

IN THE HIGH COURT OF KARNATAKA AT BANGALOREDATED THIS THE 30TH DAY OF JULY, 2013

BEFORE

THE HON'BLE MR. JUSTICE B.SREENIVASE GOWDAMiscellaneous First Appeal No. 1299 of 2008 (MV)**BETWEEN**

RAVI,
S/O. DODDEGOWDA @ CHANDREGOWDA,
AGED ABOUT 25 YEARS,
CLERK,HEMAVATHI HIGH SCHOOL,
GORUR,HASSAN TALUK.

RESIDENT OF GOWRIKOPPALU,
KASABA HOBLI,
HASSAN DISTRICT.

... APPELLANT

(By Sri. R. KRISHNA REDDY, ADV.
M/S. CHANDRASHEKAR ASSOCIATES, ADVS.)

AND

1. LAXMEGOWDA,
S/O. JAVAREGOWDA,
AGED MAJOR,
HANUMANTHPURA VILLAGE,
KASABA HOBLI,
HASSAN TALUK AND DISTRICT – 573 219.
2. SOMAIAH,
S/O. ANNEGOWDA,
AGED MAJOR,
SALIGRAMA VILLAGE,

K. R. NAGAR TALUK,
MYSORE DISTRICT – 571 602.

3. THE NEW INDIA ASSURANCE CO. LTD.,
BRANCH OFFICE,
HEMA MENSION,
2ND FLOOR, GANDHI BAZAR,
HASSAN – 573 219.
4. THE ORIENTAL INSURANCE CO. LTD.,
DIVISIONAL OFFICE,
B.C.ROAD,
HASSAN DISTRICT – 573 219.

... RESPONDENTS

(By SRI. ASHOK N. PATIL, ADV. FOR R.4)

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THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED: 22.9.2007 PASSED IN MVC NO. 1594/2006 ON THE FILE OF THE PRESIDING OFFICER, FAST TRACK COURT-3 AND ADDL. MACT, HASSAN, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

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

J U D G M E N T

This appeal is by the claimant seeking enhancement of compensation awarded by the Tribunal.

2. Heard. The appeal is admitted and with the consent of the learned Counsel appearing for the parties, it is disposed of finally.

3. For the sake of convenience parties are referred to as they are referred to in the claim petition before the Tribunal.

4. As there is no dispute regarding injuries sustained by the claimant in a road traffic accident occurred on 26-01-2002 due to rash and negligent driving of offending tractor bearing registration No.MEY-6358/59 by its driver and liability of the insurer of the offending vehicle, the only point that remains for my consideration in the appeal is:

Whether compensation awarded by the Tribunal is just and proper or does it call for enhancement ?

5. After hearing the learned Counsel for the parties and perusing the judgment and award of the Tribunal, I am of

the view that the compensation awarded by the Tribunal is not just and reasonable, it is on the lower side and therefore, it is deserved to be enhanced.

6. As per Ex.P.4 – wound certificate, claimant had sustained the following injuries ;

Fracture of left mandible, maxilla and zygomatic bone.

Doctor has opined that the injuries are grievous in nature. Ex.P.7 also discloses that claimant sustained fractures as stated in the wound certificate. He was treated in Government Hospital, Hassan and Sanjay Gandhi Hospital, Jayanagar, Bangalore as inpatient from 26-1-02 up to 5-2-02 for a period of 11 days.

7. Considering three fractures sustained by the claimant, a sum of Rs.45,000/- is awarded towards pain and suffering as against Rs.40,000/- awarded by the Tribunal under this head.

8. He has produced medical bills at Ex.P.8 for Rs.29,000/- and was treated as inpatient for 11 days. Considering the same, a sum of Rs.35,000/- is awarded towards medical and incidental expenses as against Rs.30,000/- awarded by the Tribunal.

9. He claims to have been earning Rs.4,500/- per month by working as a clerk in Hemavathi High School, Gorur and has produced salary certificate issued by the Headmaster of Hemavathi High School, Gorur, at Ex.P.18. The Tribunal has rightly accepted Ex.P.8 and assessed his income at Rs.4,500/- and further Tribunal considering period of treatment and rest as 3 months has rightly awarded Rs.13,500/- towards loss of income during laid up period. The same is just and proper and there is no scope for enhancement.

10. It is not the case of the claimant that after sustaining injuries he has left employment as clerk in Hemavathi High School, Gorur. Therefore, awarding

compensation towards loss of future income does not arise. Nevertheless, he has to bear with the disability stated by the doctor at 20% towards facial bones and certain amount of discomfort and unhappiness in his future life. Considering the same, a sum of Rs.25,000/- is awarded towards loss of amenities and Rs.10,000/- towards disfigurement of face..

11. Thus the claimant is entitled for the following compensation:

1)	Pain and suffering	Rs. 45,000/-
2)	Medical and incidental expenses	Rs. 35,000/-
3)	Towards loss of income during laid up period	Rs. 13,500/-
4)	Towards loss of amenities	Rs. 25,000/-
5)	Disfiguration of face	Rs. 10,000/-

Total	Rs.1,28,500/-
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Less compensation awarded by the Tribunal

Rs.1,00,000/-

Rs. 28,500/-

12. Accordingly the appeal is allowed in part and the Judgment and award of the Tribunal is modified to the extent stated herein above. The claimant is entitled for additional compensation of Rs.28,500/- with interest at 6% p.a. from the date of claim petition till the date of realisation, excluding interest for the delayed period of 720 days in filing the recalling application.

13. The Insurance Co. is directed to deposit the additional compensation amount with interest, but excluding interest for the delayed period of 720 days in filing the recalling application and the same is ordered to be released in favour of the claimant.

No order as to costs.

**SD/-
JUDGE**

Mgn/-
CT: bs*