

Karnataka High Court Fakkirappa vs Yallawwa And Anr. on 18 November, 2003 Equivalent citations: 2004 ACJ 1141 Author: S Nayak Bench: S Nayak, R M Reddy JUDGMENT S.R. Nayak, J. 1. A minor male child who sustained certain grievous injuries in an accident that occurred on 8.5.2000 involving a motor vehicle bearing certificate of registration No. KA 25-2380 owned by the respondent No. 1 and insured by the respondent No. 2, resulting in amputation of the left leg below knee, represented by his father-guardian, has preferred this appeal calling in question the correctness and legality of the judgment and award dated 4.10.2001 passed in M.V.C. No. 1575 of 2000 on the file of the Motor Accidents Claims Tribunal (III) and II Additional District Judge, Dharwad (for short 'the M.A.C.T.'), seeking more compensation. 2. The fact that the accident took place on account of rash and negligent driving of the motor vehicle involved in the accident by its driver is not in controversy. Therefore, there is no need for this court to review the finding recorded by the M.A.C.T. with regard to actionable negligence attributed to the driver of the offending vehicle. 3. The learned counsel for the appellant while contending that the quantum of compensation awarded by the M.A.C.T. is unreasonable and inadequate would highlight that having regard to the fact that the left leg of the child had to be amputated below knee on account of the accident, M.A.C.T. is not justified in awarding only a sum of Rs. 1,00,000/- for the future loss of income. Learned counsel would also contend that the compensation awarded under other various heads is very much on a lower side. The learned counsel further contends that the M.A.C.T. ought to have awarded reasonable compensation for loss of marriage prospects, and that it is not justified in not awarding any compensation towards attendant charges, conveyance charges and towards special food and nourishment, etc. The learned counsel would also contend that interest awarded at 6 per cent is not in accordance with the recent trends reflected by the judgments of the Apex Court and those of this court. 4. Having heard the learned counsel for the parties, the only question that arises for decision is whether sum of Rs. 2,00,000/-awarded by the M.A.C.T. as compensation in the facts and circumstances of the case and evidence on record could be regarded as just and reasonable? If not, what shall be the just and reasonable compensation to which the claimant-appellant is entitled? Before answering the above point, the principles and norms governing determination of compensation in bodily injury cases may be noted briefly. 5. Bodily injury is to be treated as a deprivation which entitles a claimant to damages, the amount of damages varies according to gravity of the injury. Deprivation of injuries may bring with it three consequences, namely, (i) loss of earnings and earning capacity, (ii) expenses to pay others for what otherwise he would do for himself, and (iii) loss or diminution in full pleasures of living. Though it is impossible to equate money with human suffering or personal deprivation, the court has to make an attempt to award damages so far as money can compensate the loss. Therefore, while considering deprivation, the court should have regard to the gravity and the degree of deprivation and the degree of awareness of the deprivation. While awarding damages in the personal injury cases, the compensation awarded by the court should be substantial and it should not be merely token damages.

Lord Morris in his memorable speech in *H. West and Son Ltd. v. Shephard*, 1958-65 ACJ 504 (HL, England), pointed out this aspect in the following words: “Money may be awarded so that something tangible may be procured to replace something else of the like nature which has been destroyed or lost. But money cannot renew a physical frame that has been battered and shattered. All that Judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common assent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards.” 6. In the above case, their Lordships of the House of Lords observed that the bodily injury is to be treated as a deprivation which entitles plaintiff to the damage and that the amount of damages varies according to the gravity of the injury. Their Lordships emphasised that in personal injury cases the courts should not award merely token damages but they should grant substantial amount as compensation. 7. In *Ward v. James*, (1965) 1 All ER 563, speaking for the Court of Appeal in England, Lord Denning while dealing with the question of awarding compensation for personal injury had laid down three basic principles: “Firstly, assessability: In cases of grave injury, where the body is wrecked or brain destroyed, it is very difficult to assess a fair compensation in money, so difficult that the award must basically be a conventional figure, derived from experience or from awards in comparable cases. Secondly, uniformity: There should be some measure of uniformity in awards so that similar decisions may be given in similar cases; otherwise there will be great dissatisfaction in the community and much criticism of the administration of justice. Thirdly, predictability: Parties should be able to predict with some measure of accuracy the sum which is likely to be awarded in a particular case, for by this means cases can be settled peaceably and not brought to court, a thing very much to the public good.” 8. In deciding the quantum of damages to be paid to a person for the personal injury suffered by him, the court is bound to ascertain all considerations which will make good to the sufferer of the injuries, as far as money can do, the loss which he has suffered as a natural consequence of the wrong done to him. In *Basavaraj v. Shekhar*, 1987 ACJ 1022 (Karnataka), a Division Bench of this court held that “if the original position cannot be restored—as indeed in personal injury or fatal accident cases it cannot obviously be—the law must endeavour to give a fair equivalent in money, so far as money can be an equivalent and so make good the damage”. In other words, the general principle which should govern the assessment of damages in personal injury cases is that the court should award to injured person such a sum of money as will put him in the same position as he would have been in if he had not sustained the injury. The principle is sometimes referred to as *restitutio in integrum*; but it is manifest and universally realized that no award of money can possibly compensate a man and renew a shattered human frame. Lord Morris of Borth-y-Gest in the case of *Perry v. Cleaver*, 1969 ACJ 363 (HL, England), said: “To compensate in money for pain and for physical consequences is invariably difficult but...no other process can be devised than that

