

IN THE HIGH COURT OF KARNATAKA
GULBARGA BENCH

DATED THIS THE 31ST DAY OF OCTOBER 2014

PRESENT

THE HON'BLE MR.JUSTICE DILIP B. BHOSALE

AND

THE HON'BLE MR. JUSTICE B. SREENIVASE GOWDA

MISCELLANEOUS FIRST APPEAL No.32484/2012

C/W

MISCELLANEOUS FIRST APPEAL No.32485/2012 AND
MISCELLANEOUS FIRST APPEAL No.32486/2012 (MV)

MFA 32484/2012

BETWEEN:

Mallikarjun @ Mallappa S/o Bhimanna Adde
Age: 42 years, Occ: Two Wheeler Mechanic,
And automobile Business,
R/o Bhalki, Dist: Bidar,
And owner of Indica Vista.
Pin Code No-585401.

... Appellant

(By Sri. Babu H. Metagudda, Advocate)

AND:

1. Mr. Butta Bhaskar S/o B. Shankeraiah
Age: Major, Occ: Business,
R/o H.No.04-1-7/1 Ranghavendra Nagar,
Sadashivpeth, Dist: Medak (A.P.)
Pin Code No.535401.

2. The Manager Royal Sundram
Alliance. Co.Ltd No.45 whites road, Chennai,
Represented by its Divisional Manager,
Pin Code No.525301.

... Respondents

(By Sri. Sudarshan M., Advocate for R2)

This Miscellaneous First Appeal is filed U/S. 173(1) of MV Act, against the Judgment and award dated 19.7.2012 passed in MVC No:601/2010 on the file of the Presiding Officer FTC-II Bidar and Addl. MACT, Bidar (Bhalki) partly allowing the claim petition and seeking enhancement of compensation.

MFA 32485/2012:

BETWEEN:

Kavita W/o Mallikarjun Adde
Age: 36 years,
Occ: Household, owner of Tavera
& and Tailoring Work,
R/o Bhalki, Proper. Dist: Bidar,
Pin Code No.585401.

... Appellant

(By Sri. Babu H. Metagudda, Advocate)

AND:

1. Mr. Butta Bhaskar S/o B. Shankeraiah
Age: Major, Occ: Business,
R/o H.No.04-1-7/1 Ranghavendra Nagar,
Sadashivpeth, Dist: Medak (A.P.)
Pin Code No.535401.
2. The Manager Royal Sundram
Alliance. Co.Ltd No.45 whites road, Chennai,
Represented by its Divisional Manager,

Pin Code No.525301.

... Respondents

(By Sri. Sudarshan M., Advocate for R2)

This Miscellaneous First Appeal is filed U/S. 173(1) of MV Act, against the Judgment and award dated 19.7.2012 passed in MVC No:602/2010 on the file of the Presiding Officer FTC-II Bidar and Addl. MACT, Bidar (Bhalki) partly allowing the claim petition and seeking enhancement of compensation.

MFA 32486/2012:

BETWEEN:

Shivaraj @ Shivkumar
S/o Manikappa Mudda,
Age: 46 years, Occ: Business,
R/o Bhalki, Dist: Bidar,
Pin Code No.585401.

... Appellant

(By Sri. Babu H. Metagudda, Advocate)

AND:

1. Mr. Butta Bhaskar S/o B. Shankeraiah
Age: Major, Occ: Business,
R/o H.No.04-1-7/1 Ranghavendra Nagar,
Sadashivpeth, Dist: Medak (A.P.)
Pin Code No.535401.
2. The Manager Royal Sundram
Alliance. Co.Ltd No.45 whites road, Chennai,
Represented by its Divisional Manager,
Pin Code No.525301.

... Respondents

(By Sri. Sudarshan M., Advocate for R2)

Notice to R1 is dispensed with V/o dated 18.6.14)

This Miscellaneous First Appeal is filed U/S. 173(1) of MV Act, against the Judgment and award dated 19.7.2012 passed in MVC No:604/2010 on the file of the Presiding Officer FTC-II Bidar and Addl. MACT, Bidar (Bhalki) partly allowing the claim petition and seeking enhancement of compensation.

