

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 11TH DAY OF AUGUST, 2000

BEFORE

THE HON'BLE MRS. JUSTICE MANJULA CHELLUR

M.F.A.NO. 178/98.

BETWEEN:

P.Palani, S/o Ponnaswamy,
Aged 22 years, C/o Dhanamma,
No. 45, 2nd Cross, Ashokapura
Colony, Yeshwanthapuram,
Bangalore.

.....APPELLANT

(By Sri.C.M.Desai, Advocate)

AND:

1. Oriental Insurance Co.Ltd.,
Branch Office Shubhagoindam,
2nd floor, Imperial Road,
Cuddalore. Rep. by its Manager.
2. V.Venugopalan, S/o Venkatachalam,
Major, No. 11-G, Red Cross Road,
Cuddalore.

..... RESPONDENTS

(By Sri. V.Narayanaswamy, Adv. for R1 &
Sri.Frakashchandra M.N., Adv. for R2).

This M.F.A filed u/s 173(1) of the M.V.Act, 1988, praying to enhance the compensation awarded in M.V.C.No. 2371/90 dated 27.8.97 passed by the MACT, Bangalore.

This M.F.A coming on for hearing this day, the Court delivered the following:

J U D G M E N T

Heard.

2. This appeal is filed challenging the award of Rs.40,000/- as compensation under liquidated and unliquidated damages.

3. Admittedly, the appellant was aged 15 years working as supplier in a hotel, as on the date of accident. The accident has resulted in amputation of 5th toe leaving other toes bent downwards. The Tribunal after assessing the material on record i.e., evidence of the petitioner and the medical evidence, has awarded the following amounts:

1. Injury, pain & suffering - 25,000
2. Medical Expenses & nourishment - 4,000

27

3. Permanent Disability - Rs.10,000

4. Loss of income - Rs.1,000

The interest was awarded at 6% p.a.

4. The learned counsel for the appellant submitted that having regard to the very nature of the injuries, pain and suffering undergone by the appellant-injured, the amount of compensation awarded is very meagre and inadequate. Therefore, it has to be enhanced. He relies upon the following decisions which are perused:

1. 1997(3) KLJ page 216
2. 1997(2) KLJ page 278
3. 1997 KLJ page 1343 &
4. 1999 ACJ SC page 809.

5. In the present case, the appellant met with an accident on 20.8.90 at about 3.30p.m. Immediately he was shifted to Sanjaygandhi Hospital for medical attendance. He sustained

degloving injury of the left leg exposing muscles, bones and damage to the tendons^s. During the treatment about 9 bottles of blood was transfused^s and wound debridement was done twice. Subsequently, skin grafting was done on the left leg. He also underwent another operation for the amputation of the 5th toe. He was hospitalised for 2 months 27 days. After the discharge also he visited the hospital for further check-up as out-patient.

6. Considering all these facts, the award of Rs.25,000/- in respect of injury, pain and suffering is on the lower side which has to be enhanced to Rs.40,000/-. So far as the permanent disability is concerned two doctors were examined who are Orthopaedic surgeon and Plastic Surgeon^s from Sanjaygandhi Hospital. They speak with regard to the disabilities with which the appellant-injured had to suffer throughout

his life. From the evidence of medical experts, it is established that there is deformity of the left leg as a result of varus deformity, limping due to shortening of the leg, ^{and} ugly scar. Apart from this he is not able to place his left foot evenly on the floor due to skin grafting ^{and} ~~under~~ formation of scar. ^SUlceration at the pressure bearing area of the left foot is a recurring process with which the petitioner has to suffer throughout his life. Taking into consideration the age of the petitioner who was unmarried at the time of this accident, Rs.15,000/- is awarded towards permanent disability. As already stated above, at an young age, the petitioner has to undergo such an agony on account of physical and mental pain. Therefore, some amount has to be awarded towards loss of amenities of life i.e., Rs.10,000/-.

7. Admittedly, the appellant was hospitalised for 2 months and 27 days apart from taking treatment as out-patient. He must have spent

some amount towards conveyance and nourishment; the award of Rs.4000/- is on lower side. It is also borne on record that the parents of the petitioner were looking after ^{him} ~~them~~ who were also coolies, during the period of stay in the hospital. Having regard to ^{all} these facts a sum of Rs.10,000/- is awarded towards medical care, conveyance and nourishment and pecuniary loss to the ^s parents. Admittedly, the appellant was earning Rs.400/-p.m as on the date of accident. The injuries in question must have made him not to work for a minimum period of six months. Therefore, loss of income is awarded at the rate of Rs.400/-p.m for 6 months as Rs.2,400/-.

8. The learned counsel for the appellant-injured contended that having regard to the disabilities explained by the medical experts, the court can very well come to the conclusion that there

is loss of earning capacity also. Unfortunately though the medical experts have said how the patient has to undergo the suffering due to the disability of limping, formation of ~~ulceration~~ ^{ulceration}, have not said that he will not be able to do any sort of work to earn his livelihood. Therefore, the said contention cannot be considered.

9. For the suffering the petitioner has ~~be~~ undergone at the age of 15 years, the rate of interest allowed at 6% by the Tribunal. Having regard to the pain and suffering, he would be entitled for 9% interest on the enhanced sum from the date of presentation of the appeal till the date of deposit. In all the compensation is enhanced to Rs.77,500/- as against Rs.40,000/-.

10. Accordingly the appeal is disposed of.

So far as the apportionment of the money that has to be paid by cash to

the appellant-injured and by way of deposit,
the Tribunal shall follow the law laid down
by the Apex Court.

Sd/- JUDGE

KVN*