

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 8TH DAY OF JANUARY 1998

BEFORE

THE HON'BLE MR.JUSTICE CHIDANANDA ULLAL

M.F.A.No.2677 OF 1994

Between:

Sri K P Syed Ali Kutty,  
son of Sri K P Moosa,  
aged about 37 years,  
No.3, 5th Cross,  
Sreerampuram,  
Bangalore-560 021.

.. Appellant

(By Sri V N Murthy, Adv. for  
Sri K Abhinav Anand, Adv.)

And:

1. Smt.Bhambri,  
wife of Sri S P Bhambri,  
Major.
2. Sqn.Ldr.S P Bhambri,  
son of late Bhishanlal,  
Major.

Both residents of No.T-228,  
Officers Quarters,  
Jalahalli, Air Force,  
Bangalore.

3. United India Insurance  
Co. Ltd.,  
360-A, 1st Floor,  
Peenya, Tumkur Road,  
Bangalore.  
Represented by its  
Divisional Manager,  
D.No.6, Chitrapur  
Bhavan, 15th Cross,  
Malleswaram,  
Bangalore-3.

.. Respondents

(By Sri O Mahesh, Adv. for R-3)

This miscellaneous first appeal is filed under Section 173(1) of the Motor Vehicles Act against the judgment and award dated 6.7.1994 passed in MVC No.1526/86 on the file of the Claims Tribunal No.I, Bangalore City, allowing the claim petition partly for compensation.

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

- JUDGMENT -

This is the claimant's appeal to challenge the judgment and award dated 6.7.1994 in MVC No.1526/86 passed by the Motor Accident Claims Tribunal No.I, Bangalore whereunder while allowing the claim of the appellants herein in part, it had awarded a sum of Rs.12,000/- as global compensation.

2. I heard the learned counsel for the appellants, Sri V N Murthy appearing alongwith Sri Abhinava Anand and the learned counsel for the contesting respondent No.3, Insurance Company, Sri O Mahesh. The respondents No1 and 2 were dispensed with notices at the time of admission by this Court since they remained *exparte* before the Motor Accident Claims Tribunal No.I (henceforth in brief as MACT). I also perused the case records.



3. The learned counsel for the appellat/claimant had taken me through the facts of the case; they are as hereunder:

That the appellant was working as Sales Representative and while he was riding his cycle from Malleswaram Circle towards Yeshwanthpur on Sampige Road, the respondent No.2, rider of the TVS-50 bearing No.CAI-5047 caused the accident resulting in fracture of right clavical bone and other minor injuries all over his body and the accident had taken place on 4.10.1985. That the appellant/claimant did not produce any medical records for the treatment immediately after the accident though, he is stated to have been taken <sup>that</sup> immediately after the accident. However, he had produced the the medical certificate issued by PW.2, a Doctor of the KCG.Hospital who had examined him on <sup>and</sup> 25.1.1993 on his examination he found old mal-united fracture of right clavicle.

3. On appreciation of the evidence on record, both oral and documentary the MACT had awarded a sum of Rs.10,000/- under the head of 'general damages' and a sum of Rs.2,000/under the head of 'medical expenses, conveyance, noursinment etc.', in all the



MACT had awarded a sum total of Rs.12,000/- as global compensation. The learned counsel for the appellant submitted that the said amount is too meagre and according to him, a minimum sum of Rs.50,000/would have been awarded as against the total claim of Rs.1,00,000/-. Therefore, he prayed that the impugned judgment and awarded passed by the MACT be modified and the Appellant be awarded with a sum of Rs.50,000/as global compensation.

4. As against the above argument advanced, the learned counsel for the contesting respondent No.3, Sri O Mahesh argued that it is the appellant who was negligent in conducting his case, for he had not produced any medical evidence worth the name for the injury he had suffered. According to him, the award of a sum of Rs.10,000/- towards general damages and a further sum of Rs.2,000/- towards medical expenses were just and proper. He also pointed out that a sum of Rs.2,000/- was awarded by the MACT without there being any material evidence produced by the appellant/claimant before the MACT. While suming up his argument, he submitted that the sum awarded by the MACT was just and proper and it does not call for interference with by this court.



5. Having heard both sides, the only point for my consideration is whether the above sum of Rs.12,000/- awarded by the MACT as global compensation is just and proper. In the facts and circumstances, it is not in dispute that the appellant/claimant had <sup>✓</sup> suffered fracture of his right clavical bone and the <sup>same had ✓</sup> mal-united. It is also not in dispute that at the time of the accident the appellant/claimant was working as business representative. It is also on record that for the present the appellant/claimant is practising as lawyer. If that is so, it is not exaggeration to say that the mal-union of the right clavicle bone had caused some disability on the right hand having suffered a fracture of his right clavical bone. Even in the evidence of the Doctor who had examined, him had stated that there is a disability in the Appellant-claimant to an extent of 10% in his hand.

6. By taking totality of the circumstances, it appears to me that if a sum of Rs.15,000/- is awarded under the head 'pain and suffering', a sum of Rs.15,000/- is awarded under the head 'loss of amenities' and further the said sums are added with a further sum of Rs.2,000/- towards 'medical expenses' as awarded by the MACT the same would be just and

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proper compensation awardable to the appellant-claimant. If that is so, the total award works out to Rs.32,000/- as global compensation and therefore the judgment and award of Rs.12,000/awarded by the MACT stands modified to award global compensation of Rs.32,000/-. In addition to the above, the appellant/claimant is also entitled to for interest at 9% p.a. from the date of petition down to the date of payment, for in my view the interest @ 6% awarded by the MACT is on the lower side. Let the respondent No.3, Insurance Company deposit the said sum together with interest at the above rate within a period of 8 weeks from this day. The Insurance Company is at liberty to give deduction for any amount deposited either before this Court or before the MACT subsequent to the impugned judgment and award herein challenged.

The appeal therefore allowed in part as above. No costs.

Sd/- JUDGE