
(2010) 04 KAR CK 0207
In the Karnataka High Court
Case No : M.F.A. No. 7424 of 2008

Amith Kumar Naik Since minor represented by his Natural Guardian father Jaya Naik APPELLANT

Vs

Kariyappa and The Branch Manager New India Assurance Co. Ltd. RESPONDENT

Date of Decision : 08-04-2010

Acts Referred:

Citation : (2010) 04 KAR CK 0207

Hon'ble Judges : B. Sreenivase Gowda, J

Bench : Single Bench

Advocate : P. Dhananjaya, for the Appellant; R.B. Deshpande, for R. 2, for the Respondent

Final Decision : Allowed

Judgement

B. Sreenivase Gowda, J.—This appeal is by the claimant seeking enhancement of compensation awarded by the Tribunal.

2. The appeal is admitted and with the consent of the learned Counsel appearing for the parties, it is taken up for final disposal.

3. For the sake of convenience, parties are referred to as they referred to in the claim petition before the Tribunal.

4. Brief facts of the case are:

That on 12-12-05 when the claimant was proceeding towards the land of Thimmanaika to meet his father and his elder brother, near Kalagere village, an autorickshaw bearing registration No. KA-16-A-1260 came with high speed in a rash and negligent manner and dashed against him. As a result, he fell down and sustained injuries. As he was minor, the claim petition was filed through his father and natural guardian before the MACT, Davanagere, seeking compensation of Rs. 10,00,000/-. The Tribunal awarded him a sum of Rs. 61,600/- with interest

at 6% p.a. from the date of claim petition till the date of payment.

5. As there is no dispute regarding injuries sustained by the claimant in a motor road accident and the liability of the Insurance Co., the only point that arises for consideration in this appeal is:

Whether the compensation awarded by the Tribunal is just and reasonable or does it call for enhancement?

6. The learned Counsel appearing for the claimant submits, considering the nature of injuries and duration of treatment, the compensation awarded by the Tribunal is on the lower side. Therefore, he prays for allowing the appeal and enhancing the compensation.

7. Per contra, the learned Counsel appealing for the Insurance Co. submits, the compensation awarded by the Tribunal is just and reasonable and there is no scope for enhancement and he prays for dismissal of the appeal.

8. After hearing the learned Counsel appearing for the parties and perusing the judgment and award of the Tribunal, I am of the view that the compensation awarded by the Tribunal is on the lower side and therefore, it is deserved to be enhanced.

9. The claimant has sustained fracture of tibia and fibula of lower 1/3rd of left leg, as evident from the discharge summary - Ex. P. 5 and supported by the oral evidence of the father of the claimant and the doctor examined as P.Ws. 1 and 2 respectively. He was treated as inpatient in Bapuji Hospital, Davangere, for about one month. P.W.2, the doctor has stated that the claimant suffered 55% permanent physical disability.

10. Considering the nature of injuries, Rs. 20,000/- awarded by the Tribunal towards pain and sufferings is on the lower side and it is deserved to be enhanced by another Rs. 5,000/- and I award Rs. 25,000/- under this head.

11. Rs. 11,600/- awarded by the Tribunal towards medical expenses is based on the medical bills produced by the claimant and hence, there is no scope for enhancement under this head.

12. Considering the duration of treatment, Rs. 3,000/- awarded by the Tribunal towards conveyance, nourishment and attendant charges is on the lower side and it is deserved to be enhanced by another Rs. 12,000/- and I award a sum of Rs. 15,000/- under this head.

13. The claimant is a young boy aged about 10 years and question of awarding compensation either towards loss of income during laid up period or future loss of income does not arise. Nevertheless, claimant has to bear with certain amount of disability, inconvenience and discomfort throughout his future life. Considering the permanent physical disability stated by the doctor at 55%. Rs. 27,000/- awarded by the Tribunal towards loss of amenities and disability is on the lower side and it is deserved to be enhanced by another Rs. 13,000/- and I award Rs.

40,000/- under this head.

14. Accordingly, the appeal is allowed in part. Judgment and award of the Tribunal is modified. The claimant is entitled for an additional compensation of Rs. 30.000/- with interest at 6% p.a. on the enhanced compensation from the date of claim petition till the date of realisation.

15. The Insurance Company is directed to deposit the compensation amount with interest within two months from the date of receipt of a copy of the award

16. The enhanced compensation with proportionate interest is ordered to be deposited in Fixed Deposit in any Nationalised or Scheduled bank in the name of the minor claimant, for a period of seven years.

No order as to costs.