These appeals coming on for Admission this day, **B. SREENIVASE GOWDA J.**, delivered the following:

JUDGMENT

By consent of the learned counsel appearing for the parties, the appeals are heard and disposed of finally at the stage of admission.

2. As all these appeals are arising out of a common road traffic accident and a common judgment of the Tribunal, they are disposed of by this common judgment.

3. The appellants having sustained certain injuries in a road traffic accident, filed three separate claim petitions in MVC Nos.601/2010, 602/2010 and 604/2010 before MACT, Bidar seeking compensation under Section 166 of the Motor Vehicles Act from the

owner and the insurer of the offending vehicle. The Tribunal, by impugned common judgment, has awarded different amount of compensation in each case. Aggrieved by the sum awarded by the Tribunal, the claimants have preferred these appeals seeking enhancement.

4. As there is no dispute regarding certain injuries sustained by the claimants in the road traffic accident that occurred on 02.08.2010 due to rash and negligent driving of the offending Temp bearing Reg.No.AP-23/W-3063 by its driver and liability of the insurer of the said vehicle, the only point remains for consideration in this appeal is:

“Whether quantum of compensation awarded by the Tribunal is just and reasonable or does it call for enhancement?”

5. After hearing the learned counsel appearing for the parties and perusing the judgment and awards of the Tribunal, we are of the view that the quantum of

compensation awarded by the Tribunal is not just and reasonable and is on the lower side and therefore, the compensation awarded by the Tribunal is deserved to be enhanced.

6. MFA No.32484/2012 has arisen out of award made in MVC No.601/2010. The injured claimant in this appeal is one Mallikarjun, aged about 40 years.

7. As per wound certificate Ex.P6, he had sustained following injuries:

- (i) Fracture of left femur
- (ii) Fracture of left 5th rib and injury to chest.

Injuries sustained and treatment undergone by him were supported by oral evidence of the claimant and the doctor who were examined as PW-1 and PW-4 respectively. PW-4 – Doctor in his evidence has stated that this claimant has suffered disability at 51% to limb.

8. Considering two fractures and other simple injuries sustained by the claimant Rs.25,000/- awarded by the Tribunal towards pain and suffering is on the lower side and therefore we enhance it by another Rs.15,000/- and award Rs.40,000/- under this head.

9. As Rs.82,896/- awarded by the Tribunal towards medical expenses is based on the medical bills and prescriptions produced by the claimant, the same is just and proper and there is no scope for enhancement.

10. He was treated as inpatient for 22 days in a private hospital. Considering the duration of treatment undergone by him as inpatient, we award a sum of Rs.12,000/- towards incidental expenses such as conveyance, nourishment and attendant charges as against Rs.7,500/- awarded by the Tribunal.

11. He claims to have been earning Rs.15,000/- per month by working as two wheeler mechanic, but it is

not supported by any document. In the absence of proof of income, considering his age as 45 years, year of accident as 2010 and his avocation as a daily wager, his income could be assessed at Rs.4,500/- per month as against Rs.3,000/- per month assessed by the Tribunal. Nature of injuries suggest that he must have been under rest and treatment for a period of four months. Therefore, a sum of Rs.18,000/- is awarded towards loss of income during laid up period.

12. Considering the nature of injuries sustained by the appellant, disability stated by the doctor and an amount of discomfort and unhappiness that he has to suffer in his future life a sum of Rs.25,000/- is awarded towards loss of amenities as against Rs.10,000/- awarded by the Tribunal.

13. Now we have assessed the income of the claimant at Rs.4,500/- per month. Considering the nature of fracture and disability stated by Doctor at 51% to limb,

the Tribunal is justified in taking disability caused to whole body at 15%. Multiplier applicable to the age group of the claimant is '14'. If that is so, loss of future income works out to Rs.1,13,400/- (Rs.4,500/- x 12 x 15/100 x 14) and it is awarded as against Rs.75,600/- awarded by the Tribunal.

