

C.M. Loganathan Vs. Divisional Controller, B.T.S. Division, K.S.R.T.C.

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Court : Karnataka

Decided On : Mar-30-2001

Reported in : III(2002)ACC406

Judge : T.N. Vallinayagam, J.

Appellant : C.M. Loganathan

Respondent : Divisional Controller, B.T.S. Division, K.S.R.T.C.

Judgement :

T.N. Vallinayagam, J.

1. Aggrieved by the inadequacy of the quantum of compensation granted by the Motor Accident Claims Tribunal, (CCC-6) Bangalore, in M.V.C. No. 569/1991 dated 3.8.1998, the appellant/claimant is before this Court.

2. The accident had occurred on 2.1.1991 at about 9.00 a.m. at the junction of N.R. Road and K.P. Main Road, while the petitioner/appellant herein was driving his TVS. Moped and B.T.S. Bus bearing Registration No. CAF-275, came at a very high speed in a rash and negligent manner, endangering human life and dashed to the appellant's Moped from hindside, which resulted in injuries to the claimant/appellant herein complained of by the claimant.

3. The finding of negligence against the driver of the offending vehicle has become final inasmuch as no appeal has been preferred challenging the same by the owner.

4. The injuries sustained by the claimant/appellant are as follows:

(1) Contusion of spine (back bone), clinically swelling/deformity on L-4 and L-5 spinements of lumbar spine very painful.

(2) Clinically fracture of pelvis with compression and dislocation of dire painful.

(3) Extensive lacerated injury over right side abdomen 14' x 8' found bleeding.

5. This was spoken to by PW 1 the claimant himself supported by Ex P5, the wound certificate. The Tribunal after considering the oral and documentary evidence adduced, has granted a sum of Rs. 19,500/- as total compensation for the injuries sustained with interest, at 6% p.a. from the date of petition till the date of deposit.

6. The Tribunal has granted a sum of Rs. 8,000/- for lumber fracture, Rs. 5,000/- for pelvis fracture and in addition it granted Rs. 3,000/- towards pain and sufferings, Rs. 3,000/- towards loss of income during the period of treatment and Rs. 500/- towards medical treatment, conveyance and nourishment totally Rs. 19,500/- was granted.

7. It is claimed that the appellant has spent Rs.10,000/- for medical treatment and Rs. 10,000/- towards follow up treatment. It is also claimed that he was under bed rest for a period of six months and lost his salary for that period. It is further contended that no compensation was granted towards permanent disability as the doctor was not examined despite the wound certificate and discharge card and hospital receipts are produced. Reliance was placed upon the dictum in : ILR 1997 KAR2812 , Renuka Devi's case and 1987 (1) ACJ Page 92 (Radeshram's case) and Vijaykumar v. K.S.R.T.C : ILR 1997 KAR1342 and 1986 ACJ 122 (P.R. Narayan 's case) to show that the resultant permanent physical disability ought to have been considered.

8. On the question of loss of amenities and enjoyment of life, the case of *Snbratnanya Bhatt v. Govinda Raj* 1979(1) Kar.L.J. 5, was relied upon and it was claimed that under the head of loss of amenities and enjoyment of life Rs. 25,000/- should have been given. Further, a sum of Rs. 20,000/- was claimed towards conveyance, Rs. 25,000/ for deformity and permanent disability and for future medical expenses. Relying upon the dictum of *Kiwada v. Ramadas Naik* Kar.L.J. 1997(2) page 278, loss of advancement of career and future earning capacity was claimed. For mental shock and agony, it was claimed that the Tribunal ought to have been granted a sum of Rs. 25,000/- under that head. The question of rate of interest was also challenged.

9. It has become the order of the day to claim fabulous amounts for the small injuries i.e., sow a cheap in the mind of claimants who are mostly illiterates or unaware of legal consequents, dreams of more money and then file a claim petition of the present nature. No doubt it is true that there has been accident which is certainly quite unfortunate is ill luck would have it the claimants suffered injuries when he was driving his T.V.S. Moped at the junction of N.R. Road and K.P. road when there was a collision with BTS bus bearing No. CAF-275 which hit him from the hind side. It is claimed that he sustained clinical fracture of pelvis, extensive lacerated injury over right side abdomen and he was treated as an inpatient for 15 days and no doubt he was advised to take rest for six months. It was further claimed that he was working as a commission agent with M/s. Eswar Road Lines on a monthly salary of Rs. 2,500/- He has received a sum of Rs. 500/- as ex gratia from the respondent. The claim was made for a fabulous sum of Rs. 2,00,000/-.

