

**IN THE HIGH COURT OF KARNATAKA AT BANGALORE**

DATED THIS THE 29<sup>TH</sup> DAY OF NOVEMBER, 2013

**: PRESENT :**

**THE HON'BLE MR. JUSTICE N.K. PATIL**

**AND**

**THE HON'BLE MR. JUSTICE BUDIHAL R.B.**

M.F.A.NO. 6126 OF 2011 (MV)

Between:

Master Kuruba Basker,  
S/o. Kuruba Shivappa,  
Aged about 8 years,  
R/at. C/o. Lakshminarayan,  
No.57, I Main, I Stage,  
3<sup>rd</sup> Cross, HMT Layout,  
Mathikere,  
Since minor rep. by his father,  
Kuruba Sivappa,  
S/o. Chinnappaiah as natural guardian.

... Appellant

(By Shri. Vasanthappa, Advocate)

And:

1. Arun Kumar.M,  
S/o. Mani,  
Aged about 47 years,  
No.254, 3<sup>rd</sup> Cross,  
Jayamaruthi Nagar,  
Nandini Layout,  
Bangalore-96.

2. The Branch Manager,  
Oriental Ins. Co., Ltd.,  
D.O.3, No.48, Church Street,  
Bangalore-1.

... Respondents

(By Shri. P.K. Vedamurthy, Advocate for R2;  
Notice to R1 dispensed with v/o. dated 26/11/2012)

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This MFA is filed U/S 173(1) of MV Act against the Judgment and Award dated: 16/03/2011 passed in MVC No.8811/2009 on the file of the IX Additional Senior Civil Judge, Member, Motor Accident Claims Tribunal-7, Court of Small Causes, Bangalore, partly allowing the claim petition for compensation and seeking enhancement of compensation.

This MFA coming on for Admission, this day, **N.K. PATIL. J.**, delivered the following:

### J U D G M E N T

This appeal by the claimant is directed against the impugned judgment and award dated 16<sup>th</sup> March 2011, passed in MVC No.8811/2009, by the IX Additional Senior Civil Judge, Member, Motor Accident Claims Tribunal-7, Court of Small Causes, Bangalore, (for short, 'Tribunal' ) for enhancement of compensation on the ground that, the compensation of ₹5,60,000/-, awarded in his favour as against his claim for ₹25,00,000/-, is inadequate.

2. The appellant claims to be a minor boy aged about 6 at the time of accident and studying in I Standard and is represented by his father, natural guardian. He was hale and healthy prior to the date of accident. That at about 4:00 P.M., on 27-03-2008, when the appellant was crossing the road at chinnaguddam palli near M. Birepalli Cross on Hindupur to Gorantla road to go to his grand father's house, at that time, a Tata Indica Car bearing Registration No.KA-03/MB-1343 being driven by its driver at high speed in a rash and negligent manner, came from Hindupur side and dashed against the appellant. Due to the impact, the appellant sustained grievous injuries.

3. It is the case of the father of the appellant that he has spent considerable amount towards conveyance, nourishing food and attendant charges including medical expenses and other incidental expenses and therefore, he has to be compensated adequately.

4. On account of the injuries sustained in the accident, the appellant, being minor, represented by his father, filed the claim petition under Section 166 of the Motor Vehicles Act, before the Tribunal, seeking compensation of a sum of ₹25.00 lakhs against the respondents. The said claim petition had come up for consideration before the Tribunal on 16<sup>th</sup> March, 2011. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of ₹5,60,000/- with interest on ₹5,10,000/- at 6% per annum from the date of petition till the date of deposit. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant is in appeal before this Court, seeking enhancement of compensation.

5. Learned counsel appearing for appellant vehemently submitted that the appellant was aged about only 6 years at the time of accident and has

sustained grievous injuries on account of road traffic accident and because of the same, he has lost his education and his marriage prospects are also grim and that he has sustained 100% permanent disability towards the particular limb, as deposed by the Doctor. Further, he submitted that he took treatment as in-patient for a period of four months on various occasions and also underwent a surgery. Therefore, the compensation awarded by Tribunal towards injury, pain and sufferings, loss of amenities, discomfort and unhappiness, loss of marriage prospects etc. is on the lower side and liable to be re-determined, by modifying the impugned judgment and award passed by Tribunal.

6. As against this, learned counsel appearing for second respondent/Insurer sought to justify the impugned judgment and award passed by Tribunal, stating that the same is passed after critical evaluation of the oral and documentary evidence available on file and also considering each and every aspect, the

Tribunal has awarded compensation under all the heads including loss of education and loss of marriage prospects. Hence, interference in the well considered judgment and award is uncalled for.

