

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 3rd day of July, 2000

PRESENT

THE HON'BLE MR JUSTICE R V RAVEENDRAN

AND

THE HON'BLE MR JUSTICE V G SABHAHIT

Misc First Appeal No 3012 of 1998

Between:

Sri Poornachandra Sridhar
s/o H.R.Sathyanarayana
No.564, 63rd Cross
5th Block
Rajajinagar
Bangalore - 560 010

..Appellant

(By Sri T.N.Raghupathy, Advocate)

And:

1. D.Ravirajan
s/o Dakshina Murthy
No.142/D-16
Thiyagi Manicram
Naickar Street
Pinji, Ranipet
North Arcot District
Tamil Nadu
(NAA District)
2. The oriental Insurance
Co., Ltd.,
Branch Office
No.17, Krishnagiri Road

Panipet
N.A. District - 632 401
by its Managing Director .. Respondents

(By Sri H G Ramesh, Adv., for R2;
notice to R1 dispensed with)

Misc First Appeal is filed under Section 173(1) of Motor Vehicles Act, 1988 against the judgment and award dated 16-8-1997, in MVC No 351 of 1992, on the file of I Additional District Judge & Motor Accident Claims Tribunal-II, Bangalore, partly allowing the claim petition for compensation.

This Appeal coming on for orders this day, RAVEENDRAN, J delivered the following:-

J U D G M E N T

This is a claimant's appeal arising from the judgment and award dated 16-8-1997 passed by the I Additional District Judge and Motor Accidents Claims Tribunal-II, Bangalore ^{Rural District} in M.V.C.No.351/1992.

2. On 4-11-1991, the claimant was travelling in his car bearing No.MEE-5080 from K.G.F. to Bangalore. When the car was passing 8th k.m. stone before Hoskote at about 8.00 p.m., lorry bearing No.TCJ 1575 (belonging to first respondent and insured with the second respondent) dashed against the car. As a result, the claimant

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sustained grievous injuries. Feeling aggrieved, he filed MVC No. 351/1992 claiming compensation of Rs.7 lakhs alleging that the accident occurred due to the negligent driving of the lorry driver (third respondent before the Tribunal).

3. The claim petition was resisted by the respondents. On the pleadings, the Tribunal framed the following issues:

(1) Whether the petitioner proves that the injuries caused to him are due to the Motor Road Accident by Lorry bearing registration No.TCJ 1575?

(2) Whether the petitioner proves that the accident has occurred on account of the rash and negligent driving of the lorry bearing registration No.TCJ 1575 by the driver of the vehicle?

(3) Whether the second respondent proves that the petition is bad for non-joinder and mis-joinder of necessary and proper parties?

(4) Whether the second respondent proves that the accident has occurred only on account of the negligence of the driver of the petitioner's vehicle?

(5) Whether the petitioner is entitled for compensation and if so what is the amount of compensation and by whom?

(6) What order? "

RMR

4. The claimant examined himself as P.W.1. He examined the Eye-specialist - Dr.K.R.Murthy as P.W.2, Dr. B.M.Parthasarathy, Orthopaedic surgeon as P.W.3. He also examined the Divisional Manager of Widia India Limited wherein he was working as Sales Engineer at the time of the accident as P.W.4. He marked Exhibits.P-1 to P-241. On behalf of the respondents, no oral evidence was let in. A copy of the Insurance policy was marked as R.W.1.

5. After appreciating the evidence, the Tribunal allowed the claim petition by judgment and award dated 16-8-1997 allowing the petition in part. It held that the accident occurred due to the rash and negligent driving by the driver of the lorry bearing No.TCJ 1575 belonging to first respondent and insured with the second respondent; that the claimant sustained injuries alleged by him in the said accident and he is entitled for damages. The Tribunal awarded a sum of Rs.1,43,000.00 (with interest at 6% p.a. from the date of the petition till the date of payment) as compensation under the following heads:

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1. Injury, pain and suffering. Rs.25,000.00
2. Physical disability and loss of amenities in life. Rs.40,000.00
3. Reimbursement of medical and other expenses. Rs. 54,000.00
4. Loss of income during treatment for three months at Rs.6,000.00 per month. Rs.18,000.00
5. Future medical expenses. Ps. 6,000.00

Feeling aggrieved, claimant-appellant has filed this appeal contending that the compensation awarded is inadequate and seeking enhancement of the compensation as claimed in the claim petition.

6. As this is a claimant's appeal, the question of negligence does not arise for consideration. The only question that arises for consideration is whether the compensation awarded is inadequate and whether it should be increased.

