

Mallappa Vs. Yamanayya and Another

Mallappa Vs. Yamanayya and Another

SooperKanoon Citation : sooperkanoon.com/378511

Court : Karnataka

Decided On : Feb-04-2000

Reported in : II(2000)ACC185; 2001ACJ795; ILR2000KAR919; 2000(3)KarLJ226

Judge : Kumar Rajaratnam, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 168(1)

Appeal No. : Miscellaneous First Appeal No. 3772 of 1998

Appellant : Mallappa

Respondent : Yamanayya and Another

Advocate for Def. : Sri P.B. Raju, Adv.

Advocate for Pet/Ap. : Sri N. Shankar Rangareji, Adv.

Judgement :

ORDER

1. The claimant-appellant being aggrieved by the inadequacy of compensation granted to him in M.V.C. No. 174 of 1997 by the Motor Accident Claims Tribunal No. VII, Bijapur has preferred this appeal.

2. The appellant was travelling in a maxi cab on 12-9-1996. Due to the rash and negligent driving of the driver of the vehicle insured with the 2nd respondent the appellant-claimant suffered serious injuries. The appellant was shifted to the

Government Hospital, Kustagi and thereafter shifted to K.M.C. Hospital, Hubli for better treatment. The appellant was an in-patient for 2 1/2 months and had undergone treatment. The appellant claimed to be a driver earning about Rs. 2,500/- per month and sought for compensation under different heads to the extent of Rs. 2,20,000/-.

3. The Tribunal awarded Rs. 15,000/- for pain and suffering, Rs. 5,000/- was awarded towards medical expenses, loss of amenities was determined at Rs. 10,000/- and Rs. 5,000/- was awarded towards loss of earnings during the period when the appellant was confined to bed; in all, a total compensation of Rs. 35,000/- was awarded.

4. The learned Counsel for the appellant submitted that as a result of the accident there was shortening of the leg by 3'. It was further submitted that the appellant had sustained grievous injuries.

5. The learned Counsel for the Insurance Company submitted that the award of compensation was adequate in the facts and circumstances of the case.

6. A perusal of the accident register and the evidence of the appellant-P.W. 2 clearly indicates that there was mal-union of fracture of neck femur of right side. There was disability of nearly 40% to 50% of the right lower limbs. The appellant was advised by the doctors to reconstruct and astronomy the right hip joint. The injury certificate Ex. P-5 indicates that there was a contusion on the right side of the hip 3 cm. x 5 cm. The injury certificate indicates that there was trochanteric fracture of the right hip.

7. There is no dispute with regard to the finding by the Tribunal that it was as a result of the rash and negligent driving of the driver the accident occurred and as a result of which the appellant was injured. I affirm the finding of the Tribunal.

8. With regard to the compensation, the learned Counsel for the appellant relied on a judgment of the Supreme Court in the case of Shashendra Lahri v UNICEF and Others . That was a case where there was shortening of the leg of the appellant and the Supreme Court awarded a sum of Rs. 4,58,000/-.

9. The learned Counsel for the Insurance Company submitted the each case depends on the facts of that case. In the case before the Supreme Court it was clearly established that the claimant was an academic student and therefore there is no direct comparison with the judgment of the Supreme Court with the facts of this case. The learned Counsel for the Insurance Company, however, submitted that only a marginal increase may be permissible in accordance with law.

10. The judgment cited by the learned Counsel for the appellant cannot have much application for the facts in this case. Firstly, the claimant before the Supreme Court was a student with a bright future. Secondly, the materials produced before the Tribunal in this case does not indicate that the appellant was a driver. However, the judgment of the Supreme Court will have some bearing on this case. The loss of amenities was determined by the Tribunal at Rs. 10,000/-. I feel that it would be appropriate to enhance it to Rs. 25,000/-. The pain and suffering was determined at Rs. 15,000/- Rs. 30,000/- would be the just and equitable compensation on this head. Medical expenses was determined at Rs. 5,000/-. That will have to be enhanced at Rs. 10,000/-. Loss of earning during the period the appellant was bedridden was determined at Rs. 5,000/-. That will have to be enhanced to Rs. 10,000/-. The future loss of earning has not been determined by the Tribunal. I determine the future loss of earning at Rs. 75,000/- taking into account the law laid down by the Supreme Court.

11. In all there will be a total compensation of Rs. 1,50,000/-. The balance of the enhanced amount shall be deposited before the Tribunal with interest at 9% p.a. within six weeks from the date of receipt of this order. The appeal is allowed in part. No costs.