

Vcnkatappa, Vs. the Divisional Manager

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Court : Karnataka

Decided On : Nov-10-2010

Judge : B. Sreentvase Gowda J.

Appeal No. : Miscellaneous First Appeal No. 3436 of 2009 (MVC)

Appellant : Venkatappa,

Respondent : The Divisional Manager

Advocate for Def. : Sri. K. N. Srinivasa. Adv

Advocate for Pet/Ap. : Sri R. Chandrashekhar, Adv.

Judgement :

1. Although the matter is listed under the orders list, with the consent of learned Counsel appearing for the parties, it is taken up for final disposal.
2. This appeal is by the claimant seeking enhancement of compensation.
3. For the sake of convenience parties are referred to as they are referred to in the claim petition.
4. Brief facts of the case are:

That on 03.03.2007 when the claimant aged about 60 years was crossing KH road in front of KSRTC office all of a sudden a car bearing registration No. KA-01-MA-I

134 came in a rash and negligent manner and dashed against him, as a result, the claimant sustained grievous injuries. Hence he filed a claim petition before MACT, Mangalore seeking compensation of 3,00,000/- and the Tribunal has awarded compensation of Rs. 1,08,000/- with interest at 6% p.a.

5. As there is no dispute regarding occurrence of the accident, negligence and liability of the Insurer of the offending vehicle the only point, that remains for consideration is:

Whether the compensation awarded by the Tribunal is just and reasonable or does it call for enhancement

6. After hearing the learned Counsel appearing for the parties and perusing the judgment and award of the Tribunal I am of the view that the compensation awarded by the Tribunal is not just and reasonable, it is on the lower side and therefore it is deserved to be enhanced.

7. The claimant has sustained tenderness deformed fracture one H. shoulder right single fracture right humerus. Injuries sustained by him are evident from wound certificate Ex. P 5. Discharge summary Ex. P 6, Ultrasound report Ex P 7, OP card Ex. P 10. case sheet Ex. P 11, x-ray Ex. P 12 and supported by oral evidence of the claimant and the doctor examined as PVV's 1 and 2 respectively. PW 2 Dr. Manohar C.V. who examined the claimant has found the following findings during his examination:

i) Tenderness right shoulder;

ii) Swelling right shoulder:

iii) Deformity right arm;

iv) Abnormal mobility with crepitus present;

v) No distal Neuron Vacuolar deficits.

8. Considering the nature of injuries, .25,000/-awarded by the Tribunal towards pain and suffering is on the lower side and it is deserved to be enhanced by

another sum of ?5,000/- and I award 30,000/- under this head.

9. As 20,000/- awarded by the Tribunal towards medical expenses is based on the medical bills produced by the claimant for 19,587/-, there is no scope for enhancement under this head.

10. The claimant was inpatient in PD Hinduja Sindhi hospital for about 8 days. Considering the same 8,000/- awarded by the Tribunal towards incidental expenses such as conveyance, nourishment and attendant charges is just and proper and it does not call for enhancement.

11. Considering the disability stated by the doctor 10,000/- awarded by the Tribunal towards loss of amenities is on the lower side and I award 15,000/- under this head.

12. Considering the age of the claimant, nature of injuries and duration of treatment 9,000/- awarded by the Tribunal towards loss of income during laid up period is just and proper and it does not call for enhancement.

13. The Tribunal considering the age of the claimant and his avocation has rightly assessed his income at 3,000/- p.m. and awarded 36,000/- towards loss of future income and there is no scope for enhancement under this head.

14. Thus the claimant is entitled for the following compensation:

1) Pain and suffering. 30,000/-

2) Medical and incident; Expenses. 20,000/-

3) Incidental expenses. 8,000/-

4) Loss of income during Laid up period. 9,000/-

5) Loss of amenities. 15,000/-

6) Loss of future income. 36,000/-

Total 1,18,000/-

15. Accordingly the appeal is allowed in part. The judgment and award of the Tribunal is modified to the extend stated hereinabove. The claimant is entitled for a total compensation of 1,18,000/- as against t; 1,08,000/- awarded by the Tribunal with interest at 6% p.a. on the enhanced compensation of .10,000/from the date of claim petition till the date of realization.

16. The Insurance Company is directed to deposit the enhanced compensation with interest within two months from the date of receipt of a copy of this judgment and the same is ordered to be released in favour of the claimant.

No order as to cost.

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