Bhaskar Rao and ors. Vs. Arunkumar

Bhaskar Rao and ors. Vs. Arunkumar

SooperKanoon Citation : sooperkanoon.com/371716

Court : Karnataka

Decided On : Dec-04-2001

Reported in : II(2002)ACC108; 2003ACJ332; ILR2002KAR615; 2002(2)KarLJ176

Judge : K.H.N. Kuranga and ;K.L. Manjunath, JJ.

Acts : Code of Civil Procedure (CPC) , 1908 - Order 8, Rule 10; Motor Vehicles Act, 1988 - Sections 168, 171 and 173

Appeal No. : Miscellaneous First Appeal No. 2044 of 1998

Appellant : Bhaskar Rao and ors.

Respondent : Arunkumar

Advocate for Def. : G.S. Visweswara, Adv.

Advocate for Pet/Ap. : A.N. Krishnaswamy, Adv.

Disposition : Appeal partly allowed

Judgement :

K.L. Manjunath, J.

1. This appeal is by the owner, driver of the lorry and the insurance company who were respondents 1 to 3 before the Tribunal. Respondent herein is the petitioner-claimant who filed a claim petition on account of the injury sustained by him in a

road traffic accident on 20-7-1992 at about 12.30 noon near the railway over-bridge on Jewargi Road, Gul-barga. Claimant was aged about 28 years and that he was a Sales Officer at Zandu Pharmaceuticals Limited and was looking after the areas covering Bidar, Bellary, Gulbarga and Raichur and was drawing the salary of Rs. 4,500/- per month. In the said accident, the claimant sustained the following injuries:

1. Lacerated injury over the left patellar region 1' x 1/2';

2. Swelling of left knee and upper part of left leg;

3. Commuted fracture at provinal (sic) part of left tibia with displacement of fracture fragments seen;

4. Sublimation of left fibula seen; and

5. Soft tissue swelling seen around knee joint on left side, in addition to several other injuries.

Immediately after the accident, he was shifted to Civil Hospital, Gulbarga, he was treated there as an in-patient for 2 days. On the advice of the doctors he was shifted to Bombay Trust Hospital, Bombay. He was in-patient for about two months. His left leg was amputated above knee. According to him, he spent about Rs. 2 lakhs towards medical expenses, Rs. 70,000/- towards lodging, boarding and travelling expenses. Company advanced a loan of Rs. 2 lakhs towards medical treatment of the claimant and Rs. 50,000/- was raised by him from private parties on interest. Due to the accident, he is unable to carry on the work of Sales Officer of the entire areas of Bidar, Bellary, Gulbarga and Raichur Districts. Now the areas restricted to Bijapur, Bidar and Gulbarga Districts only. In order to attend his regular work, he has to take an attendant, as he is not in a position to travel due to amputation of his left leg above knee. Considering the evidence of the claimant and the doctor who treated him at Gulbarga, Tribunal has awarded a sum of Rs. 6,48,000/-towards future loss of income, Rs. 1,77,000/- towards medical expenses, Rs. 30,000/- towards conveyance and boarding charges. Thus, in all, Rs. 8,55,000/- was awarded as compensation by the Tribunal. Being aggrieved by the order and award of the Tribunal, present appeal is filed by the owner and the insurance company.

2. We have heard the learned Counsels for the parties.

3. Learned Counsel for the appellants contend that the Tribunal has not awarded compensation on the basis of normal procedure which is being followed by all the Courts. According to him, there is no provision to award compensation of Rs. 6,48,000/- towards future loss of income, calculating the loss of income based on the percentage of disability suffered by the appellant even though the appellant is drawing more salary and continue to work in tbe same job. He contends that the Tribunal should have assessed the compensation under different heads like 'injury, pain and sufferings', 'loss of amenities in life', 'loss of future prospectus in life', 'medical expenses' incurred by the claimant and conveyance, nourishment and attendant's charges and other heads. According to him, Tribunal without following the procedure as laid down by this Court and the Apex Court, has awarded compensation in its own way. Therefore, the entire calculation awarded by the Tribunal has to be modified and reassessed properly in accordance with law. Per contra, learned Counsel for the respondent Sri Visweswara contends that the compensation awarded by the Tribunal under different heads requires to be confirmed. He further contends that the appeal filed by the appellants is not maintainable. He contends that the owner of the lorry had not contested the petition before the Tribunal. Therefore, appeal filed by the insurance company along with the owner before this Court is not maintainable. Per contra, learned Counsel for the appellants contends that the owner as well as the insurance company have together contested the case before the Tribunal and therefore the submission of the respondent's Counsel has to be rejected in toto.

