

(2013) 12 KAR CK 0094
In the Karnataka High Court
Case No : M.F.A. No. 6798 of 2011 (MV)

Master D. Hemanthkumar

APPELLANT

Vs

Superintendent of Police and Karnataka Government,
Insurance Department

RESPONDENT

Date of Decision : 06-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0094

Hon'ble Judges : N.K. Patil, J; Budihal R.B., J

Bench : Division Bench

Advocate : C.N. Raghavendra for Smt. Suguna R. Reddy, for the Appellant;
Prathima Honnapura, HCGP for R1 and R2, for the Respondent

Judgement

N.K. Patil, J.—This is a claimant's appeal against the impugned judgment and award dated 25/01/2011 passed in MVC No. 5257/2008, by the IV Additional Judge, Court of Small Causes and Member, Motor Accident Claims Tribunal, Bangalore City (SCCH-6), (for short "Tribunal"), for enhancement of compensation. By its judgment and award, the Tribunal has awarded a sum of Rs. 3,60,500/- under different heads with interest at 6% p.a., from the date of petition till its payment as against the claim made by the appellant for a sum of Rs. 25,00,000/-, on account of the injuries sustained by him in the road traffic accident.

2. In brief, the facts of the case are:

The appellant claims to be aged about 7 years at the time of the accident. He was hale and healthy prior to the accident. That at about 12.00 noon on 18.2.2008, when the appellant after alighting from his school bus was crossing the road on V.Kota-KGF road at Gatta Kamadenahalli, at that time, the driver of the jeep belonging to the Circle Inspector of Police Bangarpet, bearing Reg. No. KA.08.G.72 came with high speed in a rash and negligent manner and dashed to the said boy. Due to which, appellant sustained grievous injuries. Immediately, appellant was taken to T.L. Jalappa hospital and after taking first aid treatment,

he was referred to Manipal Hospital, Bangalore, where he took treatment as inpatient for 38 days, underwent two surgeries, implants were inserted and removed and thereafter, on the advise of the Doctor he has taken bed rest and follow up treatment.

3. It is the further case of the appellant that, his parents have spent considerable amount towards medical and other incidental charges and on account of the injuries sustained by him, he has suffered permanent disability. The Doctor has assessed the disability at 48.66%. Therefore, appellant has filed a claim petition before the Tribunal through his natural guardian, mother, u/s 166 of M.V. Act, claiming compensation against the respondents.

4. The said claim petition had come up for consideration before the Tribunal. The Tribunal, after hearing both sides and after assessing the oral and documentary evidence, has allowed the said claim petition in part and awarded a sum Rs. 3,60,500/- as compensation under different heads with interest at 6% p.a., from the date of petition till its payment.

5. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant has presented this appeal through his natural guardian, mother, seeking enhancement of compensation.

6. We have heard the learned counsel appearing for appellant and learned Government Pleader appearing for respondents.

7. The submission of the learned counsel Sri. C.N. Raghavendra, for Smt. Suguna R. Reddy, appearing for appellant at the outset is that, the compensation awarded by the Tribunal towards injury, pain and sufferings, towards medical expenses, loss of education for one academic year, loss of amenities, discomforts and unhappiness, towards loss of marriage prospects is inadequate and it requires to be enhanced. To substantiate the said submission, he submitted that the appellant is aged about 7 years, he sustained injuries in the accident and on account of which, he took treatment as inpatient for 38 days, underwent two surgeries, implants were inserted and removed and the Doctor has assessed the disability at 48.6% and due to which, he lost his education for one academic year and it would affect his happiness in future life. Therefore, he submitted that the impugned judgment and award is liable to be modified by awarding reasonable compensation.

8. As against this, learned Government Pleader appearing for respondent Nos. 1 and 2 has fairly submitted that the impugned judgment and award passed by the Tribunal is just and proper and after due appreciation of the oral and documentary evidence available on file and therefore, it does not call for interference.

