

(1982) 06 KAR CK 0024
In the Karnataka High Court
Case No : M.F.A. No. 535 of 1981

Karnataka State Road Transport Corporation

APPELLANT

Vs

Samuel Ebenezer Abnes

RESPONDENT

Date of Decision : 16-06-1982

Acts Referred:

Citation : (1983) ACJ 547

Hon'ble Judges : G.N. Sabhahit, J;A.K. Laxmeshwar, J

Bench : Division Bench

Advocate : E. Masilamani, for the Appellant; Narendra Kumar Ganaki, for the Respondent

Final Decision : Allowed

Judgement

G.N. Sabhahit, J.—This appeal by the K.S.R.T.C. is directed against the judgment and award, dated 6.10.1982, passed by the Motor Accidents Claims Tribunal-I, Belgaum, in M.V.C. No. 115/1979, on its file, awarding compensation of Rs. 74,500/- to the injured claimant.

2. It is case of the claimant that he was going on cycle on 30.1. 1979, at about 10.30 a.m. on new Belgaum Sambra Road, when a K.S.R.T.C. bus bearing No. MYF 5409 coming from the opposite direction in the school zone, hit against the cycle. Due to the rashness and negligence of its driver, the boy sustained severe injuries on his left leg, in addition to other minor injuries. Ultimately his leg came to be amputated below the knee. He was studying in the first year P.U.C. He claimed Rs. 1,20,000/- from the Respondents.

3. Respondent 1 is the owner of the vehicle, Respondent 2 is the driver and Respondent 3 is the internal insurance fund. They contested the claim. According to them the accident was not the result of rash and negligent driving of the bus in question. They also contended that the amount of compensation claimed was excessive.

4. The Tribunal appreciating the evidence on record held that the accident was

the result of rash and negligent driving of the bus in question and since the left leg had to be amputated below the knee and the boy was only 17 years studying in first year P.U.C. and since his earning capacity was materially reduced and he had to suffer pain, throughout his life and suffered loss of amenities also in addition to the injury the Tribunal awarded Rs. 70,000/- towards general damages and it awarded Rs. 4,500/- towards special damages, less Rs. 5,000/- paid already. Aggrieved by the said judgment and award the K.S.R.T.C. has come up in appeal before this Court.

5. The Learned Counsel for the Appellant strenuously urged before us that general damages awarded was very much on the higher side.

6. As against that the Learned Counsel for the claimant argued supporting the quantum awarded by the Tribunal.

7. The sole point, therefore, that arises for our consideration in this appeal is:

Whether the quantum of general damages awarded at Rs. 70,000/- is just and proper?

8. In case of this nature, compensation has to be awarded for the injury for loss of earning capacity, for loss of amenity and for pain and suffering. The evidence on record shows that one of the relatives of the boy was serving in the army as Captain. The boy had the ambition of joining the army. He was studying in the first year P.U.C. His left leg is amputated below the knee. Therefore the chances of his joining the army are reduced, so also his earning capacity. While awarding compensation, it is also necessary to bear in mind the rate of awards made in similar cases over some length of time. this Court in the case of S. Sanjiva Shetty Vs. Anantha and Others, had occasion to consider the case of a boy of 10 years whose leg was amputated above the knee. The Tribunal in that case has awarded general damages of Rs. 40,000/- . this Court reduced the general damages to Rupees 25,000/- . The accident in that case had occurred on 18.4.1970. The accident in the present case has occurred on 30.1.1979. The money value has reduced in the meanwhile. Besides, the boy in this case was 17 years and he was studying in the first year P.U.C. Having regard to these factors, we are persuaded to award Rs. 30,000/- as general damages for injury, loss of earning capacity and for loss of amenities of life, having regard to the social and economic status of boy and the possible prospects he could have otherwise enjoyed. The Tribunal has no doubt relied upon a decision of the Madras High Court, in the case of K. Gopalakrishnan Vs. Sankara Narayanan and Others, In that case, a boy studying in the first B.Ph., in Madras Medical College, aged about 20 years, met with an accident and his left leg above the knee had to be amputated. The High Court, considering the probable loss of earning having regard to the social and economic status of the boy, awarded Rs. 57,865/- as compensation. Loss of earning for 30 years was assessed and was made a part of the award. The Tribunal, without applying its mind, as to why Rs. 57,865/- were awarded by the Madras High Court, jumped to the conclusion that Rs. 70,000/-

should be awarded on the facts of the present case. As pointed out above, the boy in that case was aged 20 years. He was studying in first B. Ph., in the Medical College at Madras. The prospects of the boy were far better and his leg was amputated above the knee. That being so, the Tribunal was not justified in relying on the Madras decision ignoring the decision of this Court cited above.

9. In addition to Rs. 30,000/- awarded for the injury, loss of earning and loss of amenity, we are persuaded to award Rs. 5,000/- towards pain and suffering as the boy had to suffer a lot as revealed in the evidence of the doctors examined before the Tribunal. He has to suffer in future also. We also confirm the special damages awarded at-Rs. 4,500/- by the Tribunal for artificial leg and other medical expenses, etc. Together, therefore, the claimant is entitled to Rs. 39,500/- which we round off to Rs. 40,000/- instead of Rs. 74,500/- awarded by the Tribunal.

10. In the result, the appeal is partly allowed. The compensation awarded is reduced from Rs. 74,500/- to Rs. 40,000/- . The present Appellant shall pay the same along with interest at 6 per cent per annum from the date of petition till payment as also the costs of the claimant before the Tribunal, less the amount already deposited before the Tribunal. No costs of this appeal.