

Mr Vasantha Puthran vs Mr Deepak Puthran

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Court : Karnataka

Decided On : Aug-23-2024

Judge : T.G. Shivashankare Gowda

Appeal No. : MFA/4145/2016

Appellant : Mr Vasantha Puthran

Respondent : Mr Deepak Puthran

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF AUGUST, 2024 BEFORE THE HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA MFA NO. 4145 OF 2016 (MV-I) BETWEEN: MR VASANTHA PUTHRAN AGED ABOUT 37 YEARS S/O LATE SOMAPPA R/AT SRI JYOTHI, MOODABAILU KADEKAR VILLAGE AND POST UDUPI TALUK AND DIST - 576 101 APPELLANT (BY MS.PRIYANKA S. URS, ADV. FOR MS.MAMATHA SHETTY., ADV.) AND:

1. MR DEEPAK PUTHRAN AGED ABOUT 31 YEARS S/O SURENDRA SUVARNA R/AT SRINIDHI NEAR SYNDICATE BANK KADEKAR VILLAGE AND POST UDUPI TALUK AND DIST - 576 101

2. M/S BHARATHI AXA GENERAL INSURANCE

Digitally signed by PRAJWAL A COMPANY LTD., REP. BY ITS MANGALORE BRANCH MANAGER, CITY GATE BUILDING Location: HIGH COURT 1ST FLOOR, KADRI TOLL GATE OF KARNATAKA MANGALORE-575 002 RESPONDENTS (BY SRI. D MANJUNATH, ADV. FOR R2; R1 SERVED AND UNREPRESENTED) THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 08.03.2016 PASSED IN MVC NO.956/13 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE, UDUPI & ADDITIONAL MACT, UDUPI, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION. -2- THIS APPEAL, COMING ON FOR HEARING, THIS DAY,

JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA

ORAL JUDGMENT

In this appeal, the petitioner is seeking enhancement of compensation.

2. For the sake of convenience, the rank of the parties shall be referred to as per their status before the Tribunal.

3. Undisputedly there was a accident on 26.04.2012, that took place near Thekil Thota, on NH-

66, Yenagudde village, Udupi taluk, at 11.15 p.m. while the petitioner was riding the motorcycle bearing Reg.No.KA-20/EA-1218 as a pillion rider. After taking treatment at Adarsha Hospital, Udupi, he approached the Tribunal for grant of

compensation of Rs.10,00,000/-. Claim was opposed by the Insurance Company. The Tribunal, after taking the evidence and

hearing both the parties by the impugned judgment

allowed the claim petition granting compensation of -3- Rs.2,01,000/- with interest @ 8% per annum. Pleading inadequacy and seeking enhancement of compensation, the petitioner is before this Court on various grounds.

4. Heard the arguments of Ms.Priyanka S. Urs, learned counsel for Ms.Mamatha Shetty, learned counsel for the petitioner and Shri D.Manjunath, learned counsel for the insurance company.

5. It is contended by the learned counsel for the petitioner that the petitioner was under hospitalization for 1 month with 7 days ICU. The medical evidence shows that he has suffered closed head injury with

diffuse axonal injury with right temporal lobe contusions with diffuse cerebral edema. The injury is certainly affecting him in discharging duty as a gas repairer. The compensation awarded by the Tribunal is on the lower side. Though PW.2 has assessed whole body disability at 15%, the Tribunal did not consider the future loss of income and awarded global -4- compensation of Rs.40,000/-, which requires enhancement.

6. Per contra, learned counsel for the insurance

company has contended that the doctor who examined before the Tribunal is a Forensic Expert, he is not a Neurosurgeon. The Forensic Expert cannot be accepted as a treated doctor. The nature of injury how affecting the earning capacity of the petitioner is not explained through medical evidence. The Tribunal, considering all

the relevant factors, has rightly assessed the compensation. Post treatment, the petitioner has become normal and there is no loss of earning, the

order of the Tribunal is proper and has supported the

impugned judgment.

7. I have given my anxious consideration to the arguments addressed on behalf of both parties and perused the records.

8. The accident is not in dispute. -5-

9. The insurance company has satisfied the

award passed by the Tribunal. Hence issue is only in respect of the medical records explains that the petitioner has suffered closed defuse head injury with defuse axonal injury with right temporal lobe contusion with defuse cerebral edema. The medical records shows that the petitioner was put on to ICU for about 7 days and thereafter under hospitalization totally 1 month. Medical expenses of Rs.72,000/- is ordered to be reimbursed.

10. The accident is of the year 2012. The petitioner claiming to be a gas repairer and even ignoring the evidence of PW.2 that injury of this nature

will certainly affect the functioning of a person, therefore the petitioner has to be awarded with just compensation. Hence, the petitioner has to be awarded with Rs.50,000/- towards pain and suffering, medical expenses at Rs.72,000/-, food and nourishment at Rs.15,000/-, attendant charges for 1 month at -6- Rs.7,000/-, he was laid up for 5 months and Rs.35,000/- (Rs.7,000/- x 5 months) is assessed towards loss of income during laid up, loss of amenities and discomfort is assessed at Rs.40,000/-.

11. As regarding loss of future earnings is

concerned, though PW.2 has assessed whole body disability at 15%, having regard to the nature of injury, age and avocation of the petitioner it is proper to fix disability at 5%. The petitioner was aged 34 years applicable multiplier is '16'. Then loss of future income would be Rs.7,000/- x 12 x 16 x 5% = Rs.67,200/-. Thus, in all, the petitioner is entitled to

total compensation of Rs.2,86,200/- as

compensation that the petitioner is entitled, in the

facts and circumstances of the case.

12. Accordingly, the appeal merits consideration, in the result, the following: -7-

ORDER

(i) The appeal is allowed in part.

(ii) The impugned judgment and award is modified;

(iii) The petitioner is entitled to enhanced compensation of Rs.85,200/- with interest at the rate of 6% per annum from the date of petition till deposit;

(iv) The insurance company is directed to deposit enhanced compensation along with accrued interest within eight weeks from the date of receipt of certified copy of this judgment. SD/- (T.G. SHIVASHANKARE GOWDA) JUDGE MKM List No.: 1 Sl No.: 9

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