

Karnataka High Court

Azmath S/O Ameerjan Khan vs Surjeeth Kaur W/O Kribal Singh ... on 14 September, 2010

Author: N.K.Patil And K.Govindarajulu

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 14TH DAY OF SEPTEMBER,

: PRESENT:

THE HON'BLE MR.JUSTICE.IRISH:;i;\$?_AT:i. ii

THE HON'BLE MR.JUSTICE.KLG()Vii\$1'\$;\$RAJIZILfJ >

M.F.A.No. iéaswgr zbosmm

Between: I i 3 A 2

Sri. Azfnath, ' ' . _ I ' ; _ Q

Aged about 42 "

S/O. Ameerj'aall. _ Kh.a'n," j ~

R/O. Nearljfisiajika iaefefi ¢

Kolar%.563_10.1\$ ' ' . ' '

.V A ' ~'AppeHant

(By Sr}; Diidé.r -shi%kfei3.ii' ~ « .

M/s. Mdhxnaed 'A_ther'& Associates, Advocates}

z_=x_n_<:J};

'1.,.,i"Snlit.:.S1lfjeeth Kaur,

* _ 'VHII/VG¢"KLl'i'b~@.l"&T.qingh Rajpal,

_ 5:./'c';.No. 23;

' _ Dhanaktyaiadi,

"Purie--Sa'ihara Road.

Pun€'i.«43,

A. Vsi_i\Iavsarastra State,

'[{_}wner of Lorry N0. MH.12.Q.9933-1).

. United India Insurance

Company Limited,

By its Manager,

Branch Office Ba Mansions.

___W___ " M___,_,,.,.,.

Doddapet,

Kolar--563 101.

..... Respondents

(Notice to R1 dispensed with v/ o dated 15.9.008; R2 served and unrepresented} *!= \$*=E*=!6 This MFA is filed U/S 173(1) of MV~'Ae.£ja:gainst we judgment and award dated: passed 273/1996 on the file of the Additional;1._Civi1'J1id'ge(S1*.D1i)»vV&_u Additional MACT, Kolar, party'a,lioudng the _cl'aini:._petition for . A' compensation and seeking enhancement of cornpensa□on. This M.F.A. on Aidfieaing this day, N.K. PATIL J, delivered the fo1iew:ng_:=._;_auaeMeie appeal for enhancement of compensation' the impugned judgment and awegjid datedV"():V\$ \$V.:(j1.2005 passed in MVC No. 273/1996 the Additional Civil Judge(Sr.Dn} and Accident Claims Tribunal, Kolar, A ("Ti9ib}ina1""for short).

it By its judgment and award, the Tribunal has ai□arded a sum of Rs.1,09,000/-- with interest at 6% from the date of petition till its realization as against the claim made by the appellant for a sum of Rs.2,75,000/--, on account of the injuries by him in the road traffic accident. f A

3. In brief, the facts of the case alrezn 'p it The appellant is claiming1':'tphatf he 'agednu '35 years at the time of thVe~..5ilp:'(icidenVt,.. .harI:\$v_:ail:fVifV'V:fi{3t'lc;tlthy,VV working as lorry V than Rs.6,500/-- per p.m., on 2.1.1995 from Chittoor towards "the lorry bearing with poultry feeds and when '\$o'rne'shwarapalya Tank on Ko1ar-- Mulbagal the driver of lorry bearing No';'-If/iHLi2'IQ.993 from opposite direction in a "negligent manner and dashed against the lorry appellant, due to Which, he sustained auto arnptitation of 5", éiuh and 3rd toes of right leg, fracture if patella and fracture of upper third tibia. ~irnmediately, he has been shifted to SNR Hospital, Kolar where he has taken treatment as inpatient for 1 1/2 AM months, undergone two surgeries and spent reasonable amount towards medical expenses, conveyance and other incidental charges. On account of the..Vin'j"u.ries sustained by the appellant in the said accid\$e.nt;l suffered permanent disability. 'l_y'he__Doc_ior 'ass'essec1"*. the functional disability at 106%, if 6G%"to lower limb and at 35% 'to._v'"thVe whole.body□□therefore;at appellant has □ed a claiIn...pe'tition_ befo'r--e._th,e\$ Tribunal claiming compensation he -- A b respondents. The said claim petition h;aVd'c'o1ér1e4'up.forconsideration before the fillfile hearing both sides and after and documentary evidence, has allowed petition in part and awarded Rs...p1,09l,OO'OV/-- as compensation under different vinlterest at 6% pa, from the date of petition ti1l..__its__>re.a.}isation. Being aggrieved by the quantum of xcompentsation awarded by the Tribunal and also for not W_awa'rding any compensation towards loss of amenities " ~-"and future medical expenses, appellant has presented this appeal, seeking eirhancement of compensation. __M_'__"__,__,__,a about the occurrence of the accident and the injuries sustained by the appellant in the said accident. It is also not in dispute that, on account of the injuries sustained by the appellant, he has taken treatIrient_ as inpatient for one and half months, surgeries and during the said period he lot it ' of pain and agony and he might amount towards conveyance and VoptherfiricidentaiV charges. Further, in View,3-of--.the"injuries'sustained by the appellant, he disability.

