

IN THE HIGH COURT OF KARNATAKA,  
DHARWAD BENCH

Dated this the 30<sup>TH</sup> day of June 2020

Present

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

And

THE HON'BLE MR. JUSTICE V. SRISHANANDA

MFA No.101167 of 2015 (MV-I)

Between:

Shri Suresh S/o.Kadappa Gurav,  
Age 62 years, Occ: Business & Agriculture,  
R/o.: Hullolihatti, Tq.L:L Hukeri,  
R/o.: 4370/A1, Chavat Galli,  
Belagavi-590 001.

... Appellant

(By Shri Laxmikant K.Gurav, Advocate)

And:

1. Shri Anil B. Patil,  
Age major, Occ: Business,  
R/o.: Halladakeri, Hukkeri-591 309,  
Tq.: Hukkeri, Dist.: Belgaum,  
Owner of Tractor No.MH-09/AL-9788.
2. The United Insurance Company Ltd.,  
Plot NO.23, TPS No.1, Arshida Building,  
Near Shahu Mill, Bagal Chowk,  
Kolhapur-416 001, Maharashtra,  
Insurer of Tractor No.MH-09/AL-9788,  
Policy No.: 1628013113P100419019,  
Valid from 19.04.2013 to 18.04.2014.

...Respondents

(By Smt.Sunand P.Patil, Advocate for R1;  
Smt.Preeti Shashank, Advocate for R2)

This MFA is filed under Section 173(1) of the Motor Vehicles Act, against the judgment and award dated 16.02.2015, passed in M.V.C. No.2666/2013 on the file of the Prl. Senior Civil Judge and Member Addl. MACT, Belgaum, partly allowing the clam petition for compensation and seeking enhancement of compensation.

This MFA coming on for Final Hearing through Video Conference due to covid-19, this day, **S.G. PANDIT, J** delivered the following:

### **JUDGMENT**

The claimant-injured is before this Court in this appeal praying for enhancement of compensation not being satisfied with the quantum of compensation awarded under the judgment and award dated 16.02.2015 in M.V.C. No.2666/2013 on the file of the Principal Senior Civil Judge and Member Additional Motor Accident Claims Tribunal, Belgaum (for short 'the Tribunal').

2. The claim petition was filed under Section 166 of M.V. Act seeking compensation for the accidental injuries sustained in a road traffic accident involving motorcycle bearing No.KA-23/J-633 and a tractor-trailer bearing No.MH-09/AL-9788. The accident involving the above two vehicles and the accidental injuries sustained by the claimant-appellant is not in dispute in this appeal. The claimant states that he was doing agricultural work and also running a flour mill and earning and

Rs.1,00,000/- p.a. and Rs.15,000/- per month respectively. He was aged about 60 years as on the date of accident. The tribunal on the material made available before it, awarded total compensation of Rs.1,20,800/- with interest at the rate of 6% p.a. from the date of filing of the petition till its realization by respondent No.2, on the following heads:

1. Medical & other incidental expenses	Rs.40,000/-
2. Pain and suffering	Rs.5,000/-
3. Future loss of earning capacity due to disability	Rs.64,800/-
4. Loss of income during laid up period	Rs.6,000/-
5. Loss of amenities in life	Rs.5,000/-
TOTAL	<u>Rs.1,20,800/-</u>

3. While awarding the above compensation, the tribunal assessed the monthly income of the injured-appellant at Rs.6,000/- per month and assessed the body disability at 10%. Not being satisfied with the same, the appellant is before this Court praying for enhancement of compensation.

4. Heard the learned counsel for the appellant through Video Conference and the learned counsel for the respondent – Insurance Company in person. Perused the trial Court records.

5. Learned counsel for the appellant submits that the income of the injured assessed by the Tribunal at Rs.6,000/- per month is on the lower side and prays for enhancement of income. He further submits that the injured was running flour mill and thereby earning Rs.15,000/- per month, apart from earning Rs.1,00,000/- p.a. from agricultural work. He submits that the Tribunal failed to consider the evidence of PW1 and also Exs.P7 and P18 Record of Rights and Ex.P14 electricity bills, which were placed on record to show that he was running flour mill. Further, the learned counsel submits that the claimant examined PW2, the Doctor in support of his case. He deposed that the claimant suffered 40% injuries to a particular limb, whereas, the tribunal has failed to assess the whole body disability properly. The assessment of whole body disability by the tribunal at 10% is on the lower side. Thus, he prays for enhancement of percentage of whole body disability. It is submitted that the claimant has suffered closed fracture of upper end of left tibia/lateral condyle of tibia, fracture of neck of fibula. The claimant was inpatient for seven days and the compensation awarded by the Tribunal on the head pain and suffering and on the other heads when compared to the injuries

sustained and also the treatment taken, are on the lower side. It is his submission that the claimant-injured suffered permanent physical disability, hence, the compensation awarded by the tribunal on the head loss of income during laid up period also needs to be enhanced. Thus, he prays for allowing the appeal.

