

IN THE HIGH COURT OF KARNATAKA

CIRCUIT BENCH AT DHARWAD

DATED THIS THE 26th DAY OF MARCH 2009

PRESENT

THE HON'BLE MR. JUSTICE AJIT J. GUNJAL

AND

THE HON'BLE MR. JUSTICE JAWAD RAHIM

MISCELLANEOUS FIRST APPEAL No. 5896/2004 (MVC)

BETWEEN:

THE DIVISIONAL MANAGER
NEW INDIA ASSURANCE CO. LTD.
CLUB ROAD, BELGAUM
REPRESENTED BY ITS
REGIONAL OFFICE AT
MISSION ROAD
BANGALORE

...APPELLANT

(BY SRIYUTHS. SIDDAPPA SAJJAN FOR RAVI G SABHAHIT,
ADVS.)

AND:

1. SRI MALLIKARJUN RAMAGOUDA MUTNAL
AGED 27 YEARS
RESIDENT OF MASTI
HUKKERI TALUK
BELGAUM DIST.

LB

(Corrected vide
Chamber order
dt. 21.07.2010)
Mamatha.
Sr. J.W.
23/7/10

2. ANKUSH
S/O RAMACHANDRA KOLEKAR
R/O NEAR PATIL'S HOUD
SHANIWAR ETTI
MIRAJ
MAHARASHTRA STATE ...RESPONDENTS

(BY SRI. D.S. HOSMATH, ADV., FOR R1)

THIS APPEAL IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED: 15.3.04 PASSED IN MVC NO.2322/01 ON THE FILE OF THE CIVIL JUDGE (SR.DN.) & MEMBER, AMACT, HUKKERI, AWARDED COMPENSATION OF RS.5,00,800/- WITH INTEREST AT 8% P.A. & DIRECTING THE APPELLANT HEREIN TO DEPOSIT THE SAME.

THIS MFA COMING ON FOR HEARING THIS DAY, JAWAD RAHIM, J., DELIVERED THE FOLLOWING:

JUDGEMENT

The insurer is appeal against the judgment and award in MV 2322/01, dated 15.3.2004, on the file of MACT, Hukkeri.

2. The genesis of this appeal is the motor vehicle accident on 20.2.2001 involving motor cycle No.KA-22/E-5753. The rider is said to have driven it in a rash and negligent manner while passing Dodabanatti petrol bunk

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area and hit against certain persons amongst whom Mallikarjun Rameagouda Mutnal was one of the victim. He suffered fracture of both the limbs, upper and lower. Despite best treatment, he is said to have suffered physical disability which the medical officer assesses at 55%. On that basis, he sought grant of compensation for physical impairment, loss of avocation and consequent income. He is an agriculturist. He claimed to be earning Rs.50,000/- and from other sources he had additional income.

3. Claim was resisted by the insured and the insurer.

4. Based on the material propositions in the pleadings, the tribunal has adjudicated the claim and held there was rash and negligent driving of the offending vehicle. That finding is not assailed by the insured. It is the insurer who has questioned the compensation granted to the claimant.



5. It is urged in this appeal that the grant of compensation for "Pain and sufferings" at Rs.1,00,000/- is high and excessive, grant of Rs.2,75,400/- towards "Loss of future income" is also not supported by evidence. Question is also raised regarding grant of compensation towards reimbursement of the amount towards "Medical treatment", "Loss of income during the period of treatment" and particularly award towards "Loss of amenities" and "Compensation towards physical disability".

6. Having heard the learned counsel on these grounds, we are also satisfied that the award of the Tribunal needs redetermination.

7. To begin with, we notice that the claimant has successfully established he had suffered fracture of shaft of left femur and fracture of both bones of fibula and tibia of the shaft of the left leg. The fact that he was an agriculturist is also not seriously in dispute. What is disputed is the quantum of compensation towards "Pain and sufferings" as also "Loss of future income".



Undoubtedly, the claimant had suffered fracture of both bones of lower limb and the pain emanating there from has to be understood, considering the time the wounds have taken to heal. It supports claimant's contention that there was prolonged treatment and it is only after that the bones could be set. Besides despite such treatment he is visited with physical disability according to doctor at 55%.

8. However, the tribunal has awarded Rs.1,00,000/- towards "Pain and sufferings", which we feel is on the higher side, as the claimant has been compensated on the other heads. Therefore, the award under this head needs to be scaled down and according to us it should be at Rs.50,000/-.

9. As regards "Loss of income" is concerned, **the claimant has tendered acceptable evidence for establishing physical disability attained due to fracture of both the limbs at 55%. But the Tribunal has disbelieved version of the doctor.** However the



Tribunal could not resist to accept it at 45%. We wish not to interfere with such assessment.

10. We therefore accept Tribunal's finding that claimant has suffered physical disability at 45% and that becomes the datum for calculating the "Loss of future income". Claimant, no doubt he claimed income at Rs.50,000/- per annum, but the Tribunal has fixed it at Rs.3,000/- per month. It is also reasonable. Taking the annual income at Rs.36,000/- at 45% the loss of income will be Rs.16,200/- at 45%. The claimant was aged 26 years and hence the multiplier applicable would be 17. On that basis he will be entitled to Rs.2,75,000/- which the Tribunal has awarded.

11. We therefore confirm the said award.

12. As regards the award of "Compensation towards physical disability" as also "Loss of amenities" is concerned, we have noticed that the Tribunal has split it into two heads awarding Rs.25,000/- each. The



cumulative effect is total sum awarded is Rs.50,000/- which in the given fact situation, we are satisfied is justified. Therefore, we also confirm the same. The award amount of Rs.8,700/- towards "Attendant charges, conveyance, specialised diet and incidental expenses" is also not on the higher side. So also is the amount of Rs.4,200/- towards "Loss of income during the period of treatment".

13. We therefore, confirm the same. The only modification that is required is to reduce the amount of Rs.1,00,000/- under the head "Pain and sufferings" to Rs.50,000/-. This shall be the only modification to the impugned judgement and award. The appeal is allowed in part with the modification indicated above.

14. Rest of the terms contained in the award are affirmed.



The appeal stands disposed in terms of this order.

Sd/-
JUDGE

Sd/-
JUDGE

BNS./GH

AJGJ:
21.07.2010

(Chamber Order)

It is brought to my notice that by inadvertence, the number of the Miscellaneous First Appeal has been omitted from the case.

The same shall be included in the cause-title and necessary corrections to be carried out in the cause-title.

Sd/-
JUDGE

Jm/-