

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 23<sup>RD</sup> DAY OF OCTOBER, 2007

P R E S E N T

THE HON'BLE MR. JUSTICE V.G. SABHAHIT

&

THE HON'BLE MR. JUSTICE JAWAD RAHIM

MISCELLANEOUS FIRST APPEAL NO.6265/2002(MV)

BETWEEN:

Siddappa Devaru, S/o Basappa,  
Aged about 38 years,  
R/o Sampige Village,  
Turuvekere Taluk,  
Tumkur District.

:APPELLANT

(By Smt.Nalina K. Adv. for Sri.S.K. Venkata Reddy, Adv.)

And:

1. H. Ramamurthy, S/o late H. Venkaterao,  
Aged about 49 years,  
Prop: Super Coffee Works,  
Balija Hostel Building,  
1<sup>st</sup> Main, Chamarajapet,  
Bangalore.  
(Driver-Maruthi Car - KA-03-M-1907)

2. V. Keshavamurthy,  
S/o late Vasudeva Rao, major,  
R/a No.150, Ashok Nilaya,  
Mysore Road, Bangalore - 26.  
(Owner-Maruthi Car - KA-03-M-1907)

3. M/s. The Oriental Insurance Co. Ltd.,  
C.B.O. No.7, II Floor, 669,  
Annasalai, Kamala Arcade,  
Madras (Chennai) - 600 006.  
(Policy No.41136/102/14000/MV/68190  
Certificate No.E7019 Valid from  
08.04.1991 to 17.02.1992).

:RESPONDENTS

(By Sri.Gopalakrishna Kurandwad, Adv. for R-1;  
Sri.Y.K. Seshagiri Rao, Adv. for R-3;  
Appeal against R-2 is abated. )

This appeal is filed under Section 173(1) of the Motor Vehicles Act, 1988 against the judgement and award dated 28.02.02 passed in MVC No.114/1992 on the file of Civil Judge (Sr. Dn.) & Addl. MACT, Tiptur, seeking enhancement of compensation.

This appeal coming on for hearing this day, SABHAHIT J., delivered the following:-

#### JUDGMENT

This is an appeal by the claimant in MVC No.114/92 on the file of learned Civil Judge (Sr. Dn.) and Addl. MACT, Tiptur, against the judgment and award dated 28.2.02 wherein the Tribunal has awarded compensation of Rs.77,000/- with interest at 9% p.a. from the date of petition till the date of payment towards personal injury and consequent permanent disability sustained by the

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petitioner. The petitioner is seeking for enhancement of compensation.

2. The essential facts of this case leading up to this appeal with reference to the ranking of the parties as before the Trial Court are as follows:

It is the case of the petitioner that on 25.11.91 at about 1.30 p.m., he was riding two-wheeler bearing registration No. KA-06/E-4300 in the extreme left side of Tumkur - Tiptur Road and near Hindiskere Village. A maruti car bearing registration No. KA-03/M-1907 driven by the second respondent in a rash and negligent manner came and dashed the petitioner and he sustained grievous injuries and consequent permanent physical disability and also suffered pain and sufferings and loss of amenities and therefore, he filed claim petition before the MACT seeking compensation of Rs.12,50,000/- with interest at 12% p.a. from respondents 1 to 3 being the owner, driver and insurer of the above referred Maruti car.

3. First respondent was placed ex-parte. Respondents No.2 and 3 appeared before the Tribunal and

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objections were filed by them contending that the compensation claimed is excessive. On behalf of the claimant, claimant himself was examined as PW-1 and he also examined PW-2 - Dr. Kiran Katalah and got marked Exs.P.1 to P.348. On behalf of the respondents, no oral and documentary evidence is adduced before the Tribunal. The Tribunal after considering the contention of the learned counsel appearing for the petitioner and respondents No.2 and 3 and appreciating the oral and documentary evidence adduced by the petitioner, held that the accident occurred due to rash and negligent driving of the Maruti car by the second respondent and that the petitioner who sustained injury and consequent disability is entitled to total compensation of Rs.77,000/- with interest at 9% p.a. from the date of petition till the date of payment and directed that the compensation shall be paid by the third respondent - insurance company by its judgement and award dated 28.2.02. Being aggrieved by the said judgment and award, claimant is before this Court in this appeal seeking enhancement of compensation.

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4. The finding of the Tribunal regarding negligence, entitlement of the claimant for compensation and the liability of the respondents have become final and the same is not challenged before us.

5. We have heard the learned counsel appearing for the appellant and the learned counsel appearing for respondents. Having regard to their contentions the point that would arise for consideration in this appeal is:

" Whether the compensation awarded by the Tribunal is inadequate and the claimant is entitled for enhanced <sup>ment of</sup> compensation?

