

**(2015) 01 KAR CK 0249**

**In the Karnataka High Court**

**Case No :** Miscellaneous First Appeal No. 911/2008 (MV)

Maresh

APPELLANT

Vs

Anita Mallikarjuna Angadi

RESPONDENT

**Date of Decision :** 02-01-2015

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 166

**Citation :** (2015) 01 KAR CK 0249

**Hon'ble Judges :** P.D. Waingankar, J.

**Bench :** Single Bench

**Advocate :** M.M. Khannur, for the Appellant; Sriyuts U.C. Ainapur, Advocates for the Respondent

**Final Decision :** Partly Allowed

## Judgement

P.D. Waingankar, J.—This appeal by the claimant is directed against the judgment and award dated 27.09.2007 passed in M.V.C. No. 1456/2006 on the file of the Civil Judge (Sr. Dn.) and Member, Addl. MACT., Bailhongal.

2. The brief facts, which gave rise to this appeal are as under:

On 13.05.2006 at about 9.30 a.m., Kumar Maresh, a minor boy aged about 4 years was proceeding by walk on the left side of Bailhongal-Anigol road. At that time, vehicle bearing registration No. KA-24/M-566 came from behind in a rash and negligent manner and dashed against the minor boy. As a result, he sustained fracture of Tibia apart from other injuries. He was treated in the Mahantshetty Hospital, Bailhongal followed by KLE Hospital. His parents spent substantial amount for treatment. Despite best treatment, he suffered 36% disability of that particular limb. Hence, a claim petition came to be filed under Section 166 of the MV Act claiming compensation on account of the injury sustained by the claimant-a minor boy.

3. The claim petition was opposed by the Insurance Company. It came up for consideration before the Tribunal. The Tribunal upon consideration of the

evidence placed on record, awarded a total compensation of Rs. 1,06,700/- by the impugned judgment and award. Aggrieved by the quantum of compensation awarded by the Tribunal, the claimant has preferred this appeal.

4. I have heard both the learned counsel appearing for the appellant/claimant and the 2nd respondent-Insurance Company.

5. On hearing the arguments and upon consideration of the materials on record, the point that arises for my consideration is

"Whether the compensation awarded by the Tribunal is just and proper?"

6. My finding is in Negative for the following reasons:

Insofar as the issue of negligence is concerned, the Insurance Company had not taken serious objections. Even otherwise the claimant was a minor boy aged about 4 years and therefore, no negligence can be attributed to a minor boy. Coming to the determination of the compensation, it is seen from Ex. P3-the wound certificate that in the said accident, the claimant sustained fracture of Tibia and other injuries for which he was treated as inpatient for a period of 21 days. During the period of hospitalization, skin grafting was done. On behalf of the claimant, Dr. B.F. Patil has been examined as PW-3 who has spoken about the nature of injuries sustained by the claimant, nature of treatment, period of hospitalization and the disability suffered by the claimant. Having regard to the nature of injuries sustained by the claimant, the Tribunal has awarded a sum of Rs. 29,000/- towards "pain and suffering", Rs. 23,600/- towards "medical expenses", Rs. 2,000/- towards "nourishment charges", which appears to be just and proper having regard to the gravity of the injuries sustained by the claimant. The Tribunal has also awarded a sum of Rs. 10,000/- towards "future medical expenses". I do not find any reason for enhancement of the said amount of compensation.

7. Insofar as "loss of future amenities" is concerned, the Tribunal has awarded Rs. 40,000/-. The Tribunal has rightly not awarded any amount under the head "loss of income due to disability", probably for the reason that the claimant is hardly aged about 4 years and a non-earning member. However, the Tribunal ought to have taken into consideration 36% permanent disability suffered by the claimant to the effected limb and granted compensation under the head loss of amenities". Therefore, taking into consideration 30% disability suffered by the claimant to the affected limb, it would be just and proper on my part to award compensation of Rs. 50,000/- under the head loss of amenities" as against Rs. 40,000/- awarded by the Tribunal.

8. Further, the Tribunal has not awarded any amount of compensation under the head "attendant charges". The claimant is hardly aged about 4 years, he was in constant need of service of an attendant, apart from the service rendered by his parents not only during the period of his hospitalization, but even thereafter for a month or two. As such, I deem it just and proper on my part to award Rs.

8,000/- under the head "attendant charges". Further, the Tribunal has also not awarded any amount under the head "conveyance charges". The condition of the claimant after the accident were such that the services of a special vehicle were indispensable having regard to the nature of injuries sustained by the claimant. Moreover, he was taken to as many as three hospitals definitely by a special vehicle. So an amount of Rs. 5,000/- is awarded under the head "conveyance charges".

9. It is also borne out from the judgment of the Tribunal that it has not awarded any amount under the head "loss of earnings during the period of treatment". Both the parents of the claimant must have been attending the claimant for a period of about 2 to 3 months and thereby they lost their earnings. Taking into consideration the pragmatic view, it would be just and proper to award Rs. 12,000/- under the head "loss of earnings of parents of claimant during the period of treatment of the claimant".

10. Thus, the appellant-claimant is held to be entitled for the compensation under various heads as under:

11. Thus, the appellant/claimant has been awarded enhanced compensation of Rs. 42,900/- ( Rs. 1,49,600 - Rs. 1,06,700) over and above the compensation awarded by the Tribunal which is rounded off to Rs. 43,000/-. Accordingly, I proceed to pass the following:

#### ORDER

(i) The appeal is partly allowed. The judgment and award dated 27.09.2007 passed in M.V.C. No. 1455/2006 on the file the Civil Judge (Sr. Dn.) and Member, Addl. MACT., Bailhongal stands modified.

(ii) The appellant/claimant is awarded an enhanced compensation of Rs. 43,000/- over and above the compensation awarded by the Tribunal together with interest at the rate of 6% per annum from the date of claim petition till realisation.

(iii) The Insurance Company is directed to deposit the enhanced compensation together with interest within a period of two months from the date of receipt of a copy of the order.

(iv) In the event of deposit, a sum of Rs. 40,000/- shall be invested in the name of the claimant in any Nationalised Bank of the choice of his parents in the Fixed Deposit till he attains the age of majority and the balance amount shall be released to the father of the claimant Gangappa Madanbhavi.