

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF SEPTEMBER, 2019

BEFORE

THE HON'BLE MR.JUSTICE S.G.PANDIT

M.F.A.NO.5952/2014 (MV)

Between:

Bakery Kumar,
S/o Shumbugowda,
Aged about 38 years
Agriculturist and Businessman
R/o Bhramadevarahalli,
Village Honkere Hobli,
Nagamangala Taluk - 571418.

... Appellant

(By Sri.Surendra Kumar.N., Advocate)

And:

1. Smt.R.Kamala,
W/o K.J.Manjegowda
No.9080, 10th Main Road,
Avalahalli Main Road,
Srinagara,
Bengaluru - 560050.
2. The Manager,
United India Insurance Co. Ltd.,
No.1119/8, M.C.Road,
Mandya - 571432.

... Respondents

(By Sri.Janardhan Reddy, Advocate for R2
Service of notice on R1 is dispensed with v/o dated
12.04.2017)

This MFA is filed under Section 173(1) of MV Act
against the judgment and award dated: 16.11.2013 passed

in MVC No.43/2011 on the file of the Senior Civil Judge, MACT, Nagamangala, partly allowing the claim petition for compensation and seeking enhancement of compensation.

This MFA coming on for **Admission**, this day, the Court delivered the following:

JUDGMENT

The claimant is before this Court in this appeal not being satisfied with the quantum of compensation awarded under the judgment and award dated 16.11.2013 in MVC No.43/2011 on the file of Senior Civil Judge and MACT, Nagamangala.

2. Claimant filed claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation for the injuries suffered in a Motor Vehicle accident. It is stated that on 17.04.2010, while the claimant was proceeding as pillion rider in motor bike bearing registration No.KA-11-L-5227, car bearing registration No.KA-06-B-8659 came in a rash and negligent manner and dashed to the motor bike. Due to which the claimant – pillion rider suffered grievous injury to his right leg. He took treatment in Apollo, BGS Hospital, Mysore as inpatient. He was inpatient for 5

days. It is stated that he was agriculturist and was earning Rs.12,000/- p.m.

3. On service of notice, both respondents appeared before the tribunal and filed their objection statements. The respondent No.2 – Insurer filed statement denying the claim petition averments in toto. It also contended that at the time of alleged accident, the offending car was not having insurance coverage and driver of the car was not having valid and effective driving license. The claimant examined himself as PW.1 and also examined CW.1 – Doctor apart from marking documents as Exs.P1 to P13 and Exs.C1 to C3. The tribunal on appreciating the material on record, awarded a total compensation of Rs.3,00,000/- with interest at the rate of 6% p.a. from the date of petition till realisation under the following heads:

Sl.No.	Heads	Amount in (Rs.)
1.	Pain and Sufferings	40,000/-
2.	Loss of amenities, future unhappiness and discomforts	40,000/-
3.	Medical expenses	96,500/-
4.	Loss of income during treatment and laid up period	20,000/-
5.	Loss of income due to disability	96,000/-

6.	Attendant charges, traveling and miscellaneous expenses	7,500/-
Total		3,00,000/-

The claimant not being satisfied with the quantum of compensation is before this Court in this appeal.

4. Heard the learned counsel for the appellant and the learned counsel for the respondent/Insurer and perused the materials placed on record.

5. Learned counsel for the appellant submits that the income assessed by the tribunal at Rs.5,000/- p.m., is on the lower side. It is submitted that the claimant was an agriculturist and was earning Rs.12,000/- p.m. Further the learned counsel submits that the claimant suffered fracture of shaft of right tibia and undergone surgery, being inpatient totally for 8 days. Thus, he submits that compensation awarded on other heads are on lower side. It is his further submission that the CW.1 - Doctor opined that claimant suffers from 21% disability whereas the tribunal without assigning any reason assessed the whole body disability at 10% which requires to be revised. Thus, he prays for enhancement of compensation.

6. Per contra, learned counsel for the respondent-Insurer submits that the quantum of compensation awarded by the tribunal is just compensation which requires no interference. Further, he submits that the tribunal looking to the nature of injuries, medical records and evidence of CW.1 – Doctor has rightly assessed the whole body disability at 10% which requires no interference. Thus, prays for dismissal of the appeal.

7. Having heard the learned counsel for the parties and on perusal of the material placed before it, the only point that arises for consideration in this appeal is:

(a) *Whether the claimant would be entitled for enhanced compensation ?*

Answer to the above point would be partially in the affirmative for the following reasons:

8. The accident occurred on 17.04.2010 and accidental injuries by the claimant involving motorbike bearing registration No.KA-11-L-5227 and a car bearing registration No.KA-06-B-8659 are not in dispute in this

appeal. The claimant's appeal is for enhancement of compensation. The claimant states that he suffered Type II fracture of shaft of right tibia. CW.1 – Doctor opined that the claimant suffers from 21% disability. The tribunal taking note of the nature of injury, medical records and the evidence of CW.1 –Doctor has rightly assessed the disability at 10% which needs no interference. The tribunal assessed the income of the claimant at Rs.5,000/- p.m. which is on the lower side. The claimant states that he was an agriculturist and was earning Rs.12,000/- p.m. But no material is placed before the tribunal to indicate his exact income. In the absence of any material to indicate the exact income, the tribunal assessed the income of the claimant notionally at Rs.5,000/- p.m. This Court and Lok Adalaths, while settling the accident claims of the year 2010 would normally assess the notional income of Rs.5,500/- p.m. In the present case also in the absence of any material to indicate the exact income of the claimant, it would be appropriate to assess the income of the claimant notionally at Rs.5,500/- p.m.

9. The claimant was inpatient for 8 days and has undergone surgery. Looking to the injury suffered, treatment taken as inpatient for 8 days and looking to the avocation of the claimant, I am of the opinion that the claimant would be entitled for enhanced total global compensation of Rs.25,000/-.

10. Thus, the compensation is enhanced by Rs.25,000/-. The claimant would be entitled for **Rs.3,25,000/-** compensation as against Rs.3,00,000/- awarded by the tribunal with interest at the rate of 6% p.a. from the date of petition till realization

11. Accordingly, the appeal is allowed in part. The judgment and award dated 16.11.2013 passed in MVC No.43/2011 on the file of Senior Civil Judge and MACT, Nagamangala is modified to the above extent.

**Sd/-
JUDGE**