

Sri Lakshmana Gowda B.N. Vs. The Oriental Insurance Company Ltd. and Anr.

Civil Appeal No. 4255 of 2023 @ SLP (Civil) No.13736 of 2019
2023-07-07 | Aravind Kumar, J.
Repository ID: F2J-C-1626

Full judgment text

Sri Lakshmana Gowda B.N. Vs. The Oriental Insurance Company Ltd. and Anr.

[Civil Appeal No. 4255 of 2023 @ SLP (Civil) No.13736 of 2019]

Aravind Kumar, J.

1. Leave granted. I.A. No.177122/2022 for production of additional documents is allowed.
2. The claimant not being satisfied with the quantum of compensation awarded by the Motor Vehicles Claims Tribunal in M.V.C. No.914 of 2008 sought for enhancement by filing an Appeal under Section 173(1) of the Motor Vehicles Act (for short "MV Act") in M.F.A. No.6365 of 2009 before the High Court of Karnataka, whereunder the compensation of Rs.2,36,812/- awarded by the Tribunal came to be affirmed and interest awarded @ 8% p.a. came to be reduced to 6% p.a. by judgment dated 07.01.2019. Being aggrieved by the same the present appeal has been filed.
3. We have heard the arguments of Mr. C.B. Gururaj, learned counsel appearing for the appellant assisted by Mr. Prakash Ranjan Nayak, Pramit Chhetri and Animesh Dube, Advocates and Mr. T. Mahipal, learned counsel appearing for Respondent No.1, assisted by Rohit K. Sinha. Perused the records.
4. The short point that arises for our consideration in this appeal is:

(1) Whether the compensation awarded by the Tribunal, as affirmed by the High Court deserves to be affirmed or modified?

(2) What order?

Brief Background

5. The appellant/claimant met with a road accident on 22.12.2007 and as a result sustained injuries. For award of compensation claim petition under Section 166 of MV Act came to be filed. The Insurer contested the matter before the Tribunal and after trial, Tribunal allowed the claim petition in part and awarded compensation of Rs. 2,36,812/- under the following heads:
6. As already noticed hereinabove, the claimant/appellant challenged the afore-stated award of the Tribunal before the High Court unsuccessfully. Hence this appeal.
7. It is the contention of Shri C.B. Gururaj, learned counsel appearing for the appellant that Tribunal committed a serious error in awarding abysmally less compensation contrary to the evidence on record. He would elaborate his submissions by contending that Tribunal committed a serious error in construing the income of the claimant at Rs.3,000/- p.m. though it was stated on oath that claimant was aged 24 years on the date of accident and was a graduate, working as a Marketing Executive in a private company and earning Rs.8,000/- p.m.

He would contend that Tribunal erred in not taking note of the fact that permanent physical disability to the whole body was 48% as per medical evidence and same had been completely ignored. Hence, he prays for enhancement of compensation.

7.1 Per contra, Mr. T. Mahipal, learned counsel appearing for the Insurer would support the judgment of the High Court and award passed by the Tribunal and prays for dismissal of the appeal.

Discussion and Findings:

8. The accident in question, claimant/appellant having sustained injuries in the said accident, the offending vehicle having been insured with 1st respondent, issuance of policy and same being in force as on the date of the accident are not disputed. The claimant had sustained multiple cranial fractures of C7 and D1 of right

transverse process and vertebral hemotoma, as is evident from Ex.P-7 Discharge Summary. Medical record also reflected that claimant had sustained contusion of right brachial plexus with right hemiplegia.

The CT Scan Ex.P-12 disclosed extradural haematoma within right temporal region and hemorrhagic contusions on the right temporal lobe. MRI of cervical spine Ex.P-13 also disclosed contusion and edema within the cord extending from C4 to C7. Claimant had also sustained fractures involving zygomatic arch and squamous temporal bones.

For treatment claimant was hospitalized and initially admitted in ICU also. It is in this background Tribunal has awarded compensation under various heads as noticed hereinabove. In the background of injuries sustained claimant was treated as an in-patient for ten (10) days. Hence, we are of the view that compensation awarded towards 'pain and suffering' is on the lower side.

Having regard to the fact that claimant remained in hospital for ten days and was also in continuous treatment thereafter persuade us to award additional compensation towards 'pain and suffering'. Hence, we award Additional Compensation of Rs.50,000/- under the head 'pain and suffering'.

9. Claimant has contended that he was working as Marketing Executive and earning salary of Rs.8,000/- p.m. To substantiate his claim, he has produced salary certificate Ex.P-6. Though he has deposed on oath that on account of the injuries sustained he has not been able to discharge his normal duties or in other words he had stopped working, he did not examine the employer nor produced certificate or letter from the employer.

