

Sri Ansar Ali Vs. Sri Shaheed Shaik

Sri Ansar Ali Vs. Sri Shaheed Shaik

SooperKanoon Citation : sooperkanoon.com/1231706

Court : Karnataka

Decided On : Feb-19-2020

Judge : Ashok G.Nijagannavar

Appeal No. : MFA 3296/2014

Appellant : Sri Ansar Ali

Respondent : Sri Shaheed Shaik

Judgement :

R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE19H DAY OF FEBRUARY 2020 BEFORE THE HON'BLE MR.JUSTICE ASHOK G. NIJAGANNAVAR M.F.A. NO.3296 OF2014(MV-I) BETWEEN: SRI ANSAR ALI, S/O MOHAMMED HUSSAIN, AGED ABOUT40YEARS, OC: MECHANIC, R/O. NO.403, 6TH CROSS, GANGONAHALLI, MEKKA MASZID ROAD, BANGALORE-560 039. ...APPELLANT (BY SRI SURESH M LATUR, ADVOCATE) AND:

1. SRI SHAHEED SHAIK, S/O MEHABOOB SHAEB, R/O BHARATHI ENGINEERING WORKS, CIVIL BUS STAND, M.C. ROAD, MANDYA-571 401.
2. THE REGIONAL MANAGER, NEW INDIA ASSURANCE COMPANY LIMITED, UNITY BUILDING, MISSION ROAD, BANGALORE-560 027. RESPONDENTS (BY SRI E.D.SANMATHI, ADVOCATE FOR R2, NOTICE TO R1 DISPENSED) 2 THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION1731) OF

MV ACT AGAINST THE

JUDGMENT

AND AWARD DATED:

28. 10.2013 PASSED IN MVC NO.653/2010 ON THE FILE OF THE XII ADDL. SMALL CAUSES JUDGE AND MEMBER, MACT, BANGALORE (SCCH-8), 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:

JUDGMENT

Though this appeal is listed for admission, with the consent of learned counsel for both sides, arguments are heard for final disposal.

2. This appeal has been filed by the injured- claimant assailing the judgment and award dated 28.10.2013 passed in MVC No.653/2010 by the XII Additional Small Causes Judge and Member, Motor Accident Claims Tribunal, Bangalore (hereinafter referred to as the Tribunal for the sake of brevity).

3. The present appeal is only on the question of quantum of compensation awarded by the Tribunal, in 3 other words, for enhancement of compensation. For the sake of convenience, the parties shall be referred to in terms of their status and ranking before the Tribunal.

4. The relevant facts stated in the petition are that on 28.10.2009 at 11.30 a.m., the petitioner was doing the repair work under tipper lorry bearing Reg.No.KA-22-A-3127 in Shri Durga Engineering Works at Kengeri, Bengaluru, at that time, the driver started the vehicle without giving any signal, as a result of which, the jack came in contact with the electric wire and the petitioner got the electric shock. Due to the negligence of the driver of the tipper lorry, the petitioner has sustained the burn injuries. The left arm of the petitioner was amputated on account of the injuries caused in the accident. The petitioner has endured lot of pain and suffering and has also lost the income and earning capacity. The owner and insurer of the lorry are liable to pay the compensation. 4

5. On service of notice, respondent No.1 has not appeared, as such, he was placed exparte. Respondent No.2 has filed objections denying the averments made in the claim petition. It is contended that the petitioner has failed to take standard care and precaution while working near the vehicle. The injuries sustained are only on account of the negligence on the part of the petitioner himself. Further, the driver of the lorry was not having a valid and effective driving licence. If at all it was an electrical accident, the insurance company cannot be held liable for payment of compensation.

6. On the basis of the aforesaid pleadings, the Tribunal has framed the following issues: 1. Whether the petitioner proves that he has sustained grievous injuries as mentioned in column No.11, in a road traffic accident on 28-10-2009 at about 11.30 a.m., Sri Durga Engineering 5 Work, near BMTC, 12th depot, Kengeri Bangalore-60, due to the rash and negligent driving of the driver of the Lorry bearing No.KA-22.A.3127?.

2. Whether petitioner is entitled for any compensation?. If so to what extent and from whom?.

3. What Order or Award?.

7. On appreciating the oral and documentary evidence placed on record, the Tribunal has held that the petitioner has sustained grievous injuries in the said accident and has awarded the total compensation of Rs.11,16,345/- under various heads along with interest at 6% p.a. from the date of petition till actual realization of the amount from the respondents.

8. Being aggrieved by the quantum of compensation awarded by the Tribunal, the injured- petitioner has preferred this appeal for enhancement of compensation. 6

9. Heard the learned counsel for the appellant- injured and learned counsel for the respondent- Insurance Company. Perused the judgment and award passed by the Tribunal.

10. Learned counsel for the appellant-injured contends that the left arm of the petitioner has been amputated above the elbow, even the right hand of the

petitioner has become totally useless because of the burn injuries, but the Tribunal has committed error by assessing the functional disability as 70%, which is not proper and correct. On account of the amputation of the left arm and the injury caused on the right hand the petitioner is unable to do any work, as such, there is 100% functional disability, but the same has not been considered by the Tribunal. The compensation awarded towards loss of amenities in life, happiness and frustration, is too meager and disproportionate. The Tribunal has also failed to award the compensation towards loss of earning during the laid up period.