of making a monetary assessment.” 9. Damages must be full and adequate. Field, J. in *Phillips v. South Western Railway Co.*, (1871) 1 QBD 106, held: “You cannot put the plaintiff back again into his original position, but you must bring your reasonable common sense to bear, and you must always recollect that this is the only occasion on which compensation can be given. The plaintiff can never sue again for it. You have, therefore, now to give him compensation, once and for all. He has done no wrong; he has suffered a wrong at the hands of the defendants and you must take care to give him full fair compensation for that which he has suffered.” 10. Though, undoubtedly there are difficulties and uncertainties in assessing the damages for personal injury case, that fact should not preclude an assessment as best as can, in the circumstances be made. Lord Halsbury in *Mediana*, (1900) AC 113, said: “Of course the whole region of inquiry into damages is one of extreme difficulty. You very often cannot even lay down any principle upon which you can give damages; nevertheless, it is remitted to the jury, or those who stand in place of the jury, to consider what compensation in money shall be given for what is a wrongful act. Take the most familiar and ordinary case: how is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by any arithmetical calculation establish what is the exact amount of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident. . . But, nevertheless, the law recognises that as a topic upon which damages may be given.” 11. It is well settled position in law that in granting compensation for personal injury, the injured has to be compensated (1) for pain and suffering; (2) for loss of amenities; (3) shortened expectation of life, if any; (4) loss of earnings or loss of earning capacity or in some cases for both; and (5) medical treatment and other special damages. In personal injury actions the two main elements are the personal loss and pecuniary loss. Chief Justice Cockburn in *Fair v. London and North Western Railway Co.*, (1869) 21 LT 326, distinguished the above two aspects thus: “In assessing the compensation the jury should take into account two things, first, the pecuniary loss the plaintiff sustains by the accident: secondly, the injury he sustains in his person, or his physical capacity of enjoying life. When they come to the consideration of the pecuniary loss they have to take into account not only his present loss, but his incapacity to earn a future improved income.” 12. *McGregor on Damages*, 14th Edn., para 1157, referring to the heads of damages in personal injury actions states: “The person physically injured may recover both for his pecuniary losses and his non-pecuniary losses. Of these the pecuniary losses themselves comprise two separate items, viz., the loss of earnings and other gains which the plaintiff would have made had he not been injured and the medical and other expenses to which he is put as a result of the injury, and the courts have subdivided the non-pecuniary losses into three categories, viz., pain and suffering, loss of amenities of life and loss of expectation of life.” 13. Besides, the court is well advised to remember that the measures of damages in all these cases “should be such as to enable even a tortfeasor to say that he had amply atoned for his misadventure”. The observation of Lord Devlin that the proper approach to the problem or to adopt a test as to what contemporary society would deem to

be a fair sum, such as would allow the wrongdoer to “hold up his head among his neighbours and say with their approval that he has done the fair thing”, is quite apposite to be kept in mind by the court in determining compensation in personal injury cases. 14. In the premise of the above well settled principles and norms governing payment of compensation under various heads, let us have a look at the facts of this case. 15. The minor child had been born and brought up predominantly in an agriculturist family. Due to the injuries sustained by him, the child had to be hospitalised as an inpatient in two spells, from 8.5.2000 to 8.6.2000 in the first spell and again from 3.7.2000 to 5.7.2000 in the second spell. During the first spell, his left leg below knee has to be amputated by a surgery. Even after discharge on 8.6.2000, he had to be again admitted as an inpatient for follow-up treatment and rectification. The doctor who was examined as a witness in support of the claim of the appellant has assessed the permanent disability at 60 per cent to 65 per cent of left leg. The doctor’s evidence also discloses that the minor has to seek replacement of artificial leg every year in conformity with his physical growth in height and take treatment. The amputation of one of the legs, it is trite, would make the young boy totally frustrated. That impairment would also undoubtedly diminish his marriage prospects and deny him joy and happiness of life, which a normal human being can have. In bodily injury cases, it is always said and reiterated that the compensation to be awarded by the Tribunal or the court in comparison to the compensation paid to the dependants of the deceased would be on a higher scale, obviously, because compensation would go to the injured and not to the dependants. It is also universally realised that no quantum of compensation would in real sense restore a person who has suffered injury, particularly grievous injury resulting in amputation of limbs, to his or her pre-injury status. Be that as it may, the court is bound to decide and award just and adequate compensation applying permissible empirical formulae. If we keep these principles and norms as set out by us supra in the decision-making, we are constrained to observe that the M.A.C.T. has practised conservatism to the core in awarding total compensation of Rs. 2,00,000/- under various heads. The sum of Rs. 25,000/- towards loss of amenities of life, loss of happiness, frustration in life is very meagre and would be nowhere nearer to just compensation contemplated under the Motor Vehicles Act, 1988 (for short, ‘the Act’). Having regard to the kind of permanent injuries caused to the body-frame of the young child with which he has to lead the rest of his life, we think that he is at least entitled to a sum of Rs. 1,00,000/- for loss of amenities of life, happiness, frustration and we, accordingly, award a sum of Rs. 1,00,000/- under the said head. It need not be said that amputation of a leg below knee would undoubtedly diminish the marriage prospects of the boy when he grows up. The courts have been awarding compensation towards loss of marriage prospects. We do not find any reason or ground to deny compensation under the said head to the injured boy in this case. Therefore, we award a sum of Rs. 50,000/- towards loss of marriage prospects. The M.A.C.T. has awarded a sum of Rs. 25,000/- under the omnibus head which is inclusive of medical expenses, special food nourishment, attendant charges, conveyance, etc. The boy was hospitalised as an inpatient for a total period of 35 days in two spells.

