the consent of learned advocates appearing for both the parties, this appeal is taken up for final disposal.

2. Appellant-petitioner herein filed the present appeal for enhancement of compensation against judgment and award passed MVC No.10007/2013 dated 02.09.2014 on the file of III Addl. Senior Civil Judge and MACT at Gulbarga awarding compensation of Rs.2,47,986/- with 6% interest from the date of claim petition till realization.

3. It is the case of appellant-petitioner that on 06.04.2013 at about 5.15 p.m. when the appellant-petitioner after completion of his meson work at Kesaratagi village was proceeding to Gulbarga by the left side of the road of said village, the Hero Honda Motor Cycle bearing Reg.No.KA-38-J-2525 coming from backside in high speed in a rash and negligent manner dashed to the left side of the appellant-petitioner, due to loss of control, the appellant-petitioner fell down and sustained comminuted fracture of L/E left tibia and fibula with other grievous injuries. The University Police Station, Gulbarga registered a case in Crime No.114/2013 against the rider of the said motor cycle.

4. Immediately the appellant-petitioner was shifted to United Hospital, Gulbarga where he was treated as an inpatient from 06.04.2013 to 13.04.2013 and on 07.04.2013 appellant-petitioner has undergone surgery and rod has been inserted in the leg. After discharge, appellant-petitioner was in complete bed rest with follow-up treatment. Appellant-petitioner still now taking treatment. Appellant-petitioner further contended that he has spent Rs.2,00,000/- for medical expenses and he requires for Rs.1,00,000/- for future medical expenses. Appellant-petitioner was quite, hale and healthy and aged about 25 years and earning Rs.15,000/- per month by doing mason work, but due to the injuries, he has lost his earning. He has spent huge money towards food, boarding, lodging and conveyance for himself and his attendant s. Respondent No.1 is the owner and respondent No.2 is the insurer are jointly and severally liable to pay the commendation. Hence, appellant-petitioner has filed the present appeal for enhancement of compensation as prayed for.

5. In spite of service of notice, the respondents failed to appear before Tribunal, therefore they have placed exparte.

6. On the basis of the averments made in the claim petition, the Tribunal has framed the following points for its consideration;-
1. Whether the petitioner proves that on 06.04.2013 at about 5.15 p.m. by the side of the road of village Kesaratagi, leading towards Gulbarga, he met with motor vehicle accident due to the rash and negligent riding of Hero Honda Splendor Motorcycle bearing Reg.No.KA-38-J-2525 and sustained injuries?
 2. Whether the petitioner is entitled for compensation? If so, how much and from whom?
 3. What order or award?
7. The appellant-petitioner in order to establish his case before the Tribunal examined himself as PW1 and got marked the documents as Ex.P.1 to Ex.P.13. He has also examined the Consulting Orthopedic Surgeon as PW2. The respondents neither adduced their evidence nor produced any documents.
8. The Tribunal considering the entire material on record has recorded the finding that the accident occurred on 06.04.2013 at about 5.15 p.m. due to rash and negligent riding of Hero Honda Motorcycle bearing Reg.No.KA-38-J-2525 thereby the appellant-petitioner sustained the fracture of L/E left tibia and fibula with other grievous injuries. Accordingly, Tribunal has awarded compensation of Rs.2,47,986/- with interest at 6% per annum. Hence, present appeal is filed by the appellant-petitioner for enhancement.
9. The respondent No.2 Insurance Company has not filed any appeal against the impugned judgment and award passed by the Tribunal.
10. We have heard the learned counsel for the parties to the lis.
11. Sri. Sanjeev Patil, learned counsel for the appellant-petitioner contended that the Tribunal has erred in awarding compensation of Rs.2,47,986/- which is very much on the lower side, contrary to the material on record and therefore requires further enhancement. Learned counsel further contended that Tribunal awarded compensation towards pain and suffering only a meager amount of Rs.30,000/-

which requires further enhancement. Further contended that Tribunal has not awarded any compensation towards future medical expenses. The compensation awarded towards loss of amenities and enjoyment in life, loss of future income, medical expenses and attendants chares, food, nourishment and conveyance expenses and loss of income during laid-up period which are very meager amount.

12. He further contended that the Tribunal has erred in taking the income of the appellant-petitioner at Rs.6,000/- ignoring the evidence of PW1 who stated on oath that he was earring Rs.15,000/- per month. Therefore he sought for modification of impugned judgment and award passed by Tribunal by allowing the present appeal for enhancement of compensation.

13. Per contra Sri. Shivanand Patil learned counsel for respondent No.2 Insurance Company sought to justify the impugned judgment and award. He further contended that the appellant-petitioner has stated that his income Rs.15,000/- per month, but he not produced any material document. Therefore, he sought to dismiss the present appeal.

