

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JUNE 2022

BEFORE

THE HON'BLE MR. JUSTICE H. T. NARENDRA PRASAD

MFA No.2614 OF 2019(MV)

BETWEEN

SRI PRAVEEN
S/O H. SIDDARAJU
AGED ABOUT 30 YEARS
R/AT AJJIPURA VILLAGE
KOLLEGALA TALUK
CHAMARAJANAGARA DISTRICT
CHAMARAJANAGARA-571439.

...APPELLANT

(BY SRI. BHANU PRAKASH H V., ADV.)

AND

- 1 . SRI MUNIYA
S/O SIDDA
R/AT KOLAGALA VILLAGE
MYSURU TALUK AND DISTRICT
MYSORE-570015.
- 2 . SRI. MUTHURAJU
S/O BILYAPPA SHETTY
R/AT NO.34, MUTHUSETTIYUR VILLAGE
KOLLEGAL TALUK

CHAMARAJANAGAR DISTRICT
CHAMARAJANAGAR.

3 . THE DIVISIONAL MANAGER
UNITED INDIA INSURANCE CO. LTD.,
T.P HUB NEAR BULLAL CIRCLE
MYSURU(KRISHNAMURTHY PURAM)
MYSORE-570 005.

...RESPONDENTS

(BY SRI.JANARDHANA REDDY. ADV. FOR R3:
NOTICE TO R1 & R2 IS DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173(1) OF
MV ACT AGAINST THE JUDGMENT AND AWARD
DATED:29.10.2018 PASSED IN MVC NO.972/2016 ON
THE FILE OF THE JUDGE, ADDITIONAL COURT OF
SMALL CAUSES, PRESIDING OFFICER, MOTOR
ACCIDENTS CLAIMS TRIBUNAL,SENIOR CIVIL JUDGE,
MYSURU, PARTLY ALLOWING THE CLAIM PETITION
FOR COMPENSATION AND SEEKING ENHANCEMENT
OF COMPENSATION.

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

JUDGMENT

This appeal under Section 173(1) of Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') has been filed by the claimant being aggrieved by the judgment dated 29.10.2018 passed by MACT, Mysuru in MVC 972/2016.

2. Facts giving rise to the filing of the appeal briefly stated are that on 13.3.2016 when the claimant was traveling in lorry bearing registration No.KA-01-C-9038 from Karnataka to Tamilnadu near Kirepathre road, Kollegala Taluk, at that time, the driver of the said lorry drove the same at a high speed and in a rash and negligent manner, caused accident. As a result of the aforesaid accident, the claimant sustained grievous injuries and was hospitalized.

3. The claimant filed a petition under Section 166 of the Act seeking compensation. It was pleaded

that he spent huge amount towards medical expenses, conveyance, etc. It was further pleaded that the accident occurred purely on account of the rash and negligent driving of the offending vehicle by its driver.

4. On service of notice, the respondent No.3 appeared through counsel and filed written statement in which the averments made in the petition were denied.

The respondent Nos.1 and 2 did not appear before the Tribunal inspite of service of notice and were placed ex-parte.

5. On the basis of the pleadings of the parties, the Claims Tribunal framed the issues and thereafter recorded the evidence. The claimant himself was examined as PW-1 and Dr.Puttaswamy was examined as PW-2 and got exhibited documents namely Ex.P1

to Ex.P11. On behalf of the respondents, one witness was examined as RW-1 and got exhibited documents namely Ex.R1 to Ex.R2. The Claims Tribunal, by the impugned judgment, inter alia, held that the accident took place on account of rash and negligent driving of the offending vehicle by its driver, as a result of which, the claimant sustained injuries. The Tribunal further held that the claimant is entitled to a compensation of Rs.292,880/- along with interest at the rate of 6% p.a. and directed the Insurance Company to deposit the compensation amount along with interest. Being aggrieved, the present appeal has been filed.

6. The learned counsel for the claimant has raised the following contentions:

Firstly, even though the claimant claims that he was doing cleaner work and earning Rs.12,000/- per

month, but the Tribunal has taken the notional income as merely as Rs.9,000/- per month.

Secondly, the claimant has examined the doctor as PW-2. The doctor in his evidence has stated that the claimant has suffered disability of 24% to particular limb. But the Tribunal has taken the whole body disability at 8%, which is on the lower side.

Thirdly, due to the accident, the claimant has sustained grievous injuries. He was treated as inpatient for a period of 10 days. Even after discharge from the hospital, he was not in a position to discharge his regular work. He has suffered lot of pain during treatment. Considering the same, the compensation awarded by the Tribunal under the heads of 'loss of amenities', 'pain and sufferings' and other incidental expenses are on the lower side.