Therefore, it is quite natural, the young boy would have been accompanied by an attendant to take care of him in the hospital. Further, having regard to the length of treatment, it is reasonable to suppose that the parents of the boy must have spent considerable money towards medical treatment, conveyance, special food and nourishment, etc. Therefore, we award a sum of Rs. 25,000/- towards medical expenses, special food and nourishment and another sum of Rs. 10,000/- towards attendant charges and conveyance. 16. In awarding a sum of Rs. 1,00,000/- towards amputation of leg, we find perversity in the reasoning of the M.A.C.T. The learned Tribunal having referred to the judgment of the Apex Court, in *Imtiaz v. National Insurance Co. Ltd.*, 2001 ACJ 1033 (SC), has held that it is bound by that decision and in determining the compensation, quite curiously, awarded only a sum of Rs. 1,00,000/-. Hon'ble Apex Court in the above judgment has opined that even a sum of Rs. 2,00,000/- as compensation for the injuries sustained in that case is on a lower side. Of course, from the above judgment of Hon'ble Apex Court placed before us, we could not know the relevant facts which have gone into the decision-making. We do not know the date of the accident or the status and family background of the boy. Be that as it may, we are of the considered opinion that justice requires that the boy should be awarded at least a sum of Rs. 1,50,000/- exclusively towards amputation of leg below the knee. Accordingly, we award Rs. 1,50,000/- for amputation of leg below knee. 17. This takes us to what shall be the reasonable compensation to be awarded to the boy towards future medical expenses. The doctor's evidence as well as the finding recorded by the learned Tribunal would go to show that, till the boy attains the age of 22 years, he has to replace artificial limb every year. Of course, from the records we could not get any assistance or aid as to what shall be the cost of artificial leg. We are told at the Bar that cost of artificial leg currently will be in the range of Rs. 17,000/- to Rs. 32,000/-. Since no concrete evidence is forthcoming from the records, it is a fit case where we should allow guesswork to play. In that view of the matter, we think that we may probably take the cost of the artificial leg at Rs. 20,000/-. We are also told that the growth during the next 20 years in the age of the boy would not be uniform and there as no necessity to replace the artificial leg every year. Allowing all these uncertainties, we think that a sum of Rs. 1,50,000/- would be just compensation towards future medical expenses. Accordingly, we award a sum of Rs. 1,50,000/- for future medical expenses. The M.A.C.T. has not awarded any compensation towards loss of expectations of life. We could reasonably accept that on account of critical impairment to the body-frame, the boy deserves to be compensated reasonably. Therefore, we award a sum of Rs. 50,000/- towards loss of expectation of life. Since we have awarded reasonable and adequate compensation under various other heads permissible in the bodily injury cases, we do not think it necessary to enhance the sum of Rs. 50,000/- awarded by M.A.C.T. towards pain and suffering. The M.A.C.T. has awarded interest at the rate of 6 per cent per annum. Rate of interest awarded by M.A.C.T. is not in conformity with the recent trends reflected by the judgments of the Apex Court and those of this court. Therefore, we award interest at the rate of 9 per cent per annum. 18. In the result, for the foregoing reasons,

we allow the appeal in part with costs. In substitution of the impugned award, we award a sum of Rs. 5,85,000/- under the following heads with 9 per cent interest per annum from the date of claim petition till its payment: Pain and suffering Rs. 50,000/- Loss of amenities of life, happiness, frustration, etc. Rs. 1,00,000/- Loss of marriage prospects Rs. 50,000/- Amputation of leg below knee Rs. 1,50,000/- Loss of expectation of life Rs. 50,000/- Medical expenses inclusive of special food, nourishment Rs. 25,000/- Attendant and conveyance charges Rs. 10,000/- Future medical expenses to replace artificial left leg till he attains the age of 22 years Rs. 1,50,000/- Total Rs. 5,85,000/-

Advocate's fee is fixed at Rs. 1,500/-.