

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 17<sup>TH</sup> DAY OF APRIL, 2012

BEFORE

THE HON'BLE MR. JUSTICE B. SREENIVASE GOWDA

M.F.A. NO.948/2008 (MVC)

BETWEEN

KOLLAIAH  
S/O SHIVANNA  
AGED ABOUT 14 YEARS  
MINOR, REP BY NEXT FRIEND FATHER GUARDIN  
SHIVANNA S/O PENNAVAR RANGAPPA  
AGED ABOUT 47 YEARS, AGRICUTLURIST  
AND COOLIE R/O NANNIVALA, CHALLAKERE  
R/O K B EXTENSION, 1 CROSS  
CHITRADURGA - 577501

... APPELLANT

(BY M/S GOUD & ASSTS. AND SRI RAVI G SABHAHTT,  
ADVS.)

AND :

1 S NAGENDRAPPA  
S/O SANNAPPA, AGED ABOUT 42 YEARS  
OWNER OF THE VEHICLE NO KA 16-J-4711  
R/O THIPPAGONDANAHALLI  
CHALLAKERE, CHITRADURGA 577522

2 BRANCH MANAGER  
NEW INDIA INSURANCE CO LTD  
TOWN COOPERATIVE SOCIETY BUILDING  
NEAR TALUK OFFICE, CHITRADURGA 577501

... RESPONDENTS

(BY SRI C.R.RAVISHANKAR, ADV. FOR R2  
R1 SERVED)

MFA FILED U/S 173(1) OF MV ACT, AGAINST THE JUDGEMENT AND AWARD DATED 01.10.2007 PASSED IN MVC NO.800/2005 ON THE FILE OF C/C I ADDITIONAL CIVIL JUDGE (SR.DN.) & ADDITIONAL MACT, CHITRADURGA, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

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 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 12.5.2005 due to rash and negligent riding of the offending motorcycle bearing registration No.KA-16/J-4711 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.40,000/- 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.

②

6. The claimant has sustained the following injuries:-

- a) Abrasion over the right molar region about  $\frac{1}{2}$  x1 cms. Right eye region swelling and bleeding
- b) Lacerated wound to the scalp over the occipital region 4x2 cms
- c) Contusion and tenderness over the right knee joint
- d) Abrasion over the left knee joint
- e) Incises wound to the left forearm 4x1 cms
- f) Tenderness present over the left shoulder joint
- g) Cut wound to the right arm 3x4 cm

Injury No.1 is grievous in nature and other injuries are simple in nature. His right eyeball is removed and he lost his right eye.

The injuries sustained by the claimant are evident from the wound certificate Ex.P-5, disability certificate Ex.P-6, discharge card Ex.P-11 and supported by oral evidence of the father 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 permanent disability of 40% to the right eye.





their regular work, and therefore a sum of **Rs.5,000/-** is awarded towards 'loss of income of the parents during laid up period' of the claimant.

11. 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.75,000/-** is awarded towards 'loss of amenities' including loss of marriage prospectus.

12. The claimant is aged about 12 years at the time of accident, and the multiplier applicable to his age group is 15. His notional income is assessed at Rs.15,000/- p.a. PW-2, doctor in his evidence has stated that claimant has suffered disability of 40% to the right eye. Therefore, the 'loss of future income' works out to **Rs.91,000/-** ( $15,000 \times 15 \times 40/100$ ) and it is awarded.

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



	HEADS	Rs.
1	Pain and sufferings	75,000
2	Medical and incidental expenses	10,000
3	Loss of income during laid up period	5,000
4	Loss of amenities	75,000
5	Loss of future income	90,000
	<b>TOTAL</b>	<b>2,55,000</b>
	<b>LESS: Compensation awarded by the Tribunal</b>	<b>40,000</b>
	<b>BALANCE</b>	<b>2,15,000</b>

14. 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.2,15,000/-** with interest at 6% p.a. from the date of claim petition till the date of realisation.

15. 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,

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Rs.2,00,000/- 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 8 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.

16. Sri.C.R.Ravishankar, adv., who was directed to take notice for Respondent No.2 and has argued the case on behalf of respondent No.2, is granted two weeks time to file vakalath for Respondent No.2.

No order as to costs.

Sd/-  
JUDGE

DM