

**Master Manoj Vs. Muniraju**

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**SooperKanoon Citation :** [sooperkanoon.com/1234347](http://sooperkanoon.com/1234347)

**Court :** Karnataka

**Decided On :** Dec-12-2022

**Judge :** Hanchate Sanjeevkumar

**Appeal No. :** MFA 10507/2018

**Appellant :** Master Manoj

**Respondent :** Muniraju

**Judgement :**

- 1 - MFA No.10507 of 2018 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE12H DAY OF DECEMBER, 2022 BEFORE THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR MISCELLANEOUS FIRST APPEAL NO.10507 OF 2018 MV-I) BETWEEN:

1. MASTER MANOJ, AGED ABOUT8YEARS, S/O T.K.MANJUNATH, MINOR, REPRESENTED BY HIS NATURAL FATHER T.K.MANJUNATH, AGED ABOUT37YEARS, S/O KRISHNAPPA, R/AT TEKAL DINNE, (S.T.COLONY), TEKAL POST, MALUR TALUK, KOLAR DISTRICT - 563 101, NOW R/AT PALASANDRA LAYOUT, KOLAR - 563 101. APPELLANT (BY SRI. PAVANA CHANDRA SHETTY H., ADVOCATE) AND:

1. MUNIRAJU, S/O CHIKKAUDDANADAPPA, NO.61, KONDASHETTY VILLAGE AND POST, MALUR TALUK - 563 101.-. 2 - MFA No.10507 of 2018 2. TATA AIG GENERAL INSURANCE CO. LTD., NO.69, 2ND FLOOR, JP AND DEVI,

JAMBAKESHWARA ARKOD, MILLERS ROAD, BANGALORE - 560 052.  
RESPONDENTS (BY SRI.RAVI S SAMPRATHI, ADVOCATE FOR R2; R1  
SERVED) THIS MFA IS FILED U/S1731) OF MV ACT AGAINST THE

JUDGMENT

AND AWARD DATED 04/11/2017, PASSED IN MVC NO.258/2013, ON THE FILE  
OF THE PRINCIPAL SENIOR CIVIL JUDGE & CHIEF JUDICIAL MAGISTRATE  
AND MACT, KOLAR, PARTLY ALLOWING THE CLAIM PETITION FOR  
COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION. THIS  
APPEAL, COMING ON FOR

ORDER

S, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is filed by the claimant under Section 173(1) of Motor Vehicles Act, 1988 (hereinafter referred to as 'MV Act' for short), challenging the judgment and award passed in MVC No.258/2013 dated 04.11.2017 by the Principal Senior Civil Judge and MACT, Kolar, seeking enhancement of the compensation.-. 3 - MFA No.10507 of 2018 2. The undisputed facts are that the claimant has sustained injuries in a road traffic accident that occurred on 07.08.2013 at about 8.45 a.m., near Tekal-Thoralakki road when tipper lorry bearing No.WB-29-4841 dashed against the claimant. Therefore, the claimant has filed claim petition under Section 166 of the Motor Vehicles Act, seeking compensation.

3. The Tribunal after considering the facts and circumstances and evidence on record, has granted a compensation of Rs.15,90,500/- with interest at the rate of 6% p.a. from the date of petition till the date of realisation.

4. Being aggrieved by the award of lesser quantum of compensation, the present appeal is filed.

5. Learned counsel for the appellant/claimant submitted that the quantum of compensation awarded by the Tribunal is meager one and prays for enhancement of compensation.-. 4 - MFA No.10507 of 2018 6. On the other hand, learned

counsel for the respondent No.2-Insurance Company submitted that the compensation awarded by the Tribunal is just and proper and therefore, prays for dismissal of the appeal.

7. The Tribunal has granted the compensation under various heads as follows: Sl. Particulars Amount No.(in.Rs.) 1. Pain and sufferings 3,00,000.00

2. Incidental charges 50,000.00

3. Medical expenses 3,40,500.00

4. Future medical expenses 5,00,000.00

5. Loss of amenities 4,00,000.00 Total 15,90,500.00

8. The undisputed facts are that a minor boy, aged about 3 years, has sustained amputation of his left leg below the knee in the motor vehicle accident. At this tender age, the child has lost his left leg and his childhood activities like enjoying, playing, etc. are affected. Therefore, the minor boy is to be suitably compensated.-