10. It appears that the petitioner himself asserted that he was riding his T.V.S. Moped on N.R. Road and when he reached the junction of N.R. Road and K.P. Road, he was hit by the BTS bus from behind. The Tribunal holding that there was no contra evidence came to the irresistable inference that the fault lies only on the driver of the offending bus,

11. The wound certificate was produced at Ex. P.5 and those wounds described above. Out of the three injuries sustained, one is contusion and another is external

compression. The second injury namely the clinical fracture of pelvis with compression alone is grievous. The fracture of pelvis bones consists of two hip bones and middle sacrum. Both the hip bones and sacrum bones constitutes pelvic ring. The sacrum bone is also part of vertebrae bone and part of pelvic bone. The formula normally is that if both inferior and superiolemi of both sides of pelvic bones are fractured, Rs. 20,000/- will be a reasonable sum and if one side of pelvic bone is fractured, Rs. 10,000/- is granted and for fracture of sacrum bone Rs. 10,000/- is the just and reasonable compensation. In the present case, the wound certificate does not disclose as to what type of injury or fracture was made to what bone. This is the area where the Doctor's evidence is most required and non-examination of the doctor is certainly not beneficial to the claimant/appellant herein. For any injuries, there should be a formula and that the evaluation of such injuries is made only on the basis of the evidence of the Doctor and without examining author of the wound certificate i.e., the doctor, the mere referring to the wound certificate or to the decisions or rulings on this point is not helpful to arrive at just and reasonable conclusion. In the circumstances, the only way left to the Court is to grant the minimum of Rs. 10,000/- instead of Rs. 5,000/- for pelvic fracture as I find that a sum of Rs. 5,000/- granted by the Tribunal is on a lower side. The other amount of Rs. 8,000/- granted towards lumbar fracture claims to be on the lower side. The third part of spinal column is the lumbar spine which is called lower back consisting of five vertebra called as L-1 to L-5 (L stands for Lumbar). The fracture of a spinal column bone in the Lumbar region may result in urinary bladder and bowel disturbance, and partial weakness in the lower limbs may affect the nerves system. But here there is no medical opinion is available to assess the resultant disabilities of such lumbar fracture. No disability is shown or proved by the Doctor, the formula is that a sum of Rs. 20,000/- is grantable in case of fracture of pelvis column bone without consequential disability. The Court below has granted Rs, 8000/- in the absence of any medical evidence, I feel it proper to grant a sum of Rs. 20,000/- only for the lumbar fracture of L-4 and L-5. Herein again it is to be noted that non-examination of the doctor is fatal to the contentions now raised by the learned Counsel for the appellant in the appeal. In respect of pain and sufferings, taking into consideration the nature of injuries and the period of treatment, a sum of Rs. 5,000/- is granted instead of Rs. 3,000/-.

12. The only evidence given by the claimant/appellant (EW. 1) was that he was advised to take rest for six months and whether he attended the office or took leave is not brought out in his evidence. Though he has claimed that he deprived of his salary for six months but no documents were produced regarding his employment/salary and even regarding his inability to attend his work. However, the Tribunal considering the nature of injury, granted Rs. 3,000/- towards loss of income which is just and reasonable and does not call for interference. So far as the medical expenses is concerned, the receipt for only Rs. 10/- was filed. Therefore, the Tribunal has granted Rs. 500/- towards medical expenses. However, taking into consideration the nature of fracture and period of treatment, I feel it proper to grant a sum of Rs. 3,000/- as medical expenses in respect of fracture of L-4 to L-5 and Rs. 5,000/- as medical expenses for fracture of pelvis.

13. In any claim in proceedings in a Court of Law, it must be proved by evidence and nobody can imagine without evidence as to what would have been happened and they arrive at a pecuniary compensation. Even for applying rough and ready method, there should be some records to appreciate and arrive at proper adjudication of the claim. Otherwise, it will be a fabulous exercise embarked upon by the litigant and the Court. Thus, I am of the opinion that the claimant/applicant is entitled to total compensation of Rs. 46,000/-.

14. In the result, the appeal is partly allowed. The compensation awarded is enhanced from Rs. 19,500/- to Rs. 46,000/-. (Rupees forty six thousand only). The other terms and conditions regarding deposit and interest directed by the Motor Accident Claims Tribunal are confirmed.

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