

IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD

DATED THIS THE 4th DAY OF APRIL 2013

BEFORE

THE HON'BLE MR.JUSTICE B.SREENIVASE GOWDA

MFA No.24925/2011(MV)

BETWEEN

Shri. KASAHAPPA KRISHNAPPA BANE,
AGE: 46 YEARS, OCC: PLUMBER
(PIPE LINE WORK) NOW-NIL,
R/O SAVADATTI, TQ. & DIST. BELGAUM

.. APPELLANT

(BY SRI. K.ANANDKUMAR, ADV.)

AND:

1. BALAGOUDA APAPANNA PATIL
AGE: 52 YEARS, OCC: AGRICULTURE,
RO BIRADI, TQ. RAIBAG, DIST. BELGAUM

2. UNITED INDIA INSURANCE CO. LTD.,
THROUGH ITS DIVISIONAL OFFICE,
THE DIVISIONAL MANAGER,
MARUTI GALLI, BELGAUM

.. RESPONDENTS

(BY SRI. A.G. JADHAV, ADV. FOR R2.)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT 1988 AGAINST THE JUDGMENT AND AWARD DATED 01/01/2011 PASSED IN MVC NO.2462/2009 ON THE FILE OF THE PRESIDING OFFICER FTC III MEMBER AMACT BELGAUM PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

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

JUDGMENT

Appeal by the claimant seeking enhancement of compensation awarded by the Tribunal on 01/01/2011 in MVC No.2462/2009.

2. With the consent of the learned counsel appearing for the parties, appeal is heard, admitted and disposed of finally.

3. As there is no dispute regarding injuries sustained by the claimant in a road traffic accident occurred on 07/11/2009 due to rash and negligent driving of tractor with trailer bearing No.KA-23/TA 4311-KA/TA-4312 and 4313 by its driver and liability of the insurer of the said vehicle, the only point that arises for consideration is:-

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

4. 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 quantum of compensation awarded by the Tribunal is not just and reasonable, it is on the lower side and therefore it deserves to be enhanced.

5. As per Ex.P-8-wound certificate, the claimant had sustained the following injuries.:

- a. Fracture of neck scapula and
- b. Rib fracture on left side

The claimant was treated as an in patient for 17 days in a private hospital. PW-3 Dr. S.R. Angadi in his evidence has stated that the claimant has suffered disability of 25% to upper limb. Considering two fractures sustained by the claimant, a sum of R.30,000/- is awarded towards pain and suffering. Rs.12,000/- awarded towards medical expenses is as per the medical bills, there is no scope for enhancement. For the treatment taken by the claimant as an inpatient for 16 days, Rs.3,000/- awarded by the

Tribunal towards incidental expenses is just and proper. He claims to have been earning Rs.8,000/- by doing plumbing work but has not produced any document to establish the same. In the absence of proof of income, considering his age as 44, year of accident as 2011, his income is assessed at Rs.4,000/- per month. The nature of injuries suggest that he must have been under rest and treatment for a period of three months. Therefore a sum of Rs.12,000/- is awarded towards loss of income during laid up period. Rs.12,000/- awarded by the Tribunal towards loss of amenities and future unhappiness is just and proper and there is no scope for enhancement. Multiplier applicable to his age group is 14. His income is assessed at Rs.4,000/- per month and considering the disability stated by the Doctor at 25% to limb, disability caused to the whole body comes to 6%. So loss of future earnings works out to Rs.40,320/-($4000 \times 6 / 100 \times 12 \times 14$) and it is awarded.

6. Thus, the claimant is entitled to the following compensation:

	Rs.
1. Pain and suffering	30,000/-
2. Medical expenses	12,000/-
3. Incidental charges	3,000/-
4. Loss of income during Laid up period	12,000/-
5. Loss of amenities	12,000
6. Loss of future income	40,320/-

-Total amount comes to	1,09,320/-
-Less compensation awarded By the Tribunal	75,760/-

-So additional compensation comes to	33,560/-

Accordingly, the appeal is allowed in part. The judgment and award passed by the Tribunal is modified to the extent stated herein above and the claimant is entitled to additional compensation of Rs.33,560/- with interest at 6% per annum from the date of claim petition till the date of realization but excluding interest for the delayed period of 180 days in filing the appeal.

Insurance company is directed to deposit the additional compensation with interest within two months

from the date of receipt of copy of this judgment but excluding interest for the delayed period.

From out of the additional compensation, 75% with proportionate interest shall be deposited in fixed deposit in any nationalized bank/scheduled bank or post office for period of 6 years in the name of the claimant with a right of option to renew it from time to time and withdraw interest accrued thereon periodically and the balance amount with proportionate interest shall be released in favour of the claimant.

No order as to costs.

Sri. A.G. Jadhav, who was directed to take notice for respondent No.2 and has argued the case on their behalf, is granted three weeks time to file vakalath.

**Sd/-
JUDGE**

Kmv