11. Per contra, learned counsel for the respondent-insurance company submits that in the instant case, the Doctor, who has treated the petitioner- injured, has stated that the injured has got disability to an extent of 54% but considering the injuries caused to the injured-petitioner, the Tribunal has rightly assessed the functional disability as 70%, which is proper and justified. There is no convincing evidence to hold that the petitioner has got 100% disability. The compensation awarded under other heads is also proportionate and justified.

12. Having heard the learned counsel for the respective parties and on perusal of the materials on record and the impugned judgment, the following point would arise for consideration:

8. Whether there are valid grounds for modification of the judgment and award passed by the Tribunal?. In other words, whether the petitioner-injured is entitled for additional compensation?.

13. In the present case, the Tribunal has awarded the compensation under various heads as detailed below:

Sl.No.	Particulars	Amount
1	Loss of future income due to disability	Rs.5,67,000
2	Loss of amenities in life, happiness & frustration	Rs.40,000
3	For conveyance, attendant charges, food and nourishment	Rs.20,000
4	Pain and suffering	Rs.1,00,000
5	Medical expenses	Rs.3,89,345
	Total	Rs.11,16,345

14. It is evident from the material evidence placed on record that the petitioner-injured had sustained the burn injuries and there was amputation of the left arm. Even the right hand is also affected by the burn injuries as shown in the photographs Ex.P-8. 9 Thus, it is necessary to consider about the functional disability of the petitioner-injured.

15. Learned counsel for the appellant-petitioner has relied on a decision reported in 2014 ACJ627 in the case of Syed Sadiq and others vs. Divisional Manager, United India Insurance Company Limited, wherein the Apex Court advertent to the decisions in the case of Mohan Soni vs. Ram Avtar Tomar [2012 ACJ583(SC)]. and Raj Kumar vs. Ajay Kumar [2011 ACJ1SC]. has observed that the ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the 10 accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

16. In the instant case, according to the medical evidence the petitioner has got disability of 54%, but considering the amputation of the left arm and injuries caused to the right hand, the Tribunal has considered his functional disability as 70%. P.W.4-Doctor, who has treated the petitioner, has stated in his evidence that there is an arc of movement of right wrist dorsi/palmar flexion restricted by 10% and tenderness over right 11 hand and finger joints. Thus, it is evident that there is no disability to the right hand as claimed by the petitioner to an extent of 100%, but it can be noticed that he cannot work with the right hand like a normal person as his movement of fingers and right wrist are restricted. Thus, the functional disability of the petitioner-claimant is taken as 75% to the whole body as against 70% held by the Tribunal.

17. Admittedly, the accident is of the year 2009, hence, the notional income is taken as Rs.5,000/-. The petitioner, was aged about 36 years, as such, the multiplier of 15 will be applicable. As per necessary calculation, loss of future

earnings would be Rs.6,75,000/- (Rs.5,000 X12X15X75) as against Rs.5,67,000/- awarded by the Tribunal.

18. The Tribunal has awarded a sum of Rs.40,000/- towards loss of amenities in life. As could be seen from the records, the appellant-injured has 12 suffered grievous burn injuries, as a result of which, he has lost his left arm and his right hand is also affected as such he will not be able to do any work like a normal person. He cannot stretch nor rotate his right hand or lift any objects, which is so essential to carry on his work as a Mechanic. Therefore, a sum of Rs.60,000/- is awarded towards loss of amenities as against Rs.40,000/- awarded by the Tribunal.

19. In the present case, the Tribunal has failed to award the compensation towards loss of earning during the laid up period. It is submitted on account of the injuries sustained in the accident, the petitioner was compelled to take treatment and rest for about four months, thus, a sum of Rs.20,000/- is awarded towards loss of income during the laid up period.

20. On re-appreciation of the oral and documentary evidence, it is clear that the compensation awarded by the Tribunal towards conveyance, attendant 13 charges, food and nourishment, pain and suffering and medical expenses is proper and justified and there are no grounds for enhancement under these heads.

21. For the foregoing reasons and on the submission of the learned counsel for both sides, the compensation awarded by the Tribunal is modified and enhanced to the extent as follows:

Sl.No.	Particulars	Amount
1	Loss of future income due to disability	Rs.6,75,000
2	Loss of amenities in life, happiness & frustration	Rs.60,000
3	For conveyance, attendant charges, food and nourishment	Rs.20,000
4	Pain and suffering	Rs.1,00,000
5	Medical expenses	Rs.3,89,345
	Total	Rs.12,44,345

(Rupees Twelve Lakhs Forty Four Thousand Three Hundred and Forty Five only)

22. In the result, I proceed to pass the following

ORDER

i. The appeal filed by the appellant- petitioner is allowed-in-part. 14 ii. The impugned judgment and award passed by the Tribunal is modified to the extent that the claimant is entitled to the total compensation of Rs.12,44,345/- with interest at 6% p.a. from the date of petition till the date of realization as against Rs.11,16,345/- as awarded by the Tribunal. iii. The respondent No.2 Insurance Company is directed to deposit the enhanced compensation with interest before the jurisdictional Tribunal within a period of six weeks from the date of receipt of certified copy of the judgment/award. iv. The apportionment and disbursement of the enhanced compensation shall be the same as per the order of the Tribunal. Parties to bear their respective costs. Sd/- JUDGE BSR

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com