

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 20TH DAY OF APRIL, 2012

BEFORE

THE HON'BLE MR. JUSTICE B. SREENIVASE GOWDA

M.F.A. NO. 3041/2009 (MV)

BETWEEN

ASHOKA,
S/O. MAYAPPAGOWDA,
AGED ABOUT 28 YEARS,
R/O SHANKADAKOPPALU VILLAGE,
SHANKA POST, SALAGAME HOBLI,
HASSAN TALUK.

...APPELLANT

(BY SMT. KAVITHA H.C., ADVOCATE)

AND

1. THE MANAGER,
NATIONAL INSURANCE CO. LTD.,
SREE MANJUNATHESHWARA COMPLEX,
BUS STAND ROAD,
HASSAN-573 201.

2. SRI DEVARAJU, MAJOR,
S/O NANJEGOWDA,
GUDDENAHALLI KOPPALU,
NEAR PRASANNA CONVENT,
J.H.KERE POST,
HASSAN TQ.

... RESPONDENTS

(BY SRI. L. SRINIVASA BABU & ASSOCIATES, ADV. FOR
R1, R2 NOTICE DISPENSED WITH)

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THIS MFA IS FILED U/S.173(1) OF MV ACT AGAINST THE JUDGMENT & AWARD DATED 04.10.2008 PASSED IN MVC NO.1181/2007 ON THE FILE OF ADDITIONAL CIVIL JUDGE (SR.DN.) ADDITIONAL MACT, HASSAN, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL IS COMING ON FOR ADMISSION 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. Heard, the appeal is admitted and with the consent of the learned counsel appearing for the parties, it is taken up for final disposal.

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



4. As there is no dispute regarding injuries sustained by the claimant in a road traffic accident occurred on 31.03.2007 due to rash and negligent riding of Motor Bike bearing Registration No.KA-13,J-4281 by its rider 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?”

5. After hearing the learned counsel appearing for parties 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.

6. As per Ex.P3-wound certificate, the claimant had sustained following injuries:

- 1) Abrasion on the right palm



2) Fracture of right scaphoid

The injuries sustained by the claimant and treatment taken by him are also evident from medical bills and prescriptions at Ex.P8, case sheet at Ex.P9 and X-rays at Ex.P10 and supported by the oral evidence of claimant and Doctor who were examined as PW1 and PW2 respectively.

7. PW2-Dr. Ramakrishna Bhat, has stated in his evidence that the claimant has suffered disability of 15% to right hand.

8. Considering the nature of injuries, a sum of **Rs.20,000/-** is awarded towards 'pain and suffering' as against Rs.15,000/- awarded by the Tribunal.

9. As **Rs.6,400/-** 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.

10. The claimant was treated as inpatient at Hemavathi Hospital, Hassan. But there is no evidence to show that for how many days he was treated as inpatient. Considering the same, a sum of **Rs.5,000/-** 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.

11. The claimant claims to have been earning Rs.10,000/- per month by working as a lorry driver and has produced Driving License at Ex.P7. Therefore, income of the claimant is assessed at Rs.4,000/- per month as against Rs.2,100/- per month assessed by the Tribunal. The nature of injuries suggest that he must have been under rest

and treatment for a period of 3 months. Therefore, a sum of **Rs.12,000/-** is awarded towards 'loss of income during laid up period'.

12. 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.

13. The claimant was aged about 26 years at the time of accident and the multiplier applicable to his age group is '17'. His income is assessed at Rs.4,000/- per month. As per the disability stated by the doctor at 15% to upper limb, so as to whole body it comes to 4% and the Tribunal has rightly assessed the functional disability at 5%. Thus, 'loss of future income' works out to **Rs.40,800/-** ($4000 \times 5/100 \times 12$



x 17) and it is awarded as against Rs.21,420/- awarded by the Tribunal.

14. Considering the nature of injuries sustained by the claimant, a sum of **Rs.5,000/-** awarded by the Tribunal towards 'future medical expenses' is just and proper and there is no scope for enhancement under this head.

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

	HEADS		Rs.
a)	Pain and suffering	-	20,000
b)	Medical expenses	-	6,400
c)	Incidental expenses	-	5,000
d)	Loss of income during laid up period	-	12,000
e)	Loss of amenities	-	15,000
f)	Loss of future income	-	40,800
g)	Future medical expenses	-	5,000
	TOTAL	-	1,04,200
	LESS: Compensation awarded by the Tribunal	-	62,820

	BALANCE	-	41,380
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16. 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.41,380/-** with interest at 6% p.a. from the date of claim petition till the date of realisation.

17. 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 50% with proportionate interest is ordered to be invested in fixed deposit in the name of claimant in any Nationalised Bank/Scheduled Bank/Post Office for a period of 2 years with a right of option to withdraw interest periodically. Remaining amount with

proportionate interest is ordered to be released in favour of the claimant.

18. No order as to costs.

Sd/-
JUDGE

KV