

Shivakumar Vs. the Managing Director Bmtc, Central Office K H Road, Bangalore

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Court : Karnataka

Decided On : Jun-15-2011

Judge : K. Bhakthavatsala

Appeal No. : MFA.No. 5903 of 2009 (MV)

Appellant : Shivakumar

Respondent : The Managing Director Bmtc, Central Office K H Road, Bangalore

Advocate for Pet/Ap. : For the Petitioner: R. Chandrashekar, Advocate for M/s Lawyers NET. For the Respondent: D. Vijaykumar, Advocate.

Judgement :

(Prayer: THIS MFA FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 27.12.2008 PASSED IN MVC NO.4633/2001 ON THE FILE OF THE VI ADDL. JUDGE, COURT OF SMALL CAUSES and MACT, BANGALORE, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.)

1. Learned Counsel for the appellant submits that the appellant was working as a security guard and after the accident he is unable to work as security guard and therefore, he was terminated from service. He also submits that as per the judgment and Award made on 6.11.2004, the Tribunal awarded compensation in

all amounting to Rs.1,47,640/-. Out of the said amount, a sum of Rs.80,640/- was awarded towards loss of future earnings on the basis of permanent disablement of 14% to the whole body. The judgment and Award made on 6.11.2004 was challenged by the respondent/BMTC, in MFA No.5502/2005 (MV). The said appeal was partly allowed by order dated 8.1.2008 confirming the finding recorded by the Tribunal on issue No.1 namely, on the point of negligence and remanded the matter for fresh consideration. The Tribunal, after the matter was remanded, has awarded compensation in all amounting to Rs.1,17,000/-. But, as per the first judgment and award dated 6.11.2004 the claimant was awarded compensation of Rs.1,47,000/-. Thus, compensation amount was reduced by Rs.30,000/-. He submits that on account of permanent disablement the claimant is entitled for enhancement of compensation.

2. Sri D.Vijayakumar, learned Counsel appearing for the respondent submits that the Tribunal had taken permanent disablement at 14% and income at Rs.3000/- per month and awarded compensation of Rs.80,640/- towards loss of future earnings. The respondent had challenged the judgment and award on the point of negligence and quantum of compensation in MFA No.5502/2005 (MV) and the matter was remitted to the tribunal for fresh consideration on the point of quantum of compensation. He draws my attention to the observation of this court made with reference to para No.13 of the earlier judgment dated 6.11.2004 of the Tribunal. He submits that after the case was remanded to the Tribunal, it has rightly reduced the compensation amount, as the claimant has not proved his termination. He further submits that this Court has held that the compensation awarded towards loss of earning capacity was not correct and on remanding the matter, the Tribunal has rightly reduced the compensation amount from Rs.1,47,000/- to Rs.1,17,000/-.

3. This Court has remanded the matter to the Tribunal with a direction to apply its mind and re-appreciate evidence on record and award compensation. After the case was remitted to the Tribunal, the claimant has got examined an eye witness- V.M.Chandraiah to the accident as PW.4. There was no need to examine PW.4 as the finding recorded by the Tribunal on issue No.1 namely on the point of negligence was confirmed. After hearing arguments, the Tribunal has awarded compensation in favour of the claimant as under:-

Heads	In Rs.
Pain and Sufferings	30,000/-
Food and Nourishment	2,000/-
Attendant charges	2,000/-
Traveling Expenses	1,000/-
Medical Expenses	25,000/-
Loss of earnings	9,000/-
Loss of amenities	40,000/-
Future Medical Expenses	8,000/-
Total	1,17,000/-

But the claimant is before this court contending that the compensation of Rs.1,17,000/- awarded by the Tribunal is inadequate.

4. As on the date of accident, the claimant was 28 years old. He sustained fracture of left femur. He was treated in Shushrusha Nursing Home and Parimala Hospital and Research Centre at Bangalore. The claimant has got himself examined as PW.1 besides examining Dr.John Ebenezer and Dr.Kiran as PWs.2 and 3 and got marked documents as per Exts.P5 to P17. Ex.P14 is the Salary Certificate dated 12.5.2003 issued by Eagle Eye Security certifying that the claimant was working since 1998 as Security Guard in the said Company and his last drawn salary for the month of October 2001 was Rs.3,214/-. The accident occurred on 9.11.2001. Ex.P15 is the termination certificate dated 12.5.2003 issued by the Eagle Eye Security certifying that the claimant, who was working as Security Guard sustained fracture in an accident and since then he was not able to do his job and therefore, the Company terminated his service. Both the Certificates dated 12.5.2003 are issued by Sridhar. Deputy General Manager of Eagle Eye Security. But the Deputy General Manager of the Security was not examined. The Tribunal has taken the salary of the claimant as Rs.3,000/- per month. Since the certificate of termination is issued in the year 2003, the Tribunal has held that the claimant continued to be in service till 2003. As per Ex.P14 that the claimant drew salary of Rs.3,214/- for the month of October 2001. Merely because the employer of the claimant was not examined and the certificates was issued in the year 2003, it cannot be said that