6. We answer the said point in the affirmative by holding that the compensation awarded by the Tribunal is inadequate and appellant is entitled for enhanced <sup>ment</sup> compensation of Rs.1,80,600/- for the following reasons:

7. The petitioner injured was aged 27 years at the time of accident. He was inpatient in the hospital for 2 months and 10 days and he has taken treatment for one year. He has suffered <sup>permanent &</sup> personal physical disability as there

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is shortening of right leg by 2 ½ to 3 inches and PW-2 – Dr. Kiran Kalalah who has examined the petitioner, has spoken to about the disability sustained by the petitioner and nothing has been elicited in his cross-examination to disbelieve the evidence or to disbelieve the contents of the certificate issued by him relating to the injuries sustained by the petitioner and the consequent disability. The Tribunal awarded compensation of Rs.77,000/- under the following heads:

Heads	Amount (In Rs.)
<b>1. Pain &amp; agony</b>	
(a) due to the communitid fracture of shaft of right femur	30,000/-
(b) fracture of shaft of right humerous	15,000/-
<b>2. Towards Medical Expenses</b>	
(a) actual amount spent towards medicine etc.	8,930/-
(b) towards nourishment	1,070/-
(c) towards expenses of attendant for two months 10 days	2,000/-
<b>3. Towards loss of income during the period of treatment for one year</b>	15,000/-
<b>4. Towards future unhappiness</b>	5,000/-
<b>Total</b>	----- 77,000/- -----

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8. Having regard to the fact that the petitioner has sustained fracture of shaft of the right femur and fracture of shaft of right humerus, the compensation of Rs.30,000/- towards fracture of shaft of the right femur and Rs.15,000/- towards shaft of the right humerus and pain and sufferings undergone by the petitioner is just and reasonable and does not call for enhancement.

9. The amount of compensation awarded by the Tribunal towards medical expenses at Rs.8,930/- towards the actual amount towards medicines etc. is justified. However, the amount of Rs.1,070/- awarded towards nourishment and Rs.2,000/- towards expenses of attendant for two months ten days is on the lower side. The Tribunal has found that the petitioner has taken treatment for one year and awarded loss of income for a period of one year and it is well settled that the petitioner may not have preserved all the bills regarding the expenses incurred by him and petitioner must have incurred expenses towards nourishing and attendant charges and other expenses. It would be just and

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reasonable to enhance the compensation to Rs.25,000/- towards medical expenses comprising of actual amount spent towards medicines, towards nourishment and towards expenses of attendant for two months and ten days. So far as the loss of income during the period of treatment for one year is concerned, the Tribunal has awarded compensation of Rs.15,000/-. PW-1 claimant has stated in his evidence that he is doing business in coconuts. However, he has not produced any material in support of his contention. Though he has stated that he was cutting the crop, the petitioner has not examined any witness in that behalf. Therefore, it would be just and reasonable to take the income of the petitioner at Rs.1,500/- per month and it would yield annual income of Rs.18,000/-. As the notional income taken by the Tribunal at Rs.15,000/- in the absence of any material, is on the lower side, it would be just and reasonable to take the income of Rs.1,500/- per month, Rs.18,000/- annually and having regard to the same, loss of income during the period of treatment has to be enhanced to Rs.18,000/-. The Tribunal <sup>has</sup> awarded compensation of Rs.5,000/- towards

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future unhappiness. Having regard to the evidence of PW-2 and the permanent physical disability suffered by him by shortening of leg by 2 to 3 inches, the compensation of Rs.5,000/- awarded by the Tribunal is inadequate and it would be just and reasonable to enhance the same to Rs.30,000/-.

10. The Tribunal has not awarded any compensation towards loss of future income though the claimant has examined PW-2 - Dr. Kiran Kalalah. Having regard to the injuries sustained by the petitioner and the consequent disability and evaluation of disability at 30 to 40% having regard to the evidence of PW-2, we hold that it would be just and reasonable to take the disability at 20% for evaluating loss of future income and therefore, the same would come to Rs.3,600/-. The appropriate multiplier would be 16 and therefore, claimant would be entitled to Rs.57,600/- towards loss of future income. Hence, the claimant would be entitled to total compensation of Rs.1,80,600/-.

11. The Tribunal has awarded interest at 9% per annum having regard to the compensation awarded and

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we <sup>confess</sup> award the same. However, so far as the enhanced compensation is concerned, having regard to the date of accident i.e. 25.11.91 and the interest prevalent from the date of accident, we hold that it would be just and reasonable to award interest at 6% per annum on the <sup>enhanced &</sup> enhanced compensation in this appeal. Accordingly, we pass the following:

**ORDER**

The appeal is allowed in part.

The compensation awarded is enhanced from Rs.77,000/- to Rs.1,80,600/-. The compensation enhanced in this appeal shall carry interest at 6% per annum from the date of petition till the date of payment. The compensation shall be deposited by the insurance company within 12 weeks from today, before the Tribunal.

Sd/-  
Judge

Sd/-  
Judge

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