

IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD

DATED THIS THE 28TH DAY OF MARCH 2013

BEFORE

THE HON'BLE MR.JUSTICE B.SREENIVASE GOWDA

MFA No.23233/2011 (MV)

BETWEEN:

MAHADEVAYYA S/O GURAYYA RITTIMATH,
AGE: 52 YEARS, OCC: ACCOUNTANT,
R/O 3RD CROSS, SHIVABASAVA NAGAR,
HAVERI, DIST: HAVERI.

...APPELLANT

(BY SRI.PATIL M.H., ADV)

AND:

1. SHIVARAJ S/O CHANAVEERAPPA MARTUR,
AGE: MAJOR, OCC: BUSINESS,
R/O APMC YARD, HAVERI,
TQ. & DIST: HAVERI.

2. THE DIVISIONAL MANAGER,
UNITED INDIA INSURANCE CO.LTD.,
MUKTALLI, BUILDING,
OPP. KSRTC BUS STAND,
HAVERI, DIST: HAVERI.

...RESPONDENTS

(BY SRI.S.C.JAINAR, ADV.FOR R2,
R1 NOTICE HELD SUFFICIENT)

THIS MFA IS FILED UNDER SECTION 173(1) OF THE
MOTOR VEHICLES ACT,1988 AGAINST THE JUDGMENT
AND AWARD DATED 08.04.2010 PASSED IN MVC
NO.268/2009 ON THE FILE OF THE DISTRICT JUDGE,

MEMBER, MACT, (FAST TRACK) AT HAVERI, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS MFA COMING ON FOR ORDERS THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

Appeal by the claimant seeking enhancement of compensation awarded by the Tribunal.

2. With the consent of the learned counsel for the parties, appeal is heard, admitted and disposed of finally.

3. As there is no dispute regarding injury sustained by the claimant in a road traffic accident on 23.02.2005 due to rash and negligent driving of the offending motorcycle by its rider and liability of the insurance company of the said vehicle, the only that arises for consideration is:

Whether quantum of compensation
awarded by the Tribunal is just and

reasonable or does not call for enhancement?

4. After hearing the learned counsel appearing for the parties and perusing the judgment and award of the Tribunal, I am of the view that the quantum of compensation awarded by the Tribunal is not just and reasonable, it is on the lower side and therefore it deserves to be enhanced.

5. As per Ex.P6-wound certificate the claimant has sustained grievous injuries to the right eye, head, nose and other parts of the body and he was treated from 23.02.2005 to 08.03.2005 in Bapuji Hospital, Davanagere and his right eyeball is removed by surgery. P.W.2 doctor in his evidence has deposed that the claimant has sustained 50% disability due to loss of one eye.

6. Considering the claimant has lost the right eye and injuries sustained to head, a sum of Rs.75,000/- is awarded towards pain suffering.

7. Claimant was inpatient for a period of 20 days in a private hospital. Considering the same, a sum of Rs.20,000/- is awarded towards medical and incidental expenses.

8. The claimant claims to have been earning Rs.8,000/- P.M. by working as an accountant in a private firm but the same is not established by producing any documents. In the absence of proof of income, considering his age as 48 years and the year of accident as 2005, his income could be assessed at Rs.3,500/- P.M. Considering the nature of injuries, he must have been under rest and treatment for a period of 3 months. Therefore, a sum of Rs.10,500/- is awarded towards loss of income during treatment period.

9. Considering the claimant has lost the right eye and the disability stated by the doctor and an amount of discomfort and unhappiness, he has to undergo for the rest of his life, a sum of Rs.75,000/- is awarded towards loss of amenities.

10. He was aged about 48 years. Multiplier applicable to his age group is '13'. His income is assessed at Rs.3,500/- p.m. The doctor has stated that claimant has suffered 50% disability. Therefore, future loss of income works out to Rs.2,73,000/- (Rs.3,500/- x 50/100 x 12 x 13) and it is awarded.

11. Thus, the claimant is entitled for the following compensation:

i) Pain and suffering	Rs.75,000/-
ii) Medical & incidental expenses	Rs.20,000/-
iv) Loss of income during treatment period	Rs. 10,500/-
v) Loss of amenities	Rs.75,000/-
vi) Loss of future income	Rs.2,73,000/-

Total	Rs.4,53,500/-

12. Accordingly, the appeal is allowed in part and the judgment and award of the Tribunal is modified. The claimant is entitled to the total compensation of Rs.4,53,500/- as against Rs.1,06,000/- awarded by the Tribunal with interest at 6% p.a. on the enhanced compensation of Rs.3,47,500/- from the date of claim petition till the date of realization excluding the interest for the delayed period of 362 days in filing the appeal.

13. The Insurance Company is directed to deposit the additional compensation with interest within two months from the date of receipt of a copy of this judgment, excluding the interest for the delayed period of 362 days in filing the appeal.

14. Out of the enhanced compensation, 75% with proportionate interest shall be deposited in fixed deposit in any nationalized bank/scheduled bank or post office for a period of 9 years in the name of

claimant with a right of option to withdraw interest periodically. The balance amount with proportionate interest shall be released in favour of the claimant.

No order as to costs.

**Sd/-
JUDGE**

MBS/-