4. Having heard the learned Counsels for the parties, what is required to be considered by us in this appeal is: Whether the appeal filedby the appellants is maintainable? If so, whether the compensation awarded by the Tribunal is excessive and requires to be modified?

5. It is. contended by the learned Counsel for the respondent that the appeal filed by the appellants is not maintainable in view of the fact that the owner and the

driver of the vehicle had not filed the statement of objections before the Tribunal and that they did not contest the claim petition. According to him, insurance company alone had filed its statement of objections and contested the case. Therefore, by obtaining the vakalat from, the owner and the driver of the lorry, insurance company has presented this appeal. According to him, the appeal is not maintainable. Per contra, learned Counsel for the appellants contends that the claim petition was resisted by the owner and the insurance company jointly though the owner of the lorry did not file statement of objections separately, owner and the insurance company have cross-examined P.Ws. 1 and 2, therefore, contention of the respondent's Counsel has to be rejected. In this background, what is required to be considered by us is if a party has been permitted by the Tribunal to cross-examine the claimant and his witnesses, without there being a statement of objections filed by him, whether it amounts to contest. As per the provisions , of Order 8, Rule 10 of the Civil Procedure Code, if the defendants fail to file the written statement, Court has the power to pronounce the judgment at once and even the Court may make such order as it thinks fit. In the present case, there were three respondents before the Tribunal. Insurance company alone has filed the statement of objections and the other two respondents did not file the statement of objections. In spite of the absence of statement of objections of the owner and the driver of the vehicle, the Court has not pronounced the judgment then and there. Similarly, Court has also not passed an order debarring the defendant from participating in the enquiry. In other words, Court has permitted the respondents to cross-examine the claimant and his witnesses. Accordingly, Counsel for the owner, driver and the insurance company has cross-examined the claimant and his witnesses. Cross-examination of P.Ws. 1 and 2 by the Counsel for the owner, amounts to participation and contesting the petition. In a claim petition, the defence open for the owner or the driver of a vehicle are two-fold, (1) is in regard to the cause of the accident; and (2) amount of compensation to be awarded by the Court. If the accident is admitted, the only defence available to the owner is in regard to the compensation to be awarded by the Tribunal. So far as awarding of compensation is concerned, without there being any written objection, respondent-owner or the driver by cross-examining the claimant and his witnesses can assist the Court in fixing the proper compensation. Therefore, even without there being any written objections, case of the claimant can be contested by the respondent. In this case, there is no dispute with regard to the cause of accident and the owner and the driver have cross-examined the witnesses in regard to the compensation to be awarded. So, we are of the opinion that even without statement of objections being filed, a party can demolish the case of the other side either by cross-examining the witnesses of the parties or by producing any other documents. In the circumstances, we are of theopinion that in the instant case, there is an effective participation of the owner and also the insurance company and that the claim petition of the respondent has been contested by the owner and the insurance company. In such circumstances, appeal filed by the owner and the insurance company jointly is maintainable. Accordingly, objections are maintainable.

6. After perusing the order and the award of the Tribunal, learned Counsels for both the parties admit that the Tribunal has not followed the proper procedure in awarding the compensation. The Tribunal has not awarded any compensation under the heads 'injury, pain and suffering', 'loss of amenities in life' and 'loss of future prospects of life'. The basis for awarding future loss of income by the Tribunal is also incorrect and such procedure is also unknown to law. The very fact that the respondent is continuing in the same job and the very fact that he is drawing the same salary on par with other Sales Officers in Zandu Pharmaceuticals, question of awarding future loss of income calculating on the basis of percentage of disability and applying the multiplier based on the age of the claimant is unknown to law. Therefore, we are of the opinion that the compensation awarded by the Tribunal has to be reassessed based on the evidence adduced by the parties.

