
(2011) 03 KAR CK 0291
In the Karnataka High Court
Case No : M.F.A. No. 7002 of 2009

Mahesh M. alias Chikke Gowda

APPELLANT

Vs

K.S. Thimmaiah and The Divisional Controller KSRTC (Urban)

RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

Citation : (2011) 03 KAR CK 0291

Hon'ble Judges : H.S. Kempanna, J

Bench : Single Bench

Advocate : R.D. Renukaradhya, for P. Nataraju Associates, for the Appellant; T.V. Manje Gowda, for R-1 and K. Nagaraja Rao, for R-2, for the Respondent

Judgement

H.S. Kempanna, J.—Though this matter is listed for admission, with consent, of learned Counsels for respective parties as records have also been received, it is taken up for final disposal.

2. This appeal is by the claimant seeking for enhancement of compensation in respect of the injuries which he has sustained in a motor accident.

3. The Appellant-claimant filed the claim petition through his mother, the natural guardian claiming compensation against the Respondents in respect of the injuries which he sustained in a motor accident. The Tribunal by its impugned judgment and award has awarded compensation of Rs. 20,000/- in all with interest at 6% p.a. from the date of the petition till realisation. The break-up of which is, towards injury, pain and suffering Rs. 12,000/-, towards conveyance, nourishing food and attendant charges Rs. 6,000/- and towards medical expenses Rs. 2,000/- The claimant being aggrieved of the quantum of compensation is in appeal before this Court.

4. The learned Counsel for the Appellant submitted that the Tribunal has not awarded commensurate compensation towards injury, pain and suffering and has not awarded any compensation towards loss of amenities. Hence, a case for enhancement is made out.

5. Per contra, the learned Counsel for the Respondent No. 2-Corporation supported the impugned judgment and award.

6. A perusal of the papers made available reveals that the minor claimant has sustained fracture of left femur apart from other injuries in the impugned accident. The Tribunal has awarded only a sum of Rs. 12,000/-. Therefore, in the facts and circumstances, having regard to the fracture that the claimant has sustained, it is just and reasonable to award further sum of Rs. 8,000/- in addition to Rs. 12,000/- awarded by the Tribunal towards injury, pain and suffering. Further, the Tribunal has not awarded any compensation towards loss of amenities. It is undisputed that the minor claimant has sustained fracture of left femur. Though having regard to the age the said fracture may unite it cannot be forgotten that he has to suffer some discomfort for the injury he has sustained in the accident. Therefore, suitable compensation ought to have been awarded which has not been done in the case. Hence in the facts and circumstances, the claimant must be awarded a sum of Rs. 12,000/- towards loss of amenities. The claimant has not chosen to lead any evidence to show that he is entitled to compensation under any other heads. Having regard to the nature of fracture that he has sustained, taking into account his age, except the compensation that is now awarded towards injury, pain and suffering and towards loss of amenities, he is not entitled to any compensation under any other heads. Therefore, the Appellant-claimant is entitled to the enhanced compensation of Rs. 20,000/- with interest at 6% p.a. from the date of the petition till realisation over and above the compensation of Rs. 20,000/- awarded by the Tribunal. Accordingly, the appeal has to succeed in part.

7. In the result, for the foregoing reasons, I proceed to pass the following order:

i) The appeal is allowed in part;

ii) The impugned judgment and award of the Tribunal is modified and the Appellant is awarded a total compensation of Rs. 40,000/- with interest at 6% p.a. from the date of the petition till realisation as against Rs. 20,000/- with interest at 6% p.a. from the date of the petition till realisation awarded by the Tribunal. The enhanced compensation comes to Rs. 20,000/ which carries interest at 6% p.a. from the date of the petition till realisation.

iii) The second Respondent-Corporation shall deposit the entire enhanced compensation with interest before the Tribunal within four weeks from the date of receipt of the copy of the judgment and award;

iv) It is brought to my notice that as on the date of filing of the appeal the Appellant claimant has attained majority. In view of the same, the entire compensation with interest is ordered to be released in his favour.

Office to draw the award accordingly.