

IN THE HIGH COURT OF KARNATAKA
AT BANGALORE

DATED THIS THE 6TH DAY OF SEPTEMBER 2012

BEFORE

THE HON'BLE MR. JUSTICE B.SREENIVASE GOWDA

MFA NO.834/2009 (MV)

BETWEEN :

G.S.ASHWATH NARAYANA @ ASHWATHAPPA,
S/O S.NARASIMAPPA,
AGED ABOUT 32 YEARS,
C/O SHIVARAJU T.M.,
NO.17, 17TH MAIN, SRINAGAR,
BANGALORE-50.

... APPELLANT

(BY SRI.SRIKANTH B., ADV.)

AND :

1. THE REGIONAL MANAGER,
THE ORIENTAL INSURANCE CO.LTD.,
DIVISIONAL OFFICE, NO.10, DWARAKA,
II FLOOR, 36, NUNGAMBAKKAM,
CHENNAI-60034.
2. MR.SRINIVASAN,
S/O VELAYUDHAN M.,
HOUSE NO.2-49-3,
HOSABETTU, SURATHKAL,
MANGALORE.
3. MR.DAYANANDA K.M.,
S/O MONTE GOWDA,
KAJEMANE, KALANJI THANDA,

BELTHANGADI TALUK,
MANGALORE.

... RESPONDENTS

(BY SRI.V.NARAYANASWAMY, ADV. FOR R1,
R2 AND R3 NOTICE DISPENSED WITH)

THIS APPEAL IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 04.07.2007 PASSED IN MVC NO.930/2007 ON THE FILE OF THE IV ADDL. JUDGE, COURT OF SMALL CAUSES, MEMBER, MACT, METROPOLITIAN AREA, BANGALORE, (SCCH.NO.6), PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL COMING ON FOR ORDERS THIS DAY, THE COURT DELIVERED THE FOLLOWING:

J U D G M E N T

This appeal is by the claimant seeking enhancement of compensation awarded by the Tribunal.

2. Heard, the appeal is admitted and with the consent of the learned counsel appearing for the parties, it is taken up for final disposal.

3. For the sake of convenience, the parties are referred to as they are referred to in the claim petition before the Tribunal.

4. As there is no dispute regarding injuries sustained by the claimant in a road traffic accident occurred on 05.03.2006 due to rash and negligent driving of the lorry bearing registration No.KA-19-B-2574 by its driver and liability of the insurer of the offending vehicle, the only point that arises for my consideration in the appeal is:

“whether quantum of compensation awarded by the Tribunal is just and reasonable or does it call for enhancement?”

5. After hearing the learned counsel appearing for the parties and perusing the judgment and award of the Tribunal, I am of the view that the compensation awarded by the Tribunal is not just and reasonable, it is on the lower side and hence it is required to be enhanced.

6. As per Ex.P6-wound certificate, the claimant has sustained following injuries:

- i) Lacerated wound 5 x 0.5 cm x bone deep, over right eyebrow.
- ii) Lacerated wound 3 x 0.5 cm x bone deep, over the chin.
- iii) Fracture of shaft of left femur at upper third.

Injuries sustained and treatment taken by him are also evident from Ex.P8 two discharge summaries, Ex.P9 79 medical bills and Exs.P10 and P12 - x-rays and supported by oral evidence of the claimant and doctor who were examined as P.Ws.1 and 2 respectively.

7. Considering one major fracture and two simple injuries sustained by the claimant, a sum of Rs.30,000/- is awarded towards 'pain and suffering' as against Rs.25,000/- awarded by the Tribunal.

8. The claimant has produced medical bills for Rs.82,826/- as per Ex.P9. Therefore, a sum of Rs.83,000/- is awarded towards 'medical expenses'. He was treated as inpatient for 32 days in a private hospital. Considering the same, a sum of Rs.15,000/- is awarded

towards 'incidental expenses' such as conveyance, nourishment and attendant charges.

9. The claimant claims to have been working as a driver and earning Rs.4,500/-per month. But the same is not established by producing any documents. In the absence of proof of income, considering his age as 29 years, year of accident 2006 and his profession as driver, his income is assessed at Rs.4,000/- per month as against Rs.3,000/- per month assessed by the Tribunal. The nature of injuries suggest that he must have been under rest and treatment for a period of 4 months and therefore a sum of Rs.16,000/- is awarded towards 'loss of earning during laid up period' as against Rs.3,200/- awarded by the Tribunal.

10. Considering the nature of injuries sustained by the claimant and an amount of discomfort and unhappiness the claimant has to undergo in his future life, a sum of Rs.25,000/- awarded by the Tribunal

towards 'loss of amenities' is just and proper and there is no scope for enhancement under this head.

11. Learned counsel for the insurer submits the Tribunal without discussing about the disability stated by P.W.2-doctor is not justified in assessing the disability caused to whole body at 15% and awarding compensation towards loss of future income.

On the other hand, the learned counsel for the claimant submits that, the Tribunal considering the nature of injuries sustained by the claimant, the medical records including x-ray and the evidence of P.W.2-doctor has rightly considered the disability caused to the whole body at 15% and awarded compensation towards loss of future income.

The claimant after sustaining major fracture of shaft of left femur at upper third cannot be said that he can continue to discharge his job as driver of a heavy vehicle with the spirit and strength with which he was doing prior to the accident. Therefore, the Tribunal considering the nature of injuries sustained by the claimant, medical

records including x-ray and the evidence of P.W.2-doctor is justified in assessing the disability caused to the whole body at 15%. As per driving licence produced by the learned counsel for the claimant along with a memo after furnishing copy of the same to the learned counsel for the insurer, the claimant was born on 06.06.1977 and his age was 29 years at the time of the accident. The multiplier applicable to his age group is 17 and his income is assessed at Rs.4,000/- per month. So loss of future income works out to Rs.1,22,400/- (4,000/- x15/100x12x17) and it is awarded as against Rs.75,600/- awarded by the Tribunal.

12. Thus, the claimant is entitled for the following compensation:-

a)	Pain and sufferings	- Rs.30,000/-
b)	Medical expenses	- Rs.83,000/-
c)	Incidental expenses	- Rs.15,000/-
d)	Loss of income during laid up period	- Rs.16,000/-
e)	Loss of amenities	- Rs.25,000/-
f)	Loss of future income	- Rs.1,22,400/-

	Total	- Rs.2,91,400/-

Less: Compensation awarded by the Tribunal	- Rs.2,21,626/- -----
Balance	- Rs.69,774/- -----

13. Accordingly, the appeal is allowed in part. The judgment and award passed by the Tribunal is modified to the extent stated herein above. The claimant is entitled for an additional compensation of Rs.69,774/- with interest at 6% p.a. from the date of claim petition till the date of realisation, excluding the interest for the delayed period of 445 days in filing the appeal

14. The Insurance Company is directed to deposit the additional compensation amount with interest, but excluding interest for the delayed period of 445 days in filing the appeal within two months from the date of receipt of a copy of this judgment.

15. Out of the additional compensation, 50% with proportionate interest is ordered to be invested in fixed deposit in the name of claimant in any Nationalised

Bank/Scheduled Bank/Post Office for a period of 3 years with a right of option to withdraw interest periodically. Remaining amount with proportionate interest is ordered to be released in favour of the claimant.

No order as to costs.

Sd/-
JUDGE

MBS/-