

Karnataka High Court *Iranna vs Mohammadali Khadarsab Mulla And . . .* on 18 March, 2004 Equivalent citations: 2004 ACJ 1396, 2004 (7) KarLJ 143 Author: R M Reddy Bench: S Nayak, R M Reddy JUDGMENT Ram Mohan Reddy, J. 1. In a bodily injury case, the injured, a minor represented by his father, natural guardian, being dissatisfied with the quantum of compensation awarded, has preferred this appeal under Section 173 (1) of the Motor Vehicles Act, 1988 (for short 'the Act'), calling in question the judgment and award dated 17.9.2002, passed in M.V.C. No. 1254 of 2000 on the file of the court of the Addl. Motor Accidents Claims Tribunal, Saundatti (for short 'M.A.C.T.'). 2. Facts in brief, noticed, for decision making are: On 19.4.2000 at about 1345 hours, while Iranna, son of Basappa Kurahatti was walking on the left side of the road in Kasaba lane, near Jogannavar Complex on Nargund-Saundatti Road of Nargund town, the motor vehicle being a bus bearing registration No. KA 25-F 937, belonging to the respondent No. 2 and driven by the respondent No. 1 at a high speed and in a rash and negligent manner from Sank-dal side dashed against the said Iranna. Due to the said accident, Iranna sustained grievous injuries resulting in amputation of his left leg below knee. The injured a student studying in 2nd standard, resident of Kurahatti, Ramdurg taluk of District Belgaum, was admitted to the Government Hospital, Saundatti, for his treatment and thereafter to KMC Hospital, Hubli for further treatment as an inpatient. Due to the amputation of the left leg, the injured discontinued his studies. On the aforesaid facts, the injured represented by his father filed a claim petition under the Act seeking compensation of Rs. 4,00,000, which petition was numbered as M.V.C. No. 1254 of 2000. Respondent Nos. 1 and 2, on notice, filed separate written statements denying the claim of the injured. 3. In the premise of the pleadings of the parties, the M.A.C.T. framed three issues, recorded the depositions of the father of the claimant as PW 1 and two other witnesses PWs 2 and 3. On behalf of the claimant, 13 documents were produced and marked as Exhs. P- 1 to P-13. The respondents did not adduce any oral evidence or produce any documents in support of their pleading. 4. The M.A.C.T., appreciating the evidence both oral and documentary, returned a finding of actionable negligence on the driver of the bus, causing the accident, resulting in grievous bodily injuries to the claimant. The M.A.C.T. awarded a total compensation of Rs. 2,27,000 with interest at 9 per cent per annum under the following heads: Pain and suffering Rs. 50,000 Medical expenses Rs. 10,000 Loss of earning capacity Rs. 1,35,000 Loss of amenities Rs. 25,000 Conveyance and attendance Rs. 6,500

Being aggrieved of the judgment and the award, the claimant-injured has preferred this appeal. Since the finding recorded by the M.A.C.T. with regard to actionable negligence is not assailed before us, there is no need for us to review that part of the finding recorded by the M.A.C.T. 5. Mr. D.S. Hosmath, learned counsel for the appellant would contend that the award of compensation of Rs. 10,000 towards medical expenses is inadequate and requires to be enhanced. He would also contend that the M.A.C.T. ought to have taken Rs. 30,000 per annum as the earning capacity of the injured and the loss of earning capacity at

