

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED: THIS THE 5TH DAY OF JUNE 2003

: PRESENT:

THE HON'BLE MR JUSTICE T S THAKUR

AND

THE HON'BLE MR JUSTICE MOHAN SHANTANAGOUDAR

MISCELLANEOUS FIRST APPEAL NO 3345 OF 1997

Between

Mahaveer, S/o Siddappa, Hulloli,
Age: 34 years, Occ: Advocate,
R/o Ghataprabha, Tal: Gokak,
Dist Belgaum

Appellant

(By Sri Ravi S Balikai, Adv ,)

And

- 1 Mallikarjun Rudrappa Aadihudi,
Major, Occ: KSRTC Driver, Indi
Depot, Tq: Indi, Dist Bijapur
- 2 The Managing Director, KSRTC , Central
Offices, K H Double Road, Bangalore
- 3 Internal Insurance Fund, KSRTC , Central
Offices, K H Double Road, Bangalore, by
its Manager
- 4 Chandrashekar Siddappa Hulloli, major,
R/o Ghataprabha, Tal:Gokak, Dist Belgaum
- 5 United Insurance Co Ltd , Divisional Office,
by its Manager, 1568, Maruti Galli, Belgaum

6. Sadanand Gireppa Mantur, major, Occ: Driver,
R/o Ghataprabha, Tal: Gokak, Dist Belgum

Respondents

(By Sri F S Dabali for R2 and 3:
Sri S V Jagannath for R5; R1, R4, R4(c) and R6 sd,
~~R1, R4 and R6 removed~~ Sri. A.M. Venkatesh for R5,
Sri/Smt. Neela Arun, for R5)

This appeal is filed under Section 173(1) of the Motor Vehicles Act against the judgment and award dt 20 5 1997 in MVC No 1140 of 1989 on the file of the Addl MACT, Gokak, allowing the claim petition for compensation

This appeal coming on for hearing this day, THAKUR, J delivered the following:

J U D G M E N T

This appeal arises out of an order passed by the Civil Judge and MACT, Gokak whereby MVC No 1140 of 1989 has been allowed in part and a sum of Rs 47,500/- awarded as compensation with interest at the rate of 9% p a on Rs 42,500/- from the date of petition till the date of payment for injuries sustained by the appellant in a road accident. The present appeal seeks a suitable enhancement of the said amount

2 The claimant-appellant was pillion riding a motor cycle which met with an accident on 9 8 1989 on Gokak-Ghataprabha road involving a

KSRTC bus The accident resulted in multiple injuries to the claimant including a compound fracture of the tibia and fibula of the left leg He was shifted to the Karnataka Health Institute, Ghataprabha where he remained as an inpatient for treatment During his stay in the hospital, the claimant underwent surgery of the left leg which involved internal fixation of a plate In due course, he filed a claim petition for payment of compensation of Rs 4,20,000/- against the Corporation The claimant alleged that the accident in question has occurred on account of the rash and negligent driving of the bus by its driver entitling the claimant to the payment of compensation The Corporation opposed the claim giving raise to five issues which the Tribunal decided upon assessment of the evidence in favour of the claimant The Tribunal held that the accident in question had occurred on account of rash and negligent driving of the bus by its driver and that the injuries sustained by the claimant were caused by the accident Insofar as



the amount of compensation payable to the claimant was concerned, the Tribunal held that the claimant had undergone pain and suffering for which a sum of Rs 20,000/- was awardable apart from a sum of Rs 7,500/- representing the loss of income for a period of ten months during which period the claimant was either under treatment or advised rest at home. In addition to the said amount, the claimant was also awarded a sum of Rs 5,000/- towards future surgery for removal of implants taking the total compensation to Rs 47,500/- out of which Rs 42,500/- was made payable with interest at 9% p a. The appellant as mentioned earlier, has appealed to this Court for enhancement.

