



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF NOVEMBER, 2023

BEFORE

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

MISCELLANEOUS FIRST APPEAL NO. 6443 OF 2021 (MV)

BETWEEN:

SRI ANNEGOWDA B R
S/O RANGEGOWDA
AGED ABOUT 36 YEARS
R/O BELASINDA VILLAGE
KASABA HOBLI, CHANNARAYAPATNA TALUK
HASSAN DISTRICT 573201.

...APPELLANT

(BY SRI. GIRISH B BALADARE.,ADVOCATE)

AND:

1. SRI MANJEGOWDA K R
S/O RANGEGOWDA K S
AGED ABOUT 42 YEARS
R/O KALASINDA VILLAGE
KALKERE POST, KASABA HOBLI
CHANNARAYAPATNA TALUK
HASSAN DISTRICT 573201.
2. REGIONAL MANAGER
UNITED INDIA INSURANCE CO LTD
MADHU COMPLEX, MYSORE ROAD
CHANNARAYAPATNA TOWN & TALUK
HASSAN DISTRICT-573201.

...RESPONDENTS

(BY SRI.B.S.KRISHNA., ADVOCATE FOR R2:
NOTICE TO R1 IS DISPENSED WITH
V/O DATED:14.02.2023)

Digitally signed
by
DHANALAKSHMI
MURTHY
Location: High
Court of
Karnataka



THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED:15.04.2019 PASSED IN MVC NO. 53/2018 ON THE FILE OF THE SENIOR CIVIL JUDGE AND J.M.F.C., CHANNARAYAPATNA, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

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

JUDGMENT

1. 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 15.4.2018 passed by MACT, Channarayapatna in MVC No.53/2018.

2. Facts giving rise to the filing of the appeal briefly stated are that on 4.8.2017 when the claimant was proceeding by walk near CGMR Kalyan Mantap of Channarayapatna town, at that time, motorcycle bearing registration No.KA-13-F-8890 being ridden by its rider at a high speed and in a rash and negligent manner, dashed to



the vehicle of the claimant. 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 charges, 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 respondents appeared through counsel and respondent No.2 filed written statement in which the averments made in the petition were denied.

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.Abdul Basheer was examined as CW-1 and got exhibited documents namely Ex.P1 to Ex.P24 and ExC-1 to



7. On behalf of the respondents, neither any witness was examined nor any document was produced. 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.388,871/- along with interest at the rate of 9% 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:

- a) Firstly, even though the claimant claims that he was doing mason work and earning Rs.20,000/- per month, but the Tribunal has taken the notional income as merely as Rs.9,000/- p.m.
- b) Secondly, the claimant has examined the doctor as CW-1. Due to the accident, the claimant has sustained



grievous injuries. He was treated as inpatient for a period of 6 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. Hence, he sought for allowing the appeal.

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

- a) Firstly, even though the claimant claims that he was earning Rs.20,000/- per month, he has not produced any documents to establish his income. In the absence of proof of income, the Tribunal has rightly assessed the income of the claimant notionally.
- b) Secondly, the Tribunal considering the injuries sustained by the claimant and evidence of the doctor, has rightly assessed the whole body disability at 10.66%.



c) Thirdly, considering the injuries sustained by the claimant and considering the age and avocation of the claimant, the compensation awarded by the Tribunal under the heads of 'loss of amenities', 'pain and sufferings' and other incidental expenses are just and reasonable and it does not call for interference.

d) Lastly, in view of the Division Bench decision of this Court in the case of **Ms.Joyeeta Bose and others -v- Venkateshan.V and others (MFA 5896/2018 and connected matters disposed of on 24.8.2020)**, the rate of interest awarded by the Tribunal at 9% p.a. on the compensation amount is on the higher side. Hence, he sought for dismissal of the appeal.

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 on 4.8.2017



due to rash and negligent riding of the offending vehicle by its rider.

10. The claimant claims that he was earning Rs.20,000/- 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 2017, the notional income has to be taken at Rs.11,000/- p.m.

11. As per wound certificate, the claimant has sustained open comminuted fracture of left clavicle, chest injury, abrasion left hand, fracture phalanx right foot with lacerated exposing the bone. 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 10.66%. The claimant is aged about 34 years at the time of the accident and multiplier applicable to his age group is '16' instead of



'17' wrongly applied by the Tribunal. Thus, the claimant is entitled for compensation of **Rs.225,139/-** ($\text{Rs.11,000} \times 12 \times 16 \times 10.66\%$) on account of 'loss of future income'.

12. 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.33,000/-** ($\text{Rs.11,000} \times 3$ months) under the head 'loss of income during laid up period'.

13. The claimant was treated as inpatient for more than 6 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 'pain and sufferings' from Rs.50,000/- to **Rs.60,000/-**



and under the head of 'loss of amenities' from Rs.50,000/- to **Rs.60,000/-**.

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

15. 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	50,000	60,000
Medical expenses	38,153	38,153
Food, nourishment, conveyance and attendant charges	15,000	15,000
Loss of income during laid up period	15,000	33,000
Loss of amenities	50,000	60,000
Loss of future income	195,718	225,139
Future medical expenses	25,000	25,000
Total	388,871	456,292



16. In the result, the following order is passed:

ORDER

- a) The appeal is **allowed in part.**
- b) The judgment of the Claims Tribunal is modified.
- c) The claimant is entitled to a total compensation of **Rs.456,292/-.**
- d) In view of judgment of the Division Bench of this Court in the case of '**MS.JOYEETA BOSE**' (supra), the enhanced compensation shall carry interest at 6% per annum.
- e) The Insurance Company is directed to deposit the compensation amount along with interest 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 excluding interest for the compensation awarded under the head of 'future medical expenses'.



- f) In view of the order dated 25.9.2023 passed by this Court, the claimant is not entitled for interest for the delayed period of 255 days in filing the appeal.

Sd/-
JUDGE

DM
List No.: 3 SI No.: 47