

IN THE HIGH COURT OF KARNATAKA AT BANGALOREDATED THIS THE 20TH DAY OF APRIL, 2012

BEFORE

THE HON'BLE MR. JUSTICE B.SREENIVASE GOWDAMiscellaneous First Appeal No. 3959 of 2009 (MV)**BETWEEN**

MR. H. N. SHAKER,
S/O. LATE NANJAPPA
D. NO. 164, MUNISWAMAPPA BUILDING,
2ND CROSS, CHIKKASANDRA,
MARUTI BADAWANE,
NEAR ANJANAYA TEMPLE,
PEENAYA INDUSTRIAL AREA
BANGALORE - 560 057.

... APPELLANT

(By Sri. S. M. DAYANAND PATIL, ADV. AND
M/S. PATIL LAW CHAMBERS, ADVS.)

AND

1. ICICI LOMBARD MOTOR INSURANCE
CHOTTABHAI CENTRE NO.140,
2ND AND 3RD FLOOR,
NUNGAMBAKKAM HIGH ROAD,
CHENNAI - 600 034.
2. MR. NATRAJAN,
NO. 24/38, PERIYAR NAGAR,
ACHRAPAKKAM,
CHENGALPET,
TAMILNADU - 603 306.

... RESPONDENTS

(By Sri. K. V. LAKSHMANACHAR, ADV. FOR R.1,
R.2 NOTICE DISPENSED WITH)



THIS MFA FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED: 12.8.2008 PASSED IN MVC NO. 5920/2007 ON THE FILE OF THE IX ADDL. JUDGE, COURT OF SMALL CAUSES, MEMBER, MACT-7, METROPOLITAN AREA, BANGALORE, (SCCH.NO.7), PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

This appeal coming on for Hearing, 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. For the sake of convenience parties are referred to as they are referred to in the claim petition before the Tribunal.

3. As there is no dispute regarding injuries sustained by the claimant in a road traffic accident occurred on 16.05.2007 due to rash and negligent driving of a lorry bearing registration No. TN-21-AZ-2542 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 reasonable or does it call for enhancement?

4. As per Exs. P. 6 & P 7 wound certificates, claimant had sustained fracture of right condylar neck, fracture of mandible line and fracture of three teeth.

5. Injuries sustained and treatment taken by him are also evident from discharge summary of Victoria Hospital- Ex.P.8, discharge summary of KCG Hospital- Ex.P.9, Medical Certificate of KCG Hospital Ex. P 10, X- rays Ex. P 12 & P 17, OPD card Ex. P 15 , case sheet Ex. P 16 and supported by oral evidence of the claimant and doctor examined as P.Ws.1 and 2 respectively.

P.W.2 - Dr. T.S.Prabhakar in his evidence has stated that claimant has suffered disability of 55% to left upper limb and 15% to whole body.

6. Considering nature of injuries, Rs.4,000/- awarded by the Tribunal towards pain and suffering is



just and proper and there is no scope for enhancement under this head.

7. As Rs.20,000/- awarded by the Tribunal towards medical expenses is based on medical bills produced by the claimant at Ex.P.12 for Rs.16,365/- the same is just and proper and there is no scope for enhancement.

8. He was treated as inpatient for 29 days in K.S.General Hospital, Bangalore. Considering the same, a sum of Rs.10,000/- is awarded towards medical expenses.

9. He claims to have been earning Rs.4,000/- per month by working as a winding machine operator. He has produced salary certificate at Ex.P.11. Considering his age and profession as winding machine operator, his income is assessed at Rs.4,000/- per month as against Rs.3,000/- assessed by the Tribunal. Nature of injuries suggest, he must have been under rest and treatment for a period of three months. Considering the same, Rs.12,000/- awarded by the Tribunal towards



loss of income during laid up period is just and proper and there is no scope for enhancement under the said head.

10. He is aged about 35 years. Multiplier applicable to his age group is '16'. His income is assessed at Rs.4,000/- per month. Considering disability stated by the doctor at 55% to upper limb and 15% to whole body there is no impediment to take disability at 10% to whole body. So, future loss of income works out to Rs.76,800/- (Rs.4,000/- x 12 x 10/100 x 16) and it is awarded as against Rs.25,000/- awarded by the Tribunal towards amenities and disability.

11. A sum of Rs.15,000/- is awarded towards cost of artificial teeth under the head future medical expenses.

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

1)	Pain and suffering	Rs. 45,000/-
2)	Medical expenses	Rs. 20,000/-
3)	Incidental expenses	Rs. 10,000/-
4)	Towards loss of income during laid up period	Rs. 12,000/-
5)	Future loss of income	Rs. 76,800/-

6) Future medical expenses	Rs. 15,000/-
Total	Rs.1,78,800/-
Less compensation awarded by the Tribunal	Rs.1,02,000/-

Additional compensation comes to Rs.76,800/-

13. 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 additional compensation of Rs.76,800/- with interest at 6% p.a. from the date of claim petition till the date of realisation, excluding interest for the delayed period of 167 days in filing the appeal.

14. The Insurance Co. is directed to deposit the additional compensation amount with interest within two months from the date of receipt of a copy of this judgment, excluding interest for the delayed period of 167 days in filing the appeal from which, Rs.50,000/- with proportionate interest is ordered to be deposited in FD in the name of the claimant in any nationalised or scheduled Bank for a period of 6 years, renewable once every two years, with a right of option for him to

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withdraw interest periodically and the remaining amount is ordered to be released in his favour:

No order as to costs.

Sd/-
JUDGE

Vb/mgn*

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