

IN THE HIGH COURT OF KARNATAKA

CIRCUIT BENCH AT DHARWAD

DATED THIS THE 13TH DAY OF APRIL 2009

PRESENT

THE HON'BLE MR.JUISTICE JAWAD RAHIM

AND

THE HON'BLE MR.JUSTICE S. N. SATYANARAYANA

MFA NO.6348/2005 (MV)

BETWEEN:

Sahadevappa,
S/o Parwateppa Chavatagi,
Age 45 years,
Occ: Govt. Servant,
R/o H.C.No.748, Ranebennur
Rural P.S.
Ranebennur,
Dist: Haveri.

...APPELLANT

(By Sri Mahesh Wadeyar, Adv..)

AND:

1. Rajashekharagouda S. Patil,
Age: Major, Occ: Business,
R/o Kakol village in Ranebennur
Taluka, Dist: Haveri,
(Owner of vehicle bearing



2. Reg.No.KA-27/4798).
The Divisional Manager,
National Insurance Co. Ltd.
Sujatha Complex,
Opp: P.B. Road,
Hubli.

...RESPONDENTS

(By Sri. Srishaila, Adv. For R-2,
R-1 served)

THIS MFA IS FILED U/SEC 173 (1) OF MV ACT, 1988, PRAYING TO MODIFY THE JUDGMENT AND AWARD PASSED BY THE COURT OF CIVIL JUDGE & ADDL. MACT, RANEBENNUR, IN MVC.504/2002 DATED 25.4.2005, AND ETC.

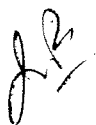
THIS MFA COMING ON FOR HEARING THIS DAY,
JAWAD RAHIM J, DELIVERED THE FOLLOWING:

JUDGMENT

Against the judgment and award in MVC.504/02 dated 25.3.2005 on the file of the MACT, Ranebennur, the claimant is in appeal.

2. Occurrence of the accident, sufferance of injuries by the appellant-claimant is not in dispute.

The finding that rash driving by the driver of the



motorcycle bearing Reg.No.KA.27/H-2901 caused the mishap, is also not questioned by the insured or the insurer.

3. On the basis of evidence led by the claimant, the Tribunal accepted he had suffered injuries to his mandible and teeth. The Tribunal also noticed fracture of tibial bone. However as no physical disability was established, the Tribunal felt it proper to award the global compensation of Rs.50,000/- towards pain and suffering without applying the said amount to the other two heads which are normally to be considered like loss of amenities, etc. The claimant feels dissatisfied on the ground that loss of income has not been assessed; No compensation is awarded towards loss of amenities and incidental expenses has been ignored. On perusal of the impugned judgment and award, we are satisfied that the Tribunal has done its best to assess "just" compensation. The only



material claimant had laid before the Tribunal is only Ex.P.3- the injury certificate. It spells out following injuries:

- i. Contusion present over lower lip inside measuring about 1.5" x 1".
- ii. Suspected alveolar fracture in the region of 3-1 to 1-3;
- iii. Fracture teeth 4-3+3";
- iv. Mobile teeth fracture;
- v. Lacerated and contusion present over right knee measuring about 2" x 1.5".

4. From the extracted portion, it is evident fortunately, the claimant escaped suffering contusion on the left rib and suspected alveolar fracture and fracture of teeth 4-3+3" and mobile teeth fracture. The expert confirmed only tibial fracture. No other details of the injuries are noticed from Ex.P.3 and claimant for unexplained reasons has not examined the medical officer who treated him. However, the



Tribunal considered the medical expenses and awarded Rs.21,500/-, in all Rs.71,740/- has been awarded. The award of Rs.50,000/- towards pain and suffering, in our view, is certainly on the higher side. But as the insurer or the insured has not assailed the same we wish to apply the same to cover loss of amenities also. For these reasons we maintain the said award. However, as regards medical expenses are concerned, the Tribunal has awarded Rs.21,500/- covered under the bill. Though he was a Government servant we do not wish to probe any further as to whether he received any further reimbursement.

5. The learned Counsel's contention that the claimant had to avail leave for over a month for the treatment needs to be compensated is acceptable. He was a Government servant and was drawing the salary of Rs.8000/- per month. Availing leave as a consequence of injury which otherwise could have



been encashed certainly amounts to monetary loss. Therefore, to this extent, we would award a sum of Rs.8000/- towards loss of availment of one month's leave. Besides, we award Rs.5000/- to cover expenses of transport, special dieting and attendant charges which has not been awarded.

6. In the result, the appeal is allowed in-part. Compensation is enhanced by Rs.13,000/- over and above the amount awarded by the Tribunal. The claimant is entitled to interest @ 6% p.a. The insurer shall discharge the same within six weeks. Rest of the direction challenged in the award are maintained.

Sd/-
JUDGE

Sd/-
JUDGE

Sub/msu