

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 2ND DAY OF JUNE, 2003

: PRESENT :

THE HON'BLE MR. JUSTICE TIRATH S. THAKUR

AND

THE HON'BLE MR. JUSTICE MOHAN SHANTANAGODAR

M.F.A.No.2283/1997(MV)

BETWEEN

1 K. JAYARAM AITHAL
MAJOR,
S/O. PADMANABHA AITHAL
R/A. NAGOOR VILLAGE,
KUNDAPURA TALUK,
P.O. KIRIMANJESHWARA

... APPELLANT

(By MRS. VATSALA SAMPATH FOR
SRI. SAMPATH ANAND SHETTY, ADV.)

AND :

1 SRI. MOHAMMED JAFFAR
MAJOR,
S/O. AHAMMED
M.M. ROAD,
CALICUT, KERALA STATE.

2 THE ORIENTAL INSURANCE CO. LTD.
CALICUT, KERALA STATE,
REP. BY ITS MANAGER.

... RESPONDENTS.

(By Sri. V.K. Bhat, Adv., for
Kumar & Kumar, Advs.,; R1-served)

THIS APPEAL IS FILED U/S 173(1) OF MV ACT
AGAINST THE JUDGMENT AND AWARD DATED: 19.12.1994
PASSED IN MVC NO.1058/1989 ON THE FILE OF THE
MACT. II, D.K., MANGALORE, PARTLY 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 made by the Motor Accident Claims Tribunal, Dakshina Kannada, whereby M.V.C.No.1058/1989 has been partly allowed and a sum of Rs.56,900/- with interest at the rate of 6% p.a. awarded as compensation for the injuries sustained by the appellant in a motor vehicle accident. The present appeal filed by the claimant seeks enhancement of the said amount.

2.The petitioner is an employee of the Corporation Bank. He was on 1st of June, 1989 waiting for the bus on the extreme right side of National Highway No.17 at Pandeshwar Village, when a car bearing No.KED 4930 driven rashly and negligently by its driver dashed against him causing grievous injuries to his person. He was shifted to K.M.C. Hospital at Manipal, where he underwent operations and remained hospitalised for 51 days as an inpatient. In due course, he



preferred a claim petition before the Tribunal for payment of a sum of Rs.4,69,875/- towards compensation for the pain and suffering undergone by him and the disability resulting from the injuries sustained in the accident. The claim was opposed by the respondents on a number of grounds giving rise to five issues which the Tribunal framed and decided in favour of the claimant. The Tribunal held that the accident in question occurred on account of rash and negligent driving of the above vehicle by its driver. The Tribunal also held that the injuries were sustained by the claimant as a result of the accident in question and that the claimant was entitled to compensation for the same. While determining the amount payable to the claimant, the Tribunal awarded a total sum of Rs.56,821.75 under the following heads:



1. General damages for pain & sufferings due to the fracture injuries sustained in the accident	: Rs.25,000/-
2. Loss of past earnings	: Rs.11,250/-
3. Loss of amenities of life	: Rs. 5,000/-
4. For permanent disability	: Rs. 7,500/-
5. Medical expenses	:Rs. 4,246/75
6. For food, tea, refreshments etc., for himself and his attendant	: Rs. 3,825/-

TOTAL:-	Rs.56,821/75
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The above amount was rounded off to Rs.56,900/- and made payable with interest at 6% p.a.

3. Learned counsel for the appellant submitted that the Tribunal was in error in awarding a sum of Rs.11,250/- only towards loss of earning during the period the appellant-claimant remained under treatment. She urged that the appellant had remained on leave for a

period of nine months, out of which nearly five months leave was on half pay allowance while the remaining was privilege leave without any salary. The Tribunal has while awarding compensation for the loss suffered on account of loss of earning taken into consideration the leave on half pay allowance for a period of five months and awarded a sum of Rs.11,250/- on that account. The remaining period of four months spent on leave by the appellant without any salary has not however been taken into consideration by the Tribunal for purposes of awarding compensation to him. She submitted that since the appellant had availed of privilege leave without any salary as a consequence of the disability arising out of the accident in question, there was no justification for denial of compensation equivalent to the loss of salary for that period.

4. We find considerable merit in the submission made by the learned counsel. It is evident from a reading of the order passed by the Tribunal that compensation has been determined and awarded only for a period of five months

claimant cannot lift any weight with his right hand nor write for long hours due to the disability suffered by him. He cannot according to the evidence on record, even eat food with his right hand. The fracture suffered in the right forearm has according to the material on record, mal-united. Having regard to all these circumstances and keeping in view the nature of the injuries and the disability we deem it just and proper to enhance the compensation awarded by the Tribunal from Rs.12,500/- to Rs.15,000/-.

6. It was next argued by the learned counsel for the appellant that the Tribunal has committed an error in awarding a sum of Rs.4,246.75 only towards medical expenses. She submitted that the appellant had spent around Rs.20,000/- on his medical treatment. Part of the expenses incurred amounting to Rs.6,000/- approximately has been reimbursed by the bank to the claimant, while out of the remaining, the Tribunal has awarded only a sum of Rs.4,246.75 which needs to be enhanced. There is in our opinion no merit in that contention. It is true that according to the

deposition of the claimant the total expenses on his treatment was to the tune of Rs.20,000/-, but it is equally true that apart from the documents that show an expense of Rs.6,000/- or so, there is no other material in proof of any other expenditure having been incurred. Out of the expenditure incurred by the claimant, he has received reimbursement of Rs.6,000/- from the bank. The award of a further amount of Rs.4,246/- under that head was therefore sufficient to meet the ends of justice. In the circumstances of the case, the claim for enhancement under this head is rejected.

7. Learned counsel for the appellant lastly submitted that the appellant had remained hospitalised as an inpatient for nearly 51 days, during which time, he had to engage an attendant to serve and assist him. The Tribunal has accepted that version and while determining the amount of compensation payable to the claimant held that the total amount payable cannot be more than 3,825/-. The Tribunal has while doing so taken Rs.50/- per day towards the expenses on the

claimant's food and refreshment and Rs.25/- for that of the attendant She submitted that the said amount could be suitably enhanced to do complete justice between the parties. Having regard to the period for which the appellant was hospitalised, we deem it just and proper to enhance the amount awarded by the Tribunal towards food and refreshment from Rs 3,825/- to Rs 5,000/-

8 To sum up the appellant shall be entitled to the following additional amount towards compensation:

1. Towards loss of earning :Rs 20,250/-
2. Towards loss of amenities of life :Rs 2,500/-
- 3 Towards food & Refreshment :Rs 1,175/-

TOTAL:-

Rs 23,025/-

Rs.23,925/-

Corrected
vide Court
Order dtd.
19/6/03

Corrected on
23-6-2003

Mr 23/6

The additional ~~amount~~ amount hereby awarded shall earn interest at the rate of 8% p.a. from the date of claim petition till payment.

9. The appeal is allowed in part and to the extent indicated above leaving the parties to bear their own costs.

Sd/-
Judge

Sd/-
Judge

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