the claimant is working as Security Guard after the accident and there is no loss of future earning. PWs.2 and 3 have stated that the claimant has got the permanent disablement to the extent of 14% of the whole body, it is well known that on the basis of physical fitness. Security Guards are selected and appointed by Security Agencies. Keeping in view that the grievous injury sustained by the claimant in the motor accident, it cannot be said the claimant is physically fit for the post of security guard. Under such circumstances, the claimant has to seek alternative job on low salary or he may not get any job at all. Now, I proceed to refer to the observations made in MFA No.5502/2005 in para 6 of the order dated 8.1.2008, which reads as under:-

“6. There is considerable force in the submission of the learned Counsel for the appellant that the compensation awarded is excessive. A bare perusal of the findings, reasons and conclusions arrived at by the MACT on issue No.2, bristles with infirmities. The MACT did not weigh the evidence, discuss the contents of the material on record, including the oral testimony of the witnesses, nor arrive at finding before recording conclusions. In short, the findings on issue No.2 are cryptic and are not in the direction of establishing just compensation payable to the injured. A bare reading of para 13 of the impugned judgment and award discloses lack of application of mind by the Presiding Officer. I say so because it is stated that Rs.3,000/- when considered as the income of the claimant, Rs.80,640/- is the calculation without mentioning the head of damages.”

5. No doubt the Presiding Officer of the Tribunal has not stated in many words while awarding compensation of Rs.80,640/-. But, it is implicit from the judgment that the Tribunal has awarded compensation of Rs.80,640/- towards loss of future earnings. In my opinion, on account of fracture of left femur and the implants still exist in the left leg, permanent disablement can be safely fixed at 10% of the whole body. Since the claimant was 28 years as on the date of accident, as per the ratio laid down in SARLA VERMA (SMT) AND OTHERS v. DELHI TRANSPORT CORPORATION AND ANOTHER [reported in 2009(6) SCC 121], multiplier 15 can be applied for awarding compensation towards loss of future earnings.

6. Learned Counsel for the respondent cited decisions reported in ILR 2000 KAR 3443 [UNITED INDIA INSURANCE CO. LTD., v. D.C.RAJANNA and ANOTHER] and ILR 2002 KAR 3355 [SUBASHCHAND JAIN v. GANAPATHI AND ANOTHER]. I have perused the decisions. In my view, the decisions are of no avail to the case of the respondent. The contention of the learned counsel for the respondent that the compensation awarded earlier should be reduced holds no water, as the claimant has undergone operation and the implants still exist in the left leg and resulted in permanent disablement. The Tribunal has not awarded adequate compensation and the claimant is entitled for compensation as under:-

Heads	In Rs.
Pain and Sufferings	40,000/-
Medical Expenses	25,000/-
Attendant, Conveyance, special diet and conveyance expenses	10,000/-
Loss of Earning during the period of treatment and rest (Rs.3,000/-x3 months)	9,000/-
Loss of future earnings [Rs.300x12x17)	61,200/-
Future medical expenses	8,000/-
Loss of Amenities	30,000/-
Total	1,83,200/-
Less: Compensation awarded By the Tribunal	1,17,000/-
Enhanced Compensation	66,200/-

7. Thus, the appellant is entitled for additional compensation of Rs.66,200/-. It is submitted that the claimant is not entitled for interest on the future medical expenses. Interest is not denied when compensation is awarded towards loss of future earnings. Under such circumstances, there is no good ground to deny interest on the future medical expenses.

8. In the result, the appeal is partly allowed holding that the appellant is entitled for additional compensation of Rs.66,200/- along with costs and interest at the rate of 6% p.a. from the date of petition till realization. Accordingly, the impugned judgment and Award are modified.

Respondent/Corporation is directed to deposit the enhanced compensation amount along with the costs and interest with the tribunal within two months from today.

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