

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31st DAY OF JANUARY 2015

BEFORE

THE HON'BLE MR. JUSTICE B. SREENIVASE GOWDA

MISCELLANEOUS FIRST APPEAL NO.11600 OF 2011 (MV)

BETWEEN:

SMT.LALITHA
W/O N.M.NAGENDRA SWAMY
AGE: 48 YEARS
BEING UNABLE TO SPEAK AND
RESPOND DUE TO SEVERE HEAD
INJURIES, REP. BY HER NEXT
FRIEND / HUSBAND
SRI.N.M.NAGENDRA SWAMY
S/O N.P.MARIBASAPPA
AGE: 50 YEARS
R/O DOOR NO.285/F5
5TH WEST CROSS
UTTARADI MUTT ROAD
KHILLE MOHALLA, MYSORE
...APPELLANT

(BY SRI.H.MOHAN KUMAR, ADV.)

AND:

1. KUM.BHAVANA M.N.
D/O NAGENDRASWAMY N.M.
AGE: 21 YEARS
R/O DOOR NO.285/F5, 5TH WEST CROSS
UTTARADI MUTT ROAD
KHILLE MOHALLA, MYSORE

2. THE NEW INDIA ASSURANCE
CO. LTD., DIVISIONAL OFFICE
JLB ROAD, CHAMUNDIPURAM
MYSORE

...RESPONDENTS

(SRI.R.JAIPRAKASH, ADV. FOR R2
R1 – SERVED AND UNREPRESENTED)

This MFA is filed under section 173(1) of Motor Vehicles Act against the judgment and award dated 22.8.2011 passed in MVC No.130/10 on the file of the Presiding Officer, Fast Track Court-II, Member, Addl. MACT, Mysore partly allowing the claim petition for compensation and seeking enhancement of compensation.

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

JUDGMENT

This appeal is by the claimant seeking enhancement of compensation awarded by the Tribunal.

2. Heard the learned counsel appearing for the parties and perused the judgment and award of the Tribunal.

3. For the sake of convenience, the parties are referred to as they are referred to in the claim petition before the Tribunal.

4. As there is no dispute regarding certain injuries sustained by the claimant in a road traffic accident that occurred on 1.5.2009 due to rash and negligent riding of the offending Honda Activa Scooter bearing registration No.KA-55 E-3885 by its rider and liability of the insurer of the offending vehicle, the only point that remains for my consideration in the appeal is:

“Whether the 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 parties and perusing the judgment and award of the Tribunal, I am of the view that as per Ex.P3 wound

certificate, claimant had sustained head injuries. Immediately after the accident, she was shifted to K.R.Hospital for treatment and from there she was shifted to Apollo BGS Hospital where she was treated as inpatient for 45 days and underwent 3 major surgeries on 2.5.2009, 7.5.2009 and 13.5.2009. She was in ICU for 21 days and on ventilator for 8 days. She was completely bed ridden without conscious. She was again admitted to the hospital for surgery and she was kept in ICU, then discharged on 17.8.2009. Further, third time, she was admitted to hospital on 25.12.2009 for removal of PEG and she was discharged on 27.12.2009. After six months, she was once again admitted to the hospital for the 4th time and she was in close observation in ICU for the treatment in anti convulsants and she was treated for 5 days and discharged on 10.6.2010. After discharge, she was undergoing further treatment and complete bed rest at

home. Injury sustained and treatment taken by the claimant was also evident from Ex.P8 to P11 (4 discharge summaries) of Apollo BGS hospital, Ex.P12 CT Scan reports, Ex.P13 (2 X-ray reports), Ex.P15 (3 CT scan films), Ex.P16 (another discharge summary of Apollo hospital), injury sustained and treatment taken by claimant are corroborated by oral evidence of claimant and Doctor who were examined as PWs-1 and 2, respectively. PW-2 – Doctor, in his evidence, has stated that he has treated the claimant and she has undergone surgeries and has suffered disability of 50%.

6. Considering the nature of injuries sustained by claimant, a sum of Rs.1,00,000/- is awarded towards pain and suffering.

7. The Tribunal, after giving deduction to the reimbursement of medical bills by the employer of the

husband of claimant who is working as Head Constable in the Department of Home, has rightly awarded Rs.25,000/- towards medical expenses as per medical bills and prescriptions produced by the claimant. As such there is no scope for enhancement under this head.

8. She was treated as inpatient for 71 days on 5 different occasions in BGS hospital. Considering the same, a sum of Rs.30,000/- is awarded towards incidental expenses such as conveyance, nourishment and attendant's charges as against Rs.3,000/- awarded by the Tribunal.

9. The income of the claimant assessed by the Tribunal at Rs.3,000/- p.m. as claimed by the claimant is just and proper. Nature of injuries suggest that she must have been under rest and treatment for a period of

10 months. Therefore, a sum of Rs.30,000/- is awarded towards loss of income during laid up period as against Rs.21,000/- awarded by the Tribunal.

10. Considering the nature of injuries sustained, the disability stated by Doctor and an amount of discomfort and unhappiness she has to undergo in future of life, Rs.50,000/- is awarded towards loss of amenities.

11. The income of the claimant is assessed at Rs.3,000/- p.m. The disability at 50% taken by the Tribunal as per the evidence of Doctor is proper. The multiplier of '13' applied by the Tribunal based on the age of claimant is sound and proper. Hence, loss of future income would work out to $Rs.3,000 \times 50/100 \times 12 \times 13 = Rs.2,34,000/-$ and the same is rightly awarded by the Tribunal.

12. A sum of Rs.30,000/- is awarded towards future medical and incidental expenses as against Rs.20,000/- awarded by the Tribunal.

13. Thus, the claimant is entitled for the following compensation:-

	HEADS	Rs.
1	Pain and sufferings	1,00,000
2	Medical Expenses	25,000
3	Incidental expenses	30,000
4	Loss of income during laid up period	30,000
5	Loss of discomfort and loss of amenities	50,000
6	Loss of future income	2,34,000
7	Future medical expenses	30,000
	TOTAL	4,99,000
	<u>LESS:</u> Compensation awarded by the Tribunal	3,85,000
	BALANCE	1,14,000

14. Accordingly, the appeal is allowed-in-part. The judgment and award passed by the Tribunal is

modified to the extent stated herein above. The claimant is entitled for an additional compensation of Rs.1,14,000/- with interest at 6% p.a. from the date of claim petition till the date of realisation.

15. The Insurance Company is directed to deposit the additional compensation amount together with interest within two months from the date of receipt of a copy of this judgment. The same is ordered to be released in favour of the claimant. From which, Rs.75,000/- with proportionate interest is ordered to be invested in fixed deposit in the name of claimant, respectively in any Nationalised Bank/Scheduled Bank/Post Office for a period of 3 years with a right of option for them to withdraw interest periodically. Remaining amount with proportionate interest is ordered to be released in favour of the claimants.

The Tribunal while releasing the amount is directed to issue FD slip to the claimants, so that they can withdraw the FD amount on its maturity and the Bank/Post Office in which the amount will be kept in FD is also directed to release the FD amount on maturity without insisting further orders from the Tribunal.

No order as to costs.

**SD/-
JUDGE**

RV