

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 8th DAY OF OCTOBER 2013

PRESENT

THE HON'BLE MR. JUSTICE MOHAN .M. SHANTANAGOUDAR

AND

THE HON'BLE MR. JUSTICE B. SREENIVASE GOWDA

MISCELLANEOUS FIRST APPEAL NO.5363 OF 2009 (M.V.)

BETWEEN:

Smt. Deepa Nittur
W/o Chetan Nittur
Aged about 36 years
Permanent address at
No.1613, E & F Block
Ramakrishnanagar
Mysore.

..Appellant

(By Sri D.L. Suresh, Adv.,)

AND :

1. Sri Dayananda
S/o Y.N. Raju
Aged about 47 years
D. No.229, 12th Main
5th Cross, Saraswathipuram
Mysore.

2. Sri H. Mahesha
S/o Hanumanthappa
Age Major
No.1656/D, 6th Main
K-Block
Ramakrishna Nagar
Mysore.

3. Bajaj Allianz
No.367, Srihari Complex
Sitavilas Road, Mysore
Rep by its Manager. ..Respondents

(By Sri H.S. Lingaraj, Adv., for R3; Notice to R-1 dispensed with; R-2 served)

This MFA is filed under Section 173(1) of M.V. Act against the Judgment and Award dated 13.4.2009 passed in MVC No.20/2007 on the file of the Presiding Officer, Fast Track Court-III and MACT., Mysore partly allowing the claim petition for compensation and seeking enhancement of compensation.

This MFA coming up for hearing this day, **MOHAN .M. SHANTANAGOUDAR .J.**, delivered the following.

J U D G M E N T

The appellant herein sustained cerebral concussion, splinter injuries over right side of face and comminuted fracture of left patella due to the accident. She had also lost her complexion. Ex.P8 – Discharge Record issued by the Basappa Memorial Hospital reveals the injuries suffered and the summary of the treatment given. The Tribunal has awarded compensation of Rs.1,11,000/-. This appeal is filed praying for enhancement of compensation.

2. The claimant was working in Unisys Corporation at London as an Associated Consultant for sale operations. She was a Business Analyst. She has come to her native place during vacation and at that time, the accident has taken place. The salary certificate of the claimant is produced at Ex.P8(c), which reveals that the claimant was getting 1,468.32 pounds per month. Though she was an in-patient for 5 days only, she underwent surgery during

the interregnum. Later, she took medical treatment as an out-patient. She had multi-stitches on her nose, ears, eyes etc., According to the claimant, she could not walk independently and she experiences pain while walking and driving the car. Due to the injuries, the eyelids, eyebrows, nostrils and neck are damaged to certain extent and she is getting headache and unable to see properly and cannot concentrate on the work. She needs plastic surgery in future. Her job involves extensive travelling in London and she has to drive her car at London personally inasmuch as she had to pay heavy price for hiring a taxi.

3. Though medical records are produced by the claimant, she has not got examined the doctor. However, we do not find any reason to disbelieve the medical certificates on record. The medical records, more particularly Ex.P5 - Wound Certificate, Ex.P8(b) - Prescription, Ex.P8(d) - Medical Certificate, Ex.P8(e) -

Discharge Card and Ex.P8(f) – Case Summary clearly reveal that the claimant has suffered fracture of left patella and cerebral concussion. The medical records also reveal that the claimant has suffered splinter injuries over right side of face and neck and she has undergone physiotherapy and she was advised not to travel.

4. We find that the appropriate compensation is awarded by the Tribunal towards medical expenses and other incidental expenses. There is nothing on record to show that the claimant has suffered future loss of earning capacity. In the absence of the evidence of the doctor, we are unable to grant any compensation under the heads of 'future medical expenses' as well as 'loss of future amenities'. However we find that the compensation awarded by the Tribunal under the head of 'pain and suffering' appears to be on the lower side. Since the claimant had suffered facial injuries apart from the fracture

of patella, she must have suffered lot of pain and agony. Therefore, we award Rs.50,000/- under the head of 'pain and agony' instead of Rs.25,000/- awarded by the Tribunal.

5. We do not find any ground to dispute the contention of the claimant that she had to remain in India for facial treatment atleast for two months after the accident. As aforementioned, she was operated and number of stitches were put on the neck and therefore she had to remain in India for two months for removal of stitches and for treatment. Hence she must have lost atleast two months salary during the period of treatment. The claimant has produced her salary certificate at Ex.P(c) and it discloses her salary as 1,486.32 pounds per month. At that point of time, one pound is equivalent to Rs.80/-. In the absence of any supporting material such as bank extract etc., we assess the income of the claimant at 1,000 pounds per month i.e. Rs.80,000/- per month. This means

that the claimant has lost 2,000 pounds for two months during the period of treatment, which is equivalent to Rs.1,60,000/-. The claimant shall be paid the said amount of compensation. Thus the claimant is entitled to Rs.1,85,000/- (Rs.1,60,000 plus Rs.25,000) more than what is awarded by the Tribunal. Therefore the claimant is entitled to Rs.2,96,000/- in toto.

Accordingly, the following order is made:

The compensation is enhanced from Rs.1,11,000/- to Rs.2,96,000/-.

The rate of interest shall be in terms of the award of the Tribunal. The enhanced compensation shall be kept in Fixed Deposit initially for a period of one year. Whenever the appellant comes back to India, she may get the entire amount alongwith the accrued interest thereon disbursed in her favour.

Appeal is **allowed in part** accordingly.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Gss/-