

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 18TH DAY OF APRIL, 2012

BEFORE

THE HON'BLE MR. JUSTICE B. SREENIVASE GOWDA

M.F.A. NO. 7372/2008 (MV)

BETWEEN

KUM. USHA K NAIR,
D/O LATE KRISHNA NAIR,
AGED ABOUT 40 YEARS,
R/A 7/1, 13TH CROSS, 5TH MAIN,
AGRAHARA DASARAHALLI,
BANGALORE-79.

...APPELLANT

(BY SRI. K.V. SHYAMAPRASADA &
SRI R. VENKATESHA NAIDU, ADVOCATES)

AND

M/S. BAJAJ ALLIANZ GEN. INSURANCE CO. LTD.,
NO.105 A/107A, CEARS PLAZA, 136,
RESIDENCY ROAD,
BANGALORE-25
REPRESENTED BY ITS SR. MANAGER.

... RESPONDENT

(SRI A.N. KRISHNASWAMY, ADVOCATE)



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THIS MFA IS FILED U/S.173(1) OF MV ACT AGAINST THE JUDGMENT & AWARD DATED 01.04.2008 PASSED IN MVC NO. 4410/2007 ON THE FILE OF IV ADDITIONAL JUDGE, COURT OF SMALL CAUSES, MEMBER, MACT-IV, METROPOLITIAN AREA, BANGALORE, SCCH-6, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL IS COMING ON FOR HEARING 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.

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4. As there is no dispute regarding injuries sustained by the claimant in a road traffic accident occurred on 15.04.2007 due to rash and negligent driving of an Autorickshaw bearing registration No.KA-05-D-5145 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?”

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 the following injuries:

- 1) Abrasion of 3 x 2 cms over lower 1/3rd of left forearm. Red in colour.

2) X-ray No.1463 shows-Fracture of lower end of radius of left forearm.

The injuries sustained by the claimant and treatment taken by her are also evident from OPD card at Ex.P11 and supported by the oral evidence of the Claimant and Doctor who were examined as PW1 and PW3 respectively.

7. PW3-Dr. S.U. Shivaprakash, has stated in his evidence that the claimant has suffered disability of 17% to limb and 8% to whole body.

8. Considering the nature of injuries, a sum of **Rs.25,000/-** awarded by the Tribunal towards 'pain and suffering' is just and proper and there is no scope for enhancement under this head.

9. As **Rs.2,379/-** 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 conservatively and was also treated as outpatient in a private hospital. Considering the same, a sum of **Rs.10,000/-** 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 working as Teacher (Care Mother) cum Secretary at Shanthinekethan Educational Social and Charitable Trust, Agrahara Dasarahalli, Bangalore, and was getting salary of Rs.5,000/- per month. She had availed leave from 15.04.2007 to 30.06.2007 for treatment. The Tribunal calculating the loss of leave in terms of salary has rightly awarded **Rs.12,500/-** towards 'loss of income during

laid up period' and there is no scope for enhancement under this head.

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 her future life, a sum of **Rs.25,000/-** awarded by the Tribunal towards 'loss of amenities' is just and proper and there is no scope for enhancement under this head.

13. Learned counsel for the claimant submits that the claimant after sustaining injuries i.e. fracture of lower end of radius of left forearm, her employer i.e. Shanthinekethan Educational Social and Charitable Trust, Agrahara Dasarahalli, Bangalore, passed a resolution terminating her from services. Therefore, he prays this Court to award loss of future income by taking the disability at 17% as stated by the Doctor to upper limb as against the compensation awarded by the

Tribunal considering the disability stated by the doctor at 8% to whole body.

14. The Medical Board has not passed any order or issued certificate invalidating her that she is not able to continue her job. Merely because the trust has passed a resolution terminating her from services that does not mean that the claimant after sustaining fracture of lower end of radius of left forearm cannot continue her employment as Teacher (Care Mother) cum Secretary. It is not her case that compensation towards loss of future income is to be awarded considering the disability at 100%. She has to bear with the disability of 17% to upper limb and 8% disability to whole body as stated by the doctor. Therefore, justice would be met if functional disability is taken at 10%. The claimant was aged about 39 years at the time of accident and the multiplier applicable to her age group is '15'. She was getting salary of Rs.5,000/- per month when she was

terminated from service. Thus, 'loss future income' works out to **Rs.90,000/-** ($5000 \times 10/100 \times 12 \times 15$) and it is awarded as against Rs.67,200/- awarded by the Tribunal.

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

	HEADS		Rs.
a)	Pain and suffering	-	25,000
b)	Medical expenses	-	2,379
c)	Incidental expenses	-	10,000
d)	Loss of income during laid up period	-	12,500
e)	Loss of amenities	-	25,000
f)	Loss of future income	-	90,000
	TOTAL	-	1,64,879
	LESS: Compensation awarded by the Tribunal	-	1,42,079
	BALANCE	-	22,800

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.22,800/-** 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. The same is ordered to be released in favour of the claimant.

18. No order as to costs.

Sd/-
JUDGE

KV