

IN THE HIGH COURT OF KARNATAKA

CIRCUIT BENCH AT GULBARGA

DATED THIS THE 6TH DAY OF AUGUST 2013

BEFORE

THE HON'BLE MR. JUSTICE S. ABDUL NAZEER

MISCELLANEOUS FIRST APPEAL No.31121/2010 (MV)

BETWEEN:

Aravind
S/o. Shivanand Allagi @ Soragond
Aged 26 years
Occ: Private Service
R/o. Moratagi, Tq: Sindagi
Dist: Bijapur
Now at Ibrahimpur, Bijapur

.... APPELLANT

(By Sri. B.H. Metagudda, Adv.)

AND:

1. Mahiboob Pashya
S/o. Moinuddin Jagiradar
Age: 48 years
Occ: Business and owner of the TATA Indica
R/o. Chigaralli, Tq: Jewargi
Dist: Gulbarga

2. The Branch Manager
The United India Insurance Co. Ltd.
No.52/88/1, Vidyanagar
Sultan Complex, Main Road
Shahapur

... RESPONDENTS

(By Sri. Prabhakar K. M., Adv. for R-1
Sri. Shivanand Patil, Adv. for R-2)

This appeal is filed under Section 173(1) of the Motor Vehicles Act, 1988, praying to modify the judgment and award dated 23.2.2010 in MVC No.566/2007 on the file of the MACT-VI, Bijapur, and etc.

This appeal coming on for *Orders* this day, the Court delivered the following:

JUDGMENT

This appeal by the claimant is directed against the judgment and award dated 23.2.2010 in MVC No.566/2007 on the file of the Motor Accident Claims Tribunal No.VI, Bijapur, whereby the Court below has awarded the total compensation of Rs.1,34,100/- with interest at 6% p.a. from the date of the petition till the date of deposit.

2. Learned counsel for the appellant-claimant submits that the claimant was doing agricultural work and was earning Rs.7,500/- per month. The Court below has assessed the monthly income at Rs.3,500/- per month. It is argued that as per the opinion of the Doctor, the claimant had sustained 45% to 50% permanent disability to the particular limb. The Court below has taken only 10% permanent disability to the whole body. It has not awarded

any compensation towards conveyance, nourishment etc. The compensation awarded under all the other heads is on the lower side.

3. On the other hand, learned Counsel appearing for the respondent-Insurance Company has sought to justify the impugned judgment and award.

4. I have carefully considered the arguments of the learned Counsel for the parties made at the Bar and perused the materials placed on record.

5. There is no dispute as to the occurrence of the accident and the liability of the respondent-Insurance Company to pay compensation.

6. The only question for consideration in this appeal is as to whether the compensation awarded by the Court below is adequate ?

7. The Doctor in his evidence has stated that the claimant had sustained 45% to 50% permanent disability to

the particular limb. Therefore, the Court below ought to have taken the permanent disability at 17% instead of 10% to the whole body. According to the claimant, he was doing the agricultural work and was earning more than Rs.7,500/- per month. No documents have been produced in support of the said contention. Therefore, I deem it proper to fix the notional income at Rs.4,500/- per month. The claimant was aged 25 years at the time of the accident. The proper multiplier to the case is 18. By taking the income of Rs.4,500/- per month, with the application of multiplier 18 and 17% permanent disability to the whole body, the compensation payable towards loss of future income comes to Rs.1,65,240/-. The Court below has awarded Rs.75,600/- under this head. The balance of compensation payable under this head is Rs.89,640/-. The claimant is entitled for Rs.5,000/- towards conveyance, nourishment etc. The compensation awarded under all the other heads is just and reasonable. Thus, the claimant is entitled for an additional compensation of Rs.94,640/-.

3. In the result, the appeal succeeds and it is accordingly allowed in part. The respondent – Insurance

company is directed to deposit a sum of Rs.94,640/- with interest at 6% per annum from the date of the petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this order. The claimant is permitted to withdraw the amount on its deposit. No costs.

**Sd/-
JUDGE.**

Cs/-

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