

(2010) 09 KAR CK 0104
In the Karnataka High Court
Case No : M.F.A. No. 4642 of 2005 (MV)

Kumar Mylari Rep. by Minor Guardian Natural Father Ningappa	APPELLANT
Vs	
Madu Machayya	RESPONDENT

Date of Decision : 07-09-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 163 A

Citation : (2011) 4 KCCR 3222

Hon'ble Judges : K. Bhakthavatsala, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : B. Sharanabsawa, for M/S. Jayakumar. S. Patil Associates, for the Appellant; G. N. Raichur, Advocate for R. 2 and R. 1 Served, for the Respondent

Judgement

1. The Appellant is before this Court for enhancement of compensation.
2. Learned Counsel for the Appellant submits that the Appellant was ten years old as on the date of accident (i.e., On 20.09.2001). Due to rash and negligent driving of the lorry by its driver, he sustained injuries to left lower limb and crush injury to right leg. The right leg from knee level was amputated. He submits that the claimant was treated in Government Hospital at Harappanahalli, and thereafter at Bapuji Hospital at Davanagere for a period of three months. The claimant was a student and also assisting his parents and earning 500/- per month. But, the Tribunal has taken notional income at 15,000/- per annum and applied multiplier of "15" instead of "18" and awarded compensation of 1,12,500/- towards loss of future earnings. In addition to that the Tribunal has awarded compensation of 30,000/- towards medical expenses, attendant charges, loss of amenities and marriage prospects, and pain and suffering. He submits that the compensation awarded by the Tribunal in the case of amputation of leg of a lad of 10 years is very much on the lower side.
3. Learned Counsel for Respondent No. 2 insurance company submits that the Tribunal has awarded adequate compensation.

4. We have perused the records of the Tribunal.

5. The claimant has not produced any records to show that he was a student as on the date of accident. In the wound certificate, at Ex.P-5, the age of the claimant is mentioned as ten years. Ex.P-46 is the photograph of the claimant boy showing amputation of his right leg from the level of knee. Ex.P-45 is the Disability Certificate issued by Dr. Eshwargouda. It is stated in Ex.P-45 that on account of the amputation of right leg at the level of knee joint, he has got permanent disability to an extent of 65%. There is no dispute about the amputation of right leg at the level of knee. If the amputation is below the knee, atleast the claimant could have used artificial limb. The Tribunal has taken permanent disability at 50% of the whole body and fixed the notional income of 15,000/- per annum. The Tribunal has applied "15" multiplier and awarded compensation as under:

(i)

Los off future earnings [15,000/- X 50% X15]

Rs. 1,12,500/-

(ii)

Medical expenses:

Rs. 5,000/-

(iii)

Attendant charges, special diet, etc.:

Rs. 5,000/-

(iv)

Loss of amenities and marriage prospects:

Rs. 50,000/-

(v)

Pain and suffering:

Rs. 20,000/-

TOTAL

Rs. 1,92,000/-

6. It is pertinent to mention that after attaining the age of majority, the claimant would have earned atleast a sum of 5,000/- per month as a collie. The Tribunal taking notional income of 15,000/- per annum for the rest of his life, is not correct. Since, the claimant is ten years old at the time of accident, maximum "18" multiplier can be applied. The Tribunal has erred in applying multiplier with

reference to second Schedule appended to Section 163A of the Motor Vehicles Act. We deem it proper to fix loss of income at 500/- per month until attaining the age of majority and 5,000/- after attaining majority. Thus, loss of earning capacity comes to 2,500/- per month. We split the multiplier "18" as "8+10" and award compensation. We award compensation as under:

(i)

Pain and suffering:

Rs. 50,000/-

(ii)

Medical expenses:

Rs. 10,000/-

(iii)

Attendant charges, conveyance, special diet and other incidental expenses:

Rs. 10,000/-

(iv)

Loss of earnings till attaining majority: $[500/- \times 12 \times 8]$

Rs. 48,000/-

(v)

Loss of earning after attaining majority: $[2,500/- \times 12 \times 10]$

Rs. 3,00,000/-

(vi)

Loss of amenities and marriage prospects:

Rs. 2,00,000/-

TOTAL

Rs. 6,18,000/-

LESS compensation awarded by the Tribunal:

Rs. 1,92,500/-

BALANCE:

Rs. 4,25,500/-

Thus, the claimant is entitled for enhanced compensation of 6,18,000/- as against 1,92,500/- awarded by the Tribunal.

7. In the result, we pass the following order:

ORDER

(i) The appeal is allowed in part holding that the claimant is entitled for an additional compensation of 4,25,500/- (6,18,000 - 1,92,500) along with costs and interest at the rate of 6% per annum from the date of petition till the date of realization.

(ii) Accordingly, the impugned judgment and award are modified.

(iii) The Respondent No. 2/Insurance Company is directed to deposit the additional compensation amount along with costs and interest, with the Tribunal within two months from today.

(iv) Out of the additional compensation amount awarded, a sum of 4,00,000/- shall be kept in fixed deposit for a period of five years, with liberty to withdraw periodical interest that accrues on the deposit.