

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF APRIL, 2018

BEFORE

THE HON'BLE MR. JUSTICE N.K.SUDHINDRARAO

MISCELLANEOUS FIRST APPEAL NO.1068 OF 2014(MV)

BETWEEN:

BAJAJ ALLIANZ GENERAL
INSURANCE COMPANY LTD.
NO.105A/107A, CEARS PLAZA
NO.136, RESIDENCY ROAD
BENGALURU-560 025

REPRESENTED BY ITS REG.OFFICE:
THE DIVISIONAL MANAGER
BAJAJ ALLIANZ GENERAL
INSURANCE COMPANY LTD.
4TH FLOOR, GARDEN HOUSE NO.1/2,
59TH "C" CROSS, 4TH M-BLOCK,
RAJAJINAGAR,
BANGALORE 560 010

... APPELLANT

(BY SRI.P.B.RAJU, ADV.,)

AND:

1. MR. DEEKSHITULA VENKATA SATYANAND
S/O DEESHITULA LAKSHMIPATHI
AGED ABOUT 37 YEARS
R/AT FLAT NO.3, H.NO.2, SVS BUILDING
RAJARAJESHWARI TEMPLE STREET
NARAYANA REDDY LAYOUT
ELECTRONIC CITY
BENGALURU-560 100.

PERMANENT ADDRESS: NO.82
HARIDWAR APARTMENTS-2
H.NO.29-1357/2, P.NO.17
DEENDAYAL NAGAR, NEREDMAT
MALKAJGIRI RANGA REDDY -500 056.

2. SREE ANNAPOORNA HOSPITALITY
SERVICES, NO. 458, NGR LAYOUT
ROOPENA AGRAHARA, BOMMANAHALLI
BENGALURU-560 068.

...RESPONDENTS

(BY SRI.K.V.SHYAMAPRASADA, ADV., FOR R-1,
NOTICE TO R-2 IS DEEMED TO BE COMPLETE
VIDE COURT ORDER DATED 3.10.2017)

THIS MISCELLANEOUS FIRST APPEAL IS FILED
UNDER SECTION 173(1) OF MV ACT AGAINST THE
JUDGMENT AND AWARD DATED 01.10.2013 PASSED IN
MVC NO. 3120/2012 ON THE FILE OF THE 24TH
ADDITIONAL SMALL CAUSES JUDGE, 22ND ACMM, MACT,
BANGALORE, AWARDING A COMPENSATION OF
Rs.5,87,000/- WITH INTEREST ON Rs.5,72,000/- AT THE @
6% P.A. FROM THE DATE OF PETITION TILL DEPOSIT OF
ENTIRE AMOUNT IN THE TRIBUNAL.

THIS MFA IS COMING ON FOR ADMISSION THIS
DAY, THE COURT MADE/DELIVERED THE FOLLOWING:

JUDGMENT

The matter is listed for admission. With the
consent of learned Counsel for both the parties, it is
taken up for final disposal.

2. This appeal is directed against the judgment and award dated 01.10.2013 passed in MVC No.3120/2012 on the file of MACT, XXIV Additional Small Causes Judge, Bangalore, wherein the claim petition was partly allowed granting compensation of Rs.5,87,000/- to the claimant.

3. Brief facts of the case are as follows:

That on 26.02.2012 at about 6.15 p.m., the claimant was riding motor cycle bearing registration No.AP-28-AF-8722 from Hosur road towards Infosys Company, Electronic City Road. At that time, near café corner, a tempo bearing registration No.KA-51-A-247 came in a rash and negligent manner and dashed against the motor cycle driven by the claimant. Because of the accident, the claimant suffered serious injuries. It is stated that the injured was an MBA graduate, working in Infosys Company and earning a sum of Rs.69,964/-per month. It is further stated that

the Doctor who treated the claimant has reckoned the disability to the extent of 11.5% to the whole body and 20% to the left lower limb. However, the learned Member has taken the disability at 5% to the whole body. The claimant had sustained fracture of lateral tibial condyle left and underwent ORIF with screw for tibial condyle fracture.

4. Sri.P.B.Raju, learned counsel appearing for the appellant – Insurance Company submits that the vehicle was not covered under a valid fitness certificate. Further, he submits that the compensation granted by the Tribunal is on the higher side and more particularly, he submits that there is no justification by the Tribunal to award compensation under the head loss of future income because the claimant has not examined his employer or any person from his Company. Hence, on these grounds he prays to allow the appeal by modifying the judgment and award.

5. Sri.K.V.Shyamaprasada, learned counsel appearing for respondent No.1 submits that the injury suffered by the claimant has devastating effect on his concentration and accidental injuries have reduced his earning capacity. He further submits that the Tribunal has rightly awarded compensation. Hence, on these grounds he prays for dismissal of the appeal.

6. On perusal of the entire material placed on record, it is not in dispute that the accident has occurred and the claimant has suffered injuries. As per the submission made by the learned counsel for the appellant that the Tribunal has awarded compensation under the head loss of future income is without examining his employer or any person through his Company appears to be incorrect. In my opinion, the learned Member has rightly awarded compensation under the loss of future income by taking the income of the claimant as Rs.45,000/- per month as against

Rs.69,964/- per month and also on all other heads.

The compensation awarded by the Tribunal is as under:-

a. Pain and suffering	-	Rs. 30,000/-
b. Medical expenses	-	Rs. 4,500/-
c. Incidental & attendant charges	-	Rs. 25,000/-
d. Future medical expenses-		Rs. 15,000/-
e. Loss of income during the laid up period	-	Rs. 67,500/-
f. Future loss of income	-	Rs. 4,05,000/-
g. Loss of amenities & unhappiness	-	Rs. 40,000/-

		Rs.5,87,000/-

Thus, the claim of the Insurance Company is not sustainable.

Accordingly, the appeal is dismissed.

The amount in deposit be transferred to the Court
below, forthwith.

**Sd/-
JUDGE**

VMB