. 5 - MFA No.10507 of 2018 The Court is conscious that no amount of money can compensate the child who has suffered amputation of his left leg. However, a reasonable amount is to be computed and awarded. The compensation granted by the Tribunal under various heads appears to be just and proper, but the Tribunal has not awarded compensation under the head 'loss of future prospects in life' and also under the head 'loss of marriage prospects in future'. The child being 3 years old as on the date of the accident may not be considered an earning member of the family and strictly may not be warranted to grant compensation under the head 'loss of earning capacity due to disability' but in future, the minor petitioner attains the age of majority then he has to start his new life, his avocation for his livelihood and make his career in life and to lead decent life and this cannot be lost sight of. Therefore, a just and reasonable compensation can be awarded for 'loss of future prospects in life'. How this is to be calculated is a question. What would be the income is to be reckoned in case of three years minor, is difficult to hold. Therefore, in - 6 - MFA No.10507 of 2018 the case of minor having sustained injuries/amputation and sustained certain percentage of physical disability or the

death of the child, the Hon'ble Supreme Court has considered the notional income of Rs.30,000/- p.a., in the case of a minor child. Even though the Tribunal held that the disability towards the whole body can be considered at 30% since the doctor has stated 80% disability towards the left lower limb, no amount of compensation is granted under the head 'loss of future prospects in life'. Certainly, the compensation can be granted under the head 'loss of future prospects in life' but what would be the quantum is a question. No amount of compensation can solace the plight of a minor child who has sustained amputation of the left leg, but certain amount is to be compensated. On considering the parameters as the disability sustained, now the child is three years old boy, if the child had been a fit person then the child would become a sportsman, entrepreneur, seeking prospects in life in defense, in police service, etc. But that is not possible for the minor child due to the amputation of his left leg. Therefore, even - 7 - MFA No.10507 of 2018 though the child after attaining age of majority can do some certain works but he has suffered mentally that he is not able to choose his profession/job according to his mental satisfaction since confined to some profession/job against his will and wish. Therefore, in this regard, the future prospects in life is to be considered. Therefore, for quantification purpose, 100% functional disability is to be taken into consideration. If 40% of income is added towards 'loss of future prospects in life' only for the purpose of quantification and applying multiplier of '18' then the 'loss of future prospects in life' is to be assessed and quantified as under:  $\text{Rs.30,000} + \text{Rs.12,000/- (40\% of Rs.30,000)} \times 18 = \text{Rs.7,56,000/-}$ . Accordingly, a sum of Rs.7,56,000/- is awarded under the head 'loss of future prospects in life'.

9. Even though the Supreme Court in the case of Master Mallikarjun Vs. Divisional Manager, the - 8 - MFA No.10507 of 2018 National Insurance Company Limited & Anr1 that the principles laid down at paragraph 12 apply if the disability sustained is above 90%, the compensation shall be Rs. 6,00,000/-. In the present case, the disability is not because of a fracture to the bones, but the worst situation that happened was the amputation of the child's left leg. Therefore, the above-mentioned amount is assessed by considering the statistics of holding the notional income at Rs.30,000/- p.a. and considering 100% disability by applying the relevant multiplier.

10. Since the child has suffered amputation of left leg, certainly his marriage prospects would be hampered. Hence, a sum of Rs.3,00,000/- is awarded under the head 'loss of marriage prospects in life'.

11. Even if the parameters are still applicable today, the question is how far it is practicable to keep the notional income at Rs. 30,000/- per year throughout his 1 reported in (2014) 14 SCC396- 9 - MFA No.10507 of 2018 career is the question. However, the Hon'ble Supreme Court in the case of death of a child, the notional income at Rs.30,000/- p.a. is considered, and that is also considered here. Even though the notional income at Rs.30,000/- p.a. is to be considered, is at lesser rate.

12. So far as the quantum of compensation to be awarded in case of amputation to a child is strictly concerned, the compensation cannot be determined under the head 'loss of future income due to disability' but can be granted under the head 'loss of future prospects in life'. The 'loss of future prospects in life' cannot always be defined in terms of money. A person's decision to pursue a career is never influenced by the salary, earnings, or income of that profession, job, or avocation. It is a person's satisfaction in life. As a child grows elder it will dream of becoming a sport man/sports woman, finding carrier in defence, police, etc. The aim of every person is to lead contented life as per his/her wish and will. But this is not possible when a child suffers from amputation of - 10 - MFA No.10507 of 2018 limbs/limb/s become functionless. Therefore, for this purpose inevitably for quantification purpose the Courts will normally take the parameter of income to a fixed sum, as in the present case, the notional income of Rs.30,000/- p.a. is held, but the question is; how far is it correct and feasible to take the notional income of Rs.30,000/- p.a. throughout the career of child in case of amputation. But as the practice in vogue in case of death of child, where we can consider the maximum notional income at Rs.30,000/- p.a. but this income of Rs.30,000/- p.a. is considered to a person in case of child throughout his career, but the hands of this Court are tied for taking this notional income of Rs.30,000/- p.a. in case of child as per the judgment of Hon'ble Supreme Court in a catena of decisions.

13. Therefore, the minor petitioner is entitled for the following sums: - 11 - MFA No.10507 of 2018 Sl. Particulars Amount No.(in.Rs.) 1. Pain and sufferings 3,00,000.00 Kept in tact 2. Incidental charges 50,000.00 Kept in tact 3. Medical expenses 3,40,500.00 Kept in tact 4. Future medical 5,00,000.00 Kept in tact expenses income 5. Loss of amenities 4,00,000.00 Kept in tact 6. Loss of future 7,56,000.00 prospects in life 7. Loss of marriage 3,00,000.00 prospects in life Total 26,46,500.00

15. The Tribunal has awarded the compensation of Rs.15,90,500/-, but the appellant/claimant is entitled to total compensation of Rs.26,46,500/-. Therefore, the appellant/claimant is entitled to enhanced compensation of Rs.10,56,000/- (Rs.26,46,500-15,90,500) with interest at the rate of 6% p.a. from the date of petition till - 12 - MFA No.10507 of 2018 realization, in addition to what has been awarded by the Tribunal.