14. Thus, he is entitled to following compensation:

1.	Pain and suffering	Rs.40,000/-
2.	Medical expenses	Rs.82,896/-
3.	Incidental expenses	Rs.12,000/-
3.	Loss of income during laid up period	Rs.18,000/-
4.	Loss of amenities	Rs.25,000/-
5.	Loss of future income	Rs.1,13,400/-
Total		Rs.2,91,296/-

15. Thus the appellant is entitled to a total compensation of Rs.2,91,296/- as against Rs.2,01,806/- awarded by the Tribunal and is entitled to an additional compensation of Rs.89,490/- with

interest at 6% per annum from the date of claim petition till the date of realisation.

16. MFA No.32485/2012 has arisen out of award made in MVC No.602/2010. The injured claimant in this appeal is one Kavita, aged about 40 years.

17. As per wound certificate Ex.P20, she had sustained following injuries:

- (i) Multiple fracture of ribs on left side
- (ii) Haemothorax, left lung collapsed

Injuries sustained and treatment undergone by her were also supported by oral evidence of the claimant and the doctor who were examined as PW-2 and PW-5 respectively. PW-5 – Doctor in his evidence has stated that the claimant has suffered disability of 43% to limb.

18. Considering the nature of injuries sustained by the claimant Rs.15,000/- awarded by the Tribunal towards pain and suffering is on the lower side and

therefore we enhance it by another Rs.15,000/- and award Rs.30,000/- under this head.

19. As Rs.44,561/- awarded by the Tribunal towards medical expenses is based on the medical bills and prescriptions produced by the claimant, the same is just and proper and there is no scope for enhancement.

20. She was treated as inpatient for 22 days in a private hospital. Considering the duration of treatment undergone by the claimant as inpatient, we award a sum of Rs.12,000/- towards incidental expenses such as conveyance, nourishment and attendant charges as against Rs.7,500/- awarded by the Tribunal.

21. She claims to have been earning Rs.10,000/- per month by doing tailoring work, but the same has not been established by producing any document. Therefore, in the absence of proof of income, considering her age as 40 years, year of accident as 2010 and her

avocation as a daily wager, we assess her income at Rs.4,500/- per month as against Rs.3,000/- per month assessed by the Tribunal. Nature of injuries suggest that she must have been under rest and treatment for a period of three months. Therefore, a sum of Rs.13,500/- is awarded towards loss of income during laid up period.

22. Considering the nature of injuries sustained by the appellant, the disability stated by the doctor and an amount of discomfort and unhappiness that she has to suffer in her future life a sum of Rs.15,000/- is awarded towards loss of amenities as against Rs.10,000/- awarded by the Tribunal.

23. Considering the nature of injuries and the disability stated by the Doctor at 43% to limb, the Tribunal is justified in considering the functional disability at 10%. Multiplier applicable to the age group of the claimant is '15'. We have assessed the income of

the claimant at Rs.4,500/- per month. If that is so, loss of future income works out to Rs.81,000/- (Rs.4,500/- x 12 x 10/100 x 15) and it is awarded as against Rs.54,000/- awarded by the Tribunal.

24. Thus, he is entitled to following compensation:

1.	Pain and suffering	Rs.30,000/-
2.	Medical expenses	Rs.44,561/-
3.	Incidental expenses	Rs.12,000/-
3.	Loss of income during laid up period	Rs.13,500/-
4.	Loss of amenities	Rs.15,000/-
5.	Loss of future income	Rs.81,000/-
Total		Rs.1,96,061/-

25. Thus the appellant is entitled to a total compensation of Rs.1,96,061/- as against Rs.1,31,061/- awarded by the Tribunal and she is entitled to an additional compensation of Rs.65,000/- with interest at 6% per annum from the date of claim petition till the date of realisation.

26. MFA No.32486/2012 has arisen out of award made in MVC No.604/2010. The injured claimant in this appeal is one Shivaraj @ Shivakumar, aged about 45 years.

27. As per wound certificate, he had sustained following injuries:

- i) Fracture of greater trochanter of left femur
- ii) Fracture of lower end of shaft of left femur
- iii) Fracture of left ilium
- iv) Fracture of nasal bone
- v) Fracture of 7th left ribs

Injuries sustained and treatment undergone by him were supported by oral evidence of the claimant and the doctor who were examined as PW-3 and PW-6 respectively. PW-6 – Doctor in his evidence has stated that he has suffered the disability of 82% to limb.

