IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 31st day of October, 2006

BEFORE

THE HON'BLE MR. JUSTICE N KUMAR

MFA No. 2336 of 2003

BETWEEN:

Rajesh
S/o Kuppa Devadiga
Aged 28 years
R/o Shiralli
Batkal
Taluk Batkal
Dist. Uttara Kannada ...Appellant

(By Sri J S Shetty, Advocate)

AND:

1 Smt. Vidya Ramadas Kamath
Age: Major
Registered Owner of the Truck
No.KA-30/2521
R/o Kakaneer
Post: Heble
Taluk Batkal

2 The Divisional Manager
The National Insurance Company Limited
Divisional office
Sujata Complex
Hubli

3 Mohanlal Bishnu Jodhapur
S/o Suraja Ram Bishnoo
Registered Owner of the
Truck RJ-19/G 6537
R/o Guda Bishnoyan
Dist. Jodhapur
Gujarath State

4 The Divisional Manager
The Oriental Insurance Company Limited
Oriental Office
Enkay Complex
Keshwapur.
Hubli

5 Bupendra Singh
S/o Suraj Ram Bishno
Owner of the Truck
Truck RJ-19/G 6537
R/o Guda Bishnoyan
Dist. Jodhapur
Gujarath State ...Respondents

(By Sri C M Monappa and C M Poonacha, Advocate for R2;
Sri K Suresh, Advocate for R4;
R1, 5 and 3 are served)

This MFA filed under section 173 (1) of MV Act against the judgment and award dated 10-10-2002 passed in MVC No.544/2001 on the file of the Civil Judge (Sr.Dn.) & Member, Additional MACT, Honnavar, partly allowing the claim petition for compensation and seeking enhancement of compensation.

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

JUDGMENT

This is a claimant's appeal seeking enhancement of compensation for the injuries sustained in a motor vehicle accident.

2. The claimant along with others on 14.6.1997 was travelling in a truck bearing registration No. KA-30/2521 near Annebela at 12.00 pm. Another truck bearing registration No.RJ-19/G-6537 coming from the opposite direction and driven in a rash and negligent manner dashed against the truck in which the claimant was travelling. On account of the said accident the claimant sustained grievous injuries. Immediately he was admitted to the hospital. After treatment he preferred the claim petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation. In fact other occupants who also sustained injuries preferred independent claim petitions. To all these claim petitions the owner of both the vehicles and the insurance companies which had insured both the vehicles were made parties. The owner of the truck bearing registration No. KA-30/2521 and the insurance

company which had insured the said vehicle contested the matter. It was specifically contended by them that the accident is on account of the rash and negligent driving of the lorry bearing No. RJ-19/G-6537 and, therefore, they are not liable to pay any compensation. The other set of respondents filed counter disputing the liability and blamed the driver of the other vehicle for the accident. The tribunal framed the common issues which are as under :-

1. Whether the petitioner proves that on 14.6.1997 at about 12.00 PM he was travelling in Truck No. KA-30/2521 as Hamal and near Annebela on N.H.17 the driver of Truck No. RJ-19/G-6537 drove the same in a rash and negligent manner and dashed to truck No.KA-30/2521 due to which he sustained injuries?
2. Whether the petitioner is entitled for compensation? If so, how much and against whom?
3. What award or order?

3. The claimant was examined as PW4 and PW6 is the doctor who treated him. 222 documents were produced which

are marked as Exs. P1 to P222. On behalf of the respondents no evidence was adduced. However, by consent of the parties, the insurance policies of both the vehicles were marked as Exs. R1 and R2. On the basis of the aforesaid evidence it was held that the accident was on account of the rash and negligent driving of the driver of the truck bearing No. RJ-19/G-6537 and consequently the National Insurance Company which had insured the said vehicle is liable to pay the compensation. The owner of the other truck and the insurance company which had insured the said vehicle were exonerated. Thereafter, the Tribunal looked into the evidence of the claimant, the doctor and the other medical record produced in the case and found that the claimant had sustained fracture of frontal bone and nasal bone apart from other injuries and, therefore, awarded a sum of Rs.35,000/- towards pain and suffering. The claimant produced medical bills to the extent of Rs.15,652/- which has been allowed by the Tribunal by rounding off it to Rs.15,660/-. The claimant was working as a cleaner in the lorry and, therefore, his income was taken as Rs.1,500/- per month. A sum of Rs.12,000/- was awarded towards loss of income