16. In the present case, the driver was holding driving license to drive the light motor vehicles (non transport) but drove the heavy goods vehicle and caused the accident. Therefore, the driver of the tipper lorry was not holding valid and effective driving license to drive the tipper lorry. Hence, as per Sub-Section (2) of Section 149 of the MV Act, the Insurance Company is able to take defense and established successfully. Therefore, as per Sub-Sections (1), (5), (7) of Section 149 of MV Act and also as per the principles of law down in the cases of National Insurance Co. Ltd., vs. Swaran Singh<sup>2</sup>, Pappuu and others vs. Vinod Kumar Lamba and another<sup>3</sup>, and full bench decision of this Court in the case of New India Assurance Co., Ltd., vs. Yallavva and another<sup>4</sup>, principle of pay and recovery is applied since 2 reported in 2004 ACJ13 reported in (2018) 3 SCC2084 reported in ILR 2020 KAR2239- 13 - MFA No.10507 of 2018 the child is a third party. Therefore, the Insurance Company shall pay the compensation to the claimant at the first instance then recover the same from the owner of the offending tipper lorry No.WB-29-4871. Hence, an order of pay and recovery is made.

17. Presently, the Court has assessed the quantum of compensation as above stated in case of amputation of leg of a child. But another question arises before the Court that whether the above determined compensation can be considered

throughout the life span of a child?. This is a grey-area to be considered. Especially, where in a case of amputation of limb is caused to a minor child like in the present case, if the above determined compensation is the only compensation to be considered throughout the life of a child, is certainly an assault on the career of the child. Because, on taking example of the present case in case of amputation of a limb of a child, his entire career prospects is completely affected. As discussed above, career of a child cannot be always equated to be in monetary terms.-. 14 - MFA No.10507 of 2018 However, inevitably some quantification is to be made and that is made in the present case.

18. But as discussed above, whether is it proper to take the above determined compensation throughout the life of the child, how far it is adequate and sufficient is to be taken judicial notice of the fact in keeping in mind the best interest of the child. If at any point of time, the child becomes disabled person due to the amputation; certainly this is violation of Article - 21 of the Constitution of India. Therefore, some method is to be evolved to determine the compensation, when the child attains the age of 18 years of majority. Therefore, certain amount is to be awarded to the child after attaining the age of majority, as the value of money will get depleted and also because of inflation, the money value becomes reduced after decades. Therefore, in my view, the above determined compensation cannot be considered for throughout the life of the child. Therefore, some mechanism is to be adopted - 15 - MFA No.10507 of 2018 / evolved to come to a just and proper compensation after the child attains the age of majority.

19. If the present case is taken as an example, the child is entitled to some compensation after attaining the age of majority. Because as of now, the determination of compensation is made by considering the notional income of Rs.30,000/- per annum. In other words, this notional income of Rs.30,000/- per annum is considered throughout the life span of the child. Therefore, certainly the above determined compensation would become less, visualizing the future of the child. Therefore, the Court is of the opinion that half of the amount determined above shall be paid along with interest @ 9% per annum from the date of the attaining the age of majority till the payment, in addition to what has been awarded now. This atleast may solace the child after attaining the age of majority.

Therefore, it is hereby ordered, to pay half of the amount determined along with interest at 9% per annum after attaining the age of majority till making payment to - 16 - MFA No.10507 of 2018 the child, considering the plight of the child and future career aspect, certainly it does not amount to double jeopardy.

20. Therefore, it is directed that the insurance company shall deposit the above determined compensation within a period of three months from the date of receipt of the copy of this order and also pay half of the above amount determined to the claimant after the child - claimant attaining the age of majority within the period of six months with interest at 9% per annum from the date of attaining the age of majority till making payment in future, as observed above. Pay and recovery order made above shall hold good in future payment also.

21. Accordingly, I proceed to pass the following:

#### ORDER

i. The appeal is allowed-in-part. ii. The judgment and award passed by the Tribunal in MVC No.258/2013 is hereby modified holding the - 17 - MFA No.10507 of 2018 claimant is entitled for enhanced compensation of Rs.10,56,000/- with interest @ 6% p.a., from the date of petition till its realization, in addition to what has been awarded by the Tribunal. iii. The insurance company shall comply the order as observed above of paragraphs Nos.19 and 20. iv. The Insurance Company shall pay the above said compensation at the first instance then recover it from the owner of the offending vehicle. v. The claimant is not entitled for interest for the delayed period of 308 days in filing the appeal. vi. The other observations and findings of the Tribunal are not altered. vii. Costs made easy. viii. Draw award accordingly. Sd/- JUDGE KA

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