

A

ANIL KUMAR

v.

BRANCH MANAGER, NATIONAL INSURANCE COMPANY
LTD. & ANR.

B

(Civil Appeal No. 4398 of 2016)

AUGUST 31, 2018

**[ABHAY MANOHAR SAPRE AND
UDAY UMESH LALIT, JJ.]**

C

Motor Vehicles Act, 1988:

D

s. 173 – Compensation – Claimed – Motor accident – Causing partial and permanent disability – To 25 years old unmarried person – Tribunal awarded Rs. 3,43,000/- towards compensation – High Court dismissed the appeal of the claimant – On appeal, held: Claimant was able to make out a case for further enhancement in the quantum of compensation – He is entitled for a further sum of Rs.5,00,000/- in lump sum in addition to the sum awarded by the Tribunal – However, interest is not awarded on the enhanced sum of Rs. 5,00,000/-.

E

Allowing the appeal, the Court

F

G

H

HELD: 1. The appellant was able to make out a case for further enhancement in the quantum of compensation awarded by the Tribunal. The appellant (claimant) was a young unmarried boy of 25 years at the time of accident and did not suffer with any kind of ailment. He had sustained fracture of both pelvic bones with rupture of urethra and abdomen injuries for which he underwent four operations and suffered partial but permanent disability in his body which reduced his movement capacity to a larger extent. Due to partial but permanent disability, also lost his job. He spent a substantial sum for his medical treatment. Since he was still not able to move freely due to disabilities suffered by him, he is entitled to be suitably compensated by awarding him monetary compensation. [Paras 11 and 12] [879-C-F]

2. The appellant is entitled for a further sum of Rs.5,00,000/- in lump sum in addition to what has been awarded by the Tribunal,

i.e., Rs.3,43,000/-. Thus, the appellant (claimant) is now entitled to claim a total sum of Rs.8,43,000/- from the respondents jointly and severally by way of compensation for the injuries sustained, partial and permanent disability occurred, medical expenses incurred and loss occasioned due to injuries sustained by him in the accident. However, interest is not awarded on the enhanced sum of Rs.5,00,000/-. The appellant is entitled to claim interest only on the sum of Rs.3,43,000/- at the rate of 8 % awarded by the Tribunal. Respondent No.1 (Insurance Company) is directed to deposit the awarded amount. [Paras 15, 16, 17 and 19] [880-A-C, D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4398 of 2016.

From the Judgment and Order dated 19.03.2015 of the High Court of Karnataka at Dharwad in M.F.A. No. 24385 of 2011 (MV).

C. B. Gururaj, Yogendar Kumar Varma, Prakash Ranjan Nayak, Ms. Manjeet Chawla, Manu Shalia, Advs. for the appearing parties.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. This appeal is filed by the claimant against the final judgment and order dated 19.03.2015 passed by the High Court of Karnataka Bench at Dharwad in Misc. First Appeal No. 24385 of 2011(MV) whereby the High Court dismissed the appeal filed by the claimant (appellant herein) and affirmed the judgment and award dated 12.04.2011 passed by the Member, MACT-II, Bellary in M.V.C. No.711 of 2010.

2. Few relevant facts need to be mentioned hereinbelow to appreciate the question involved in the appeal.

3. The appellant was working as a cleaner in a lorry bearing Regn. No.AP-21/V-4682 belonging to respondent No.2 herein. At the relevant time, it was insured with respondent No.1. On 05.12.2004, at about 1.00 p.m. near VGM Factory, Belgal Road, Bellary, when the appellant was standing in front of the abovementioned lorry for the purpose of loading iron ore, the driver of the lorry moved the vehicle without giving any signal or horn and dashed it against him. As a result of which, the appellant sustained fracture of both pelvic bones with rupture of urethra and abdomen injuries and other grievous injuries all over his body. The

A appellant was then taken to VIMS Hospital, Bellary for the medical treatment. The appellant claimed to have spent a substantial sum towards his medical treatment. Due to the aforementioned injuries sustained by the appellant, he has become permanently disabled to do the work which he was doing before the accident. At the time of accident, the appellant was 25 years of age and earning Rs.4000/- per month.

