

IN THE HIGH COURT OF KARNATAKA

CIRCUIT BENCH AT DHARWAD

DATED THIS THE 13<sup>TH</sup> DAY OF APRIL 2009

PRESENT

THE HON'BLE MR.JUISTICE JAWAD RAHIM

AND

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

MFA NO.6178/2005 (MV)

BETWEEN:

Sri. Appasaheb s/o Basavant Khot,  
25 years, Agricultural and milkvending  
Business, R/o Aryabyanwadi,  
Taluk : Chikodi.

...APPELLANT

(By Sri. Sachin S Magadam, Advocate)

AND:

1. Sri. Narasappa,  
S/o Bharamu Donawade,  
Age : Major, Occ: Agriculture,  
R/o Arabyanwadi,  
Taluk : Chikodi.

2. New India Assurance Company  
Branch Nipani, Ashok Nagar,



Nipani.

...RESPONDENTS

(By Sri.Vishwanath S. Shettar, Adv. for R2,  
R1 – served)

THIS MFA IS FILED U/SEC 173 (1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED: 14.3.2005 PASSED IN MVC NO.939/03 ON THE FILE OF THE CIVIL JUDGE (SR.DN) & AMACT, CHIKODI, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

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

JUDGMENT

Dissatisfied claimant is in appeal against the judgment and award in MVC.939/2003 dated 14.3.2005 on the file of the Civil Judge (Sr. Dvn) & Addl. MACT, Chikodi.

2.Contextual facts are, the claimant suffered injuries to the lower limb in a motor cycle accident on 5.5.2003 while he was standing on the side of Ankali-



Chikodi road, involving motor cycle bearing No.KA-23/K-411.

Alleging culpable negligence in the driving of motor cycle rider, claim was lodged which was adjudicated by the Tribunal. The claim was resisted by the insured and the insurer, necessitating a decision on 3 issues. The Tribunal on the basis of evidence led by the claimant though him as PW.1 and considering the documents which comprised, copy of FIR, Complaint, Spot Panchanama and charge sheet, marked as Ex.P1, Ex.P2, Ex.P.3 and Ex.P.5, accepted the claimant's contention and fastened culpable wrong on the rider of the motor cycle. That finding has not been challenged by the insured and insurer and it has reached finality.

3.The claimant's contention that he suffered injuries which resulted in physical disability, has also been accepted by the Tribunal. The medical evidence establishing 15% physical impairment is also accepted.




However, the learned Member of the Tribunal declined to accept the claim of the claimant that he was earning more than Rs.3000/-. The Tribunal on its own fixed notional income at Rs.2,250/- and further scaled it down by 50%. On that basis, 10% amount of future income is calculated and awarded Rs.22,900/-. No amount has been awarded towards pain and suffering and awarded Rs.2000/-towards loss of amenities. Further, the Tribunal has allowed pecuniary loss suffered by the claimant towards medical expenses in its entirety amounting to Rs.55,150/-. The claimant is, therefore, not satisfied.

4. On reconsideration, we are satisfied that the Tribunal has not been realistic in assessing the loss suffered by the claimant and physical impairment which has affected him as a consequent to the injuries. On re-assessment we are satisfied that the claim need to be enhanced.



5. As the claimant has suffered fracture of both bones of lower limb, and undisputably, he was agriculturist, the functional disability resulting therefrom will certainly be an impairment in his avocation. It directly has consequence of reduction in his earning capacity. Pain and suffering endured by him is evidenced from the nature of injuries itself. Therefore for pain & suffering we award Rs.30,000/- and towards loss of amenities which is at 15% we award Rs.25,000/-. Towards loss of income, taking his income at Rs.3000/- per month, 15% of it as assessed by the doctor gives us loss of future income at Rs.54000/-. The multiplier applicable in this case depending on the age of the claimant would be 17. The multiplication of 5400 by 17 gives us loss of future income as Rs.91,800/-.

6. As setting up bones itself consumes medically more than 3 months, he will be entitled to loss of income during laid up period at Rs.3000/-, which will



be Rs.9000/-. We further allow Rs.10,000/- towards incidental expenses, sufferings, special diet and attendant charges. However, we maintain the award of Rs.55,150/- towards reimbursement of medical expenses.

7. In the result, the claimant would be entitled to Rs.2,20,950/- as against a sum of Rs.89.830/- awarded by the Tribunal, which shall carry interest @ 6% p.a. from the date of petition and insurer shall discharge the same within six months from the date of receipt of copy of the award. We maintain the award so far as rest of the directions are concerned.

Sd/-  
JUDGE

Sd/-  
JUDGE

SUB/Msu