

IN THE HIGH COURT OF KARNATAKA AT BANGALOREDATED THIS THE 20TH DAY OF NOVEMBER, 2012**:BEFORE:****THE HON'BLE MR.JUSTICE N.K.PATIL**M.F.A. No. 8312 of 2011 (MV)Between:

Master Gangadhara,
S/o. Nagappa,
Aged about 14 years,
R/at. Gollapalli Gadda,
Chintamani Taluk,
Chikkaballapura District.
Now R/at. C/o. Chalapathi,
I Cross, I Main, Muneshwarnagar,
Kolar City.
Since appellant is a minor,
He is rep. by his father Sri. Nagappa,
S/o. Kolar Muniswamy,
Aged about 47 years.

....Appellant

(By Smt. P.V.Kalpana, Advocate)

And:

1. The Manager,
The National Insurance Co., Ltd.,
Branch Office,
Opp. KSRTC Bus Stand,
Hindupur, Andhra Pradesh.
2. Suresh,
S/o. C.Ramesh,
No.8/319, Lakshminagar,
Ananthapur-515001.

Andhra Pradesh.

...Respondents

This MFA is filed U/s. 173(1) of MV Act against the Judgment and Award dated: 05/09/2009 passed in MVC No.299/2005 on the file of the Presiding Officer, Fast Track Court-I, Kolar, partly allowing the claim petition for compensation and seeking enhancement of compensation.

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

:JUDGMENT:

This appeal by the appellant-claimant is directed against the impugned judgment and award dated 05/09/2009 passed in MVC No.299/2005 by the Presiding Officer, Fast Track Court-I, Kolar, (hereinafter referred to as 'Tribunal' for short).

2. Along with the appeal, the appellant has filed I.A.No.I/2011 of condonation of delay of 640 days in filing the appeal.

3. I have heard learned counsel for the appellant Smt. P.V. Kalpana.

4. The delay of 640 days in filing the appeal has been explained by the guardian of the appellant in the affidavit dated 12th September 2011, filed along with the application,

stating that, the lower Court has passed the award in the month September 2009 and after obtaining the amount in the month of April 2010, he told his Advocate to file an appeal, who has instructed him to meet him during first week of June 2010. It is further stated that, he has to maintain his family by doing coolie work, he keep on migrating in search of the work he had gone to Chittoor which is in A.P. and started working in construction site and as such, he could not meet his advocate in time to file the appeal. Only during the second week of September 2011, he met his Advocate and sign the necessary papers to file the appeal and then only , he came to know that he ought to have filed the appeal within 90 days from the date of judgment. He has no legal knowledge and the delay is due to bonafide reasons which is not intentional one. If the said delay is not condoned, he will be put to much hardship and inconvenience and no prejudice will be caused to the other side, if the delay is condoned. Therefore, he prayed to condone he delay in filing the appeal.

5. After careful perusal of the statements made in para-2 of the affidavit filed along with the application, the inordinate delay of 640 days in filing the appeal has not been explained by the guardian appellant satisfactorily by assigning cogent and valid reasons. The explanation offered by the appellant is omnibus in nature and much credibility cannot be given to the same. Appellant has to explain each day's delay in filing the appeal satisfactorily by assigning cogent and valid reasons. In view of non explanation of the delay in filing the appeal by the appellant by offering cogent and valid reasons, I.A.No.I/2011 filed for condoning the delay in filing the appeal is liable to be dismissed as devoid of merits. Accordingly, it is dismissed.

6. However, in the interest of justice and equity, I have gone through the judgment and award passed by the Tribunal. After careful perusal of the same, it emerges that, the Tribunal taking into consideration the nature of injuries sustained by the appellant, the nature and duration of treatment taken by him, having regard to his age and the year of accident, the pain and agony suffered by

him during the treatment period, has justified in awarding a sum of ₹30,000/- towards pain and sufferings, ₹40,000/- towards medical expenses, conveyance, nourishing food and attendant charges, ₹54,000/- towards loss of earnings, ₹40,000/- towards loss of amenities and ₹10,000/- towards future surgery and in all, ₹1,74,000/- with interest at 6% p.a., (excluding interest on ₹10,000/- awarded towards future surgery) from the date of petition till its realization, which is just and proper. In fact, the multiplier of '18' adopted by the Tribunal is on higher side and appropriate multiplier would be '15' since the claimant is aged about 8 years as on the date of the accident. Taking all these factors into consideration, interference by this Court is not called for. Hence, the appeal filed by the appellant is dismissed on the ground of delay and laches as also on merits.

Ordered accordingly.

SD/-
JUDGE

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