

IN THE HIGH COURT OF KARNATAKA AT BANGALORE.

Dated the 19th day of November 1998.

BEFORE

THE HON'BLE MR. JUSTICE N.S.VEERABHADRAIAH.

MISC. FIRST APPEAL NO. 722 OF 1990.

BETWEEN:

Nagarathamma,  
Aged about 29 years,  
D/O Siddalingappa,  
Household Work and  
Agriculturist, Cocly  
R/O Apparasanahally,  
Andanur Post  
Holakkere Taluk.

APPELLANT.

(By Sri.B.M. Siddappa for appellant)

AND:

- 1) Babu,  
Driver of Lorry  
bearing No. TMM 3199,  
C/O Smt. Radhika,  
Owner of Lorry TMM  
3199, No. 270, Hegodu  
Road, Madras.
- 2) D. Jayamma,  
Minor represented by  
her mother Radhika,  
Owner of the Lorry No. TMM  
3199, No. 270, Hegodu Road,  
Madras.
- 3) The Branch Manager,  
New India Assurance Co.,  
Salem-1, Tamil Nadu.

RESPONDENTS.

(By Sri.K. Suryanarayana Rao for R.3)

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This Miscellaneous First Appeal filed  
under Section 110-D of the Motor Vehicles Act,  
against the Judgment and decree dated 8-12-1989  
passed in M.V.C.No. 326/86 on the file of the  
Motor Accidents Claims Tribunal, Chitradurga etc.,

This appeal is coming on for hearing this day, the Court delivered the following:

JUDGMENT

This is claimant's appeal for enhancement of compensation.

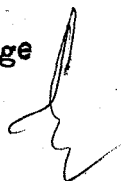
2. Brief facts of the case are as follows:

The injured - Nagarathamma presented a claim petition before the Claims Tribunal, Chitradurga, claiming compensation of Rs.1,63,300/- on account of the injuries suffered in the accident that took place on 22-12-1985 near Palavanahalli Bridge due to the rash and negligent driving of the lorry bearing No. TMM 3199 by its driver.

3. The owner and the injured filed objection statement resisting the claim petition. The Insurance Company contended that the petitioner was a gratuitous passenger and thereby not liable to be covered under the policy of Insurance.

The Claims Tribunal framed the following issues:

- 1) Does the petitioner prove that she sustained injuries in accident due to the rash and negligent act of the first respondent on 22-12-1985 at 3-30 p.m. near Palavvanahally bridge on N.H. 4 ?



-x 3 :-

2) Is the petitioner entitled to compensation? If so, to what extent and from whom?

3) What order?

4. The petitioner examined P.Ws.1 and 2 and produced Ex.P.1 to Ex.P.9 whereas respondent produced Ex.R.1 and 2 and closed their side.

5. The Claims Tribunal held that the accident resulted on account of the rash and negligent driving of the goods vehicle in question and awarded compensation of Rs.15,000/- against the driver and the owner and dismissed the claim against the Insurance Company.

6. The appellant being dissatisfied with the quantum of compensation awarded and also the finding absolving the liability has come up with this appeal.

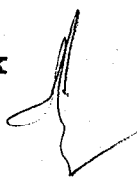
7. Learned counsel for the appellant contended that at the time of the accident the injured was aged 25 years and as a result of the accident he has suffered with the fracture of right clavicle and also degloving of the skin over the dorsum of the right foot.

which are grievous in nature and comparing to the nature of injuries, the quantum of compensation awarded is meagre and inadequate and prayed to award compensation.

8. The point for consideration that arises is:

Whether the appellant is entitled for enhancement of compensation ?  
If so, which of the respondent are liable to pay the compensation ?

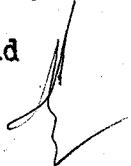
9. The injured in her evidence has stated that as a result of the injuries she was under the treatment for a period of three months in Chitradurga Hospital and spent Rs.3000-00 and that she was earning Rs.500/- by doing business in vegetables. The evidence of P.W.2 - Dr. K.C. Rajasekhar, shows when he examined the injured he found as many as following six injuries:

- "1. A Lacerated wound over the border of the mandible on the right side.
  2. An irregular lacerated wound over the right side of the neck and shoulder extending on to the back
- 

side of the shoulder with laceration of the muscles underneath. Clinically there was a fracture of the right clavicle fractured fragment are felt in the wound.

3. Multiple small lacerated wounds over the right deltoyed region.
4. An abrassion over the right forearm on the dorsal aspect.
5. A lacerated wound over right leg.
6. A lacerated wound over the whole of the dorsum of the right foot with digloveing of the skin over the forsum of the right foot. "

10. It is further seen that the injured was inpatient from 22-12-1985 to 12-3-1986 that is, nearly for over a period of three months and the X-ray also reveal a fracture of right clavicle and according to the evidence of the doctor that there is disability over the right clavicle. The wound certificate clearly shows that the injured has suffered with fracture of right clavicle with degloveing of the skin over the forsum of the right foot and the said injuries are permanent in nature. In view of the said



fact, the compensation awarded appears to be on the lower side. Considering the factual injury and the degloving of the skin over the forsum of the right foot if a compensation of Rs.30,000/- is awarded for pain and suffering it would meet the ends of justice. Apart from that the injured being an inpatient for over a period of three months in the Hospital she is entitled for another sum of Rs.5000/- towards medical expenses and for Rs.10,000/- towards loss of amenities. In all the petitioner is entitled for a total compensation of Rs.45,000/- less Rs.15,000/- awarded by the Claims Tribunal.

11. The next point for consideration that arises whether the liability has to be fastened on the Insurance Company ?

12. It is not the case of the petitioner that she was accompanying in the vehicle as a coolie or a loader or along with the goods. When such being the case, under the terms and conditions of the policy of Insurance fastening the liability on the Insurance Company does not arise and thereby the Claims Tribunal is justified in dismissing the claim against

the Insurance Company and therefore it is only the owner and the driver who have to make good the compensation.

13. For the foregoing reasons, the appeal allowed in part enhancing the compensation of Rs.45,000/- less Rs.15,000/- with interest at 9% from the date of petition till the date of payment recoverable from the owner and the driver and the claim against the Insurance Company is dismissed.

The parties shall bear their own costs.

Sd/-  
Judge

Csk/-