

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29<sup>TH</sup> DAY OF JUNE 2018

BEFORE

THE HON'BLE MR. JUSTICE H. T. NARENDRA PRASAD

M.F.A.No. 1804 OF 2012 (MV)

C/W.

M.F.A.No. 1806 OF 2012

M.F.A.No.1804/2012:

BETWEEN:

Mr.Lakshman Ram Chouhan,  
S/o.Chandru Ramji,  
Aged about 36 years,  
R/at M/s.Poonam  
Handloom Centre,  
No.4, 1<sup>st</sup> Floor,  
Sharma Complex,  
Chikpet, Bangalore – 560 053.

... Appellant

(By Smt.H.M.Bhanu, Advocate for  
Sri M.R.Kumaraswamy, Advocate)

AND:

1. Mr.Ibrahim S.  
S/o.S.Jafar,  
R/at No.1/639, 10-2,  
CPI Colony,  
Tadipatri,
2. Bajaj Allianz General  
Insurance Company Limited,  
No.105A/107A,Cears Plaza,  
136,Residency Road,  
Bangalore – 560 025.

3. Mr.Laxmanram Chouhan,  
No.U-14, 2<sup>nd</sup> Main Nagendra,  
Garden, 9<sup>th</sup> Cross,  
Srirampuram,  
Bangalore – 560 021.

4. National Insurance Company Ltd.  
Regional Office,  
Shubharam Complex,  
M.G.Road,  
Bangalore – 560 001.

... Respondents

(By Smt.H.R.Renuka, Advocate for R2:  
Sri Shivaraj Patil, Advocate for R4:  
Notice to R2 & R3 is dispensed with  
vide order dated 12.01.2018)

This MFA is filed under Section 173(1) of MV Act against the judgment and award dated 31.03.2011 passed in MVC No.9172/2007 on the file of the XIX Additional Small Cause Judge, MACT, Bengaluru, partly allowing the claim petition for compensation and seeking enhancement of compensation and etc.

M.F.A.No.1806/2012:

BETWEEN:

Mrs.Raju Devi,  
W/o.Lokshman Ram Chouhan,  
Aged about 33 years,  
R/at M/s.Poonam  
Handloom Centre,  
No.4, 1<sup>st</sup> Floor,  
Sharma Complex,  
Chikpet, Bangalore – 560 053.

... Appellant

(By Smt.H.M.Bhanu, Advocate for  
Sri M.R.Kumaraswamy, Advocate)

AND:

1. Mr.Ibrahim S.  
S/o.S.Jafar,  
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Bangalore – 560 025.
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No.U-14, 2<sup>nd</sup> Main Nagendra,  
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Bangalore – 560 021.
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This MFA is filed under Section 173(1) of MV Act against the judgment and award dated 31.03.2011 passed in MVC No.9171/2007 on the file of the XIX Additional Small Cause Judge, MACT, Bengaluru, partly allowing the claim petition for compensation and seeking enhancement of compensation and etc.

These appeals, coming on for hearing, this day, this Court, delivered the following:

## **J U D G M E N T**

M.F.A.Nos.1804/2012 and 1806/2012, arise out of the impugned award, dated 31.03.2011 passed by the Motor Accident Claims Tribunal, Bangalore (SCCH-17), in M.V.C.Nos.9172/2007 and 9171/2007, respectively, whereby, for the injuries suffered by the claimants, the learned Tribunal has granted compensation of Rs.4,87,500/- and Rs.90,000/-, respectively. Since both the appeals arise out of the same impugned award, they have been disposed of by this common judgment.

2. The brief facts of the case are that on 31.08.2008 at about 1.30 a.m. the appellants/claimants were traveling in the car bearing registration No.KA-02/MA-7184 on NH-7 road, near Jagadruthi Village, Dhone. At that time, a lorry bearing registration No.AP-04/T-1070 had parked the vehicle on the road negligently without any signals and parking lights. Due to focus light from opposite side vehicles, the lorry could not be seen. As a result, the car dashed to the lorry, due to which, the appellants/claimants sustained grievous injuries. Immediately after the accident they were shifted to Dhone Hospital for first

aid treatment and later shifted to Karnool Hospital and thereafter shifted to Wockhardt hospital and they were in the hospital for 25 days and 7 days, respectively. During the aforesaid period, they have spent huge amount towards medical expenses, conveyance, nourishment and attendant charges. They claim that, prior to the accident, they were hale and healthy and were earning income. Due to the injuries suffered in the accident, they could not do their duty as they were doing prior to the accident. Therefore, after recovering from the injuries, the appellants/claimants submitted the claim petitions before the Tribunal. In order to support their case, three witnesses were examined on behalf of the appellants/claimants and got marked twenty seven documents. After appreciating the evidence, the learned Tribunal granted the compensation as aforementioned. Hence, these appeals.

