

IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH

DATED THIS THE 30TH DAY OF SEPTEMBER 2020

BEFORE

THE HON'BLE MR. JUSTICE V. SRISHANANDA

M.F.A.NO.24960/2011(MV)

BETWEEN

1. NAGARAJ S/O. MALLAPPA CHANDAPUR,
SINCE DECEASED BY HIS LRS.
- 1A. SMT. CHANNAMMA W/O. ROASHAN,
AGE: 28 YEARS, OCC: HOUSEHOLD,
R/O: NEAR MURUGHARAJENDRA
KALYAN MANTAP, HARIHAR, TAL:HARIHAR,
DIST: DAVANGERE.
- 1B. SMT. TIPPESWAMY
S/O. LATE NAGARAJ CHANDAPUR,
AGE: 26 YEARS, OCC: PRIVATE SERVICE,
R/O: NEAR MURUGHARAJENDRA
KALYAN MANTAP,
HARIHAR, TALUK: HARIHAR,
DIST: DAVANGERE.
2. SMT. BHAGYALAXMI
W/O. NAGARAJ CHANDAPUR,
AGE: 48 YEARS,
OCC: ANGANAWADI TEACHER,
R/O: MATTILAHOLE ROAD,
NEELKANTESHWAR TEMPLE,
NEAR HARIHAR, DIST: DAVANAGER.

... APPELLANTS

(BY SRI. S N BANAKAR, ADVOCATE)

AND

MANJUNATH
S/O. KOTRABASAPPA BANAKAR,
AGE: 48 YEARS, OCC: EMPLOYEE IN

GRASIM INDUSTRIES, HARIHAR,
R/O: WADIRAYANAHALLI, POST: KARUR,
TQ: RANEBENNUR, DIST: HAVERI. ... RESPONDENT

(BY SRI. MADANMOHAN M KHANNUR, ADV.,)

THIS MFA IS FILED U/SEC.173(1) OF MV ACT, AGAISNT THE JUDGMENT AND AWARD DTD:04-07-2011 PASSED IN MVC.NO.278/2007 ON THE FILE OF THE ADDITIONAL SENIOR CIVIL JUDGE AND MEMBER, ADDITIONAL M.A.C.T., RANEBENNUR, AWARING THE COMPENSATION OF RS.1,55,000/- WITH INTEREST AT THE RATE OF 6% P.A., FROM THE DATE OF PETITION TILL REALISATION.

THIS MFA COMING ON FOR HEARING, THIS DAY, COURT DELIVERED THE FOLLOWING:

JUDGMENT

Owner is in appeal challenging the validity of the judgment and award dated 04.07.2011 passed by the Additional Senior Civil Judge and Addl. MACT, Ranebennur in MVC No.278/2007.

2. The brief facts which are necessary for the disposal of the appeal is as under :

A claim petition came to be filed under Section 166 of the Motor Vehicles Act contending that on 02.11.2006 at about 6.40 p.m. petitioner/claimant was moving towards his house from Grasim Factory on public road and when he reached Laguna Gundi, a two wheeler

bearing No.KA-17/S-5668 came in rash and negligent manner and dashed against the claimant/petitioner, resulting in the claimant sustaining grievous injuries and he was shifted to the hospital at Davanagere. As such, he sought for awarding suitable compensation.

3. In pursuance of the notices issued, respondents appeared through their respective advocates and filed written statement denying the entire claim petition averments.

4. On the basis of rival contentions urged by the parties, Tribunal raised the following issues:

1. *Whether petitioner proves that on 2.11.2006 at about 5.40 PM on Grasim Factory road, near Laguna Gundi, Kumarapattanam, the accident occurred due to rash and negligent riding of TVS vehicle beg.No.KA 17/S-5668 by its rider?*
2. *Whether petitioner further proves that he sustained grievous injuries in the said accident?*

3. *Whether petitioner is entitled for compensation ? If so, how much and from whom?*

4. *What order or Award?*

5. In order to establish the case, claimant got examined himself as PW1 and doctor who treated him as PW2 and relied on documentary evidence as Exs.P1 to P31. On behalf of respondents, first respondent who is the owner of the two-wheeler by name Nagaraj Chandapur is examined as RW1 and no documents were relied on.

6. After hearing the parties and on cumulative consideration of oral and documentary evidence, the Tribunal allowed the claim petition in part by awarding a sum of Rs.1,55,000/- along with interest @ 6% p.a.

7. It is that judgment which is under challenge in this appeal.

8. Learned counsel for the appellant-owner vehemently contended that Tribunal grossly erred in

awarding compensation to the tune of Rs.1,55,000/-. He further contended that disability certificate is not properly proved as PW2 is not the treating doctor, which aspect has been lost sight of by the Tribunal. He further contended that respondent No.2 was not a necessary party and case against her should have been dismissed and sought for allowing the appeal.

9. Per contra, learned counsel for the claimant contended that the Tribunal has considered all relevant material on record and passed an order of just compensation.

10. In view of the rival contentions urged by the parties, the sole point that would arise for consideration is :

“Whether the compensation adjudged by the Tribunal is excessive ?”

11. This court answers the above point partly in the affirmative for the following :

REASONS

12. On perusal of the impugned judgment, the Tribunal has awarded compensation on the following heads:

1	Minimum Medical Expenses	5,000/-
2	Injury, Pain and suffering	30,000/-
3	Loss of future income	75,000/-
4	Loss of Amenities	10,000/-
5	Attendant charges	5,000/-
6	Future medical expenses	20,000/-
7	Food & Nourishment	5,000/-
8	Loss of income during inpatient for 1 month	5,000/-
	TOTAL	1,55,000/-

13. Tribunal ought not to have awarded compensation on the head of minimum medical expenses and towards the future medical expenses in the absence of any positive evidence placed by the claimant in this regard.

14. Admittedly, the claimant is an employee of Grasim Industry at Kumarapattanam, Harihar. The entire medical expenses of the claimant is met by the employer under the ESI scheme. Therefore, on the heads of minimum medical expenses and future medical expenses tribunal ought not to have awarded the compensation. Therefore, a sum of Rs.25,000/- is to be deducted from the compensation awarded by the tribunal. Accordingly, the award needs to be modified to that extent.

15. Appeal is *allowed in part*.

16. Sri. S.N. Banakar, counsel for the appellant submitted that apart from statutory deposit of Rs.25,000/-, the appellant has deposited 50% of adjudged compensation with proportionate interest before this court vide court order dated 05.09.2017.

Thus, the amount in deposit before this court be transmitted to the tribunal for disbursement.

Appellant is directed to deposit the remaining amount within three months from the date of receipt of copy of this order.

Ordered accordingly.

SD/-
JUDGE

MNS/bnv