3, Appearing for the appellant Mr Balikai argued that the Tribunal ought to have awarded a higher amount of compensation on account of the pain and suffering undergone by the claimant having regard to the fact that the claimant had remain admitted in the hospital for 77 days. He submitted that the amount of Rs 20,000/- deserves

to be suitably enhanced to be commensurate with the extent of physical pain and suffering which the claimant had undergone. We find merit in that contention. The claimant had remained admitted to the hospital for a considerable period of over a 2-1/2 months. A sum of Rs 20,000/- only for the suffering which is implicit in the nature of injuries and prolonged hospitalisation does not in our opinion, meet the ends of justice. We are inclined to enhance the amount of compensation for pain and suffering by a sum of Rs 5,000/-

4 It was next argued by Mr Balikai that the Tribunal was in error in holding that the claimant was earning a sum of Rs 1000/- p m only and awarding a sum of Rs 7,500/- on account of loss of earning during the period of treatment. He urged that the statement made by the claimant that he was earning Rs 5000/- to Rs 6000/-p m had remained unrebutted and that the said statement supported by copies of vakalats filed by him showed that he was an upcoming lawyer in

Gokak Award of Rs 750/- p m only towards compensation for a period of 10 months on the assumption that the claimant did not earn anything more than that amount was unjustified. There is merit in that contention also. The claimant had put in three years at the bar at the time of the accident. Certified copies of the vakalats filed by the claimant in various cases marked Exs P1 to P26 show that the claimant was gradually coming up in the legal profession. In the circumstances his statement that he was earning upto Rs 6000/- p m may sound exaggerated but could not be brushed aside. The award of Rs 750/- p m towards loss of income during the period of hospitalisation was not in this view sufficient to meet the ends of justice. We are inclined to hold that the claimant was earning upto Rs 2000/- p m excluding his office expenses which amount he was denied on account of his confinement to the hospital and subsequent stay at home without work. Consequently, we



award an additional amount of Rs 12,500/- to take the total amount under this head to Rs 20,000/-

5 Coming then to the question whether loss of amenities has been properly compensated, we are of the opinion that having regard to the injuries which have resulted in a permanent limp in his left leg because of shortening of the limb by $\frac{1}{2}$ " and restricted movements in the joints, the award of Rs 5,000/- only on account of loss of amenities may not suffice. In our opinion a further sum of Rs 10,000/- under this head could suitably take care of the inconvenience that the claimant is likely to suffer in the future on account of the nagging nature of the injury and the disability resulting from the same. The amount of Rs 5000/- awarded by the Tribunal under the head loss of amenities shall therefore stand enhanced to Rs 15,000/-

6 It was lastly argued by Mr Balikai that the Tribunal's estimate of the cost involved in the future operation at Rs 5,000/- was on the lower side. He submitted that a minimum amount

of Rs 8,000/- was involved in the second operation which was necessary for removal of the implants. A statement to that effect has been made by the claimant on oath which had remained un rebutted by the other side. In the circumstances we see no reason why the amount of Rs 5000/- cannot be enhanced to Rs.8000/- to take care of the expenses involved in the future operation which is necessary for removal of the implants.

7 Before parting, we may as well note another submission made by Mr Balikai. It was argued by him that the Tribunal ought to have awarded a suitable amount towards loss of future earning on account of the disability that the claimant has incurred. We have found it difficult to make any such award. We say so because neither in the statement recorded by the Tribunal nor in the evidence that he has produced, is there any indication of any reduction in the earning capacity of the appellant as a lawyer. The claimant has not made

any suggestion or statement to the effect that he cannot either stand for long hours in the Court halls to argue his cases or sit in his chambers to prepare his briefs. In the absence of any such assertion on the part of the claimant himself, it is difficult to see how the Court can possibly assume that the physical disability suffered by the claimant would reduce in reduction in his earning capacity.

8 To sum up, the claimant would be entitled to the following compensation over and above what has been awarded by the Tribunal:

(a) Towards pain and suffering:	Rs 5,000/-
(b) Towards loss of income during the period of hospitalisation:	Rs 12,500/-
© Loss of amenities in life:	Rs 10,000/-
(d) Towards future operation and treatment:	Rs 5,000/-

Total	Rs 32,500/-

The above additional amount shall earn interest @ 8% p a from the date of the petition

till the date of payment of the amount The
appeal stands allowed accordingly in modification
of the award made by the Tribunal No costs

Sd/-
Judge

Sd/-
Judge

Ksj/-