7. It is not in dispute that due to the accident left leg of the claimant has been amputated above the knee. He was an in-patient in the Civil Hospital at Gulbarga and was also an in-patient at Bombay for more than two months. Considering the nature of injury sustained by him and the fact that he has been operated at Bombay, we are inclined to award a sum of Rs. 1,00,000/- towards the injury, pain and suffering. When the accident took place, petitioner was aged about 28 years and unmarried. He is a Sales Officer in Zandu Pharmaceuticals Limited. The

nature of work of the claimant is to travel from one place to another for the sales of the products of his company and he has suffered a permanent disability of 75% of the whole body. Considering these aspects, we are of the opinion that we have to award a sum of Rs. 1,00,000/- towards the 'loss of amenities in life'. Considering the nature of injury sustained by him, considering the nature of work of the appellant and disability suffered by him, we have to award compensation towards future prospects in life. According to the claimant, the prospects of promotional opportunities have been closed once for all. The very fact that after the accident the claimant has been asked to look after only few districts instead of entire area, we have to consider that the employer of the claimant considering the nature of the injury sustained has given light work. So, in the circumstances, we are of the opinion that Rs. 1,00,000/- towards loss of future prospects in life. Due to this accident, petitioner is not in a position to attend his day-to-day work as he has to move from one place to another to promote sales, we are of the opinion that he has to take an attendant and that he has to travel from one place to another depending upon the public carriages, we are of the opinion that we have to award compensation for the future conveyance of the claimant. In addition to that, claimant has to wear an artificial limb throughout his life. Towards the costs of artificial limb and future conveyance, we are of the opinionthat Rs. 70,000/- has to be awarded under the said head. The claimant has stated in his evidence that he spent more than Rs. 2,00,000/- towards the medical treatment at Bombay. According to him, he has spent Rs. 70,000/- towards lodging, conveyance and nourishment charges. The Tribunal has awarded a sum of Rs. 30,000/- under the said head. But the Tribunal has awarded only Rs. 1,77,000/- towards medical expenses. The claimant has produced medical bills up to Rs. 1,81,000/-. He has also stated in his evidence that in addition to the said bills he has also spent another Rs. 20,000/- towards the medical expenses for which he had no bills. We are inclined to accept the evidence of the claimant. Considering his evidence, we are inclined to enhance the compensation under the head 'medical expenses' awarded at Rs. 1,77,000/- to Rs. 2,00,000/-. Thus, in all, claimant is entitled for a total compensation of Rs. 6,00,000/- as against the compensation of Rs. 8,55,000/- awarded by the Tribunal. The Tribunal has awarded only 6% interest. The petition is of the year 1995. The very fact that the appellant has spent more than Rs. 2,00,000/- towards the medical expenses, we are of the opinion that the interest awarded by the Tribunal is on the lower side and the same is required to be enhanced to 9%.

8. Accordingly, this appeal is allowed in part. Compensation of Rs. 8,55,000/- awarded by the Tribunal is reduced to Rs. 6,00,000/- with interest at 9% from the date of petition till the date of payment. It is also brought to our notice by the learned Counsel for the appellant that pursuant to the orders of this Court a sum of Rs. 4,00,000/- has already been deposited by the insurance company. If it is so, insurance company is permitted to deposit the remaining amount within three months from today. While awarding compensation, Tribunal had already passed an order to keep a sum of Rs. 3,00,000/- out of the compensation awarded by it in a fixed deposit in any nationalised bank. Accordingly, Tribunal is directed to deposit a sum of Rs. 3,00,000/- in the name of the petitioner in any nationalised bank and the remaining amount shall be paid to him.