14. In view of the aforesaid rival contentions urged by both the learned counsels the points that arise for our consideration are that;

1. Whether the Tribunal is justified in awarding the compensation of Rs.2,47,986/- with interest at the rate of 6% per annum?

2. Whether the appellant-petitioner has made out a case for further enhancement in the facts and circumstances of the present case?

15. We have given our thoughtful consideration to the argument advanced by the learned counsel for the parties and perused the records carefully.

16. It is the specific case of the appellant-petitioner that he was working as mason and earring Rs.15,000/- per month and has spent huge amount towards his medical expenses and also underwent for surgery. The respondents have not filed any objection nor produced any documents nor cross-examined PW1. In the absence of any contrary oral and documentary evidence placed by the respondents, the Tribunal ought to have taken the income of the claimant as

Rs.7,000/- in stead of Rs.6,000/-. Since the claimant has not produced any material document to prove that he was earning Rs.15,000/- per month, taking into consideration that the age of the claimant and date of the accident occurred in the year 2014.

17. It is further case of the appellant-petitioner that due to the unfortunate accident he is unable to work as before the accident. PW2 Doctor who has treated PW1 has stated oath and issued disability certificate Ex.P.8 and stated that the appellant-petitioner is suffering 50% of disability of left lower limb and the whole body is 30%. The Tribunal taking into consideration the statement made by PW2 Doctor has considered the disability at 10%. In the absence of any contra material produced and cross-examination by the respondents the statement of PW1, the Tribunal ought to have taken the percentage of 12% instead of 10% in view of the categorical statement made by PW2.

18. Taking into consideration the age of appellant-petitioner and calculating loss of future income in terms of the Law declared by Hon ble Supreme Court in the case of Sarla Verma and others vs. Delhi Transport Corporation and another reported in AIR 2009 SC 3104, the appropriate multiplier would be 17 . Therefore, the appellant-petitioner is entitled for compensation of Rs.1,71,360/- ($\text{Rs.7,000} \times 12 \times 17 \times 12\%$) towards loss of future income.

19. The Tribunal considering Ex.P.10 (bills 1 to 33) has awarded compensation of Rs.64,086/- towards medical expenses and incident charges, the same is in accordance with law. The Tribunal proceeded to award only Rs.3,500/- towards attendant charges, food, nourishment and conveyance expenses. Taking into consideration that he was admitted as an inpatient in United Hospital, Gulbarga from 06.04.2013 to 13.04.2013 for 7 days and taking into consideration subsequently underwent surgery and still he is taking treatment, the appellant-petitioner is entitled a sum of Rs.15,000/- towards attendant charges, food, nourishment and conveyance expenses. The Tribunal has awarded Rs.18,000/- towards income during laid-up period. Since we have taken the income of the appellant-petitioner at Rs.7,000/- ($7,000 \times 3$) it would be Rs.21,000/- which is towards during laid-up period. Though the appellant-petitioner claimed

compensation of Rs.1,00,000/- towards medical expenses but he has not produced any supportable and acceptable material evidence and PW2 Doctor has not stated anything about the requirement of future medical expenses. Therefore, taking into consideration the gravity of the fracture and grievous injuries sustained by the appellant-petitioner, we deem it fit to grant Rs.15,000/- towards future medical expenses.

20. For the reasons stated above, the first point raised in the present appeal has to be answered in the negative holding that the Tribunal is not justified in awarding compensation of Rs.2,47,986/- which is very meager to the facts of the present case and second point raised has to be answered in the affirmative holding that the appellant has made a case for further enhancement of compensation.

21. After reassessing the entire material placed on record, the appellant-petitioner is entitled for enhanced compensation as under;

Sl. No.	Heads	Amount
1.	Pain and suffering	50,000/-
2.	Loss of amenities	20,000/-
3.	Loss of future income	1,71,360/-
4.	Medical Expenses and incidental charges (as it was granted by Tribunal)	64,086/-
5.	Attendant charges, food, nourishment and conveyance	15,000/-

6.	Loss of income during laid-up period	21,000/-
7.	Future medical expenses	15,000/-
	Total	3,56,446/-
	Awarded by the Tribunal	-2,47,986/-
	Total enhanced compensation	1,08,460/-

In all the appellant-petitioner is entitled for compensation of Rs.1,08,460/- with interest at the rate of 6% per annum from the date of petition till the payment of compensation.

22. In view of the aforesaid reasons, the appeal is allowed in part.

23. The impugned judgment and award passed by the Tribunal dated 02.09.2014 made in M.V.C.No.1007/2013 is modified.

The appellant is entitled enhanced compensation of Rs.1,08,460/- with interest at 6% per annum from the date of petition, till realization.

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