3. In M.F.A.No.1804/2012, the contention raised by the learned counsel for the appellant Smt.H.M.Bhanu, appearing for Sri M.R.Kumaraswamy is that the appellant/claimant is that, he has examined Dr. Sree Hamsa H.N. (PW3), the Medical Officer at Wockhardt, Bengaluru regarding the injuries suffered by him.

According to the doctor (PW3) the appellant/claimant has suffered the following injuries:

- (1) Right frontal compound depressed fracture.
- (2) Bilateral basifrontal haemorrhagic contusion,
- (3) Left parieto-occipital acute sub dural haematoma and parieto – occipital contusion and
- (4) Right eye traumatic globe rupture.

She contended that the doctor has opined that right craniotomy scar present, tenderness over frontal region and right eye enunciated and assessed the disability at 30% of the right hand, 15% of the head and 45% of the whole body. Hence, he submits that the total compensation awarded by the Tribunal is on the lower side and seeks for enhancement of the compensation amount.

4. The second contention is that the Tribunal has wrongly given a finding that Laxmanram Chouhan was driving the vehicle. As per the FIR and charge sheet, one Sathyanarayan Kumawat, who is the appellant in M.F.A.No.3853/2012 was the driver and the Tribunal, without considering the materials on

record, has wrongly come to the conclusion that Laxmanram Chouhan was the owner-cum-driver of the vehicle in question.

5. On the other hand, learned counsel for the respondent Insurance Company supports the judgment and award passed by the Tribunal.

6. Heard the learned counsel for the parties and perused the impugned judgment.

7. The wound certificate is produced as Ex.P7 and discharge summary at Ex.P8. According to the statement of Dr.Sree Hamsa H.N., (PW3) the appellant/claimant has suffered right craniotomy scar present, tenderness over frontal region and right eye enunciated and the doctor has assessed his disability at 30% of the right hand, 50% of the head and 40% of the whole body. Even though PW3, in the cross-examination has stated that he is an MBBS and Diploma in Forensic Medicine, but since he is an expert, he has given assessment of the disability. The Tribunal is not justified in not considering the injuries and the evidence of the doctor in its proper perspective.

8. Considering the facts and circumstances of the case, materials placed on record and the testimony of the doctor, I am

of the opinion that the appellant/claimant is entitled to an enhanced global compensation of Rs.1.00 lakh, in addition to the compensation awarded by the Tribunal.

9. Secondly, on going through the materials produced by the parties, it is very clear that Laxmanrao Chouhan is not the owner-cum-driver, he is only the owner of the vehicle and the vehicle was driven by one Sathyanarayan Kumawat. In M.V.C.No.9139/2008 (M.F.A.No.3853/2012), the Tribunal has held that Laxmanram Chouhan was the driver of the vehicle. Therefore, the finding given by the Tribunal is contrary to the material available on record. Laxshmanram Chouhan is only the owner of the vehicle in question and he was not driving the vehicle as on the date of the accident.

10. Accordingly, M.F.A.No.1804/2012 is allowed in part. The appellant/claimant is granted an enhanced global compensation of Rs.1.00 lakh. The Insurance Company is directed to deposit the enhanced compensation amount along with an interest @ 6% per annum from the date of filing of the claim petition, till the date of realization, within a period of three weeks, from the date of receipt of the certified copy of this



judgment. The amount so deposited by the Insurance Company shall be disbursed to the claimant, after due verification of his identity.

11. In M.F.A.No.1806/2012, the contention raised by the learned counsel for the appellant Smt.H.M.Bhanu, appearing for Sri M.R.Kumaraswamy is that as per the wound certificate at Ex. P7 and Ex.P8 discharge summary, the appellant/claimant has suffered head injury with tentorial sub arachnoid haemorrhage with diffuse cerebral odema and fracture of right clavicle. She was also admitted at Wockhardt Hospital from 1.9.2007 to 7.9.2007 and was diagnosed head injury. On examination, it was revealed a GCS 13/15 with soft tissue injuries. In spite of producing all these documents, the Tribunal has awarded a global compensation of Rs.90,000/-. The same is on the lower side and prays for enhancement of the compensation amount granted by the Tribunal.

12. Per contra, learned counsel for the respondent Insurance Company submits that the even though the claimant has produced the documents like, wound certificate and discharge summary, she has not examined the doctor who has

treated her. Therefore, the Tribunal is justified in awarding a global compensation of Rs.90,000/- and supports the judgment and award passed by the Tribunal.

13. Heard the learned counsel for the parties and perused the judgment and award passed by the Tribunal.

14. It is seen that the claimant has produced Ex. P7 wound certificate and Ex.P8 discharge summary. But, to prove the said documents, she has not examined the author of the documents. The doctor has not been examined. Under the Evidence Act, it is the burden of the parties who have produced the documents, who have claimed through any documents, have to discharge that burden by examining the author of the documents. Therefore, the Tribunal is justified in awarding a global compensation of Rs.90,000/-. I do not find any reasons to interfere with the award passed by the Tribunal. Accordingly, M.F.A.No.1806/2012 is dismissed.

**Sd/-  
JUDGE**

Cm/-