

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 25th day of March, 2000

PRESENT

THE HON'BLE MR. JUSTICE R.V. RAVEENDRAN

AND

THE HON'BLE MR. JUSTICE K.R. PRASADA RAO

M.F.A. No. 5567 of 1998

Sri Manjunathachari,
s/o Bheemachari,
Occ: Agriculture,
r/o 2nd Cross, Nehru Nagar,
Chitradurga .. Appellant
(By Sri Kaleemulla Shariff, Advocate)

-Vs-

1. National Insurance Co. Ltd.,
Branch Office, Chitradurga,
by its Manager;
2. Kotreshi, s/o H.S. Gurubasappa,
owner of Bus No. CTS 8613
Church Extension,
Chitradurga .. Respondents
(By Sri C.M. Monappa, Adv., for R2; R1 sd.,)

MFA is filed under Section 173(1) of MV Act against the judgment and award dated 10-9-1998 in MVC No.270/93 on the file of Additional D.J.& MACT-II, Chitradurga, partly allowing the claim petition for compensation.

This MFA coming on for admission this day, PRASADA RAO, J., delivered the following:

J U D G M E N T

The appellant approached the Additional District Judge and Motor Accident Claims Tribunal-II, Chitradurga, seeking a compensation of Rs 6.00 lakhs for the injuries sustained by him in a road traffic accident.

2. On 3-9-1992 at about 8.30 pm, while the appellant was standing near Ragi Garage in Chitradurga city, behind the Anjaneya bus bearing No CTS 8613, which was parked therein for repairs, another bus by name Mohini, bearing No CTX 6269, also came to the said garage for repairs, ^{and} dashed against the appellant from behind, while taking reverse. As a result, the appellant sustained grievous injuries all over his body and sustained fractures of ribs and ^{bones in} right shoulder. Thereafter, the appellant was shifted to District Hospital, Chitradurga for treatment. Subsequently he was admitted ^{to} C G Hospital, Davangere and was treated there as inpatient till 18-9-1992.

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3. Third respondent, who is the insurer of the bus involved in the accident, alone contested the proceedings before the tribunal, denying that the accident took place due rash and negligent driving of bus in question. It also denied the age, income etc., given by the appellant in the claim petition.

4. The appellant-claimant examined himself as PW1 and got examined the medical officer, who treated him at Chitradurga, as PW2 and got marked 13 documents as Exp1 to 13 in support of his claim. No evidence has been adduced on behalf of the respondents. Only the insurance policy ^{issued by} of third respondent in respect of vehicle involved in the accident was marked as ExR1.

5. On appreciation of ^{the} evidence, the tribunal came to the conclusion that the accident took place due to the rash and negligent driving of the bus bearing No CTS 8613 by its driver. The tribunal awarded Rs 25,000.00 under the heading ^{of} "pain and sufferings", Rs 5,000.00 towards ^{of} "loss of income" during the period of treatment, Rs 48,000.00 towards medical expenditure incurred by the

appellant and Rs 15,000.00 towards permanent disability suffered by him. Thus, in all the tribunal awarded a total compensation of Rs 93,000.00 with interest at the rate of 6% p.a. from the date of claim petition till realization. Not being satisfied with the said compensation ^{awarded} _{2.} the appellant has filed this appeal for enhancement of compensation.

6. We ^{have} heard the arguments advanced by the learned counsel for appellant and first respondent ~~Bevi~~ - insurer.

7. Medical evidence adduced by the claimant appellant disclosed that in the accident, appellant sustained multiple fractures of his 3rd, 4th, 5th and 6th ribs and fracture of his right arm, as could be seen from the wound certificates [Exp4 and Exp9), which were issued by Government Hospital, Chitradurga and C. H Hospital, Davangere respectively. The medical officer furnished his opinion that the above injuries were grievous in

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nature. The x-ray report shows fracture of right humerus and also 5th, 6th, 7th, 8th and 9th ribs of right side of appellant.

8. Having regard to the nature of the injuries sustained by the appellant, the tribunal awarded Rs 25,000.00 under the head "pain and suffering". Having regard to the number of fractures sustained by the claimant-appellant, we feel that the said sum is not just and reasonable and the same is to be enhanced to Rs 35,000.00. The claimant examined Dr G C Basarvaraja [PW2], who treated him in respect of above said injuries, to prove that the appellant suffered permanent disability of 20% in respect of right elbow and right shoulder. This witness deposed that ^{there is} the limitation of movement of right elbow and right shoulder of the appellant to the extent of 15%. He furnished his opinion that the total per centage of disability suffered by the appellant in respect of his right shoulder movement is 20%. ~~But~~ ^{So} we feel that the amount of Rs 15,000.00 awarded by the tribunal towards permanent disability suffered by claimant is ~~on the~~ ^{on the} very much ~~on the~~ lower side, Having regard to the fact that the

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appellant suffered loss of amenities of life on account of permanent disability suffered by him, due to restricted movement of right elbow and right shoulder, in our opinion, it would be just and reasonable to enhance the said amount to Rs 35,000.00.

9. The claimant has produced medical bills to show that he has spent about Rs 47,688.59 towards purchase of medicines during the period of treatment. Taking into consideration the said medical bills, the tribunal, awarded only Rs 48,000.00 towards medical expenses. But, the tribunal has not taken into consideration the expenses incurred by the appellant during the period of his treatment, on food, nourishment, attendant and conveyance etc. Having regard to the period of treatment, undergone by the appellant for about 20 days, we feel that the appellant might have incurred ^{about} Rs 7,000.00 towards incidental expenses. We, therefore, feel that it is just and reasonable to award a sum of Rs 55,000.00 to cover the medical and other incidental expenditure. The tribunal has also awarded Rs 5,000.00 towards loss

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of income suffered by the appellant during the period of treatment, the correctness of which is not under challenge before us. Thus, in all we find the appellant is entitled to total compensation of Rs 1.30 lakhs

10. In the result, the appeal is allowed in part and in modification of the award passed by the tribunal, the appellant is awarded ~~to~~ a total compensation of Rs 1.30 lakhs with interest at the rate of 6% p.a. from the date of claim petition till realisation. The direction of the tribunal regarding deposit of Rs 40,000.00 in fixed deposit in any nationalised bank for a period of three years, is confirmed.

**pjk

Sd/-
Judge

Sd/-
Judge