

(2012) 01 KAR CK 0073

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 8249 of 2010 MV

Master Anil, Since the appellant is a minor, represented by his father and natural guardian, and Narasimha APPELLANT

Vs

Managing Director, B.M.T.C., K.H. Road, Shanthinagar, RESPONDENT
Bangalore - 560027 and The Branch Manager, United India
Insurance Co. Ltd., Chickpet Branch, K.R. Road, Vanivilas
Hospital, Bangalore

Date of Decision : 12-01-2012

Acts Referred:

Citation : (2012) 01 KAR CK 0073

Hon'ble Judges : A.S. Pachhapure, J

Bench : Single Bench

Advocate : S.M. Rajashekhar, for the Appellant;

Final Decision : Allowed

Judgement

A.S. Pachhapure

1. Though the matter is posted for admission, with the consent of the counsel, it is taken up for final disposal. The appellant-a minor boy has filed this appeal through his guardian, claiming enhancement in the quantum of compensation awarded by the Tribunal in respect of the injuries sustained by him, in a motor vehicle accident.

2. The facts reveal that on 03.10.2008 at about 9.30 a.m., the appellant, a student, aged about 10 years was alighting from a BMTC bus bearing reg. No. KA 01-FA-258 at PUP School bus stop on ring road, within the limits of Kamakshipalya Police Station. At that time the bus driver abruptly drove the bus in rash and negligent manner even before the appellant would get down from the bus and as a result, the appellant lost balance, fall down on the road and the wheel of the bus ran over his right foot, it was crushed under the wheel, resulting in very grievous injuries. He was studying in V standard at the time of

the accident. Due to the injuries sustained, he was admitted in the hospital. His father was looking after him. In the circumstances, he has claimed compensation of Rs. 8,00,000-00 on all the heads.

The claim of the appellant was contested by the 2nd respondent before the Tribunal. During the enquiry, the father of the appellant was examined as P.W. 1 and the doctor as P.W. 2 and in their evidence, documents Exs.P1 to 12 were marked. No oral evidence was led by the respondents, but the insurance policy was marked with consent as Ex.R1. The Tribunal after hearing the learned counsel for the parties and on appreciation of the material on record held actionable negligence on the part of the driver of the bus and granted compensation of Rs. 1,95,000-00 with interest at 6% p.a. from the date of the petition till its payment. Dissatisfied with the quantum of compensation, the present appeal has been filed.

3. I have heard the learned counsel for the appellant.

4. The point that arises for my consideration is;

Whether the appellant is entitled to the enhanced compensation? If so, to what extent?

5. The wound certificate has been produced at Ex.P5 and it reveals that crush injury of right foot with degloving of skin over both dorsal and planter aspects with profuse bleeding and auto amputation of great toe. X-ray shows loss of distal phalanx of right great toe and fracture right calcaneum. He underwent amputation at the level of torso metatarsal joint. Photographs have been produced at Ex.P10 and they reflect the amputation of his right foot upto the ankle level. It appears that the injury was not even hoaxed at the time when the photographs were taken.

6. The appellant examined the doctor and though the doctor in his evidence states that the disability of whole body at 20%, he opines that it may lead to 60% having regard to disability in future. So it is in these circumstances that the compensation has to be assessed. The Tribunal has granted compensation of Rs. 55,000-00 for medical and other incidental charges and the appellant has produced the bill for the value of Rs. 50,756-00. It has also granted Rs. 15,000-00 towards future medical expenses and the compensation on both these heads appears to be just and reasonable. The appellant would have suffered sufficient pain and agony due to the loss of right foot. This disability he has to suffer all along his life and therefore, the compensation of Rs. 50,000-00 awarded for pain, suffering and agony appears to be on the lower side and he is entitled to an additional sum of Rs. 10,000-00 on this head. An amount of Rs. 75,000-00 has been awarded as compensation for disability, loss of happiness and loss of future maintenance, etc. Actually, whatever avocation that the appellant may adopt in due course of time, the disability suffered would affect his income. Furthermore, he cannot enjoy a normal life in view of the disability suffered. He has to face lot of inconvenience in his life period. Hence, the amount

of Rs. 75,000-00 is on the lower side and the appellant is entitled to an additional sum of Rs. 50,000-00 on this head. With the disability suffered, the marriage prospects of the appellant are affected. Taking into consideration this aspect, as the Tribunal has not considered any compensation on this head, a sum of Rs. 30,000-00 is payable for loss of marriage prospects. Further, during the period of treatment and till the injury was healed, it was necessary for the minor to seek assistance of his father, who was looking after him all along from the date of the accident. So, considering the income of the father at Rs. 4,000-00 p.m. and the complete healing of the injury after about 3 months, I think the appellant is entitled to a sum of Rs. 12,000-00 for loss of income during the laid-up period. The Tribunal has not granted any compensation for transportation, conveyance, nourishment, food, diet, etc. I think it is just and proper to grant a sum of Rs. 5,000-00 on this head. Thereby, the appellant is entitled to an additional sum as under;

PARTICULARS

Rs.

Pain, suffering and mental agony.

19,000-00

Loss of future happiness and inconvenience

50,000-00

Loss of marriage prospects.

30,000-00

Loss of income of the father of the appellant during the period of treatment.

12,000-00

Loss of transportation, conveyance, nourishment food, diet., etc

5,000-00

TOTAL

1,07,000-00

In addition to the compensation awarded by the Tribunal, the appellant is entitled to a sum of Rs. 1,07,000-00. Hence, I answer the point in affirmative.

In the result, the appeal is allowed in part. In addition to the compensation of Rs. 1,95,000-00 with interest at 6% p.a. from the date of the petition till the date of payment granted by the Tribunal, the appellant is entitled to a sum of Rs. 1,07,000-00 with interest at 6% p.a. from the date of the petition till its payment. Out of the compensation enhanced, an amount of Rs. 50,000-00 shall be deposited in the name of the minor appellant in Fixed Deposit in any

nationalized bank for a period of 5 years The guardian of the appellant is permitted to withdraw the amount in excess.