Fourthly, PW-2 the doctor has stated that the claimant requires an amount of Rs.25,000/- to

undergo surgery for removal of implants. But the Tribunal has granted meager compensation of Rs.15,000/- under the head of 'future medical expenses'. Hence, he sought for allowing the appeal.

7. On the other hand, the learned counsel for the Insurance Company has raised following counter contentions:

Firstly, even though the claimant claims that he was earning Rs.12,000/- per month, he has not produced any documents to establish his income. Therefore, the Tribunal has rightly assessed the income of the claimant notionally.

Secondly, the doctor in his evidence has stated that the claimant has suffered disability of 24% to particular limb. The Tribunal considering the injuries sustained by the claimant, has rightly assessed the whole body disability at 8%.

Thirdly, claimant has not produced any documents either before the Tribunal or before this court with regard to particulars of surgery and cost of surgery. Therefore, the Tribunal has rightly awarded Rs.15,000/- under the head of 'future medical expenses'.

Fourthly, considering the injuries sustained by the claimant and considering the age and avocation of the claimant, the overall compensation awarded by the Tribunal is just and reasonable and it does not call for interference. Hence, he sought for dismissal of the appeal.

Fifthly, he has contended that the claimant was traveling in the lorry as gratuitous passenger. Hence, the Insurance Company is not liable to pay compensation. The same has been challenged by the Insurance Company by filing an appeal in MFA 1131/2019. This Court by judgment dated 13.11.2019

has dismissed the said appeal and confirmed the judgment and award of the Tribunal.

8. Heard the learned counsel for the parties and perused the judgment and award of the Tribunal.

9. It is not in dispute that the claimant has sustained injuries in the road traffic accident occurred due to rash and negligent driving of the offending vehicle by its driver.

The claimant claims that he was earning Rs.12,000/- per month. He has not produced any documents to prove his income. Therefore, in the absence of proof of income, notional income has to be assessed. As per the guidelines issued by the Karnataka State Legal Services Authority, for the accident taken place in the year 2016, the notional income has to be taken at Rs.9,500/- p.m.

As per wound certificate, the claimant has sustained fracture of left forearm and injuries to other parts of the body. The doctor in his evidence has stated that the claimant has suffered disability of 24% to lower limb. Therefore, taking into consideration the deposition of the doctor and injuries mentioned in the wound certificate, the Tribunal has rightly taken the whole body disability at 8%. The claimant is aged about 27 years at the time of the accident and multiplier applicable to his age group is '17'. Thus, the claimant is entitled for compensation of Rs.155,040/- ($\text{Rs.9,500} \times 12 \times 17 \times 8\%$) on account of 'loss of future income'.

The nature of injuries suggests that the claimant must have been under rest and treatment for a period of 3 months. Therefore, the claimant is entitled for compensation of Rs.28,500/- ($\text{Rs.9,500} \times 3 \text{ months}$) under the head 'loss of income during laid up period'.

The claimant was treated as inpatient for more than 10 days in the hospital and thereafter, has received further treatment. Due to the accident, the claimant has suffered grievous injuries and also undergone surgery. He has suffered lot of pain during treatment and he has to suffer with the disability stated by the doctor throughout his life. Considering the same, I am inclined to enhance the compensation awarded by the Tribunal under the head of 'loss of amenities' from Rs.20,000/- to Rs.40,000/- and under the head of 'pain and sufferings' from Rs.25,000/- to Rs.50,000/-.

The doctor in his evidence has stated that the claimant requires about Rs.25,000/- towards 'future medical expenses'. But the claimant has not produced any documents either before the Tribunal or before this court with regard to particulars of surgery and cost of surgery. Therefore, the Tribunal has rightly

awarded Rs.15,000/- under the head of 'future medical expenses'.

Considering the nature of injuries, the compensation awarded by the Tribunal under other heads is just and reasonable.

10. Thus, the claimant is entitled to the following compensation:

Compensation under different Heads	As awarded by the Tribunal (Rs.)	As awarded by this Court (Rs.)
Pain and sufferings	25,000	50,000
Medical and incidental expenses	59,000	59,000
Loss of income during laid up period	27,000	28,500
Loss of amenities	20,000	40,000
Loss of future income	146,880	155,040
Future medical expenses	15,000	15,000
Total	292,880	347,540

11. In the result, the appeal is **allowed in part**. The judgment of the Claims Tribunal is modified.

The claimant is entitled to a total compensation of **Rs.347,540/-**.

The Insurance Company is directed to deposit the compensation amount along with interest @ 6% p.a. from the date of filing of the claim petition till the date of realization, within a period of six weeks from the date of receipt of copy of this judgment.

**Sd/-
JUDGE**

DM