

IN THE HIGH COURT OF KARNATAKA,
GULBARGA BENCH

DATED THIS THE 30TH DAY OF JUNE, 2014

BEFORE

THE HONOURABLE MR.JUSTICE ANAND BYRAREDDY

MISCELLANEOUS FIRST APPEAL NO.30990/2013 (MV)

BETWEEN:

Mashaq S/o. Abdulsab Indikar
Age: 26 years, Occupation: Welding Work
R/o. Indi, District: Bijapur-586101

... APPELLANT

(Shri Sanganagouda V. Biradar, Advocate)

AND:

1. Moinoddin S/o. Salfansab Bagawan
Aged about 32 years, Occupation: Business
R/o. Indi, District: Bijapur-586101

2. The Branch Manager
Oriental Insurance Company Limited
Bijpuar – 586101

... RESPONDENTS

(Shri J. Augustin, Advocate for respondent No.2
Notice to respondent No.1 is dispensed with vide order dated
29.04.2014)

This Miscellaneous First Appeal is filed under Section 173 (1) of Motor Vehicles Act, 1988 against the Judgement and Award dated 20.12.2012 passed in MVC No. 1357/2011 on the file of the Motor Accident Claims Tribunal and Fast Track Court-I/II Bijapur, partly allowing the claim petition and seeking enhancement of compensation.

This appeal coming on for Admission this day, the Court delivered the following:

JUDGMENT

The appeal coming on for admission is admitted and heard for final disposal.

2. The appellant is seeking enhancement of compensation on two counts, namely, the percentage of disability assessed by a medical practitioner is at 35% to 40%, whereas the Tribunal has chosen to reduce the same to 12%. This was without reason or basis. Secondly, it is pointed out that the accident was of the year 2009, in the absence of evidence of the income of the appellant, who was a welder by profession, the Tribunal has adopted Rs.3,000/- per month and even if he was a menial labourer it ought to have been taken atleast at Rs.4,500/- per month. Further it is pointed out that apart from two serious

injuries the appellant had suffered fracture of both sided temporal bone and the Tribunal has awarded Rs.15,000/- towards pain and suffering, which ought to be substantially increased.

3. While the learned counsel for respondent No.2 – Insurance Company would oppose the appeal and seek to justify the judgment and award of the Tribunal.

4. In the facts and circumstances, the appellant had made out a case for enhancement of compensation, as rightly pointed out by the learned counsel for the appellant, even if there was no evidence of the appellant's income as a welder and even if he was treated as a menial labourer, he would have earned more than Rs.4,500/- in the year 2009. Further in so far as the percentage of disability is concerned, the Tribunal has varied the same as against medical opinion assessing the disability at 35% to 40%. Therefore, if the disability is taken at 40% to the whole body and income is taken at Rs.4,500/-, the appellant

would be entitled to additional compensation towards loss of future earning in a sum of Rs.3,11,040/-. Subsequently, the compensation towards loss of earning during treatment period, attendant charges and special diet would also stand enhanced to Rs.8,500/- instead of Rs.8,000/-. The appeal is allowed in part. The appellant is entitled to an additional total compensation of Rs.3,11,540/- with interest at 6% per annum from the date of claim till the date of payment.

Sd/-
JUDGE

swk