

IN THE HIGH COURT OF KARNATAKA AT BANGALOREDATED THIS THE 18TH DAY OF APRIL, 2012

BEFORE

THE HON'BLE MR. JUSTICE B.SREENIVASE GOWDAMiscellaneous First Appeal No. 1470 of 2008 (MV)**BETWEEN**

THE DIVISIONAL MANAGER,
THE ORIENTAL INSURANCE CO. LTD.,
DIVISIONAL OFFICE - 10,
NO.213-2, 2ND FLOOR, 3RD MAIN, 1ST CROSS,
CHAMARAJPET,
BANGALORE - 18.
REPRESENTED BY ITS
THE ASST. MANAGER,
THE ORIENTAL INSURANCE CO.LTD.,
REGIONAL OFFICE,
LEO SHOPPING COMPLEX,
NO.44/45, RESIDENCY ROAD,
BANGALORE - 560 025.

... APPELLANT

(By Sri. M. U. POONACHA, ADV.)

AND

1. SRI. D. ANANDKUMAR,
S/O. G. DEVANNA,
AGED ABOUT 23 YEARS,
R/AT NO.48/49, 5TH 'B' CROSS,
DEFENCE COLONY,
T. DASARAHALLI, BAGALKUNTE,
BANGALROE - 73.
2. SRI. KRISHAN,
FATHER'S NAME NOT KNOWN,
AGE MAJOR,
R/AT. NO.66/A. 12TH CROSS.

MAHALAKSHMI LAYOUT,
BANGALORE.

3. SRI. GAVIRANGAPPA,
S/O. LAKKAPPA,
AGE MAJOR,
R/AT. BYRAVESHWARA NAGAR,
NELAMANGALA,
BANGALORE RURAL DISTRICT.

... RESPONDENTS

(By R.1 SERVICE HELD SUFFICIENT,
R.2 NOTICE DISPENSED WITH,
R.3 - SERVED)

THIS MFA FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED: 27.8.2007 PASSED IN MVC NO. 7380/2006 ON THE FILE OF THE IV ADDL. JUDGE, COURT OF SMALL CAUSES, MEMBER, MACT, METROPOLITAN AREA, BANGALORE, (SCCH.NO.6), AWARDED A COMPENSATION OF RS. 1,40,403/- WITH INTEREST @ 6% P.A FROM THE DATE OF PETITION TILL PAYMENT.

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

J U D G M E N T

This appeal is by the insurer of offending vehicle challenging the quantum of compensation awarded by the Tribunal as excessive and seeking reduction of the same.

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2. Heard. Appeal is admitted and with the consent of the learned Counsel appearing for the parties, it is disposed of finally.

3. As there is no dispute regarding injuries sustained by the claimant in a road traffic accident occurred on 18.10.2006 due to rash and negligent driving of LGV van bearing registration No. KA-02-AD-1566 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 compensation of Rs.1,40,403/- awarded by the Tribunal is just and reasonable or does it call for reduction?

4. The learned counsel appearing for the insurer of offending vehicle submits as per wound certificate, Ex. P 4 issued by Spandana Nursing Home, claimant had sustained fracture injuries and as per Ex P 5 issued by Sarojini Hospital claimant had sustained only simple injuries. Considering the injuries indicated in the wound certificate Ex P 5 issued by Sarojini Hospital and

evidence of the doctor the compensation of Rs.1,40,403/- awarded by the Tribunal is exorbitant and therefore he prays for allowing the appeal by reducing compensation.

5. Claimant though was served with the notice of this appeal, remained unrepresented and he did not choose to contest the appeal. Hence, I have heard the learned Counsel appearing for the appellant-insurer and perused the judgment and award of the Tribunal.

