

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 31st DAY OF AUGUST 2020

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

M.F.A.CR.OB.100095/2015 (MV)

C/w.

MFA 24488/2012 (MV)

IN MFA CR.OB.No.100095/2015

BETWEEN:

PURUSHOTTAM S/O LINGAPPA
AGE: 36 YEARS, OCC: ELECTRICAL WORK,
R/O: MALLIGEWADA, TQ: GANAGAVATHI,
DIST: KOPPAL.

..CROSS OBJECTOR

(BY SHRI.G.N.NARASAMMANAVAR, ADV.
FOR SHRI. M. M. HIREMATH, ADV.)

AND

1. THE BRANCH MANAGER
NATIONAL INSURANCE CO.LTD.,
LINGASURU ROAD,
SINDHANOOR, DIST: RAICHUR,
R/BY THE DEPUTY MANAGER,
NATIONAL INSURANCE CO.LTD.,
REGIONAL OFFICE, ARIHANTA COMPLEX,
KESHAVAPUR, HUBLI.
2. SRI.BASAVARAJ S/O.VENKOBARAO AREYAR
AGE: 32 YEARS, OCC: RIDER OF HERO HONDA
MOTOR CYCLE BEARING NO.KA-37/K-7186

R/O.KANAKAGIRI,
TQ: GANGAVATHI, DIST: KOPPPAL

3. SRI.SHARATKUMAR S/O.DODDAPPA
AGE: 42 YEARS, OCC: OWNER OF HERO
HONDA MOTOR CYCLE
BEARING NO.KA-37/K-7186
R/O.KANAKAGIRI
TQ: GANGAVATHI, DIST: KOPPAL.

... RESPONDENTS

(BY SRI. M G GADGOLI, ADV. FOR R1)
(V/O.DATED 05.04.2018 NOTICE TO R2 & R3
IS DISPENSED WITH)

THIS MFA CROSS OBJECTION IN MFA NO.24488/2012 IS FILED UNDER ORDER 41 RULE 22 OF CPC., AGAINST THE JUDGEMNT AND AWARD DATED 04.06.2012, PASSED IN MVC NO.322/2010, ON THE FILE OF THE SENIOR CIVIL JUDGE AND MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL, GANGAVATRHI, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

IN MFA NO.24488/2012

BETWEEN

THE BRANCH MANAGER,
NATIONAL INSURANCE CO. LTD.
BRANCH OFFICE, LINGASURU ROAD,
SINDHANOOR, DIST: RAICHUR, REP: BY THE
DEPUTY MANGER NATIONAL INSURANCE CO. LTD
REGIONAL OFFICE, ARIHANTA COMPLEX,
KESHAVAPUR, HUBLI

... APPELLANT

(BY SRI.M.G.GADGOLI, ADV)

AND

1. PURUSHOTTAM S/O LINGAPPA
AGE: 33 YEARS, OCC: ELECTRICAL WORK,
R/O MALLIGEWADA, TQ: GANGAVATHI
DIST: KOPPAL
2. BASAVARAJ S/O VENKOBARAO. AREYAR
AGE: 32 YEARS, OCC: RIDER OF HERO HONDA
MOTOR REGN. CYCLE BEARING NO.KA.37/K-7186
R/O KANAKAGIRI TQ: GANGAVATHI,
DIST: KOPPAL.
3. SHARATKUMAR S/O DODDAPPA
AGE: 42 YEARS, OCC: OWNER OF HERO HONDA
MOTOR REGN. CYCLE BEARING NO. KA.37/K-7186
R/O KANAKAGIRI TQ: GANGAVATHI,
DIST: KOPPAL.

... RESPONDENTS

(BY SHRI.G.N.NARASAMMANAVAR, ADV.
FOR SHRI. M M HIREMATH, ADV.FOR R1)
(R2 AND R3 ARE SERVED)

THIS MFA FILED U/S 173(1) OF MV ACT, AGAINST THE JUDGMENT AND AWARD DATED:04-06-2012 PASSED IN MVC NO.322/2010 ON THE FILE OF SENIOR CIVIL JUDGE AND MEMBER, MACT, GANGAVATHI, AWARDING THE COMPENSATION OF RS.2,23,500/-WITH INTEREST AT THE RATE OF 6% P.A., FROM THE DATE OF PETITION TILL ITS REALISATION.

THE APPEAL AND CROSS OBJECTION COMING ON FOR ADMISSION, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

The appeal and the cross objection, though listed for admission, are taken up for final disposal with the consent of the learned counsel appearing for the parties.

2. The cross objection in MFA.Cro.OB.No100095/2015 under Order Rule 22 of CPC., filed by the claimant seeking enhancement of compensation and appeal in MFA No.24488/2012 under Section 173(1) of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act', for short) has been filed by the Insurance Company challenging the liability and quantum of compensation against the judgment dated 04.06.2012 passed by the Senior Civil Judge & MACT, Gangavathi (hereinafter referred to as "the Tribunal" for short), in M.V.C.No.322/2010.

3. Parties will be referred to as per their ranking before the Claims Tribunal.

4. Facts giving rise to the filing of the appeal briefly stated are that on 05.06.2010 the claimant was going from

Malligewada to Kanakagiri for his work by walk, when he reached on Navali-Kanakagiri road, near Kanakagiri at about 11.30 a.m, at that time, a motorcycle bearing registration No.KA-37/K-7186, the rider of which was riding it in a rash and negligent manner, dashed to the claimant. As a result of the aforesaid accident, the claimant sustained injuries and was treated immediately at a hospital. On account of that the claimant has spent huge sums of money for the treatment of the injury sustained by him in the road accident.