28. Considering the nature of injuries sustained by the claimant Rs.30,000/- awarded by the Tribunal towards pain and suffering is on the lower side and therefore we enhance it by another Rs.20,000/- and award Rs.50,000/- under this head.

29. As Rs.2,18,498/- awarded by the Tribunal towards medical expenses is based on the medical bills and prescriptions produced by the claimant, the same is just and proper and there is no scope for enhancement.

30. He was treated as inpatient for 27 days in a private hospital. Considering the duration of treatment undergone by him as an inpatient, we award a sum of Rs.15,000/- towards incidental expenses such as conveyance, nourishment and attendant charges as against Rs.8,000/- awarded by the Tribunal.

31. He claims to have been earning Rs.10,000/- per month by doing business and in order to prove the

same, the claimant except producing a licence has not established his contention that he was earning Rs.10,000/- per month by doing business by adducing cogent evidence to that effect. In the absence of proof of income, considering his age as 45 years, year of accident as 2010 and his avocation as a daily wager, his income could be assessed at Rs.4,500/- per month as against Rs.3,000/- per month assessed by the Tribunal. Nature of injuries suggest that he must have been under rest and treatment for a period of five months. Therefore, a sum of Rs.22,500/- is awarded towards loss of income during laid up period.

32. Considering the nature of injuries sustained by the appellant, disability stated by the doctor and an amount of discomfort and unhappiness that he has to suffer in his future life a sum of Rs.30,000/- is awarded towards loss of amenities as against Rs.15,000/- awarded by the Tribunal.

33. As per the disability stated by the doctor at 82% to limb, disability caused to whole body comes to 27.33. Having regard to the nature of injuries, we consider the functional disability at 20%. Now we have assessed the income of the claimant at Rs.4,500/- per month. Multiplier applicable to his age group is '14'. So loss of future income works out to Rs.1,51,200/- ($\text{Rs.4,500/-} \times 12 \times 14 \times 20/100$) and it is awarded as against Rs.1,26,000/- awarded by the Tribunal.

34. Learned counsel for the appellant submits that the claimant has to spend some amount for hip replacement. Learned counsel for the Insurance Company submits that so far the claimant has not undergone any hip replacement. Be that as it may, considering the nature of injuries, the appellant may have to spend some amount towards future medical expenses and therefore if a sum of Rs.50,000/- is

awarded towards future medical expenses it would meet the ends of justice and it is awarded.

35. Thus, he is entitled to following compensation:

1.	Pain and suffering	Rs.50,000/-
2.	Medical expenses	Rs.2,18,498/-
3.	Incidental expenses	Rs.15,000/-
3.	Loss of income during laid up period	Rs.22,500/-
4.	Loss of amenities	Rs.30,000/-
5.	Loss of future income	Rs.1,51,200/-
6.	Future medical expenses	Rs.50,000/-
Total		Rs.5,37,198/-

36. Thus the appellant is entitled to a total compensation of Rs.5,37,198/- as against Rs.3,97,498/- awarded by the Tribunal and is entitled to an additional compensation of Rs.1,39,700/- with interest at 6% per annum from the date of claim petition till the date of realisation.

37. Accordingly, appeals are allowed in part and the Judgment and awards passed by the Tribunal are

modified to the extent stated herein above. The appellants are entitled to additional compensation mentioned against their cases with interest at 6% per annum from the date of petition till the date of realization.

38. The insurance company is directed to deposit the additional compensation amount together with interest within 2 months from the date of receipt of a copy of this judgment. From out of the additional compensation amount, 75% with proportionate interest is to be invested in Fixed Deposit in the name of the claimants in any Nationalized bank/Scheduled Bank/Grameen Bank/Post Office for a period of 5 years with a right of option for the claimants to withdraw interest periodically. Remaining 25% with proportionate interest is ordered to be released in their favour.

39. It is further made clear that the Tribunal while releasing the remaining amount in favour of claimants

is also directed to issue FD slips to the claimants so that they can withdraw the FD amount on maturity and the Bank/the post office in which the FD will be invested is also directed to release FD on maturity without insisting for further orders from the Tribunal.

Office to draw up the award accordingly.

No order as to costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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