

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 28TH DAY OF MAY 2009

BEFORE

THE HON'BLE DR. JUSTICE K. SHAKTHAVATSALA

MISCELLANEOUS FIRST APPEAL NO.11255/2006

BETWEEN:

Sri. Rangaiah,
S/o. Rangappa,
Aged about 39 years,
Occ: Business,
R/o. 234, 1st Block,
7th Cross, Peenya,
Bangalore.

Appellant.

(By Sri S S Badawadagi, Adv.for appellant)

AND:

1. Smt. Gangamma,
W/o. N Nagaraj,
Age: Major, Occ: Business,
R/o.91, Lakkanahalli Colony,
Dasanapura Hobli,
Sondekoppa Post,
Bangalore North Taluk,
Bangalore.

2. The Oriental Insurance Co, Ltd.,
CB-7, Peenya, B O No.20,
100 ft Road, Jalahalli Cross,

Chikkasandra,
Bangalore.

Respondents.

(R-1 served)
(By Sri. C Shankar Reddy, S V Sudhkar Reddy., Adv.,
for R-2)

This Miscellaneous First Appeal is filed under Section 173(1) of the Motor Vehicles Act, against the judgment and award dated 27.05.2006 passed in MVC No.4193/2005 on the file of the IX Addl. Judge Member, MACT, Court of small causes, Metropolitan Area, Bangalore (SCCH-7), partly allowing the claim petition for compensation and seeking enhancement of compensation.

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

JUDGMENT

The appellant/claimant in MVC No.4193/2005 on the file of Court of Small Causes and Addl. MACT at Bangalore City is before this Court under Section 173(1) of Motor Vehicles Act, 1988, seeking enhancement of compensation by modifying the judgment and award dated 27.5.2006.

2. The appellant has urged in the grounds of Appeal that the compensation awarded towards pain and sufferings; permanent disablement; medical expenses; conveyance, diet and special diet charges are on the lower side.

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3. Learned Counsel appearing for the respondent No.2/Insurance Company submits that on appreciation of evidence on record, the Tribunal has awarded adequate compensation of Rs.1,95,000/- with interest at the rate of 6% per annum and the same does not call for interference by this Court.

4. Perused the trial Court records.

5. It is stated in the claim petition that the claimant was 28 years, owner of a Factory-Precision Works at Bangalore and his monthly income was Rs.1,00,000/-. The claimant met with an accident on 23.5.2005 at 9.15 p.m., when he was standing near Peenya Bus stop on N H-4 with motor cycle No.9683. At that time, lorry bearing registration No.MED-9054 came from the same direction in a rash and negligent manner and dashed against the claimant, as a result of which motor cycle was damaged and he sustained grievous injury. He was shifted to Ravi Kirloskar Hospital for treatment, where he was treated as in-patient from 23.5.2005 till 20.6.2005, the date on which the claimant signed the claim petition. *and continued*

It is further stated that his right leg was operated and wound debridement and K Wire with plate and screws and SSG done. It is

further stated that fibula and tibia were cut into number of pieces. The petitioner, being owner of the Factory, could not go to the field and get work orders. Therefore, he has sought for compensation in all amounting to Rs.25,00,000/- with interest at the rate of 12% per annum. During the course of trial, the claimant got himself examined as P.W-1 besides examining Dr. Parthasarathy as P.W-2 and got marked Exs.P-1 to P-32. Ex.P -3 is the wound certificate. As per the wound certificate, the claimant had sustained the following injuries:

- (i) Deep lacerated wound over middle 3rd of right leg;
- (ii) Deep lacerated wound measuring 1/1 cm present over right leg 3 cm below knee joint; and
- (iii) Comminuted fracture of both bones of right leg

6. Exs.P-6, P-7 and P-8 are the photographs of the claimant showing the claimant standing with stretches and condition of the right leg. Ex.P-10 is the discharge summary, which shows that the claimant was treated as in-patient from 23.5.2005 to 28.5.2005 in Ravi Kirloskar Memorial Hospital & Research Centre. Ex.P-9 shows that the claimant was treated in the said Hospital from 23.6.2005 to 29.6.2005. The claimant has produced medical bills at Ex.P-14

series for a sum of Rs.84,342/-. Ex.P-16 is the profit and loss account and computation of income pertaining to the work shop of the claimant for the previous year 2004-05 and assessment year 2005-06. According to that, the claimant has shown net profit of Rs.1,22,286/-. The claimant has produced OPD cards at Exs.P-22 to P-32 along with copies of X-rays and Lab reports.

7. The tribunal has awarded compensation in favour of the claimant as under:

(i)	Pain and suffering	Rs. 30,000-00
(ii)	Medical expenses	Rs. 70,000-00
(iv)	Transportation charges/ conveyance/nourishment charges (Rs.7,000+Rs.3,000)	Rs. 10,000-00
(v)	Loss of earning during the period of treatment	Rs. 20,000-00
(vi)	Disability	Rs. 50,000-00
(vii)	Future medical expenses and loss of amenities	Rs. 15,000-00

		Rs. 1,95,000-00

8. Keeping in view that the claimant was 38 years and an industrialist and he was running a Factory for precision work, he has

to go to the field and secure orders, otherwise he cannot run the industry. Keeping in view that he had net income of Rs.1,00,000/-, the income of the claimant can be safely fixed at Rs.8,000/- per month. In view the nature of injuries sustained, condition of the right leg and that he was again admitted for the second time for removal of implants by surgery, he could not have done anything during the period of treatment and rest. Therefore, the claimant is entitled for compensation towards loss of earning for a total period of five months at the rate of Rs.8,000/- per month. But the Tribunal has awarded only a sum of Rs.20,000/- towards loss of earning from the period of treatment. The Tribunal has not awarded any amount towards attendant charges though the claimant was treated for a period of 11 days in all and he required periodical medical check up. Hence it would meet the ends of justice to grant a sum of Rs.5,000/- towards attendant charges. It is also pertinent to mention that the claimant is entitled for reasonable compensation towards pain and suffering, loss of amenities and future medical expenses. The claimant has got disablement to the extent of 12% of the whole body. The observation of the Tribunal that there was loss of income is not correct as the claimant had to go to the field to secure orders, so as to run the industry.

9. It is a fit case to fix permanent disablement at 10% of the whole body and award compensation. In view of the above, the claimant is entitled for compensation as under:

(i)	Pain and suffering	50,000-00
(ii)	Medical expenses	70,000-00
(iii)	Conveyance and special Diet charges	10,000-00
(iv)	Loss of earning during the period of rest (Rs.8,000x5)	40,000-00
(v)	Permanent disablement (Loss of future earning) (Rs.8,000X10% \times 12 \times 14)	1,34,400-00
(vi)	Loss of amenities and disfigurement of right leg	50,000-00
(vii)	Future medical expenses	15,000-00

		3,69,400-00
	Less: Compensation awarded by the Tribunal	1,95,000-00

		1,74,400-00

Thus, the appellant/claimant is entitled for additional compensation of Rs.1,74,400/-.

9. In view of the above, the Appeal is partly allowed holding that the appellant/claimant is entitled for compensation of Rs.3,69,400/- as against Rs.1,95,000/- awarded by the Tribunal. Accordingly, the impugned judgment and award are modified.

Respondent No.2/Insurance Company is directed to deposit the enhanced compensation amount with the Tribunal within 3 months from today.

The Tribunal is at liberty to make appropriate orders regarding Bank Deposit.

No costs.

**Sd/-
Judge**

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