5. The claimant filed a claim petition under Section 166 of the Act seeking compensation to the tune of Rs.8,00,000/-.

6. On service of notice, first and second respondents remained absent and were placed ex-parte. The third respondent Insurance Company filed statement of objections disputing the fact that the accident had occurred on account of rash and negligent riding of offending motorcycle and contended that the accident has occurred due to negligence of the claimant himself. Age, avocation and income of the claimant were all disputed. It is also disputed that claimant had spent huge sums of money for

the treatment and it was contended that rider of offending motorcycle did not possess valid and effective driving licence to drive the vehicle.

7. On the basis of the pleadings of the parties, the Claims Tribunal framed the issues and thereafter recorded the evidence.

8. The claimant in order to prove his claim examined himself as PW.1 and the doctor who treated and assessed disability as PW.2 and marked about 67 documents as Ex.P1 to Ex.P67. On the other hand, the Insurance Company examined one witness as R.W.1 and marked one document as Ex.R.1- Insurance Policy.

9. The Claims Tribunal by impugned judgment, *inter alia*, held that accident took place on account of rash and negligent riding of the motorcycle by its rider, and further held that the claimants are entitled to a compensation of Rs.2,23,500/- along with interest at the rate of 6% p.a for the injury sustained by him in the road accident.

10. MFA No.24418/2012 is preferred by the Insurance Company questioning quantum of compensation and fastening liability upon it and MFA Cr.Ob.No.100095/2015 is filed by claimant for seeking enhancement of compensation

11. I have heard Shri.M.G.Gadgoli, learned advocate for Insurance Company and Shri.G.N.Narasammanavar, learned advocate for claimant.

12. The learned counsel for the Insurance Company submits that the Tribunal has grossly erred in fastening liability upon the Insurance Company notwithstanding the fact that the rider of offending vehicle did not have valid and effective driving licence. He further contended on the quantum of compensation that the Tribunal has already awarded the compensation on the higher side and it does not warrant any interference.

13. On the other hand, the learned counsel for the claimant submitted that the Tribunal has awarded meager compensation on loss of future income by taking income of the injured claimant at Rs.3,000/- as against Rs.5,000/- and insofar as the contention of the Insurance Company that the rider of the

motorcycle did not have a valid and effective driving licence he would rely upon Ex.P66 and P67 i.e. copy of the driving licence which was valid and effective as on the date of accident.

14. I have considered the submissions made by the learned counsel for the parties and have perused the record. The only issue that falls for my consideration is with regard to the quantum of compensation awarded by the Tribunal.

15. The contention of the learned counsel for the Insurance Company that the rider of the offending motorcycle did not possess a driving licence is contrary to the evidence on record i.e. Ex.P66 and P67, which are notarized and attested copies of the driving licence, held by the rider of the offending vehicle.

16. Thus, Tribunal considered those documents, held that rider of the motorcycle did have a valid and effective licence and fastened the liability of payment of compensation upon the Insurance Company, I did not find any error in the order of fastening the liability upon the Insurance Company to make good the compensation.

17. In regard to the quantum of compensation, admittedly the claimant has not produced any evidence to show that his income is at Rs10,000/- per month as claimed. Therefore, the notional income has to be fixed as per the guidelines issued by the High Court Legal Services Committee. Since the accident has taken place in the year 2010, the notional income in terms of the chart has to be taken at Rs.5,500/- p.m. Disability of the claimant is taken by the tribunal at 20%, which I deem it just and appropriate and the compensation on account of loss of future earning comes to Rs.2,11,200/- ($\text{Rs.5,500} \times 12 \times 20\%$) as against Rs.1,15,200/- awarded by the Tribunal.

18. The Tribunal has awarded Rs.5,000/- under loss of amenities which I deem appropriate to enhance it to Rs.15,000/. Nourishment, food and attending charges are awarded at Rs.3,000/- I deem it appropriate to enhance it to Rs.10,000/-. Loss of earning during the period of medical treatment is awarded at Rs.12,000/- taking income as Rs.3,000/- which I deem appropriate to enhance it to Rs.22,000/- taking income of

the claimant Rs.5,500/-. In all, the claimant is entitled to a total compensation in the following manner.

Sl.No.	Heads	Amount (Rs)
1	Pain and suffering	72,000
2	Towards loss of earning during treatment	22,000
3	Medical expenses	16,300
4	Loss of future earning (5500x12x50%)	2,11,200
5	Loss of amenities	15,000
6	Towards conveyance, nourishment, food and attending charges	10,000
	Total	3,46,500
	Less: compensation awarded by the Tribunal	2,23,500
	Enhanced compensation	1,23,000

19. In all, the claimant would be entitled total compensation of Rs.3,46,500/-. Needless to state that the Insurance Company will have to pay the entire amount of compensation which shall carry an interest @ 6% p.a. from the date of filing of petition till its satisfaction by the Insurance Company, except as per order dated 27.11.2018 of this Court, by which the claimants are denied interest for the delayed period

of 802 days in filing the appeal. To the aforesaid extent, the judgment of the Claims Tribunal is modified.

20. Accordingly, the appeal and the cross objection are allowed in part. The amount in deposit, if any, shall be transferred to the Tribunal forthwith for disbursement

**Sd/-
JUDGE**

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