7. The evidence discloses that the claimant was aged about 30 years at the time of the accident; that he was employed as a Engineer in

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Widia India Limited with a salary of Rs.6,000.00 per month. He has given evidence in regard to the injuries which is supported by the evidence of the eye-specialist - P.W.2 and the Orthopaedic surgeon - P.W.3. He has also produced the wound certificates (Ex.P-4 and Ex.P-232), the case sheet (Ex.P-240), O.P.D.Card (Ex.P-241), X-rays (Exs.P-233 to P-239) and medical bills (Exs.P-9 to P-161). It is clear from the evidence that the claimant had sustained the following fractures:

- "1. Fracture of right femur-comminuted in the middle 1/3rd.
2. Fracture of head of the radius - right fore-arm.
3. Fracture of lateral epicondyle of the right humerus.
4. Fracture of ribs - VI and VII on the right side.

3. It is also in evidence that he had serious injuries to the right eye and P.W.2, the Doctor who examined him on 5-11-1991 had noted the following injuries to the eye:

1. Injury to right eye and right side of the face.

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2. Rupture of eye ball, 15 mm long with prolapse of ocular contents and;
3. He had perception of light.

The evidence also shows that P.W.2 performed the operation on 5-11-1991 on the right eye, but it was not successful; that another operation was conducted on 28-3-1992 and that was also not successful; that thereafter, third operation was conducted by Dr. Rajanikanth at Madras who advised removal of right eye and to save the left eye, right eye was removed on 18-5-1992; that thereafter the claimant went to Aligarh for implantation of artificial eye as such facility was not available in South India. In regard to four fractures, it is seen that thigh fracture was reduced by open reduction and internal fixation of 'IM' nailing and further operation was done on 14-11-1991. It is seen that the fracture had the effect of shortening the right leg by 1 cms. and flexion of right knee was restricted by terminal 10 degrees and the permanent disability on account of the fractures have been assessed as 7% of the lower limb. In so far as loss of vision in the right eye is concerned, the disability was assessed as 50%. The

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evidence also shows that the claimant will have to undergo another operation for removal of implanted nailing and he will have to replace the artificial eye. The evidence also makes it clear that the claimant was in continuous treatment and underwent several operations between November 1991 till the end of May 1992 and could not have attended to the work. Infact, he has stated that he had to leave Widia India Limited and joined another company. Be that as it may.

9. Having regard to the number of fractures and serious injuries resulting in loss of right eye, we feel that the award of Rs.25,000.00 under the head of injury, pain and suffering is wholly inadequate. We therefore increased the said amount to Rs.50,000.00 under the head 'injury, pain and suffering'.

10. On the basis of the medical bills, air tickets, and prescriptions produced by the claimant, the Tribunal awarded Rs.54,000.00 towards medical and incidental expenses. No serious error

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has been pointed out in the award of the said sum. We therefore, confirm the award of Rs.54,000.00 under the head of medical and incidental expenses.

11. The evidence clearly shows that the claimant will have to undergo one more operation for removing IM nailing and also for replacing of artificial eye. In the circumstances, we feel that a sum of Rs.6,000.00 awarded towards future medical expenses is low and we therefore increase it to Rs.15,000.00.

12. The Tribunal held that the claimant had loss of income for a period of three months at the rate of Rs.6,000.00. The evidence clearly shows that from November 1991 till the end of May 1992, the claimant was not in a position to work. Infact, he joined the new employer in June 1992. Therefore, it is evident that the claimant was under treatment and lost earning for a period of six months. Hence, we award a sum of Rs.36,000.00 under the head of loss of income during the period of treatment instead of Rs.18,000.00 awarded by the Tribunal.

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13. The claimant has not alleged any loss of earning capacity. The evidence shows that the claimant who was earlier working in Widia India Company on a salary of Rs.6,000.00, joined another company on a much higher salary. Hence, we feel that compensation towards loss of amenities and disability should ^{alone} be awarded and not for loss of earning.

14. As noticed above, the claimant lost one eye and that is a serious disability. The evidence also shows that the fracture had the effect of shortening of the affected leg by 1 cm. and there was some partial disability. Having regard to the loss of right eye and the other residual effect of several fractures, we feel that a sum of Rs.75,000.00 should be awarded towards physical disability and loss of amenities as against Rs.40,000.00 awarded by the Tribunal.

15. Thus, the claimant will be entitled to a total compensation of Rs.2,30,000.00 as against Rs.1,43,000.00 awarded by the Tribunal.

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16. The appeal is therefore allowed in part and the claimant is entitled to a total compensation of Rs.2,30,000.00 with interest at 6% p.a. from the date of the petition till the date of payment. In all other respects, award of the Tribunal shall remain unaltered.

Sd/- JUDGE

Sd/- JUDGE

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