

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF AUGUST, 2019

BEFORE

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

M.F.A.NO.11174 OF 2012 (MV)

BETWEEN:

O. NEELAPPA S/O VENKATA BHOVI
AGED ABOUT 61 YEARS, R/O. APMC
MARKET BACKSIDE, HOSADURGA TOWN,
NW R/O JOGIMATTI ROAD,
KARUVINAKATTE CIRCLE,
CHITRADURGA-577 501. APPELLANT

(BY SRI. SPOORTHY HEGDE.N, ADVOCATE)

AND:

1. M/S. NEW INDIA ASSURANCE CO. LTD
BRANCH OFFICE, "VIJAYASHREE" OPP.
NANJUNDESWARA PETROL BUNK,
DAVANGERE ROAD, CHITRADURGA-577 501.
2. SMT. MAMATHA W/O LATE NAGARAJ
AGED ABOUT 26 YEARS, OWNER OF
AUTORIKSHAW NO.KA-16/A-7762
3. AJAY S/O LATE K NAGARAJ
AGED ABOUT 5 YEARS MINOR
REP. BY HIS NATURAL GUARDIAN
MOTHER-RESPONDENT NO.2

BOTH RESPONDENTS 2 & 3 ARE
R/O KELLODU, HOSADURGA TALUK,
CHITRADURGA DIST-577 526.

.... RESPONDENTS

(BY SRI. M.P.SRIKANTH, ADVOCATE FOR R1
R3 IS MINOR REPRESENTED BY R2
NOTICE TO R2 IS DISPENSED WITH V/O DATED
12.08.2015)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 07.12.2011 PASSED IN MVC NO.565/2009 ON THE FILE OF THE SENIOR CIVIL JUDGE & CJM, ADDITIONAL MACT, CHITRADURGA, 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 in appeal under Section 173(1) of the Motor Vehicles Act, not being satisfied with the quantum of compensation awarded under the judgment and award dated 07/12/2011 in M.V.C.No.565/2009 on the file of the Principal Civil Judge (Sr.Dn) & Additional MACT, Chitradurga.

2. The claimant filed claim petition under Section 166 of the Motor Vehicles Act, seeking compensation for the accidental injuries suffered by him in a road traffic accident occurred on 10-4-2009. It is stated that on 10-04-2009 at

about 10.45 A.M, when the claimant was walking on the left side of the road near Vijaya Bharath Petrol Bunk, Housing Board Layout, Hosadurga-Srirampura Road, Hosadurga, an Autorickshaw bearing Reg.No.KA-16/A-7762 came from the opposite direction in a rash and negligent manner and dashed against the claimant. Due to which, the claimant sustained grievous injuries and immediately he was shifted to Bapuji Hospital. Subsequently, the claimant took treatment in MVJ Medical College & Research Hospital, Bangalore. The claimant is a retired police officer and he is also an agriculturist.

3. On issuance of notice, respondent No.1-Insurance Company appeared before the Tribunal and filed its statement of objections denying the entire claim petition averments. It is also denied that the said accident is caused solely due to rash and negligent driving of the driver of Autorickshaw. Further contended that the accident occurred due to negligence of claimant himself. Hence, prayed for dismissal of the claim petition.

4. The claimant examined himself as PW-1 and Doctor as PW-2, apart from marking documents Ex.P-1 to P-110. Respondent No.1-Insurance Company marked document Ex.R1-Policy Copy.

5. The Tribunal on assessment of the entire material on record, awarded a total compensation of Rs.45,440/- with interest at the rate of 6% per annum, on the following heads:

		Amount in (Rs.)
1.	Pain and sufferings	15,000
2.	Medical Expenses	5,000
3.	Loss of income due to physical disability	13,440
4.	Loss of income during treatment	6,000
5.	Loss of future amenities	5,000
6.	Conveyance, dieting, attendant and other miscellaneous charges	1,000
Total		45,440

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

6. Heard the learned counsel for the appellant and learned counsel for respondent No.1-Insurance Company. Perused the entire lower court records.