The :vIjdcte1}iv:,fv1ails:7{'v functional disability at 1000/oi}. plat' 6(l)V'3/€i:_ljpto"t1:iei»4right lower limb and at 35% to the -wholelllbody. might have taken bed rest andtreatrneInt. The Tribunal has assessed the to the whole body and the same is liable__vtobellmodi□ed, on the ground that, 1/3'" of the .. has to be taken as whole body disability which 3' 'glconies to 33.33% and

the same is rounded off to 34%. " '-:Therefore, we take the whole body disability at 34%. The Doctor has deposed that, the appellant has to 'R/ _____, /4 undergo one more operation for removal of implants inserted and for that purpose he may require some amount. But ail these aspects of the matter" been considered or appreciated by the awarding compensation under,...these_-"heads.i'Having"» regard to the facts and circumstances_"of"the.case, a sum of Rs.40,000/~ instead of Rs.3;_5.,OOo' /;.:VVV:g"=._Rs,_iO,h()Go,[-- towards conveyance, nourishing' aattendant charges instead of 'towards loss of amenities" s t of Rs. 1 O, 000/ -- towards future 'medica1_expenses';«.

7. TI-wlaving reygaxjd' to the facts and circumstances of as "stated above, the impugned judgment and r ,§iwa1j<iyy pas.Şça by the Tribunal is liable to be modified. Thedtotalivivicoihpensation payable comes to Rs.1,49,000/-- and the;bVreak-- up is as follows: %3.....

Towards pain and sufferings Rs. 40,3000/-- Towards medical expenses Rs. O5',O'OO/-- Towards conveyance, nourishing food Rs.

and attendant charges " L" 7 '~ Towards loss of income during the period of treatment Towards loss of amenities . Rs;

Towards loss of future income 'Rs... 54,"OOG:; '~ Towards future medical expenses " *v}.o,GO'o'/4% irfintai i kVRs.'1z,4-9,900/---.Ed'

8. According1y.': the i'a1.iowed"AinV:part and the impugned ;-tw'arjdv'»d___'.passed by the Tribunal in granting a Vinstead of Rs.1,09,000/--.

The to Rs.40.000/-- with interest 6% date of petition till the date of realisation, A ' ~ _ V. 'i*heV%'Insurer""is directed to deposit the enhanced interest within three weeks from the date ofreceipt of a copy of this judgment and award. "Out of the enhanced compensation of 7Rs.4"O,000/--, a sum of Rs.25,000/-- with proportionate it "interest shall be invested in the Fixed Deposit in any Nationalized or Scheduled Bank, in the name of the appellant for a period of ☐ve years and renewable for another ☐ve years, with liberty to him to "-the interest accrued on it.

The remaining sum.--~*" of A proportionate interest shall be iareie-ased lli'1'1.,bfaVo1,1r appellant, immediately, on 'd,:eposit.by_ the Draw the award, aeeordiig1y';rr.. tsn* _ _