

**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**Miscellaneous First Appeal No. 11243 of 2008 (MV)**BETWEEN**

MURTHAPPA,  
S/O. CHITRAPPA,  
AGED ABOUT 39 YEARS,  
OCCUPATION - COOLIE,  
R/O. N. G. HALLY VILLAGE,  
HOLALKERE TALUK,  
CHITRADURGA DISTRICT.

... APPELLANT

(By Sri. S. C. VIJAYAKUMAR, ADV. AND  
SMT. H. G. SANDHYAVIJAYAKUMAR, ADV.)

**AND**

1. SURESH,  
S/O. SANNATHIMMAPPA,  
AGED ABOUT 26 YEARS,  
R/O. LOKADOLALU VILLAGE,  
OWNER OF TEH LUGGAGE AUTO BEARING  
REGN. NO.KA-16/A-5090,  
HOLALKERE TALUK - 577 526,  
CHITRADURGA DISTRICT.
2. THE GENEAL MANAGER,  
IFFCO TOKO, GENERAL INSURANCE CO. LTD.,  
NO.41 CRISTU COMPLEX,  
II FLOOR, NO.41 LANE ROAD,  
BANGALORE - 560 001.

... RESPONDENTS

(By Sri. H. S. LINGARAJ, ADV. FOR R.2,  
R.1 - SERVED)

THIS MFA FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED:7/8/2008 PASSED IN MVC NO.378/2007, ON THE FILE OF THE CIVIL JUDGE(SR.DN) AND MACT AT HOLALKERE, 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. Appeal is admitted and with the consent of the learned Counsel appearing for the parties, it is disposed of finally.

3. For the sake of convenience 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 14-4-07 due to rash and negligent driving of luggage auto bearing registration No.KA-16-A-5090 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 quantum of compensation awarded by the Tribunal is just and reasonable or does it call for enhancement?

5. After hearing the learned Counsel for the 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 therefore, it is deserved to be enhanced.

6. As per Ex.P.5 - wound certificate, claimant had sustained fracture of lower 3<sup>rd</sup> right fibula and fracture of right medial malleolus and other injuries.

7. Injuries sustained and treatment taken by him are also evident from discharge card - Ex.P.7, disability certificate - Ex.P.8, x-ray - Ex.P.9 and supported by



oral evidence of the claimant and doctor examined as P.Ws.1 and 2 respectively.

P.W.2 - Dr.Nagabhushan in his evidence has stated that claimant has suffered disability of 25%.

8. Tribunal is not justified in awarding Rs.62,500/- towards pain and suffering and disability instead of determining compensation separately under these two heads.

9. Considering two fractures and two simple injuries sustained by the claimant a sum of Rs.35,000/- is awarded towards pain and suffering.

10. Claimant has produced medical bills for Rs.100/-. He was treated as inpatient for 5 days in Navodaya Hospital, Davangere. Considering the same a sum of Rs.6,000/- is awarded towards medical and incidental expenses.

11. Claimant is an agricultural coolie. He has not stated how much he is earning. Considering his age as

38 years and year of accident as 2007, his income is assessed at Rs.3,500/- per month. Nature of injuries suggest, he must have been under rest and treatment for a period of three months. Considering the same, a sum of Rs.10,500/- is awarded towards loss of income during laid up period.

12. Considering disability stated by the doctor and an amount of discomfort and unhappiness which the claimant has to undergo for the rest of his life, a sum of Rs.15,000/- is awarded towards loss of amenities.

13. He is aged about 38 years. Multiplier applicable is '15'. His income is assessed at Rs.3,500/- per month. As per disability stated by the doctor at 25% to limb, disability caused to whole body can be taken at 9%. So, future loss of income works out to Rs.56,700/- ( $\text{Rs.3,500/-} \times 12 \times 9/100 \times 15$ ) and it is awarded.

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

- |    |                        |              |
|----|------------------------|--------------|
| 1) | Pain and suffering     | Rs. 35,000/- |
| 2) | Medical and incidental |              |

	expenses	Rs. 5,000/-
3)	Towards loss of income during laid up period	Rs. 10,500/-
4)	Towards loss of amenities	Rs. 15,000/-
5)	Future loss of income	Rs. 56,700/-
	<b>Total</b>	<b>Rs. 1,22,200/-</b>
	<b>Less compensation awarded by the Tribunal</b>	<b>Rs. 83,100/-</b>

**Additional compensation comes to Rs. 39,100/-**

15. 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 additional compensation of Rs.39,100/- with interest at 6% p.a. from the date of claim petition till the date of realisation.

16. The Insurance Co. is directed to deposit the additional compensation amount with interest within two months from the date of receipt of a copy of this judgment, from which Rs.25,000/- with proportionate interest is ordered to be deposited in FD in the name of the claimant in any nationalised or scheduled Bank or post office for a period of 4 years, renewable once every two years, with a right of option for him to withdraw

interest periodically and the remaining amount is ordered to be released in his favour.

17. Sri. H.S.Lingaraj is granted four weeks time to file vakalath.

No order as to costs.

Sd/-  
JUDGE

mgn\*