

**IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH**

DATED THIS THE 30<sup>TH</sup> DAY OF NOVEMBER, 2017

PRESENT

**THE HON'BLE MRS. JUSTICE S.SUJATHA**

AND

**THE HON'BLE Dr. JUSTICE H. B. PRABHAKARA SASTRY**

M.F.A. NO.103070/2015 (MV)

BETWEEN:

SRI.MURALI KRISHNA S/O VENKATARAO,  
AGED ABOUT 45 YEARS,  
OCC: AGRICULTURE AND MILK VENDOR  
R/O SRIRAMNAGAR, TQ: GANGAVATHI,  
DIST: KOPPAL.

... APPELLANT

(BY SRI.B.SHARANABASAWA, ADV.)

AND:

1. ASIF S/O UMARSAB,  
AGE: 21 YEARS, OCC: DRIVER  
OF MARUTHI SHIFT CAR  
NO.KA-34/M-8398, R/O IBRAHIMPUR,  
TQ: SIRAGUPPA, DIST: BELLARY.
2. SRI.SRINIVAS CONSTRUCTIONS  
INDIA PRIVATE LIMITED, SHVASHANKAR  
NILAYA, OPPOSITE SHAKTHI NARASINGH  
HOME BELLARY, OWNER OF THE  
SHIFT CAR BEARING NO.KA-34/M-8398.
3. THE DIVISIONAL MANAGER,  
NATIONAL INSURANCE COMPANY  
LIMITED, DIVISIONAL OFFICE,  
1<sup>ST</sup> FLOOR, BALAGUNDI COMPLEX,

RAILWAY STATION ROAD, GULBARGA.

... RESPONDENTS

(SRI.S.N.BANAKAR, ADV. FOR R1 & R2,  
SRI.M.K.SOUDAGAR, ADV. FOR R3)

THIS MFA IS FILED UNDER SECTION 173(1) OF THE MV ACT AGAINST THE JUDGMENT AND AWARD DATED 19.02.2015, PASSED IN MVC NO.323/2012, ON THE FILE OF THE SENIOR CIVIL JUDGE AND MOTOR ACCIDENT CLAIMS TRIBUNAL AT GANGAVATHI, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY, **DR.H.B.PRABHAKARA SASTRY J.**, DELIVERED THE FOLLOWING:

### **JUDGMENT**

This appeal though has been listed for admission, however, with the consent from both sides the matter is taken up for final disposal.

The appellant herein was the claimant before the Court of the Senior Civil Judge and Motor Accident Claims Tribunal, Gangavathi (henceforth referred to as the 'Tribunal', for brevity) in MVC No.323/2012, whose claim petition under Section 166 of the Motor Vehicles Act, 1988 was allowed in part by the impugned judgment and award dated 19.02.2015. Seeking enhancement of the

compensation awarded by the Tribunal the appellant has preferred this appeal.

2. In his memorandum of appeal, the appellant has taken a contention that the quantum of compensation awarded by the Tribunal under various heads are all meager. Further stating that the Tribunal ought to have awarded the compensation as claimed by him, has prayed for allowing the appeal.

3. Heard the arguments from both sides and perused the materials placed before this Court.

4. Learned counsel for the appellant in his argument reiterated the contention taken up by the appellant in his memorandum of appeal.

5. The present appeal being the claimant's appeal and the respondents having not preferred either cross-objection or a counter appeal, the question of occurrence of accident on the date, time and place as alleged by the

claimant and also the alleged rash and negligent driving on the part of the driver of the offending vehicle is not in dispute. Therefore, the question of occurrence of accident and the alleged liability of the respondents to pay compensation to the injured claimant for the injuries sustained by him in the accident need not be re-analysed again. The only question that remains to be considered is about the reasonableness of the quantum of compensation awarded by the Tribunal.

6. After analysing the evidence and the materials placed before it, the Tribunal has awarded the compensation under the following heads with the sum shown against them:

	<b>Amount(₹)</b>
Loss of future income	1,00,800/-
Pain and suffering	25,000/-
Loss of amenities in life	5,000/-
Loss of earning during treatment	10,000/-
Diet, Nourishment, Attendants charges and conveyance	5,000/-
Medical reimbursement	60,000/-
<b>Total</b>	<b>2,05,800/-</b>

7. Towards 'pain and suffering' the Tribunal has awarded a compensation of a sum of **₹25,000/-**. A perusal of Ex.P.4, which is a copy of wound certificate goes to show that the claimant had sustained hairline fracture of tip of lateral malleoli, oblique fracture of left 4<sup>th</sup> metacarpal bone, comminuted fracture of proximal phalanges of left index finger. In the light of these injuries, we do not find that the compensation awarded by the Tribunal towards 'pain and suffering' requires any enhancement.

8. The claimant in his claim petition as well in his evidence as PW.1 has contended that at the time of the accident he was aged about 42 years and was earning a sum of ₹12,000/- p.m. by doing agriculture work and milk vending activity. To substantiate his contention regarding avocation, he had not produced any documents. The Tribunal has taken his income at ₹5,000/- p.m. for the purpose of assessment of 'loss of future earning'. The

accident has occurred in the year 2012. The Co-ordinate Benches of this Court for the accident occurring in the said year are taking the notional income of the deceased/injured at ₹6,500/- p.m. As such, taking the same monthly income and retaining the percentage of disability as arrived at by the Tribunal, the quantum of compensation towards 'loss of future income', for which the claimant is entitled to would be **₹1,31,040/-** ( $₹6,500 \times 12 \times 14 \times 12 / 100$ ). Since the Tribunal has awarded a sum of ₹1,00,800/- under the said head, the same requires to be modified in the form of enhancement.

The compensation of a sum of ₹5,000/- awarded towards 'loss of amenities in life' appears to be on the lower side in the light of the nature of injuries sustained by the claimant. As such, we enhance the same and fix it at **₹25,000/-**. The quantum of compensation awarded under the head of 'loss of earning during treatment' and towards 'diet, nourishment, attendants charges and conveyance' at **₹10,000/-** and **₹5,000/-** respectively as

also the compensation of **₹60,000/-** awarded towards 'medical reimbursement' being reasonable quantum, the same does not require any modification. Accordingly, they have been retained as they are.

9. Barring the above, the claimant/appellant is not entitled for enhancement of compensation or awarding of compensation under any other heads.

10. Thus, in total the claimant/appellant is entitled for a total enhancement of a sum of **₹50,240/-** (Rupees Fifty Thousand Two Hundred and Forty Only), which is in addition to the compensation awarded by the Tribunal.

11. Accordingly, we proceed to pass the following:

**ORDER**

The appeal is allowed in part.

The judgment and award passed by the Court of the Senior Civil Judge and Motor Accident Claims Tribunal,

Gangavathi, in MVC No.323/2012 dated 19.02.2015, is modified and enhanced to ₹2,56,040/- (Rupees Two Lakhs Fifty Six Thousand Forty Only) as against ₹2,05,800/-, with interest at the rate of 6% p.a. from the date of petition till realisation.

The rest of the order of the Tribunal with respect to fixing the liability upon the respondents, apportionment of the awarded amount and the terms regarding deposit of the awarded amount, terms regarding release of the amount awarded shall remain unaltered.

Draw modified award accordingly.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

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