

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 28TH DAY OF SEPTEMBER, 2018

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

MISCELLANEOUS FIRST APPEAL NO. 3195 OF 2010 (MV)

BETWEEN:

SRI. GUDIYAPPA
S/O LATE KENCHAPPA
AGED ABOUT 53 YEARS
R/O HALEBIJJANABELLA
GOPALADEVARAHATTI POST
BUKKAPATNA HOBLI
SIRA TALUK
TUMKUR DISTRICT
NOW RESIDING AT
C/O LINGANNA
BYRAVESHWARA NILAYA
OPP. WATER TANK
NEAR TODDA OFF
KUVEMPU NAGAR
TUMKUR.

... APPELLANT

(BY SRI.K.R.RAMESH, ADVOCATE)

AND:

1. SRI. LINGARAJU
S/O KENCHAPPA
AGED ABOUT 50 YEARS
R/AT GUJJAMARANAHALLI POST
GOWDAGERE HOBLI
SIRA TALUK
TUMKUR DISTRICT.

2. THE BRANCH MANAGER
 M/S BAJAJ ALLIANZ GENERAL
 INSURANCE CO. LTD.,
 KNV COMPLEX, 4TH CROSS
 VIDYANAGAR
 TUMKUR-572 102. ... RESPONDENTS

(BY SRI.H.S.LINGARAJ, ADVOCATE FOR R2
 R1 SERVED BUT UNREPRESENTED)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173 CLAUSE 1 OF THE MOTOR VEHICLE ACT AGAINST THE JUDGMENT AND AWARD DATED:21.11.2009 PASSED IN MVC NO.646/2007 ON THE FILE OF THE II ADDITIONAL SESSION JUDGE (FAST TRACK COURT) AND MACT, TUMKUR, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS MISCELLANEOUS FIRST APPEAL COMING ON FOR *FINAL HEARING* THIS DAY, THE COURT DELIVERED THE FOLLOWING:-

J U D G M E N T

This appeal by the claimant challenges the judgment and award dated 21.11.2009 made by the MACT, Tumkur allowing the claim petition in M.V.C No.646/2007 whereby a compensation of Rs.2,34,731/- with interest at the rate of 6 % per annum subject to usual condition of bank deposit, has been awarded. The challenge is on the grounds of inadequacy of compensation and liability of the insurer.

2. The fact matrix of the case that the vehicular accident happened on 10.02.2007, because of rash and negligent driving of the offending Auto bearing Registration No.KA-06-H-477 resulting into grievous injuries to the claimant, is established by the pleadings of the parties as supported by the evidentiary material placed on record. The MACT, accordingly has made the impugned judgment and award.

3. The learned counsel for the claimant finds fault with the judgment and award on the ground that what has been awarded as compensation is much on the lower side; the MACT has taken very meager monthly income and so also the percentage of occupational disability; the MACT has erred in treating the claim with a primitive approach; he also finds fault with the MACT in apportioning the liability between the insurer and the owner of the offending vehicle in the ration of 50:50, without any logic.

4. The learned counsel for the insurer makes submission in justification of the award. He states that the

values and factors treated by the MACT for awarding compensation are true and correct since the accident happened more than a decade ago; the driver of the offending motor vehicle did not have a valid and effective driving license and therefore, the MACT is justified in levying only 50 % of award liability on the insurer.

5. I have heard the learned counsel for the claimant and the learned counsel for the insurer. I have perused the appeal papers.

6. The contention of the claimant that the award of compensation is on a meager side is established by the grievous nature of the injury; the surgical intervention for treatment; the claimant's hospitalization as an inpatient for 109 days. Therefore, the claimant is entitled to the enhanced compensation as under:-

Pain and suffering : Rs.25,000

Loss of Amenities in life : Rs.25,000

Occupational Disability : 20%

7. The compensation is re-worked out with the aid of memo of calculation filed at the Bar, as under:-

PARTICULARS	AMOUNT IN RS.
Pain and suffering	Rs.31,000
Medical Expenses	Rs.1,04,481
Loss of earnings during laid up	Rs.13,625
Future medical expenses	Rs.15,000
Incidental expenses	Rs.38,625
Loss of Amenities	Rs.25,000
Loss of future income	Rs.1,17,000
Total	Rs.3,44,731
Compensation awarded by the MACT	Rs.2,34,731
Total enhanced compensation	Rs.1,10,000

8. In the above circumstances, the claimant's appeal succeeds; the impugned judgment and award are modified enhancing the compensation from Rs.2,34,731/- to Rs.3,44,731/- (Rupees Three Lakh Forty Four Thousand Seven Hundred & Thirty One) only with interest at the rate of 6% per annum and fastening the full liability on the respondent-insurer, all other terms and conditions thereof having been left, unaltered. Respondent-insurer to discharge the award liability forthwith.

9. Since the liability is fastened on the insurer on the principle of pay and recover, it is open to the insurer to

seek reimbursement or recovery by levying execution of this judgment in terms of the decision of the Apex Court in ***National Insurance company Limited Vs. Challa Upendra Rao and Others (AIR 2004 SC 4882).***

Costs made easy.

**Sd/-
JUDGE**

PYR