

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 19TH DAY OF DECEMBER 2011

PRESENT

THE HON'BLE MR. JUSTICE N.K.PATIL

AND

THE HON'BLE MR.JUSTICE V.SURI APPA RAO

M.F.A.No.4258/2007 (MV)

BETWEEN:

Master Sudharshan T,
S/o Thimmaiah,
Aged about 14 years,
Since Minor Rep. by father
Thimmaiah, S/o late Gulanappa,
Aged about 40 years,
R/at No.44, 4th Cross,
K.N.Nagar,
Jagajeevanaram Nagar,
Bangalore – 560018.

...APPELLANT

(By Sri A.C.Mahesha, Advocate)

AND:

1. M/s The Oriental Insurance Co. Ltd.,
D.O.1, No.49, Jyothi Mahal,
St.Marks Road, Bangalore – 560001.
Rep. by its Manager.

2. M/s Amanath Motor Owner
Co-Operative Society Ltd.,
The Chairman,
No.165, 6th Main, 4th Block,
Jayanagar,
Bangalore – 560011.

3. The Divisional Manager,
BMTCL Div.,
K.H.Road, Shanthinagar,
Bangalore – 560027.

...RESPONDENTS

(By Sri V.Y.Kumar, Adv. for R3)
(R1 and R2 - Served)

This MFA is filed under Section 173(1) of M.V.Act against the Judgment & Award dated 31.10.2006 passed in M.V.C.No.8071/2005 on the file of the IV Addl. Judge, Member, MACT, Metropolitan Area, Bangalore (SCCH-6), partly allowing the claim petition for compensation and seeking enhancement of compensation.

This MFA coming on for hearing this day, **V.Suri Appa Rao. J** delivered the following: -

J U D G M E N T

This appeal by the claimant arises out of the impugned judgment and award dated 31.10.2006 passed in MVC No.8071/2005 on the file of the Motor



Accident Claims Tribunal, Bangalore, whereby the Tribunal has awarded compensation of Rs.59,975/- with interest at 6% p.a. from the date of petition till the date of realisation on account of the injuries sustained by the appellant in the road traffic accident. Being dissatisfied with the quantum of compensation awarded, the appellant has presented this appeal seeking enhancement of compensation.

2. The brief facts of the case are that the appellant was aged about 13 years. That on 25.11.2005 at about 5.20 p.m. when he was walking on the side of the road on Jagajeevanaram Nagar Main Road, a BMTC bus bearing registration No.KA-05-B-5460 driven in a rash and negligent manner dashed against the appellant. Due to which, the appellant fell down and sustained fracture olceronon process and coronoid process of left ulna. Immediately, he was shifted to hospital for treatment and spent considerable amount towards treatment. Considering the nature of injury and other

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factors, the appellant filed a claim petition before the Tribunal invoking the provisions under Section 166 of M.V.Act claiming compensation of Rs.4,00,000/- against the respondents. The father of the appellant was examined as PW1 and Dr.Prakashappa was examined as PW2. Exs.P1 to P12 were marked. Considering the oral and documentary evidence, the Tribunal awarded compensation of Rs.59,975/- under different heads with interest at the rate of 6% p.a. from the date of petition till the date of realisation. Being dissatisfied with the quantum of compensation awarded, the appellant has presented the instant appeal seeking enhancement of compensation.

3. The learned Counsel for the appellant submitted that by the date of the accident, the injured was a minor. He took treatment for more than one month. He sustained fracture of left ulna. The Medical Officer assessed the disability of the left upper limb at 42% and 14% to the whole body. He further submitted

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that the compensation awarded by the Tribunal on different heads is on lower side and the appellant is entitled for enhancement of compensation.


4. As against this, the learned Counsel appearing for the first respondent-insurer submitted that the appellant sustained only one fracture and the Tribunal has awarded just and reasonable compensation and interference by this Court is not warranted.

5. We have been taken through the impugned award and the evidence of the Medical Officer which clearly indicates that the appellant sustained fracture Olceronon process and coronoid process of left ulna. PW2 has assessed the disability to the left upper limb at 42% and 14% to the whole body. Considering the medical evidence and other factors, the Tribunal awarded compensation of Rs.59,975/- with interest at 6% p.a. from the date of petition till the date of realisation.



6. Considering the nature of injuries and other factors, we feel it just and reasonable to award Rs.30,000/- towards pain and suffering as against Rs.25,000/- awarded by the Tribunal, Rs.40,000/- towards loss of future amenities, discomfort and unhappiness as against Rs.20,000/-, Rs.20,000/- towards conveyance, nourishing food and attendant charges as against Rs.10,000/-. The Tribunal has rightly awarded Rs.4,975/- towards medical expenses and there is no need for interference by this Court under this head. The appellant is therefore entitled to a total compensation of Rs.94,975/- as against Rs.59,975/- awarded by the Tribunal. Thus there is enhancement of Rs.35,000/- with interest at 6% p.a. from the date of petition till the date of realisation.

7. For the foregoing reasons, the appeal is allowed in part. The impugned judgment and award dated 31.10.2006 passed by the Tribunal in MVC No.8071/2005 is hereby modified awarding a sum of



Rs.35,000/- with interest at 6% ^{* P.A. ~~N.A.~~} (p.m.) from the date of petition till the date of realisation in addition to the compensation awarded by the Tribunal.

The first respondent - insurer is directed to deposit the enhanced compensation amount with interest within three weeks from the date of receipt of copy of this judgment and award. On deposit of the said sum by the first respondent, the same shall be released in favour of the appellant immediately, since the appellant has now become a major.

Office to draw decree accordingly.

Sd/-
JUDGE

Sd/-
JUDGE

JT/-

V. S. / *corrected vide chamber order dated 10.08.2012