100 per cent instead of Rs. 15,000 per annum and 60 per cent functional disability, which in the established facts and circumstances of the case is erroneous. In addition, he would also contend that the application of multiple '15' is incorrect and what is required to be applied is multiple '18'. Lastly, he would contend that the award of Rs. 25,000 for loss of amenities is inadequate and requires to be enhanced. 6. Though the notice of the appeal was served on the respondents, they have remained unrepresented. 7. Having heard learned counsel for the appellant, the only question for determination in this appeal is whether the award of Rs. 2,27,000 under different heads in the facts and circumstances of the case and evidence on record could be considered to be just, reasonable and within the contemplation of the Act? If not, what is the just and reasonable compensation, the appellant is entitled to? 8. Mr. D.S. Hosmath, learned counsel for the appellant drew our attention to the principles and norms governing the determination of compensation in bodily injury cases, as noticed by us, in our judgment in *Fakkirappa v. Yallawwa*, 2004 ACJ 1141 (Karnataka), wherein one of us, Nayak, J., speaking to the Bench observed thus: "(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, court should have regard to the gravity and degree of deprivation and the degree of awareness of the deprivation. In awarding damages in 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 & 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.'" 9. It is no doubt true, this court after noticing the judgments of the English courts and those of the Apex Court applied the same to the facts of the said case, where a minor child of four years sustained injury in a motor vehicle accident resulting in amputation of the lower left limb below knee, having permanent disability of 62-65 per cent, awarded Rs. 1,00,000 towards loss of amenities; Rs. 50,000 towards loss of marriage prospects; Rs. 1,50,000 towards amputation of leg below knee and Rs. 1,50,000 towards future medical expenses for replacing the artificial limb up to the age 20 of the child. Mr. D.S. Hosmath, the learned counsel for the appellant would persuade us to take a

similar view in the award of compensation in the present appeal contending that the facts in the present appeal are almost identical with that of the case decided by this Bench. 10. In addition to the principles and norms with which we were guided in the decision-making in *Fakkirappa v. Yalla-wwa*, 2004 ACJ 1141 (Karnataka), we may usefully refer to the following observations of Scarman, L.J. in *Thomas v. British Railways Board*, 1977 ACJ 222 (CA, England), which reads thus: "...the greatest element of damage in a case such as this is the pain, the suffering and the loss of the ordinary pleasures and convenience associated with healthy and mobile limbs. All that the court can do is to award such a sum as will enable the plaintiff to acquire some material possessions or to develop a lifestyle which will offset to some extent her terrible disability." In *Birkett v. Hayes*, 1983 ACJ 697 (CA, England), the decision has been cited: "There is nothing to guide us but the feeling of what is fair. . . the Judge has to award compensation for the past and also for the future pain, suffering and loss of amenities. The future that lies ahead, beyond the date of trial, is often of more consequence than the past. The Judge awards a lump sum on the date of trial to cover all." As Prof. Flemmings James Jr., *Cornell Law Quarterly*, Vol. 4, 1956, p. 582 at 605, has stated: "If a long period had lapsed between the accident and the trial and a material change in living cost has occurred during that time, necessary adjustments have to be made". The words 'loss of amenities' have been explained in a vivid manner in the oft quoted unreported case *Manly v. Rug By Portland Cement Co. Ltd.*, C.A. No. 286 of 1952 referred to in *Kemp & Kemp*, 1982, para 3.001, page 3001 by Burkitt, L.J., as follows: "There is a head of damage which is sometimes called loss of amenities, the man made blind by the accident will no longer be able to see the familiar things he has seen all his life; the man who has had both legs removed and will never go upon his walking excursions-things of that kind-loss of amenities." The Supreme Court in *General Manager, Kerala State Road Trans. Corpn. v. Susamma Thomas*, 1994 ACJ 1 (SC), observed thus: "Much of the calculation necessarily remains in the realm of hypothesis and in that region, arithmetic is a good servant but a bad master since there are so often many imponderables. In every case 'it is the overall picture that matters' and the court must try to assess as best as it can the loss suffered'. 'The amount awarded must not be niggardly since the law values life and limb in a free society in generous scales'". This court in the case of *K. Jagannath Rai v. Gangarathna C. Bai*, 2004 ACJ 982 (Karnataka), one of us, S.R. Nayak, J., speaking to the other co-ordinate Division Bench observed thus: "The general principle which should govern the assessment of damages in personal injury cases is that the court should award to injured persons 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 injuries. This principle is sometimes referred to as *restitutio in integrum*. However, no award of money can possibly compensate a man and renew a shattered human frame. Though there are difficulties and uncertainties in assessing damages for personal injuries, that fact should not preclude an assessment as best as can, in the circumstances be made. In personal injury cases, the two main elements to be considered are the personal loss and pecuniary loss. In personal injury cases compensation can be given for:

(i) pain and suffering; (ii) loss of amenities; (iii) shortened expectation of life, if any; (iv) loss of earnings or loss of earning capacity, or in some cases, for both; and (v) medical treatment and other special damages.” 11. Keeping in mind the aforesaid principles and norms, we now proceed to examine the facts of this case and the award of compensation by the M.A.C.T. The injured-claimant, a male child, aged 7 years sustained the following bodily injuries in the accident, as set out in the wound certificate, Exh. P-4: (1) Traumatic swelling over scalp on its middle part; (2) Crushed injury of right leg, right leg bone fractured 611 x 3" x 11/2"; (3) Trauma over chest; and (4) Abrasion over left thigh 3" x 72". Injuries 1 and 2 are said to be grievous in nature while injuries 3 and 4 are simple. The injured was an inpatient in KMC Hospital, Hubli, for a period of three months ten days, i.e., from 19.4.2000 to 31.7.2000 during which period on 20.4.2000 the right leg of the claimant was amputated below the knee and skin grafting was done on 13.7.2000. In the course of treatment, the medical records reveal that blood transmission was done on few occasions. On discharge, the claimant was advised to go for an artificial lower limb, get training and stump care. 12. Dr. Hiremath Mallinath Gurusidda Shastry, Orthopaedic Surgeon of KIMs Hospital, PW 3, testified to the injuries sustained, the treatment extended at KIMs Hospital and the contents of the discharge card Exh. P-5 as well as the case-sheets. The said doctor has issued the disability certificate at Exh. P-10 in which he opines that the claimant-injured sustained 80 per cent permanent disability to the whole body. 13. The evidence of father of claimant who examined himself as PW 1 establishes that he and his family members being agricultural coolies are residents of Torangatti, Ramdurg taluk, Belgaum District corroborated by the certificate Exh. P-9 issued by the Gram Panchayath of Torangatti village. The said witness produced medical records, medical bills and receipts for having paid attendant charges, etc. He also produced Exh. P-17 the certificate issued by the Higher Primary Kannada School, Torangatti, recording the date of birth of the claimant as 30.7.1993 and that he was studying in 2nd standard as on the date of the accident. He has deposed to the fact that due to the injury sustained, resulting in amputation of the leg of his son, the injured discontinued his studies in the school. 14. Having regard to the two grievous injuries and two simple injuries sustained in the accident, resulting in the amputation of the right leg below knee, including knee disarticulation and the prolonged treatment as an inpatient for more than 3 months, the M.A.C.T. was justified in awarding a sum of Rs. 50,000 towards pain and mental agony. We do not find any good reason to interfere with the said finding. 15. The father of the injured claimed to have spent Rs. 55,000 for medical treatment but however, produced 28 medical bills at Exh. P-7 totalling to Rs. 8,352.25. M.A.C.T. awarded a sum of Rs. 10,000 towards medical expenses, which in the circumstances appears to be on the lower side. Having regard to the facts that the claimant was in the hospital for a period of 372 months, underwent blood transfusion on few occasions, amputation of the right leg below knee with knee disarticulation and skin grafting done on the stump, it is but reasonable that the claimant might have spent a considerable sum of money for medical procedures. We consider it appropriate to award a sum of Rs. 25,000 towards