6. Per contra, the learned counsel for the respondent No.2-Insurance Company submits that the compensation awarded by the tribunal is just and correct, which needs no interference. Further, he submits that the income of the claimant assessed by the tribunal at Rs.6,000/- per month is proper in the absence of any material to establish the same. He further submits that Exs.P14, P17 and 18 would not indicate the income of the injured. But, it would only show that the injured claimant was possessing landed property. Further, the learned counsel submits that the whole body disability assessed by the tribunal at 10% is proper on the basis of the injuries sustained by the claimant-appellant. Thus, he prays for dismissal of the appeal.

7. Having heard the learned counsel for the parties and on perusal of the materials on record including the trial Court records, the following points would arise for our consideration:

- (i) Whether the income and the disability assessed by the tribunal is proper and correct?
- (ii) Whether the claimant would be entitled for enhancement of compensation?

We answer the above points in the negative and affirmative respectively for the following reasons:

8. The accident is of the year 2013. The accident involving motorcycle bearing No.KA-23/J-633 and tractor-trailer bearing No.MH-09/AL-9788 and the accidental injuries sustained by the claimant are not in dispute in this appeal. The notional income assessed by the tribunal at Rs.6,000/- per month of the claimant-injured is on the lower side. The claimant-injured states that he was running flour mill and earning Rs.15,000/- per month and also earning Rs.1,00,000/- p.a. from agricultural work. He has produced only Exs.P14, P17 and P18, the record of rights in respect of the landed properties, but he has not produced any material on record showing the license of the flour mill said to have been run by the appellant-

claimant. Record of Rights would not indicate the income of the claimant. Thus, the Tribunal is justified in assessing the notional income of the claimant. However, the notional income assessed by the Tribunal at Rs.6,000/- per month is on the lower side. This Court and Lok Adalats while settling the accidental claims of the year 2013, normally would assess the notional income at Rs.7,000/- per month. In that circumstance, we deem it proper to assess the notional income of the claimant at Rs.7,000/- per month.

9. The claimant has sustained closed fracture of upper end of left tibia/lateral condyle of tibia, fracture of neck of fibula and he was inpatient for a period of 7 days. Ex.P11 is Discharge Card. PW2 is a doctor who treated the claimant and issued Ex.P8-Disability Certificate. As per Ex.P6-Wound Certificate and evidence of PW2-doctor, the claimant has suffered 40% disability to the left lower limb. The claimant has not stated as to how injury would come in the way of his day to day activities of running his flour mill and also carrying on agricultural activities. It is well settled law that  $\frac{1}{3}$ <sup>rd</sup> of disability of a particular limb of the body would be assessed as whole body

disability while calculating the loss of earning capacity of the victim of the accident. PW2-doctor has stated that the claimant has suffered 40% disability to the left lower limb. If the same is taken at  $\frac{1}{3}$ <sup>rd</sup>, whole body disability of the claimant would be 13%. Thus, the disability of the claimant assessed at 10% by the Tribunal is revised to 13%. The compensation awarded on the head pain and suffering and loss of amenities in life are on the lower side when compared to the injuries suffered and the treatment taken by the claimant. Hence, the claimant would be entitled for another sum of Rs.25,000/- each on the head pain and suffering and loss of amenities in life. The Tribunal awarded compensation of Rs.40,000/- on the head medical and other incidental expenses. It is stated that the claimant has undergone 2<sup>nd</sup> operation, hence, we are inclined to award another sum of Rs.10,000/- on the said head. Looking into the injuries suffered by the claimant, he would have been out of employment for a period of three months. Hence, he would be entitled for a sum of Rs.21,000/- on the head loss of income during the laid up period. Thus, the claimant would be entitled for modified compensation as under:



Medical and other incidental expenses	Rs.50,000/-
Pain and suffering	Rs.30,000/-
Loss of amenities in life	Rs.30,000/-
Loss of income during the laid up period for three months	Rs.21,000/-
Loss of earning capacity due to disability (Rs.7,000 x 12 x 9 x 13/100)	Rs.98,280/-
<b>Total</b>	<b>Rs.2,29,280/-</b>

10. In all, the claimant would be entitled for total compensation of **Rs.2,29,280/-** as against Rs.1,20,800/- awarded by the Tribunal with interest at 6% per annum from the date of petition till date of payment.

11. In the result, we proceed to pass the following:

#### **ORDER**

- a) The appeal filed by the claimant is allowed in part.
- b) The judgment and award passed by the Tribunal is modified by awarding total compensation of **Rs.2,29,280/-** as against Rs.1,20,800/- awarded by the Tribunal with interest at the rate of 6% per annum from the date of petition till date of payment.
- c) Respondent No.2-Insurance Company is directed to deposit the enhanced compensation along with

accrued interest within a period of six weeks from the date of receipt of certified copy of this judgment.

- d) The enhanced compensation amount shall be released in favour of the claimant immediately on deposit made by the insurance company on proper identification.
- e) Draw the modified award accordingly.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

Vnp\* & JTR