For said reason it cannot be presumed that claimant had not suffered any bodily disability at all. It is in this background additional document filed along with I.A. No.177122 of 2022 has to be looked into. A perusal of said document would disclose the disability certificate and Identity Card has been issued by the Directorate for the Empowerment of Differently Abled and Senior Citizens, Bangalore in favour of the claimant and it has been certified thereunder that overall permanent Physical impairment of claimant is 75%.

The affidavit accompanying the Interlocutory Application would also indicate that claimant has lost sensation in his right hand and he is unable to discharge his work by the use of right hand. He has also deposed that on account of the injuries sustained in the road traffic accident he is now residing in his native village and has become dependent on his parents.

The Unique Disability Identification Card issued by the Competent Authority to the claimant would also indicate that percentage of disability is 75%. Hence, we see no justifiable reason to brush aside said evidence. Hence, we are of the considered view that Tribunal as well as the High Court committed a serious error in assessing the disability for awarding compensation.

10. When we turn our attention to the salary aspect of claimant, it would not detain us to modify the finding of the Tribunal and the High Court whereunder it has been held that income of the claimant is to be construed at Rs.3,000/- p.m.

Claimant has deposed that he was working as Marketing Executive in a private company called M/s Golden Investments and drawing a salary of Rs.8,000/- p.m. as per salary certificate Ex.P-6. No doubt claimant did not examine his employer. On this ground, it cannot be gain said by the Insurer that claimant was unable to earn or was not earning Rs.8,000/- p.m.

The accident in question had occurred in the year 2007. Even a mason at that point of time was earning not less than Rs.300/- per day or in other words Rs.9,000/- p.m. during 2007. Claimant being a graduate and working as Marketing Executive, his plea of salary being Rs.8,000/- p.m. deserves to be accepted, as it is within proximity of truth and same could not have been ignored by the Tribunal and the High Court on hyper technical grounds.

Hence, we are of the considered view that Tribunal and the High Court fell in error in construing the income of the claimant at Rs.3,000/- p.m. instead of Rs.8,000/- p.m. To this extent the award passed by the Tribunal and affirmed by the High Court requires to be modified and the compensation requires to be recomputed by taking into consideration salary certificate as per Ex.P-6.

10.1 The age of the claimant as on the date accident was 24 years and appropriate multiplier as indicated in Sarla Verma and others v. Delhi Transport Corporation and others [(2009) 6 SCC 121] deserves to be adopted. Thus, under the head 'Loss of Future Income' claimant would be entitled to the following compensation:

$\text{Rs.}8,000 \times 75\% \times 12 \times 18 \div 100 = \text{Rs.}12,96,000/-$

11. On account of the injuries sustained claimant has suffered 75% whole body disability. He has clearly deposed that on account of the injuries sustained and consequential disability suffered his marriage prospects have become bleak.

Even in the affidavit filed on 30.09.2022 he has deposed that he has remained unmarried and none has come forward to marry him. In other words, the prospects of appellant getting married would remain a dream and for loss of the same he has to be suitably awarded compensation. Hence, we award a sum of Rs.50,000/- towards the "loss of marriage prospects."

12. In the light of the income of the claimant having been construed at Rs.8,000/- p.m. as discussed hereinabove, the compensation under the head 'Loss of earnings during laid up period' would require to be recomputed and we do so and accordingly award compensation for four months @ Rs.8,000/- p.m. i.e. Rs.32,000/- in substitution to the compensation awarded by the Tribunal.

13. In the light of the compensation awarded towards 'Loss of Future Income' the sum of Rs.60,000/- awarded by the Tribunal under the head 'Permanent Disability' and 'Loss of Amenities in Future Life' would not arise. The claimant, thus, would be entitled to the following compensation in substitution to what has been awarded by the Tribunal as affirmed by the High Court:

For the reasons afore stated, we allow this appeal in part and modify the award of the Tribunal as affirmed by the High Court in MFA No.6365 of 2009 and in substitution to the same we award a sum of Rs. 15,94,812/- with interest @ 6% p.a. from the date of filing of the petition till the date of payment or deposit whichever is earlier.

First Respondent, Oriental Insurance Co. Ltd. is directed to deposit the award amount as ordered hereinabove before the jurisdictional Tribunal within outer limit of six (6) weeks from the date of receipt of this Judgment excluding the amount, if any, already deposited.

Costs made easy.

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

Disclaimer: This material is for general information and legal research. It is not legal advice. Verify current law, the operative order and later history, and consult a qualified professional before acting.