7. Learned counsel for the appellant would submit that the compensation awarded by the Tribunal is on the lower side, which needs to be enhanced. He further submits that claimant is a retired police officer and also an agriculturist. Due to the accidental injuries suffered by the claimant, he is not in a position to do the agricultural work. PW-2-Doctor has stated that the claimant has suffered 26% of permanent disability to a particular limb and whole body disability at 8%. But the Tribunal has not considered the said disability for awarding compensation. It is his further submission that the medical bills produced amounting to Rs.11,000/- is rejected without there being any reason. Learned counsel also stated that the compensation awarded on the heads of 'Pain and sufferings, Loss of income due to physical disability and conveyance, dieting, attendant and other miscellaneous charges' are on the

lower side. Thus, he prayed for enhancement of compensation.

8. Per contra, learned counsel for respondent No.1-Insurance Company would submit that the compensation awarded by the Tribunal is just and proper, which needs no interference.

9. On hearing learned counsels for the parties and on perusal of the lower court records, the only question which arises for consideration in the facts and circumstances of the case is whether the claimant would be entitled for enhanced compensation. The answer to the said question is in the affirmative. The claimant is entitled for partial enhanced compensation.

10. The accident involving Autorickshaw bearing Reg.No.KA-16/A-7762, which took place on 10-4-2009 and the accidental injuries suffered by the claimant is not in dispute in this appeal. The appeal is filed for the enhancement of compensation by the claimant. Ex.P-5 is

wound certificate and as per wound certificate, the claimant has suffered the following injuries:

1. Lacerated wound present over the left parietal region measuring 3 x 1 cm.
2. Absence of lower Incisor teeth.
3. Loosening of the lower teeth.
4. Contusion present over the left shoulder.
5. +5/1 is missing.
6. +/1 is missing.
7. 765/+ are tender.
8. Bleeding from the nose.

(ENT Surgeon opinion: Hair line fracture of nasal bone just above the top. X-ray of left shoulder shows fracture of lateral end of clavicle)

11. PW-2 is a Doctor, who was examined in support of claimant's case, but PW-2-Doctor is not a treated Doctor. Subsequently, the claimant has taken treatment at MVJ Medical College & Research Hospital, Bangalore and has produced the discharge summary of that Hospital, where he was inpatient from 20-10-2009 to 30-10-2009. But no person from MVJ Medical College & Research Hospital has been examined. The accident had taken place on

10-4-2009 and the treatment taken at MVJ Medical College & Research Hospital is in the month of October 2009. Therefore, it was necessary for the claimant to examine a person from MVJ Medical College & Research Hospital to demonstrate that the treatment taken was for the accidental injuries. The claimant has failed to prove that treatment taken at MVJ Medical College and Research Hospital is for accidental injuries. Hence, the Tribunal has rightly rejected the medical bills amounting to Rs.11,000/- and has disbelieved Ex.P-98-Discharge summary of MVJ Hospital.

12. Learned counsel for the appellant states that the claimant is a retired police officer who also does agricultural work. But in support of his contention no document is produced before the Tribunal. Looking to the injuries suffered by the claimant and treatment taken, he would be entitled for 3 months income at Rs.5,000/- as 'Loss of income during treatment period'. The compensation awarded by the Tribunal on the heads of

'Pain & sufferings, Loss of future amenities, Conveyance, dieting, attendant and other miscellaneous charges are on the lower side when compared to the injuries and treatment taken by the claimant, being inpatient for 15 days. Thus, the claimant-appellant would be entitled for modified enhanced compensation as follows:

		Amount in (Rs.)
1.	Pain and sufferings	30,000
2.	Medical Expenses	5,000
3.	Loss of income due to physical disability	13,440
4.	Loss of income during treatment	15,000
5.	Loss of future amenities	40,000
6.	Conveyance, dieting, attendant and other miscellaneous charges	15,000
Total		1,18,440

13. Thus, the claimant would be entitled for enhanced modified compensation of Rs.1,18,440 as against Rs.45,440/- with interest at the rate of 6% per annum from the date of petition till realization as awarded by the Tribunal.

The judgment and award of the Tribunal is modified to the above extent. Accordingly, appeal is allowed in part.

**Sd/-
JUDGE**

SMJ/HB