

**IN THE HIGH COURT OF KARNATAKA AT BANGALORE**DATED THIS THE 18<sup>TH</sup> DAY OF APRIL, 2012

BEFORE

**THE HON'BLE MR. JUSTICE B.SREENIVASE GOWDA**Miscellaneous First Appeal No. 5404 of 2008 (MV)**BETWEEN**

G. P. KAVITHA,  
D/O. LATE G. POLANA REDDY,  
AGED ABOUT 26 YEARS,  
NOW R/AT. MARTHOMA ROUND CHURCH,  
2<sup>ND</sup> CROSS, KANAKADASA LAYOUT,  
LINGARAJAPURAM,  
BANGALORE - 84.

... APPELLANT

(By Sri. G. B. VENKATASHIVA REDDY, ADV.,  
SRI. D. V. CHANDRASHEKARA, ADV.,  
SRI. M. S. B. ANANDKUMAR, ADV.)

**AND**

1. SRI. MAHESH,  
S/O. DODDEGOWDA,  
NO.109, 1<sup>ST</sup> MAIN, 3<sup>RD</sup> PHASE,  
9<sup>TH</sup> BLOCK, BSK 3<sup>RD</sup> STAGE,  
BANGALORE - 58
2. ORIENTAL INSURANCE COMPANY LTD.,  
NO. 101/2, BRANCH OFFICE F-11,  
SWASTI ARCADE, SC ROAD,  
OPP. SHESHADRIPURAM POLICE STATION,  
BANGALORE - 20.  
REP. BY ITS MANAGER.

... RESPONDENTS

(By Sri. A. M. VENKATESH, ADV. FOR R.2,  
R.1 NOTICE DISPENSED WITH)

THIS MFA FILED U/S.173(1) OF MV ACT AGAINST THE JUDGMENT & AWARD DATED 6/10/2007 PASSED IN MVC NO.4448/04 ON THE FILE OF THE IX ADDL.JUDGE, MEMBER, MACT-7, COURT OF SMALL CAUSES, METROPOLITAN AREA, BANGALORE (SCCH.7), PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION & SEEKING ENHANCEMENT OF COMPENSATION.

This appeal coming on for Orders, this day, the Court, delivered the following:

### J U D G M E N T

This appeal is by the claimant seeking enhancement of compensation awarded by the Tribunal.

2. Although the appeal is listed in the orders list, it is heard, admitted and with the consent of learned Counsel appearing for the parties, it is taken up for final disposal.

3. As there is no dispute regarding injuries sustained by the claimant in a road traffic accident occurred on 05.12.2003 due to rash and negligent driving of a Maxi Cab bearing registration No. KA 05 A 6905 by its driver and liability of the insurer of the



offending vehicle, the only point that remains for my consideration in the appeal is:

Whether quantum of compensation awarded by the Tribunal is just and proper or does it call for enhancement?

4. As per wound certificate Ex. P 4, claimant has sustained comminuted fracture of upper 1/3<sup>rd</sup> shaft of left tibia including articular margin upper 1/3<sup>rd</sup> shaft of left fibula. Injuries sustained by her are also evident from discharge card Ex. P 7, case sheet Ex. P 9, X ray Ex. P 10, OPD card P 11 and supported by oral evidence of the claimant and the doctor examined as P.Ws 1 and 2 respectively.

PW 2 Dr. N. Vijayakumar who treated the claimant in his evidence has stated claimant has suffered disability of 10% to limb.

5. Considering two fractures sustained by the claimant a sum of Rs.40,000/- is awarded towards pain and suffering as against Rs.30,000/- awarded by the Tribunal.



6. Claimant has produced medical bills for Rs.3,500/-. She was treated as inpatient for 27 days in Victoria Hospital, Bangalore and plaster of Paris was done twice. Considering the same a sum of Rs.20,000/- is awarded towards medical and incidental expenses such as conveyance, nourishment and attendant charges as against Rs.10,000/- awarded by the Tribunal.

7. Claimant claims to have been earning Rs.4,000/- per month by working as an Assembly Trainee in Electronic products, but it is not established by producing any document. In the absence of proof of income considering her age and year of accident her income could easily be assessed at Rs.3,500/- per month as against Rs.3,000/- per month assessed by the Tribunal. Nature of injuries suggests that she must have been under treatment and rest at least for a period 5 months and therefore, a sum of Rs.17,500/- is awarded towards loss of income during laid up period against Rs.9,000/- awarded by the Tribunal.

8. The claimant has continued her job after sustaining injuries. therefore awarding compensation towards loss of future income does not arise. However considering the disability stated by the doctor and an amount of discomfort and unhappiness which the claimant has to undergo for the rest of her life, Rs.50,000/- is awarded towards loss of amenities and disability as against Rs.15,000/- awarded by the Tribunal.

9. Thus the claimant is entitled for the following compensation:

1)	Pain and suffering	Rs. 40,000/-
2)	Medical and Incidental expenses	Rs. 20,000/-
3)	Towards loss of income during laid up period	Rs. 17,500/-
4)	Towards loss of amenities & permanent disability	Rs. 50,000/-
	<b>Total</b>	<b>Rs. 1,27,500/-</b>
	<b>Less compensation awarded By the Tribunal</b>	<b>Rs. 64,000/-</b>
	<b><u>Additional compensation comes to Rs. 63,500/-</u></b>	

10. Accordingly the appeal is allowed in part and the judgment and award of the Tribunal is modified to the

extent stated herein above. The claimant is entitled for an additional compensation of Rs.63,500/- with interest at 6% p.a. from the date of claim petition till the date of realisation.

11. The Insurance Company is directed to deposit the additional compensation amount together with interest within two months from the date of receipt of a copy of this judgment from which Rs.40,000/- with proportionate interest is ordered to be invested in F.D. in the name of the claimant in any nationalised/scheduled bank or post office for a period of 4 years renewable once in two years and with an option to withdraw interest periodically. Remaining amount is ordered to be released in favour of the claimant.

No order as to costs.

Sd/-  
JUDGE

Vb/