medical expenses, special food and nutrition. 16. The M.A.C.T. awarded Rs. 4,500 towards attendant charges as shown in the receipt Exh. P-6 produced by PW 1. The award under this head does not require any enhancement. The award of Rs. 2,000 towards conveyance is unjust. The appellant a resident of Torangatti village being a minor, with the nature of injuries sustained, it is possible that the parents and relatives of the appellant would have had to travel between Torangatti and Hubli on several occasions. The distance between the said two places, according to the learned counsel for the appellant, is about 150 km. We think it is appropriate to award a sum of Rs. 5,000 towards conveyance. 17. The award of Rs. 25,000 towards future unhappiness and loss of amenities cannot be justified, particularly, in view of the fact that the injured aged 7 years will have to live with this impairment for the rest of his life. Claimant having sustained grievous injuries in the accident resulting in amputation of the leg will cause frustration, discomfort, disappointment, inconvenience, etc., and it will also diminish the prospects of marriage thereby denying him the joy of life which he would have otherwise enjoyed but for the impairment. It is beyond cavil of doubt that no amount of compensation would restore the loss of limb, much less the damage caused to the body frame. The courts are enjoined with the duty to award compensation which is just, reasonable, adequate and within the contemplation of the Act. Having regard to the permanent injuries caused to the body frame of a young child, with which he has to live for his entire lifetime, we think it appropriate to award a sum of Rs. 1,00,000 towards loss of amenities of life, happiness, frustration, etc., and we accordingly award the said sum. 18. It is not denied nor can it be denied that amputation of lower limb below knee and disarticulation of knee would seriously prejudice the prospects of marriage of the claimant when he grows up. The claimant is entitled to be compensated towards such loss or diminution in marriage prospects. It would be unfair if no compensation is awarded under the said head. We therefore award a sum of Rs. 50,000 towards loss of marriage prospects. 19. In the case of *Imtiaz v. National Insurance Co. Ltd.*, 2001 ACJ 1033 (SC), the Apex Court opined that even a sum of Rs. 2,00,000 as compensation for the injuries sustained in that case was on a lower side. Having noticed the injuries and amputation of the limb, we are of the considered view that an award, in the least, in a sum of Rs. 1,50,000 towards amputation of the leg below knee and disarticulation of knee would meet the ends of justice. We accordingly award Rs. 1,50,000 towards amputation of leg below knee and knee disarticulation. 20. The injured is advised a prosthesis, secure training and stump care. It will not be irrational or unreasonable to presume that a boy aged 7 years growing up into adulthood will cause changes in the bone structure, in which event, the artificial limb will be required to be replaced every year. Though, we do not find any assistance or aid from the impugned judgment and award as to what would be the cost of artificial leg, we have in identical circumstances in *Fakkirappa v. Yallawwa*, 2004 ACJ 1141 (Karnataka), held that the cost of artificial leg would be in the range of Rs. 17,000 to Rs. 32,000. Even in this case, no concrete evidence is forthcoming, we think it appropriate to apply the same costing for artificial leg as is done in the aforesaid case at Rs. 20,000, keeping in mind that the growth

of the boy during next 20 years would not be uniform, there can be no necessity to replace artificial leg every year. Also allowing for some improbables in life, we think it appropriate to award a sum of Rs. 1,50,000 as just compensation towards future medical expenses. 21. M.A.C.T. awarded Rs. 1,35,000 towards loss of earning capacity taking the notional income at Rs. 15,000 since the claimant is a non-earning member, applying multiple '15' and disability at 60 per cent arrived at Rs. 1,35,000 towards loss of earning capacity. This court having awarded Rs. 1,00,000 for loss of amenities and a further sum of Rs. 1,50,000 for amputation of the leg, the award towards loss of expectancy or loss of earning capacity requires to be scaled down. In this view of the matter, as we have awarded reasonable and adequate compensation under various heads permissible in bodily injury cases, we think it just and reasonable to award Rs. 50,000 for loss of expectancy of life. 22. The M.A.C.T. awarded interest at the rate of 9 per cent per annum from the date of petition till payment, which is in conformity with the recent trends reflected by the judgments of the Apex Court and those of this court. Therefore, there is no need to enhance the rate of interest. In the result and for the reasons set out supra, we allow the appeal in part, with costs and in substitution of the impugned award, we award Rs. 5,84,500 under the following heads: Pain and suffering Rs. 50,000

Loss of amenities of life, happiness and frustration, etc. Rs. 1,00,000

Loss of marriage prospects Rs. 50,000

Amputation of leg below knee and knee disarticulation Rs. 1,50,000

Loss of expectation of life Rs. 50,000

Medical expenses inclusive of special food and nutrition Rs. 25,000

Attendant and conveyance charges Rs. 9,500

Future medical expenses towards replacement of artificial leg until he attains the age of 22 years Rs. 1,50,000

Total Rs. 5,84,500

with interest at 9 per cent per annum from the date of petition till its payment.

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