

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 7TH DAY OF JANUARY, 1998

BEFORE

THE HON'BLE MR. JUSTICE CHIDANANDA ULLAL

M.F.A.NO. 310/1994.

Between :

K.P.Joseph, S/o.
K.P.Baby, aged 24 yrs.,
R/of. Ballya village
& Post, Puttur taluk,
D.K. .. APPELLANT

(By Sri. S.S.Sripathy, Adv. for applt.)

A n d :

1. M.Adam, s/o. Hajee
K.Ismail, adult,
Post Kadaba,
Puttur taluk, D.K.
2. The National Insurance
Co.Ltd., Shivakrupa
Bldg., I Floor, Puttur,
D.K. by its Manager. .. RESPONDENTS

(By Sri. B.C.Seetharam Rao for respdts.)

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MFA filed u/s. 110-D of the M.V.Act against the judgment and award dt. 28-8-93 in MVC No. 241/88 on the file of th e MACT-III, D.K., Mangalore, allowing the claim petition for compensation.

This MFA coming on for hearing this day, the Court delivered the following :

J U D G M E N T

This appeal is preferred by the claimant to challenge the judgment and award dt. 28-8-93 in MVC No. 241/88 passed by the Motor Accidents Claims



Tribunal - III, Dakshina Kannada District, Mangalore. In passing the above judgment and award, the Claims Tribunal had awarded a global compensation of Rs.78,700/- as against the claim of Rs.1,50,000/-.

2. I heard the learned Counsel for the appellant - claimant Sri. S.S.Sripathy and the learned Counsel for the respondent No. 1 - owner and the respondent No. 2 - Insurance Co. Sri. B.C.Seetharama Rao. I have also perused the case records.

3. The learned Counsel for the petitioner while taking me through the facts of the case and further urging the grounds in the appeal memorandum submitted that the appellant - claimant at the prime of his age lost his right leg below knee and he was unmarried at the time of the accident on 1-3-88. The grievance of the appellant is that the Claims Tribunal had awarded him almost one half of what was claimed by him totally overlooking the circumstances that he had lost earning capacity almost totally as he was a tailor by profession and further that under the head pain and sufferings and for medical expenses, the Tribunal below had awarded only a



small sum of Rs.5,000/- each. According to him, even if the Tribunal had taken that one half of the total income had to be construed as the loss of earning capacity, that would have worked out to Rs.300/- per month or Rs.3,600/- per annum and the multiplier that would have been employed by the Tribunal at 18 by taking note of his young age of 24 years and if that is so, under the head General Damages, the Tribunal would have awarded a sum total of Rs.64,800/- as against Rs.50,000/-. It is also his submission that under the head 'pain and sufferings' and 'loss of amenities in life', the Tribunal below would have awarded a minimum of Rs.20,000/- and Rs.10,000/- each. However, the learned Counsel for the appellant had not made out any grievance as to award of a sum total of Rs.18,700/under different heads such as 'loss of income', 'expenditure towards fitting or artificial limbs' from time to time, 'cost of shoes' under the head special damages.

4. Therefore according to him, there would have been a minimum compensation of Rs.1,13,500/-. Therefore he prayed that the instant appeal be



allowed at least in part by modifying the impugned judgment and award passed by the Tribunal below accordingly.

5. As against the above arguments advanced by the learned Counsel for the appellant, the learned Counsel for the respondents Sri. Seetharam Rao on the other hand while supporting the impugned judgment and award passed by the Tribunal, argued that the Tribunal below had meticulously considered every aspect of the case and awarded under different heads taking note of all the attendant circumstances even to the extent that the appellant - claimant had to go for change of shoes and the change of artificial limb or in other words his argument is to sustain the award of the Tribunal below.

6. Now in the light of the above submissions, the point for my consideration is whether the Tribunal below had awarded a just and proper compensation to the appellant - claimant by taking into consideration all the facts and circumstances of the case. As argued by the learned Counsel for the appellant it appears to me that the Tribunal below would have considered the loss of earning capacity of the appellant - claimant at least to one



half of the loss by reckoning the fact that the appellant - claimant was a tailor by profession and that he lost his right leg below the knee as the right leg below the knee was crushed in the accident and that the appellant claimant had to undergo yet another agony in amputation of that part of the leg below the knee. Therefore it appears to me that under the head pain and suffering a minimum sum of Rs.20,000/- had to be awarded as against the sum of Rs.5,000/awarded by the Tribunal. Even towards the loss of amenities with the loss of the right leg below the knee, it appears to me that a minimum sum of Rs.20,000/would have been awarded under that head. If the other items of the compensation awarded by the Tribunal were to sustain, that would give a sum total of Rs.1,23,500/-. Yet another aspect of the case in my considered view is, the Tribunal below had totally overlooked the loss of marital prospects of the appellant - claimant, ^{✓ as ✓} ~~that~~ the appellant - claimant was unmarried and was hardly about 19 years and in the said facts and circumstances, the Tribunal below would have granted a minimum sum of Rs.25,000/towards loss of marital prospects. To sum up all the above, the global compensation sums upto Rs.1,48,500/-.



7 . In my considered view, the above global compensation would have been just and proper compensation awardable to the appellant - claimant. The interest granted at 6% p.a. by the Tribunal also stands modified at 9% p.a., for I am of the view that the interest rate awarded by the Tribunal below was too less a rate.

8 . In the result, the impugned judgment and award of Rs.78,700/- together with interest at 6% p.a. is modified to Rs.1,48,500/- together with interest at 9% p.a.

9. The respondents are directed to pay the above sum together with interest at the above rate from the date of the petition after giving deduction for what has already been deposited either before this Court or before the Tribunal below under intimation to the appellant.

10. The Registry is also directed to transfer any sum in deposit in this appeal (if deposited) to the MACT below immediately.

11. The appeal therefore succeeds and accordingly allowed in part. *No Cost.*

Sd/-
Judge

ngn/-