9. However, after going through the original records available on file, specifically, the medical bills produced by the appellant, learned counsel appearing for appellant and learned Government Pleader appearing for respondents, have

arrived at the exact amount of Rs. 2,75,498/- towards medical expenses and submitted that the same may be considered in accordance with law.

10. After hearing the learned counsel for the parties and after perusal of the materials available on record, including the impugned judgment and award passed by the Tribunal, the only point that arises for our consideration is:

Whether the compensation awarded by the Tribunal is just and reasonable?

11. The occurrence of the accident and the resultant injuries sustained by the appellant are not in dispute. It is also not in dispute that, appellant was aged about 7 years, studying in First standard and it is also not in dispute that, he has lost his education for one academic year on account of the injuries sustained by him. The Tribunal is justified in assessing the notional income of the appellant at Rs. 15,000/- p.a. and we accept the same.

12. Further, it emerges that, in the accident, appellant has sustained diffused axonal injury, fracture of right femur, multiple abrasions and laceration over the face and fracture of left parietal and temporal bone with EDH, for that, he has taken treatment as inpatient for 38 days, underwent two surgeries, implants were inserted and removed on the advice of the Doctor, he might have taken bed rest and follow up treatment and during the said period he might have undergone pain and agony, spent considerable amount towards medical expenses. Further, in view of the injuries sustained by the appellant, he has suffered permanent disability. The Doctor has deposed that, appellant has suffered disability at 48.66% and the Tribunal has assessed the functional disability at 15% to the whole body and we accept the same and it is permanent in nature, he has to suffer this disability through out his life and it would affect his happiness, comforts and amenities in future life. On account of the injuries, he has lost his education for one year and the disability will affect his marriage prospects. Taking all these aspects into consideration, we award a sum of Rs. 75,000/- towards pain and sufferings instead of Rs. 50,000/-; Rs. 2,75,498/- towards medical expenses as per medical bills instead Rs. 1,90,000/-, Rs. 25,000/- towards loss of education for one academic year instead of Rs. 5,000/-, Rs. 50,000/- towards loss of amenities, discomforts and unhappiness due to disability instead of Rs. 20,000/-, Rs. 50,000/- towards loss of marriage prospects instead of Rs. 10,000/-

13. However, the Tribunal is justified in awarding a sum of Rs. 40,000/- towards conveyance, nourishing food and attendant charges, Rs. 5,000/- towards loss of income during the treatment period, Rs. 40,500/- towards loss of future earnings and therefore, it does not call for interference.

Thus, the appellant is entitled to the total compensation of Rs. 5,60,998/- instead of Rs. 3,60,500/- and the break- up is as follows:

Having regard to the facts and circumstances of the case, the appeal filed by the appellant is allowed in part The impugned judgment and award dated

25/01/2011 passed in MVC No. 5257/2008, by the IV Additional Judge, Court of Small Causes and Member, Motor Accident Claims Tribunal, Bangalore City (SCCH-6), stands modified, awarding the compensation of Rs. 5,60,998/- instead of Rs. 3,60,500/-. There would be an enhancement of Rs. 2,00,498/- with interest at 6% p.a., from the date of petition till its realization. The 2nd respondent is directed to deposit the enhanced compensation of Rs. 2,00,498/- with interest at 6% p.a., from the date of petition till the date of realization, within three weeks from the date of receipt of a copy of this judgment.

Immediately on deposit by the 2nd respondent, out of the enhanced compensation of Rs. 2,00,498/-, a sum of Rs. 1,50,000/- with proportionate interest shall be invested in the Fixed Deposit, in any Nationalized or Scheduled Bank, in the name of the appellant, till he attains 30 years, with liberty reserved to the natural guardian, mother of the appellant, to withdraw the interest accrued on it, periodically, for the welfare of the appellant, till he attains 21 years and from 21 years to 30 years, he is entitled to withdraw the interest accrued on it, periodically.

The remaining sum of Rs. 50,498/- with proportionate interest shall be released in favour of appellant through his natural guardian, mother immediately.

Draw the award, accordingly.