

Karnataka High Court

Sri Santhosh Kumar vs Sri Narayana Pai on 23 October, 2010

Author: B.Sreenivase Gowda

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 2339 DAY OF OCTOBER. 2010
BEFORE

THE I-ION'BLE MR. JUSTICE B.SREENIVAL\$iffV:V(i.C)'\$lTDl%.

Miscellaneous First Appeal No. 210Q__d'l'._:20jGS\$0'{l\II'_'Jj Q

BETWEEN

Sri. Santhosh Kumar.

S / 0. Late Gopirlath,

Aged about 23 years,

R/at. 'Shabari Nivas', . --. L -

Thandolige, Jeppirl211_li0ga'ru,;V-- . "

Marlgalore Taluk.

Appellant

1. Sri.'-Narayafirla'Pei';-4v
S /'0._.'Vivtté'lla"Pa»il A 0'
. ., Aged' about 38 years,
R»esidin'g'»lilearAVitobha
5»-Telilple Road;
V -,C'arbS'u~eet,
' v..IVIgir;galQre.

,._RatI\$lnakara Pal,
. . S/0. Late Kamalaksha Pal,

"Pal Sales Corporation,
Mangaladevi Road,
Pandeshwara.

Mangalore.

3. The New India Assurance Co., Ltd.,
Nellikai Road,

9%'

Man galore.

Respondents

(By Sri. K. Suryanarayana Rao, Adv. for R. 8, R1 and R2 are served and unrepresented.)*--- This MFA is filed U/S 173(1) of the Judgement and award dated 1-9-2008*-passed in MVC No.27"/2002 on the file of Principal Civil Judge [Sr.Dn.) and Member, MACT, Mangalore; partly allowing the claim petition for compensation; and on appeal seeking enhancement for compensation. This appeal coming (i.e.) before the Court, delivered the following judgment: "The Tribunal has awarded compensation of Rs.2,00,000/- to the claimant for enhancement of compensation awarded by the Tribunal.

2. Heard consent of learned Counsel for parties, it is taken up for final disposal for the sake of convenience parties are referred to final disposal as they are referred to in the claim petition before the Tribunal.

4. Brief facts of the case are:

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That on 14-3-01, when the claimant was proceeding by riding Kinetic Safari bearing registration No.KA-19-K-514 towards his house in Arya Samaj road from Nandikoor Clinical Laboratory of a motor Cycle bearing registration No. came from opposite direction in passing manner and dashed against his motor cycle. As a result, the claimant fell down and sustained injuries. Hence, he filed a claim petition before MACT, Mangalore, seeking compensation of Rs.2,00,000/-. The Tribunal has awarded compensation of Rs.2,00,000/- with interest at 6% per annum. quantum of compensation awarded to the claimant is in appeal for enhancement of compensation. As there is no dispute regarding occurrence of accident, negligence and liability of the insurer of the offending Vehicle, the only point that remains for consideration in the appeal is: Whether the quantum of compensation awarded by the Tribunal is just and proper or does it call for enhancement?

6. After hearing the learned Counsel for the parties and perusing the award of the Tribunal, the view that the compensation awarded is not just and proper, it is on side and therefore it is deserved to be enhanced.

7. The claimant has suffered injuries: Sprain, of left knee joint, ligament and posterior ligament and multiple elbow joint injuries are evident from the wound certificate issued by physio

-- disability certificate -- Ex.P.11. Summary -- EX.P.12, Certificate issued from Hospital -- EX.P.13, case sheet -- Ex.P.14 and supported by oral evidence of the claimant and two doctors examined as P.Ws.1, 2 and 3 respectively. 4% Claimant was treated as inpatient for a period of 16 days in Athena Hospital, Mangalore. P.W.2 - Dr.Sridhar Shetty, has stated in his evidence that he treated the claimant for the ligament injury to left knee joint in Athena Hospital... flexion is 85%. He assessed the disability as 25% and on examination he found knee flexion is 85%.

"is 7 persisting and he has stiffness of In his view, he has got functional disability to left knee and it may be permanent. P.W.3 is running a Claimant was as 'Laboratory' VV Assistant.

8. 'Considering the nature of injuries, Rs.20,000/-- awarded by the Tribunal towards pain and suffering is on lower side and it is deserved to be enhanced by another Rs.5,000/-- and award Rs.25,000/-- under this head. > ~ A

9. " Rs.22,000/-- awarded by the Tribunal towards medical expenses is as per medical bills produced by the claimant for Rs.21,825/-, the same is just and proper and therefore, it does not call for enhancement.

10. Claimant was treated as inpatient for 16 days in Athena Hospital and A.J. Hospital, Mangalore. Considering the same, Rs.5,000/- awarded by the Tribunal towards incidental expenses {such as conveyance, nourishment and attendant charges} on 7. the lower side and it is deserved to award another sum of Rs.5,000/- under this head. It is in it V

11. Claimant has salary of Rs.22,000/- working as an Assistant in the Laboratory, of the Tribunal considering the period of treatment as three months awarded Rs.6,000/- towards loss of income during laid up period the same is just and proper and there is no scope for enhancement. Claimant even after sustaining injury has continued his employment in the Laboratory of P.W.3, and there is no loss of employment. Therefore, he is not entitled for compensation towards loss of future income. Nevertheless, he has to bear with the disability stated by the doctor and certain amount of discomfort and unhappiness, which he has to undergo for the rest of his life. Considering the Rs.2,000/- awarded by the Tribunal towards loss, of Rs.70,000/- lower side and it is deserved to award Rs.25,000/- under this head. It

13. Thus the claimant for the following compensation: H

3.) it is found that the claimant is entitled to Rs. 25,000/- for medical expenses Rs. 22,000/- for incidental expenses Rs. 10,000/- for loss of income during laid up period Rs. 6,000 / - Towards loss of amenities Rs. 25,000/- Total Rs. 88,000/-

14. Accordingly the appeal is allowed in part and the judgment and award of the Tribunal is modified to the extent stated herein above. The claimant is entitled for a total compensation of Rs.88,000/- as against Rs.55,000/-- awarded by the Tribunal with interest at 6% pa. on the enhanced compensation of Rs.33,000/-- from the date of claim petition till the date of realisation, excluding interest for the delayed period of 241 days in filing the appeal.

15. The Insurance Co. is directed to pay the enhanced compensation amount of Rs.48,000/- excluding interest for the filing the appeal, within date of receipt of a copy of this

16. Out of the 75% with proportionate interest to be invested in ED. in any nationalized bank in the name of the period of 6 years and the

remaining amount 's\$zi't11.pproportionate interest is ordered to be A _ order ~as'jto costs.

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