

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF NOVEMBER 2015

PRESENT

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

AND

THE HON'BLE MR. JUSTICE PRADEEP D.WAINGANKAR

M.F.A.NO.1830/2015 (MV)

BETWEEN:

DHARMARAJ
AGED ABOUT 47 YEARS
S/O K MADEGOWDA
R/AT NO.519, 2ND STAGE
3RD MAIN, 'M' BLOCK
KUVEMPUNAGAR
MYSURU – 570 023
APPELLANT

...

(BY SRI R D RENUKARADHYA FOR
SRI P NATARAJU, ADVOCATE)

AND:

1. R RAVICHANDRA
AGED ABOUT 37 YEARS
S/O RAJA NAIDU
R/AT NO.81/3, M.M.ROAD
BANGALORE – 560 005
AND ALSO R/AT D.NO.437-F
LAKSHMANAPURI
GANDHINAGAR
BANGALORE – 560 009
2. RANGAPPA
MAJOR

S/O B V MUNISWAMY
R/O SANTHE GATE
BHOVI COLONY
KOLAR TOWN – 563 101

3. M/s AMBSSADOR TRAVEL SERVICE
KASTHURI COMPOUND
2ND FLOOR, 76, MAIN ROAD
BENGALURU DISTRICT – 560 001

4. UNITED INDIA INSURANCE CO LTD.,
DIVISIONAL OFFICE-2
NO.2911, 3RD FLOOR
SUNDAR ARCADES, B.N.ROAD
OPP: KSRTC BUS STAND
MYSURU – 570 001

...RESPONDENTS

(BY SRI PUTTIGE R RAMESH, ADVOCATE FOR R-4;
NOTICE TO R1-3 DISPENSED WITH VIDE
ORDER DT 30.11.2015)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED:29.12.2014 PASSED IN MVC NO.316/2012 ON THE FILE OF THE PRINCIPAL JUDGE, COURT OF SMALL CAUSES, MYSURU, IN CONCURRENT CHARGE OF ADDITIONAL COURT OF SMALL CAUSES, MYSURU, PRESIDING OFFICER, MACT MYSURU PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS MFA COMING ON FOR ORDERS, THIS DAY, N.K.PATIL, J., DELIVERED THE FOLLOWING:-

JUDGMENT

This appeal is filed by the claimant against the impugned judgment and award dated 29.12.2014 passed in MVC No.316/2012 on the file of the Principal

Judge, Court of Small Cases, Mysuru, in concurrent charge of Additional Court of Small Causes, Mysuru, Presiding Officer, MACT, Mysuru, (hereinafter referred to as 'Tribunal' for brevity) awarding compensation of Rs.2,00,400/- with interest at 9% p.a. from the date of petition till the date of realisation, on account of the injuries suffered in a road traffic accident.

2. The brief facts of the case are:

The appellant was aged about 44 years, doing Kova business and hale and healthy prior to the accident. He met with an accident on 27.09.2011 due to rash and negligent driving by the driver of the offending vehicle involved in the accident. Due to the impact, he sustained comminuted fracture of tibia and fibula bone and he was admitted as an in-patient for 27 days in the hospital and also undergone one surgery and suffered mental pain and agony. On account of injuries sustained in the accident, he has spent huge amount towards medical expenses, conveyance, nourishing food and attendant charges, follow up

treatment etc. Taking all these factors into consideration, the appellant was constrained to file a claim petition under Section 166 of the M.V.Act before the Tribunal seeking compensation against the respondents. The Tribunal after assessing the oral and documentary evidence and other relevant material available on the file, allowed the claim petition in part awarding compensation of Rs.2,00,400/- with interest at 9% p.a. from the date of claim petition till the date of realisation. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant has presented the instant appeal seeking enhancement contending that the compensation awarded by the Tribunal is inadequate.

3. We have heard Sri R.D.Renukaradhya for Sri P.Nataraju, learned Counsel appearing for the appellant and Shri Puttige R.Ramesh, learned Counsel appearing for respondent No.4 – Insurance Company, for considerable length of time.

