

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 20TH DAY OF APRIL, 2012

BEFORE

THE HON'BLE MR. JUSTICE B. SREENTIVASE GOWDA

M.F.A. NO.5151/2009 (MVC)

BETWEEN

JUBER S/O LATE SUBAN SAE
AGED 38 YEARS
OCC NIL, R/O 1ST CROSS, 1ST MAIN
AZAD NAGAR,
DAVANAGERE

... APPELLANT

(BY SMT SARITHA KULKARNI, ADV.)

AND :

1 SRI.BALARAJ S/O CHANBASAPPA
MAJOR, OCC BUSINESS
R/O 5TH CROSS
AHMED NAGAR
DAVANAGERE

2 THE DIVISIONAL MANAGER
THE ORIENTAL INSURANCE CO LTD
DIVISIONAL OFFICE
KNKAY COMPLEX
KESHAWAPUR HUBLI

... RESPONDENTS

(BY SRI P B RAJU FOR R2
R1 NOTICE DISPENSED WITH)

MFA FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED:24.4.2009 PASSED IN MVC NO.672/2006 ON THE FILE OF THE ADDL. DISTRICT JUDGE, PRESIDING OFFICER, FAST TRACK COURT-II & ADDL. MACT, DAVANGERE, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND 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. Heard, the appeal is admitted and with the consent of learned counsel appearing for 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 24.8.2005 due to rash and negligent

riding of the motorcycle bearing registration No.KA-17-U-3878 by its rider and liability of the insurer of the offending vehicle, the only point that arises for my consideration in the appeal is:

"whether compensation of Rs.1,25,000/- with interest at 6% p.a. 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 the compensation awarded by the Tribunal is not just and reasonable, it is on the lower side and hence it is required to be enhanced.

6. The claimant has sustained fracture of left femur and fracture at the hip joint. The injuries sustained by the claimant are evident from the wound certificate Ex.P-5, disability certificate Ex.P-9, X-ray

film Ex.P-10, x-ray report Ex.P-11, case sheet Ex.P-14 and supported by oral evidence of the claimant and doctor, who were examined as PWs-1 and 2 respectively. PW-2, doctor in his evidence has stated that the claimant has suffered disability of 35% to the limb.

7. Considering the nature of injuries, Rs.15,000/- awarded by the Tribunal towards 'pain and suffering' is on the lower side and it is deserved to be enhanced by another Rs.20,000/- and I award **Rs.35,000/-** under this head.

8. The claimant has not produced any medical bills regarding amount spent towards medical expenses. He was treated as inpatient for a period of 78 days at C.G.Hospital and Bapuji hospital, Davanagere. Considering the nature of injuries and duration of treatment, a sum of **Rs.25,000/-** is

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awarded towards 'medical and incidental expenses' as against Rs.11,000/- awarded by the Tribunal.

9. The claimant claims to have been doing glass fitting work and earning a sum of Rs.6,000/- per month, but the same is not established by producing any documents. In the absence of proof of income, considering his age as 36 years and year of accident as 2005, income assessed by the Tribunal at Rs.4,000/- 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 and therefore a sum of **Rs.16,000/-** is awarded towards 'loss of income during laid up period' as against Rs.12,000/- awarded by the Tribunal.

10. Considering the disability stated by the doctor and an amount of discomfort and unhappiness the claimant has to undergo in his future life, a sum

of **Rs.20,000/-** is awarded towards 'loss of amenities' as against Rs.15,000/- awarded by the Tribunal.

11. The claimant is aged about 36 years at the time of accident, and the multiplier applicable to his age group is 15. His income is assessed at Rs.4,000/- p.m. PW-2, doctor in his evidence has stated that claimant has suffered disability of 35% to the limb. So the disability caused to the whole body is $1/3^{\text{rd}}$ of the disability caused to the limb, which comes to 11.66% and it can be rounded off to 12%. Therefore, the 'loss of future income' works out to **Rs.86,400/-** ($4000 \times 12 \times 15 \times 12/100$) and it is awarded as against Rs 72,000/- awarded by the Tribunal.

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

	HEADS	Rs.
1	Pain and sufferings	35,000
2	Medical and incidental expenses	25,000
3	Loss of income during laid up period	16,000

4	Loss of amenities	20,000
6	Loss of future income	86,400
	TOTAL	1,82,400
	LESS: Compensation awarded by the Tribunal	1,25,000
	BALANCE	57,400

13. 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.57,400/-** with interest at 6% p.a. from the date of claim petition till the date of realisation.

14. 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 fixed deposit in the name of claimant in any Nationalised Bank/Scheduled Bank/Post Office for a period of 6 years renewable once in 2 years and

with a right of option to withdraw interest periodically.
Remaining amount with proportionate interest is
ordered to be released in favour of the claimant
immediately after the deposit.

No order as to costs.

Sd/-
JUDGE

DM