
(2001) 03 KAR CK 0025
In the Karnataka High Court

North West Karnataka Road Trans. Corpn.	APPELLANT
Vs	
Kumar Anand Irappa Belawadi	RESPONDENT

Date of Decision : 14-03-2001

Acts Referred:

Citation : (2003) 2 ACC 89

Hon'ble Judges : T.N. Vallinayagam, J

Bench : Single Bench

Judgement

T.N. Vallinayagam, J.—The appellant Corporation questions the quantum of compensation granted raising only one ground in the memorandum of grounds.

2. Though there is objection by the learned Counsel for the respondent that there is no ground at all, therefore, the appeal has to be dismissed in limine in the absence of any grounds, I disagree with him. Ground Nos. 4 and 5 which are extracted below are the two grounds made out in the appeal.

(4) The judgment and award of the Court below is contrary to law and facts of the case.

(5) That the Claims Tribunal has erred in awarding Rs. 90,720/- under the head loss of earnings by wrongly applying the multiplier method to a case of injuries and on the notional assumption of income of the respondent at Rs. 1,200/- per month even though he was a student and aged 10 years at the time of the accident.

3. It is the settled law that the entire argument need not be made as grounds of the appeal and it is enough that the judgment and award is contrary to law and facts of the case are mentioned. It is for the appellant to substantiate such a ground by way of arguments. It is always said that evidence need not be pleaded in a pleading so also the attack on the judgment or challenge on the judgment need not be explained in the grounds of appeal. A look at the form prescribed in the pleading book and a reading of this will indicate that the format usually contains the grounds, it may be in any form. The validity of such a ground is a

matter for consideration by this Court while disposing of the appeal. I hold that the first ground is sufficient to challenge the entire award and the second ground is against the grant under the head loss of earnings.

4. The learned Counsel for the appellant contended that the injured was only 10 years old boy. He was a student and even today he continues to be the student and he has not been earning at all. This factum that the appellant continued to be a student is in fact reiterated by the learned Counsel for the respondent himself. So the question of earning in respect of a student or loss of earnings does not arise prima facie. The learned Counsel relied upon Second Schedule wherein, notional income for compensation for those who had no income-prior to accident has been given as Rs. 15,000/- per annum. That will not apply to a minor student in my opinion. In any event, it is not disclosed by evidence that the student was either earning or having the income or any other source prior to the date of the accident and such income or earning has been impaired by the accident in question.

5. Looking to the accident, it is seen that the K.S.R.T.C. bus bearing No. KA 31-F 124 collided with the claimant who was crossing the road on his bicycle. PW 2 who is the guardian and PW 3 who claims to be the eye-witness state that the minor petitioner was standing holding the bicycle in the bus stand compound and at that time the bus came and hit the boy. Witness has been cross-examined and suggestion was that there was no person in the bus stand compound at 4 p.m. on the ill-fated date. However, as the Corporation has not got examined the driver, the Tribunal has accepted the evidence of PW 3. The doctor, PW 1, has stated that he found Antalgic gait and linear scar present over the middle of right leg and anterior and anteromedially. Tenderness elicited over the middle of right leg and in the right knee joint. Mild degree of mal-union present at the middle of right leg over tibia bone. The doctor opined that the claimant had 75 per cent of physical disability. Taking that as basis and fixing notional income, the Court has come to the conclusion that Rs. 90,720 will be the net loss of earnings.

6. Concerning the permanent injury in leg, we find in case of Delhi Transport Corporation and Another Vs. Lalita, a boy of 15 years who was a bright student received permanent disability to the extent of 25 per cent on the left leg was granted Rs. 31,324/- as compensation and Rs. 20,000/- for loss of earnings. In case of Prabbavati Vs. Anton Francis Nazarath, the Karnataka High Court has granted Rs. 10,000/- in respect of a minor girl who received permanent injury in her leg. When the left leg of a boy of 14 years had to be amputated he was awarded Rs. 50,000/- as compensation in lumpsum. Leg from knee downward of a girl aged 18 years who was reading in T.D.C. had to be amputated on account of injury in motor accident she was given a total compensation of Rs. 52,000/-. A boy aged 12 years whose right leg above ankle had been amputated and who was required to use crutches was awarded Rs. 25,000/- as general damages and Rs. 45,000/- as special damages in Amul Ramchandra Gandhi Vs. Abhasbhai Kasambhai Diwan and Others, A student who was going on the road aged about

12-13 years sustained severe injuries, the right leg shortened by half an inch, was granted Rs. 27,000 for future economic loss, Rs. 15,000/- for special damages and Rs. 9,000/- for medical treatment. Thus, a total sum of Rs. 37,500/- was granted. So also the Bombay High Court and Kerala High Court has granted Rs. 40,200/- in respect of the amputation of leg of the claimant. Even when the claimant was studying in the First Year PUC who suffered severe injury on left leg and below knee which was amputated and to be given artificial leg was granted a total compensation of Rs. 40,000/- by this Court in Karnataka State Road Transport Corporation Vs. Samuel Ebenezer Abnes,

7. Taking these into consideration, I find that the grant of Rs. 90,720/- for loss of earnings is certainly on the high side. Apart from the aforesaid sum, the Court below has granted Rs. 25,000/- for pain and suffering; Rs. 22,000/- for loss of comforts; Rs. 8,000/- for medical expenses; Rs. 4,230/- for special diet; and Rs. 43,200/- towards the attendant's charges. Even the grant of Rs. 1,00,000/- is certainly on the higher side in the light of the decisions mentioned above. However, taking into consideration that there is no challenge to the grant on other heads specifically, I hold that a total compensation of Rs. 1,00,000/- shall be reasonable and to that extent the appeal is allowed and the amount granted shall stand reduced to Rs. 1,00,000/-. Other conditions regarding interest shall stand confirmed.