4. Learned Counsel for the appellant submits that the Tribunal has erred in not awarding reasonable compensation towards injury pain and sufferings, loss of amenities etc. and what is awarded is inadequate. The appellant was admitted for a period of 27 days in the hospital and undergone one surgery. After clinical and radiological examination, the doctor who treated the appellant has opined that the appellant has 17% disability to the left lower limb and out of that, if $1/3^{\text{rd}}$ is taken, the permanent disability comes to 5.6% rounded off to 6%. The claimant has to suffer mental pain and agony, loss of amenities, discomforts and unhappiness throughout his life. The claimant is not able to do his business as earlier to the accident. Therefore, he prays to modify the judgment and award, by awarding just and reasonable compensation.

5. Per contra, learned Counsel for the insurance company *inter alia* submitted that the impugned judgment and award passed by the tribunal is after appreciating the oral and documentary evidence on record and therefore, interference by this Court is uncalled for.

6. After critical evaluation of the oral and documentary evidence available on record and considering the submissions made by the learned Counsel for both parties and after perusal of the impugned judgment and award, the only point that arises for our consideration is:

Whether the quantum of compensation awarded by the Tribunal is just and reasonable?

7. After careful perusal of the impugned judgment and award passed by the Tribunal, what emerges is, the occurrence of the accident and the injuries sustained by the appellant are not in dispute. It is also not in

dispute that the appellant was aged 44 years, doing Kova business and hale and healthy prior to the accident. He has sustained fracture of tibia and fibula of left leg. He was admitted as an in-patient for 27 days in the hospital and undergone one surgery. He has examined the doctor P.W.2-Dr.Ajay Hegde, who after clinical and radiological examination, has assessed the disability at 17% to the left lower limb. Out of which if $\frac{1}{3}$ rd is taken, it comes to 5.66% which is rounded off to 6% towards whole body. The discomfort and unhappiness persists through out his life. Taking these factors into consideration, we award Rs.45,000/- towards pain and sufferings as against Rs.30,000/- and Rs.15,000/- towards loss of amenities as against Rs.5,000/- awarded by the Tribunal. The Tribunal has rightly awarded Rs.30,000/- towards loss of income during laid up period, Rs.50,400/- towards loss of future earnings, Rs.40,000/- towards medical expenses, Rs.25,000/- towards future medical expenses,

Rs.10,000/- towards attendant charges which do not call for interference and breakup is as follows:

Sl.No.	Particulars	Amount
01	Pain and suffering	Rs. 45,000-00
02	Loss of amenities	Rs. 15,000-00
03	Medical expenses	Rs. 40,000-00
04	Loss of future earning	Rs. 50,400-00
05	Future medical expenses	Rs. 25,000-00
06	Loss of income during laid up period	Rs. 30,000-00
07	Attendant charges, conveyance & Special diet etc.	Rs. 20,000-00
	Total:	Rs.2,25,400-00

8. Having regard to the facts and circumstances of the case as stated above, the appeal filed by the claimant is allowed in part. The impugned judgment and award dated 29.12.2014 passed in MVC No.316/2012 on the file of the Principal Judge, Court of Small Causes, Mysuru, in concurrent charge of Additional Court of Small Causes, Mysuru, Presiding Officer, MACT, Mysuru is hereby modified. The total compensation payable comes to Rs.2,25,400/- as

against Rs.2,00,400/- awarded by the Tribunal. The enhanced compensation comes to Rs.25,000/- with interest at 9% p.a. from the date of petition till its realization.

The fourth respondent-insurer is directed to deposit enhanced compensation with interest at 9% p.a. within three weeks from the date of receipt of a copy of this judgment.

The enhanced amount of Rs.25,000/- with interest at 9% p.a. from the date of petition till date of deposit shall be released in favour of the appellant, immediately after deposit by the Insurer.

Office to draw the award accordingly.

Sd/-
JUDGE

Sd/-
JUDGE

Yn.