during the period of treatment. A sum of Rs.10,900/- was awarded towards conveyance and attendant charges; Rs.6,000/- towards future medical expenses and Rs.20,000/- towards loss of amenities. Applying the multiplier of 17, taking the disability at 60% for the whole body, a sum of Rs.1,83,600/- was awarded under the heading loss of future income. Thus, in all a global compensation of Rs.2,83,160/- was awarded. Aggrieved by the said award of the Tribunal, the claimant is in appeal.

4. Learned counsel for the appellant urged two grounds. Firstly he contended that, the Tribunal committed a serious error in taking the income of the claimant as Rs.1,500/-. It ought to have been taken as Rs.2,000/- and thus the claimant is entitled to enhanced compensation. Similarly it was contended that the award of Rs.12,000/- towards loss of earning during the period of treatment and Rs.6,000/- towards future medical expenses is on the lower side and the claimant is entitled to higher compensation.

5. Per contra, the learned counsel for the insurance company supported the impugned award.

6. I have gone through the judgment, award and the trial Court records. It discloses that, the accident, the injuries sustained in the accident, actionable negligence, treatment given, the age of the claimant, disability sustained are all not in dispute. The medical evidence on record shows that the claimant sustained fracture of frontal bone and nasal bone apart from other injuries. Therefore, award of Rs.35,000/- under the heading pain and suffering is proper and reasonable. The claimant produced medical bills to the extent of Rs.15,652/- and the Tribunal has awarded Rs.15,660/-. Therefore, the claimant has no grievance whatsoever on that account. Similarly, award of Rs.10,900/- towards conveyance and attendant charges is also proper as the claimant was an inpatient for a period of 41 days in the hospital. The dispute mainly revolves around the income of the claimant as well as the extent of the disability. It is not in dispute that the claimant has not produced any evidence by way of documentary evidence to substantiate his contention that he

was earning Rs.2,000/- per month. It is to be noticed that he was aged 23 years on the date of the accident and he was working as a cleaner in the lorry. Accident took place in the year 1997. Under these circumstances, the Tribunal has taken the income of Rs.1,500/- per month. In the facts of this case the said finding cannot be said to be unreasonable. Therefore, the Tribunal was justified in holding that the claimant was earning Rs.1,500/- per month. Now coming to the disability the medical evidence on record shows the claimant has sustained fracture of frontal bone and nasal bone and other injuries. He was treated in the KMC Manipal Hospital. There was leakage of brain fluid from the nose. X-ray of skull was taken. He had sustained injuries to his brain. He was treated as an inpatient for 41 days in the said hospital. The claimant was shifted to ENT Department and operated for fracture of nasal bone. Due to the fracture of frontal bone, according to the doctor, the claimant has suffered 60% disability for the whole body. Therefore, the Tribunal did not find any good reason to reject the evidence and took the disability of 60% for the whole body. But, the learned counsel contends that,

having regard to the nature of injuries and the inconvenience which is caused due to the accident, the claimant will be unable to do any work and, therefore, the disability ought to have been taken at 100% and accordingly compensation is to be awarded. In the first place the doctor who treated him and who has issued the disability certificate though he has set out the injuries and the effect of the said injuries even after treatment has not deposed nor stated in the disability certificate what is the disability in so far as the limb or that portion of the body which is injured is concerned. That is what he is expected to state. It is from that for this Court to assess the disability for the whole body. But, admittedly the doctor has deposed 60% is the disability for the entire body. Probably what he meant was the disability for the particular portion of the body. But the Tribunal has taken 60% as the disability for the whole body and on that basis it has awarded compensation of Rs.1,83,600/- which is on the higher side. Merely because the claimant has sustained injuries to the nose, frontal bone and his brain is also injured, it cannot be said that the claimant has sustained 100% disability for the whole body as

contended by the appellant and consequently he is unable to earn anything in the rest of his life time. In that view of the matter, I do not find any merit in this appeal. The award passed by the Tribunal is valid and legal, based on legal evidence. No interference is called for. Accordingly, the appeal is dismissed.

Sd/-
Judge

ckl