

IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH

DATED THIS THE 29th DAY OF OCTOBER 2013

BEFORE

THE HON'BLE MR. JUSTICE L. NARAYANA SWAMY

MFA No.24653/2012(MV)

BETWEEN:

SRI PANDURANG RAMA SALUNKE
AGE 51 YEARS, OCC: AGRICULTURE AND
MILK VENDOR, PRESENTLY NIL,
R/O SOUNDALGA TQ. CHIKODI
DIST. BELGAUM.

APPELLANT

(BY SMT. GEETHA K.M., ADVOCATE)

AND:

1. SHRI FIROZ SIKANDAR KALAVANT
AGE 39 YERS, OCC: BUSINESS
R/O KARADGA, TALUKA CHIKODI,
DIST. BELGAUM.
OWNER OF AUTO RICKSHAW
NO KA-23/A-1972
2. THE DIVISIONAL MANAGER
IFFCO TOKIO GENERAL INSURANCE CO. LTD.,
SUDEV PLAZA, 3RD FLOOR DAJIBAN PETH
OPP. LAXMAN TEMPLE, HUBLI DIST. DHARWAD
JPOLICY NO.1-DJ8BA0-P-400, 73882405
VALID FROM 06/09/2010 TO 05/0-9/2011.
INSURER AUTO RICKSHAW NO.KA-23/A-1972

... RESPONDENTS

(BY SRI. R.R. MANE, Advocate. FOR R2. NOTICE TO R1
DISPENSED WITH)

THIS APPEAL IS FILED UNDER SECTION 173(1) OF MV ACT, 1988 AGAINST THE JUDGMENT AND AWARD DATED 16/04/2012 PASSED IN MVC NO.232/2011 ON THE FILE OF PRESIDING OFFICER FAST TRACK COURT III AND MEMBER ADDL. MACT, BELGAUM PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL COMING ON FOR ORDERS, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

Heard the learned counsel for the parties. With consent of the learned counsel for the parties, the appeal is taken up for final disposal.

2. This appeal is filed by the appellant-claimant seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Belgaum, in MVC No.232/2011.

3. The learned counsel for the appellant submits that in the accident that occurred on 24/10/2010, the appellant-claimant suffered amputation of left leg above knee and other multiple injuries all over the body and that the injuries suffered by the claimant has been proved by

examining PW-1 and amputation has been proved by examining PW-2. The claimant has got marked the documents, wound certificate-Ex.P-5, Ex.P.8-medical bills and Ex.P.9.-23 doctor prescription and Ex.P.10-3 photos of the appellant. He further submits that Ex.P-11-X-ray report and Ex.P-12-disability certificate proves the fact that the appellant has suffered amputation. It is further submitted that the income has been assessed at Rs.3,500/- per month which is on the lower side and the same has to be enhanced.

4. Learned counsel for the respondent submits that compensation awarded by the Tribunal is just and proper and there is no scope for interference by this Court.

5. Submission of both the counsel is considered in the light of the judgment passed by the Tribunal. It is an undisputed fact that for amputation of leg above knee, Tribunal has rightly awarded Rs.60,000/- under the head of injury, pain and agony and an amount of Rs.72,000/- towards medical expenses as per the bills produced.

Under the head of nursing, attendant charges, conveyance and extra nourishment, Rs.10,000/- is awarded which is required to be enhanced by another sum of Rs.15,000/-. Under the head of loss of earning during laid up period, a sum of Rs.10,000/- awarded by the Tribunal is on the lower side. The Tribunal should have taken note of the fact that the claimant would take further treatment and at least he must have taken rest for 3 months during which period he would have not worked due to amputation, hence, the claimant would be entitled to Rs.12,000/- ($3,750 \times 3 = 11,250$ /- rounded off to Rs.12,000/-) and same is awarded under the head of loss of earning during laid up period as against Rs.10,000/- awarded by the Tribunal.

6. Assessment of disability depends upon the occupation of the claimant and also the evidence of the doctor. In view of the fact that the claimant is an agriculturist and because of amputation of leg, his earnings would be substantially reduced, disability is taken at 70%. Accordingly, the appellant is entitled to a sum of

Rs.2,83,500/-($3750 \times 12 \times 9 \times 70 / 100$) and the same is awarded under the head of loss of future earnings as against Rs.1,62,000/- awarded by the Tribunal. Further, a sum of Rs.20,000/- is awarded under the head of loss of amenities. Accordingly, I pass the following order:

Appeal is allowed in part. The judgment and award dated 16/04/2012 passed in MVC No.232/2011 by the MACT, Belgaum is modified. The appellant is entitled to additional compensations of Rs.1,58,500/-.

SD/-
JUDGE

krnv