

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 20<sup>TH</sup> DAY OF APRIL, 2012

BEFORE

THE HON'BLE MR. JUSTICE B. SREENIVASE GOWDA

M.F.A. NO. 6759/2009 (MV)

BETWEEN

K.A. RAVINDRAN,  
S/O LATE ACHUTHAN,  
AGED ABOUT 71 YEARS,  
R/A No. 15, 1<sup>ST</sup> FLOOR,  
"MATHRUSHREE NILAYA",  
'A' MAIN, 4<sup>TH</sup> CROSS,  
MUNESHWARA BLOCK,  
PALACE GUTTAHALLI.

...APPELLANT

(BY SRI. H.L. NARASIMHA MURTHY, ADVOCATE)

AND

1. UNITED INDIA INSURANCE CO. LTD.,  
NO.89, 11<sup>TH</sup> CROSS, SAMPIGE ROAD,  
MALESHWARAM,  
BANGALORE - 560003.
2. PRABHAKARAN,  
AGED ABOUT 57 YEARS,  
1/A TILES FACTORY ROAD,  
BEHIND LAKSHMI BAKERY,  
UPPAGAHALLI,  
TUMKUR - 572 101.



3. KARUNAKARAN @ KARNA,  
S/O M.KANNAN,  
AGED ABOUT 44 YEARS,  
NO.33, 4<sup>TH</sup> CROSS, NAGAPPA STREET,  
PALACE GUTTAHALLI,  
BANGALORE – 560 003.

... RESPONDENTS

(R1 SERVED, R2 & R3 NOTICE DISPENSED WITH)

THIS MFA IS FILED U/S.173(1) OF MV ACT AGAINST THE JUDGMENT & AWARD DATED 13.04.2009 PASSED IN MVC NO. 3828/2001 ON THE FILE OF I ADDITIONAL SCJ & MEMBER, MACT, BANGALORE, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL IS 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 respondent No.1, the insurer of offending vehicle was served with the notice of this appeal, they remained unrepresented and they have not chosen to contest the appeal.



3. Heard, the appeal is admitted and with the consent of the learned counsel appearing for the appellant, it is taken up for final disposal.

4. For the sake of convenience, the parties are referred to as they are referred to in the claim petition before the Tribunal.

5. As there is no dispute regarding injuries sustained by the claimant in a road traffic accident occurred on 24.06.1998 due to rash and negligent driving of an Autorickshaw bearing registration No.KA-06/9577 by its driver and liability of the insurer of the said vehicle, the only point that arises 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?"*

6. After hearing the learned counsel appearing for the appellant and perusing the judgment and award

of the Tribunal, I am of the view that compensation awarded by the Tribunal is not just and reasonable, it is on the lower side and therefore, it deserves to be enhanced.

7. As per Ex.P5-wound certificate, the claimant had sustained fracture on his left leg and injuries on the right leg and has taken treatment at Chaya Nursing Home as inpatient. He was operated at Manipal Hospital on 26.06.1998.

The injuries sustained by the claimant and treatment taken by him are also evident from discharge summary at Ex.P6, case sheet at Ex.P10 and X-ray at Exs.P11 to P17 and supported by the oral evidence of claimant and Doctor who were examined as PW1 and PW2 respectively.

8. PW2-Dr. Ashfakh Ahmed has stated in his evidence that the claimant has suffered disability of 25% for the left hip and 8.3% disability to whole body. He has

examined the claimant recently on 27.01.2005 and found the following disabilities :

- 1) Left hip movements and A.P. motion from 0 degree-100 degree with 20 degree of extension. Abduction 0 degree-20 degree adduction of 0 degree-10 degree. Rotation of both internal and external were from 0 degree to 10 degree.
- 2) Trendelenberg Gait was positive with limping
- 3) Quadriceps wasting of  $\frac{1}{2}$  inch on left side.

9. Considering the nature of injuries, a sum of **Rs.40,000/-** awarded by the Tribunal towards 'pain and suffering' is just and proper and there is no scope for enhancement under this head.

10. As **Rs.41,300/-** awarded by the Tribunal towards 'medical expenses' is based on the medical bills produced by the claimant for the said sum, the same is just and proper and there is no scope for enhancement under this head.



11. The claimant was treated as inpatient at Manipal Hospital. Considering the same, a sum of **Rs.4,000/-** awarded by the Tribunal towards 'incidental expenses' such as conveyance, nourishment and attendant charges is just and proper and there is no scope for enhancement under this head.

12. The claimant claims to have been earning Rs.8,000/- per month by doing catering. But it is not established by producing any documents. In the absence of proof of income, considering his age as 63 years and the year of accident as 1998, his income assessed by the Tribunal at Rs.3,000/- per month is just and proper. The nature of injuries suggest that he must have been under rest and treatment for a period of 4 months. Therefore, a sum of **Rs.12,000/-** is awarded towards 'loss of income during laid up period' as against Rs.9,000/- awarded by the Tribunal.

13. Considering the nature of injuries sustained by the claimant, the disability stated by the doctor and an amount of discomfort and unhappiness the claimant has to undergone in his future life, a sum of **Rs.15,000/-** is awarded towards 'loss of amenities' as against Rs.10,000/- awarded by the Tribunal.

14. The claimant was aged about 53 years at the time of accident and the multiplier applicable to his age group is '7'. His income is assessed at Rs.3,000/- per month. The disability stated by the doctor at 8.3% to whole body may be rounded off to 9%. Thus, 'loss future income' works out to Rs.22,680/- ( $3000 \times 9/100 \times 12 \times 7$ ) whereas the Tribunal has awarded **Rs.28,800/-** which is just and proper and there is no scope for enhancement under this head.

15. Considering the nature of injuries sustained by the claimant, a sum of **Rs.10,000/-** awarded by the Tribunal towards 'future medical expenses' is just and

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

16. Thus, the claimant is entitled for the following compensation:-

	<b>HEADS</b>		<b>Rs.</b>
a)	Pain and suffering	-	40,000
b)	Medical expenses	-	41,300
c)	Incidental expenses	-	4,000
d)	Loss of income during laid up period	-	12,000
e)	Loss of amenities	-	15,000
f)	Loss of future income	-	28,800
g)	Future medical expenses	-	10,000
	<b>TOTAL</b>	-	<b>1,51,100</b>
	LESS: Compensation awarded by the Tribunal	-	1,43,100
	<b>BALANCE</b>	-	<b>8,000</b>

17. Accordingly, the appeal is allowed in part. The judgment and award passed by the Tribunal is modified to the extent stated herein above. The claimant is entitled for an additional compensation of **Rs.8,000/-**

*B*



with interest at 6% p.a. from the date of claim petition till the date of realisation.

18. 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. The same is ordered to be released in favour of the claimant.

19. No order as to costs.

Sd/-  
JUDGE

KV