B
4. The appellant filed a claim petition bearing M.V.C. No.711 of 2010 before the MACT-II at Bellary under Section 173 of the Motor Vehicles Act, 1988 and claimed compensation from the respondents. It was contested by the respondents. By award dated 12.04.2011, the Tribunal partly allowed the appellant's claim petition. It was held that the monthly income of the appellant-claimant was Rs.4000/-, that the accident occurred due to sole negligence of the driver of offending vehicle, that the appellant sustained partial but permanent disability in the whole body to the extent of 25% and that the age of the appellant was 25 years on the date of accident. The Tribunal then applied the multiplier of 18 and accordingly awarded a sum of Rs.2,16,000/- towards loss of future income, Rs.75,000/- towards pain and sufferings, Rs.25,000/- towards medical expenses, Rs.15,000/- towards future medical expenses and Rs.12,000/- towards loss of income during laid up period. So far as the liability was concerned, the Tribunal held that the policy was a package policy equivalent to comprehensive policy, which covers the risk of cleaner also.

E
5. The Tribunal accordingly awarded a total compensation of Rs.3,43,000/- with interest payable at the rate of 8% p.a. from the date of claim petition till payment against the respondents jointly and severally.

F
6. Being aggrieved by the award passed by the Tribunal, the appellant-Claimant filed M.F.A. No.24385 of 2011(MV) for enhancement of the compensation before the High Court. The Insurance Company (respondent No.1 herein) also felt aggrieved and filed M.F.A. No.23729 of 2011 (MV) before the High Court for setting aside the award passed by the Tribunal.

G
7. The High Court, by order dated 19.03.2015, dismissed both the appeals.

H
8. Aggrieved by the impugned order, the appellant-claimant has filed this appeal by way of special leave in this Court. So far as the

Insurance Company-respondent No.1 herein is concerned, they have not filed any appeal against the impugned order. A

9. The short question, which arises for consideration in this appeal, is whether any case is made out on facts/evidence for further enhancement of the compensation awarded by the Tribunal to the appellant (claimant). B

10. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal in part and accordingly enhance the compensation awarded by the Tribunal to the extent indicated *infra*.

11. In our considered opinion, the High Court erred in dismissing the claimant's appeal and thus committed an error in not further enhancing the compensation. In other words, the appellant was able to make out a case for further enhancement in the quantum of compensation awarded by the Tribunal and, therefore, he is entitled for enhancement in the award of compensation on the grounds mentioned below. C D

12. First, the appellant (claimant) was a young unmarried boy of 25 years at the time of accident and did not suffer with any kind of ailment; Second, the appellant had sustained fracture of both pelvic bones with rupture of urethra and abdomen injuries for which he underwent four operations and suffered partial but permanent disability in his body which reduced his movement capacity to a larger extent; Third, the appellant due to partial but permanent disability also lost his job; Fourth, he spent a substantial sum for his medical treatment; and lastly, since the appellant is not still able to move freely due to disabilities suffered by him, he is entitled to be suitably compensated by awarding him monetary compensation. E F

13. Learned counsel for the respondent (Insurance Company) urged that no case for any further enhancement in the compensation is made out and that the High Court was, therefore, justified in upholding the award of the Tribunal. G

14. We do not agree with the submission urged by the learned counsel for respondent No.1-Insurance Company for the abovementioned reasons given by us.

15. In the light of the foregoing discussion and the grounds mentioned above, which found acceptance to the Tribunal, we are of the H

A considered opinion that the appellant is entitled for a further sum of Rs.5,00,000/- in lump sum in addition to what has been awarded by the Tribunal, i.e., Rs.3,43,000/-.

16. In other words, the appellant (claimant) is now entitled to claim a total sum of Rs.8,43,000/- from the respondents jointly and severally by way of compensation for the injuries sustained, partial and permanent disability occurred, medical expenses incurred and loss occasioned due to injuries sustained by him in the accident.

17. We, however, do not award interest on the enhanced sum of Rs.5,00,000/-, which we have awarded to the appellant. In this view of the matter, the appellant is entitled to claim interest only on the sum of Rs.3,43,000/- at the rate of 8 % awarded by the Tribunal.

18. The appeal thus succeeds and is accordingly allowed. Impugned order is set aside and the award passed by the Tribunal is modified to the extent indicated above.

D 19. Respondent No.1 (Insurance Company) is directed to deposit the awarded amount, as mentioned above, within three months in the Tribunal to enable the claimant (appellant) to withdraw the awarded sum after making proper verification by the Tribunal.