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Court : Karnataka

Decided On : Jan-04-2011

Judge : Ajit J. Gunjal & K. Govindarajulu

Appeal No. : Miscellaneous First Appeal No. 6393 of 2006

Appellant : Upendra

Respondent : The Divisional Manager, New India Assurance Co. Ltd., and Others

Advocate for Pet/Ap. : For the Appellants: V.Y. Kumar, Advocate. For the Respondent: R3 - S.S. Haveri, R1 - A.K. Bhat, Advocate.

Judgement :

Ajit J, Gunjal, J.

1. Even though the appeal is listed for admission, with the consent of both the Counsel, appeal is taken up for final disposal.

2. The appeal is by the claimant. At the time of accident he was 22 years. In a road accident, which occurred on 22.6.2001, he has suffered two fractures i.e., Fracture of Left femur and fracture of Left tibia. He lodged a claim petition seeking compensation of 10,00,000/-. The learned member of the Tribunal has awarded a sum of 2,03,000/- with interest @ 6% p.a. Hence, the appeal is filed seeking

enhancement.

3. Indeed, we are not required to go into the question of act actionable negligence inasmuch as that has been accepted by the insurer and the insured.

4. The case of the claimant appellant is that at the relevant point of time i.e. at the time of accident he was a student undergoing training in physiotherapy. It is his case that the accident and the injuries have resulted in the permanent disability inasmuch as he may not be in a position to pursue his avocation of physiotherapy. Hence sought for compensation.

5. The respondents entered appearance and have resisted the claim. Nevertheless, the learned member of the Tribunal has recorded a finding that indeed, the accident has occurred due to the rash and negligent driving of the driver who was driving the vehicle.

6. Learned Counsel appearing for the appellant submits that the learned member of the Tribunal was not justified in determining the compensation as done by him on various counts. He submits that the appellant had to undergo two operations. One for Implantation of the rod and another for removal of the same. Thus, he submits that the compensation insofar as 'Medical Expenses' is concerned requires enhancement so also on the other two heads of 'Pain and Suffering' and 'Loss of Amenities'.

7. Mr.A.K.Bhat, learned Counsel appearing for the Insurer supports the judgment and award. He submits that having regard to the nature of Injuries, the compensation determined by the Tribunal is just and fair.

8. Indeed, we are persuaded to accept the contention of the learned Counsel appearing for the appellant. We notice that the claimant - appellant has sustained the following injuries:

(i) Fracture of shaft of left femur at the junction of middle and 1 / 3rd with butterfly fragment.

(ii) Open upper tibial fracture left with missing tibial tuberosity and patellar tendon crushing.

9. We also notice that he was hospitalized and was an inpatient for 35 days and had to undergo two operations. One operation for implantation and the other for removal of the same.

10. We also notice that the claimant - appellant has taken treatment at Hosmat Hospital. The Doctor was examined during the course of trial as PW2 and the Doctors evidence and inpatient records shows that the petitioner has undergone surgery, fixation of implants also done and he has undergone wound debridement with approximate of patellar tendon and 2" suture was done. We are also required to note that he has taken treatment as inpatient on two occasions i.e. from 22.6.2001 to 25.7.2001 and 12.8.2002 to 14.8.2002.

11. Indeed, having regard to the nature of injuries as well as the duration of hospitalization, we are of the view that medical expenses all inclusive of medical expenses, nourishment, future medical expenses can be determined at Rs. 1,50,000/-.

12. Insofar as 'Loss of Future Earning' is concerned, the same is determined at 10,000/-. Insofar as the 'Loss of Amenities' as well as 'Pain and Suffering', we are of the view that indeed, the claimant is entitled for enhancement.

13. Indeed, the compensation in respect of 'Loss of Amenities', the compensation broadly is required to be classified as pecuniary and non-pecuniary. Pecuniary loss is to be determined with reference to the actual amount spent towards medical expenses etc. Insofar as non-pecuniary compensation is concerned that is required to be determined with reference to the 'Pain and Suffering' undergone by the claimant and the 'Loss of Amenities'. Indeed, this Court in the case of Suresh Bacha Pujari Vs Bandu S. Chougala and Others reported in ILR 2005 KAR 697 has observed thus:

"10. The person physically injured may recover both for his pecuniary losses and his non-pecuniary losses. Pecuniary losses consists of loss of earnings and the

medical and other expenses to which he is put to as a result of the injury. The non-pecuniary damages would consist of pain and suffering, loss of amenities of life.

11. The Courts have evolved a particular method for assessing loss of earning capacity, for arriving at the amount which the plaintiff has been prevented by the injury from earning in future. Normally the compensation is determined on the loss of earning of the injured on account of disability suffered by him due to the accident. In the case on hand the injured has suffered permanent disability and therefore, the question is, what should be the damages payable to him. The claimant - appellant has been a victim of a traumatic accident in which his right leg has been amputated. Due to the said accident the physical frame has shattered. He has to put up with deformity with the rest of life. It can not be denied that there would not be normal enthusiasm for the victim in social and other gathering without any reservations. The Courts, have to eventually keep these factors in mind before assessing the damages. But at the same time it can not be lost sight of that the damages can not be high and ridiculously low nor niggardly or windfall. The damages will have to be assessed on the basis of earnings and earning capacity at the time of accident. Some element of conjecture is inevitable in assessing damages. Lord Pearce in *Mallet Vs. Memonagle* reported in 1969 ACJ 312 (H.R..England) calls it "reasonable prophecy."

14. Indeed, we are of the view that the nature of injuries suffered by the claimant - appellant are in the nature, which hampered his movements. Hence, we are of the view that the claimant- appellant is entitled for a sum of Rs. 75,000/- under the heading of 'Pain and Suffering' and a sum of Rs. 60,000/- under the heading of 'Loss of Amenities'. Thus, the claimant is entitled for compensation under the following heads:

Medical Expenses, which is inclusive of Nourishment, Future Medical Expenses and Attending Charges.

(a) Medical Expenses Rs. 1,50,000

(b) Loss of earning Rs. 10,000

(c) Loss of amenities Rs. 60,000

(d) Pain and Suffering Rs. 75,000

Thus total compensation would be Rs. 2,95,000

Thus, the claimant - appellant is entitled for a total compensation of Rs. 2.95,000/- which we would round it to Rs. 3,00,000/-. We accept the appeal in part. The claimant - appellant is entitled for interest @ 6 % p.a. from the date of petition till the date of deposit of the enhanced compensation. The Tribunal shall invest the enhanced compensation with interest in a Nationalised Bank in Fixed Deposit and the claimant - appellant is entitled to withdraw the interest accrued on the Fixed Deposit.

Appeal stands disposed of accordingly.

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