7. We have heard learned counsel for appellant and learned counsel for second respondent/Insurance Company for considerable length of time.

8. After hearing learned counsel for the appellant and after perusal of the judgment and award passed by Tribunal including the original records placed before us, it can be seen that, the occurrence of accident and the resultant injuries sustained by appellant are not in dispute. As per the Wound Certificate and Discharge summary at Exs.P3, P4 and P5, it reveals that the appellant has sustained Type III B segmental compound open fracture of distal tibia with fracture of upper third of fibula and also crush injury over lower half of his leg over the fracture. It is also not in dispute that the

appellant was aged just six years at the time of accident. He has also undergone a surgery. The Tribunal, after assessing the oral and documentary evidence available on file, has rightly awarded compensation of a sum of ₹1,25,000/- towards medical expenses, as per the medical bills and prescriptions, ₹70,000/- towards conveyance, nourishing food and attendant charges, ₹25,000/- towards loss of education, ₹1,15,000/- towards loss of future income and ₹50,000/- towards future medical expenses. Hence, interference in the same is uncalled for.

9. However, so far as the compensation awarded under injury, pain and sufferings, loss of amenities, discomfort and unhappiness and loss of marriage prospects is concerned, the same is on the lower side and needs to be re-determined. Admittedly, in view of the road traffic accident, the appellant has sustained grievous injuries as above. Considering the nature of injuries sustained, the Doctor has assessed 100%

disability in respect of the particular limb. The Tribunal, after assessing the oral and documentary evidence available on file and also the judgment of the Hon'ble Apex Court, re-assessed the whole body permanent disability at 50%. The same, in our opinion is just and proper and it is accepted, to meet the ends of justice. The appellant being aged about only 6 years, at the time of accident, has to endure this disability for the rest of his life. Because of the injuries sustained, his marriage prospects also is likely to be affected. Further, it is stated that the appellant took treatment as in-patient for quite a long period on account of the grievous injuries sustained. During this period, he must have undergone lot of unsaid pain and agony and also underwent a surgery and must have also spent reasonable sum towards conveyance, nourishing food and attendant charges apart from incidental expenses. Therefore, having regard to the age, nature of injuries, nature and duration of treatment undergone, disability towards particular limb and also whole body disability



and also the fact that the injured claimant is just aged about 6 years at the time of accident and other facts and circumstances of the case, we award a sum of ₹1,50,000/- towards injury, pain and suffering as against ₹1,00,000/-; ₹1,00,000/- towards loss of amenities, discomfort and unhappiness as against ₹50,000/-; and ₹50,000/- towards loss of marriage prospects as against ₹25,000/- awarded by Tribunal.

10. In the light of the facts and circumstances of the case, as stated above, the appeal filed by appellant is allowed in part. The impugned judgment and award dated 16<sup>th</sup> March 2011, passed in MVC No.8811/2009, by the IX Additional Senior Civil Judge, Member, Motor Accident Claims Tribunal-7, Court of Small Causes, Bangalore, is hereby modified, awarding a sum of ₹6,85,000/- as against ₹5,60,000/- awarded by Tribunal, with interest at 6% per annum on the enhanced sum, from the date of petition till the date of realization. The break-up is as follows:

Towards Pain and sufferings	₹ 1,50,000/-
Towards Loss of amenities & enjoyment in life on account of disability	₹ 1,00,000/-
Towards Medical Expenses	₹ 1,25,000/-
Towards conveyance, nourishing food and attendant charges	₹ 70,000/-
Towards Loss of marriage prospects	₹ 50,000/-
Towards loss of education	₹ 25,000/-
Towards loss of future income	₹ 1,15,000/-
Towards future medical expenses	₹ 50,000/-
<b>Total</b>	<b>₹ 6,85,000/-</b>

The total compensation would workout to ₹6,85,000/- as against ₹5,60,000/-. The enhanced compensation would be ₹1,25,000/- with 6% interest per annum.

The second respondent/Insurance Company is directed to deposit the enhanced compensation of ₹1,25,000/-, with interest thereon at 6% per annum, within four weeks from the date of receipt of copy of the judgment.

On such deposit by the Insurance Company, a sum of ₹1,00,000/- with proportionate interest shall be invested in the name of the appellant, in Fixed Deposit, in any scheduled/Nationalized Bank, till the appellant

attains the age of 30 years, with liberty reserved to the father of appellant to withdraw the periodical interest till he attains 21 years, for his welfare and thereafter, he is entitled to receive the periodical interest.

Remaining sum of ₹25,000/- with proportionate interest shall be released in favour of the appellant, through his natural guardian, immediately.

Office to draw award, accordingly.

SD/-  
JUDGE

SD/-  
JUDGE

BMV\*