6. As per the averments made in para 22 of the claim petition that on 18.10.2006 at about 11.00 a.m. claimant while he was standing to cross the road as a pedestrian, near Chikkabidarakallu bus stand, Bangalore-Tumkur NH-4 road, Dasanapura Hobli, Bangalore North, carefully and cautiously, observing all traffic rules and regulations, at that time all of a sudden the driver of LGV van bearing registration No. KA-02-AD/1566 drove the vehicle at high speed and in a rash and negligent manner, and dashed against the claimant. Due to the said impact claimant fell down

and sustained severe injuries. Immediately he was shifted to Sarojini Hospital for treatment and admitted there as inpatient from 18-10-06 to 19-10-06. The wound certificate issued by the said Sarojini Hospital was produced by the claimant and marked as Ex. P.5, according to which, he was admitted in the said Hospital at 1.00 p.m. on 18-10-06 and is shown to have sustained abrasion injuries. Nature of injuries are described as simple in nature. As per wound certificate Ex. P 4 issued by Spandana Nursing Home he was admitted to the said Nursing Home on 19-10-06 at 12.45 p.m. and is shown to have sustained crush injury to left foot with fracture of base of 4th metatarsal left foot and fracture of neck of 5th metatarsal left foot, multiple lacerated wound over left shoulder.

7. Injuries sustained by him to the left shoulder region is entered in both the wound certificates and as per the wound certificate - Ex.P.5, he had not sustained crush injury to left foot. If he had sustained crush injury to left foot it is visible even without subjecting

him to X-ray and in such a case it would have been mentioned in the wound certificate Ex. P 5 issued by Sarojini Hospital. Fracture base of 4th metatarsal left foot and fracture of neck of 5th metatarsal left foot shown to have been mentioned in the wound certificate - Ex. P 4 issued by Spandana Nursing Home are without reference to any x-ray. P.W.2, an Orthopaedic Surgeon working in Spandana Nursing Home, has clearly stated in his evidence that he has not enquired the claimant about the treatment previously taken by him at Sarojini Hospital and he has not seen the previous medical records and x-rays of the claimant and x-rays are not produced by the claimant. Therefore, only impression which is possible to be drawn is, grievous injury to foot, fracture of base of 4th metatarsal left foot and fracture of neck of 5th metatarsal left foot which are mentioned in the wound certificate - Ex.P.4 issued by Spandana Nursing Home at a later point of time are contrary to the nature of injuries indicated in the wound certificate - Ex.P.5 issued by Sarojini Hospital at the earliest point of time,

wherein the said fracture injuries are not shown to have been sustained by the claimant. Therefore, he is entitled to be awarded compensation for the injuries indicated in the wound certificate – Ex.P.5 issued by Sarojini Hospital.

8. Considering nature of injuries sustained by the claimant as per Ex.P.5 issued by Sarojini Hospital, a sum of Rs.10,000/- is awarded towards pain and suffering as against Rs.20,000/- awarded by the Tribunal under the said head, relying upon the injuries indicated in Ex.P.4 – wound certificate issued by Spandana Nursing Home.

9. As per Ex.P.13 – medical bills pertaining to treatment taken by the claimant in Spandana Nursing Home, Tribunal has awarded Rs.22,603/- which is incorrect, as claimant was treated as inpatient for a day in Sarojini Hospital. Considering the same, a sum of Rs.10,000/- is awarded towards medical and incidental expenses relying upon the treatment taken in Sarojini Hospital.

10. His income is assessed at Rs.3,000/- per month. Nature of injuries indicated in the wound certificate – Ex.P.4 issued by Spandana Hospital suggest, Ex.P.4 was issued for the purpose of getting more compensation. As per injuries indicated in Ex.P.5 wound certificate issued by Sarojini Hospital, claimant must have been under rest and treatment for about two months. Therefore, a sum of Rs.6,000/- is awarded towards loss of income during laid up period.

11. For simple injuries sustained by the claimant as per wound certificate – Ex.P.5, he is not entitled for compensation towards loss of amenities and loss of future earning.

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

1)	Pain and suffering	Rs. 10,000/-
2)	Medical and incidental Expenses	Rs. 10,000/-
3)	Towards loss of income during laid up period	Rs. 6,000/-
	Total	Rs. 26,000/-

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 a total compensation of Rs.26,000/- as against Rs.1,40,403/- awarded by the Tribunal with interest at 6% p.a. from the date of claim petition till the date of realisation.

14. Amount in deposit is ordered to be transferred to the Tribunal for payment and the same is ordered to be released in favour of the claimant.

No order as to costs.

Sd/-
JUDGE

mgn*