

**IN THE HIGH COURT OF KARNATAKA  
CIRCUIT BENCH AT GULBARGA**

**DATED THIS THE 17<sup>TH</sup> DAY OF JUNE 2013**

**BEFORE**

**THE HON'BLE MR. JUSTICE C.R.KUMARASWAMY**

**MISCELLANEOUS FIRST APPEAL NO.30047/2012 (MV)**

**BETWEEN:**

Gurubasappa  
S/o Irabasappa Sajjan  
Age: 38 years, Occ: Business  
R/o Radhakrishna Nagar,  
Ibrahimpur,  
Bijapur-586101.

... Appellant

**(By Sri.Bapugouda Siddappa, Advocate)**

**AND:**

1. Gollalayya  
S/o Sharanayya Viraktamath,  
Age: 40 years, Occ: Owner of vehicle,  
R/o Mathapati Galli,  
Near S.G. Sajjan House,  
Bijapur.
2. The Manager,  
ICICI Lombard General Insurance C. Ltd.,  
Bellad Building, Hubli.

... Respondents

**(Sri C.S Kalburgi, Advocate for R2  
Sri S.B. Patil, Advocate for R1 – Absent)**

This Miscellaneous First Appeal is filed under Section 173 (1) of MV Act against the judgment and award dated 09.09.2011 passed in MVC No.846/2008 on the file of the Motor Accident Claims Tribunal No.XII, Bijapur, partly allowing the claim petition and seeking enhancement of compensation.

This MFA coming on for orders, this day the court delivered the following:

**JUDGMENT**

This Miscellaneous First Appeal is filed under Section 173 (1) of MV Act against the judgment and award dated 09.09.2011 passed in MVC No.846/2008 on the file of the Motor Accident Claims Tribunal No.XII, Bijapur, partly allowing the claim petition and seeking enhancement of compensation.

2. With the consent of the learned counsel for the appellant and the learned counsel for Respondent No.2, this matter was heard on merits. The materials placed before this Court is sufficient to dispose off the matter at this stage.

3. The case of the claimant in the claims Tribunal is as under:

That on 27.01.2008 at about 8.00 a.m., the claimant in MVC No.846/2008 along with his friends were proceeding towards Shiradi in Indica Car bearing registration No.KA-28/M-5672 for the business purpose. When the said vehicle reached near Ahmednagar, the driver of the said car drove the same in a rash and negligent manner and dashed against the Maruthi car bearing registration No.MH-15-E-6417 which was coming from opposite direction, as a result of which, the claimant has sustained injuries.

4. The learned counsel for the appellant has produced deposition of the claimant, translated version of complaint, crime details form, charge sheet, affidavit evidence of doctor, clinical notes and disability certificate, X.-ray report and audiogram.

5. In the instant case the doctor has been examined i.e. Dr.Satish who is consulting E.N.T. Surgeon. He has deposed that the claimant approached him and he had symptoms of nasal block, headache, tinnitus right ear, diminished hearing right ear, vertigo, anosmia (loss of sense of smell). He has examined the nose, ear and throat. He is of the opinion that the claimant has got disability to the extent of 20 to 25% to the whole body. Due to this loss of sense of smell he is not able to enjoy the food.

6. The claimant has sustained old fracture of nasal bones healed with deformity. Deviated nasal septum to left both maxillary sinus show haziness along floor. X-ray of both mastoids lateral oblique. Compared with left, right mastoid shows destruction of pneumocells with sclerotic changes. Audiogram was also taken which shows that in the right ear there is severe mixed hearing loss and in the left ear there is hearing within normal

limits. Considering all these aspects, it is just and reasonable to award sum of Rs.30,000/- under the head of pain and suffering.

7. Due to the injuries sustained by the claimant, there is impairment of hearing. Therefore, it is just and reasonable to award a sum of Rs.15,000/- under the head of loss of amenities.

8. The claimant has taken treatment at different hospitals. Therefore, it is just and reasonable to award a sum of Rs.4,000/- under the head of conveyance charges, Rs.2,000/- under the head of nourishment charges and Rs.3,000/- under the head of attendant charges.

9. The claimant has stated in his claim petition that he was carrying on oil business. Claimant has not produced documentary or acceptable evidence before the Tribunal. However, taking into consideration that the accident occurred in the year 2008, in my opinion

the earning of the claimant can be assessed at Rs.4,500/- per month. The doctor has stated in his evidence that the claimant has got disability to the extent of 20 to 25%. 20% disability is equal to Rs.900/- . Therefore, due to the reduced capacity of work the claimant has lost income of Rs.1,62,000/- (Rs.900 x 12 = Rs.10,800 x 15 = 1,62,000/-).

10. Rs.5,000/- is awarded under the head of medical expenses.

11. The Claims Tribunal has not awarded any compensation under the head of loss of earning during laid up period. Therefore, it is just and reasonable to award a sum of Rs.9,000/- under the head of loss of earning during laid up period.

12. In all, the claimant is entitled for a compensation of Rs.2,30,000/-. The enhanced compensation amount will bear interest at 6% per annum, from the date of

petition till the date of payment. The learned counsel for the appellant confines his argument only in respect of quantum of compensation and he does not urge any other grounds. Therefore, the rest of the judgment and award is accepted.

13. In view of the above discussion, I pass the following:

**ORDER**

- i) This Miscellaneous First Appeal is ***allowed in part.***
- ii) The compensation is enhanced from Rs.57,800/- as awarded by the Claims Tribunal to ***Rs.2,30,000/-***.
- iii) The enhanced compensation will bear interest at 6% per annum, from the date of petition till the date of payment.
- iv) 30% of the enhanced amount shall be kept in fixed deposit in any Nationalized Bank, for a period of three years.

v) Rest of the judgment and award is accepted.

**SD/-  
JUDGE**

swk

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