

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU****DATED THIS THE 29TH DAY OF FEBRUARY, 2024****BEFORE****THE HON'BLE MS. JUSTICE JYOTI MULIMANI****MISCELLANEOUS FIRST APPEAL NO.1012 OF 2016(MV-I)****BETWEEN:**

MR. A.V.GANAPATHY
S/O LATE VIRARAGHAVALU NAYDU
@ A.V.R.NAYDU,
AGED ABOUT 49 YEARS,
R/AT NO.246, 3RD CROSS,
VINAYAKA NAGAR, TIPTUR,
OLD ADDRESS:
NO.508/1, CHIKKANNAVARA,
THOTA, TIPTUR TOWN.

...APPELLANT

(BY SMT. BHANU.H.M., ADVOCATE)

AND:

1. MR. SEKAR.V.
S/O VARATHAPPA GOUNDER.R.,
NO.1-59C, NEW NO.137,
PRIRIVU ROAD, SANKARI WEST,
SANKARI (TP), TAMILNADU-637 301.

2. RELIANCE GENERAL INSURANCE CO.LTD.,
5TH FLOOR, CENTENARY BUILDING,
M.G.ROAD, BANGALORE-560 001.

...RESPONDENTS

(R1-SERVED AND UNREPRESENTED;
BY SRI. ASHOK.N.PATIL., ADVOCATE FOR R2)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER
SECTION 173(1) OF THE MOTOR VEHICLES ACT, 1988,
AGAINST THE JUDGMENT AND AWARD DATED:18.08.2015,





PASSED IN MVC NO.851/2013, ON THE FILE OF THE SENIOR CIVIL JUDGE & XIV MACT, TIPTUR, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS MISCELLANEOUS FIRST APPEAL IS COMING ON FOR ADMISSION, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

Sri.Ashok N.Patil., learned counsel for the respondent No.2 has appeared in person.

Notice to respondents was ordered on 11.09.2017. A perusal of the office note depicts that respondent No.1 is served and unrepresented. He has neither engaged the services of an advocate nor conducted the case as party in person.

2. Though the appeal is listed today for admission, it is heard finally.

3. For the sake of convenience, the parties shall be referred to as per their status and rankings before the Tribunal.

4. It is the case of the claimant that on the 11th day of May 2012 at about 2:00 am., he was driving his Maruti Suzuki Car bearing Registration No.KA-44-M-1503 along with his friend



in a slow and cautious manner on Tumkur - Bengaluru NH-4 highway, Nelamangala. When he reached Navayuga Toll, at that time a Lorry bearing Registration No.TN-52-5373 being driven by its driver came in a rash and negligent manner without giving any signal and took right turn. As a result of which, the back right side of the lorry hit the claimant's car and the claimant lost control and hit the driver. Hence, the claimant and his friend sustained grievous injuries. The claimant was admitted to Harsha Hospital, Fortis Hospital and M.S.Ramaiah Hospital and took treatment as an in-patient about 15 days. Contending that the accident occurred due to the rash and negligent driving of the Lorry, the claimant filed claim petition seeking compensation.

In response to the notice, the first respondent did not appear before the Tribunal and hence, he was placed *ex-parte*. The second respondent - Insurance Company appeared through its counsel and filed detailed written statement and denied the petition averments. Among other grounds it prayed for dismissal of the claim petition.



Based on the above pleadings, the Tribunal framed Issues. The claimant examined himself as PW1 and a doctor by name Ravi Gopal Varma was examined as PW3 and got marked the documents. A witness by name Karthik.M was examined as RW1, but no document was marked. The Tribunal vide Judgment and Award dated:18.08.2015 allowed the petition in part. It is this Judgment that is called into question in this appeal on several grounds as set-out in the Memorandum of appeal.

5. Learned counsel for the appellant and respondent No.2 have urged several contentions. Heard, the contentions urge on behalf of the respective parties and perused the appeal papers and also the records with utmost care.

6. The point that would arise for consideration is whether the Claimant is entitled for additional compensation?

7. The facts are sufficiently stated and do not require reiteration. I have perused the Judgment of the Tribunal with utmost care. The Tribunal extenso referred to the material on record and awarded compensation of Rs.1,41,867/- (Rupees One Lakh Forty One Thousand Eight Hundred and Sixty Seven



only) with interest at the rate of 6% per annum from the date of petition till realization.

It is noticed that the Tribunal has awarded an amount of Rs.12,000/- (Rupees Twelve Thousand only) under the head of Food, Nourishment and Attendant Charges. This Court deems it appropriate to enhance the same to Rs.15,000/- (Rupees Fifteen Thousand only) as against Rs.12,000/- (Rupees Twelve Thousand only).

It is noticed that the Tribunal has not awarded compensation under the head "Laid up period". Therefore, this Court deems it appropriate to award compensation under the head "Laid up Period". However, there is no proof of income of the claimant. In the absence of any proof of income, the chart prepared by the Legal Service Authority must be taken into consideration. As per the chart, if the accident is occurred in the year 2012, the salary of the injured must be taken as Rs.7,000/- (Rupees Eight Thousand only) per month. Hence, the amount towards laid up period of three months is as under:

Rs.7,000/- X 3 months = Rs.21,000/-.



It is noticed that the Tribunal has not awarded compensation towards Loss of Amenities. Therefore, this Court deems it proper to award an amount of Rs.25,000/- (Rupees Twenty Five Thousand only) towards Loss of Amenities.

The compensation amount awarded by the Tribunal under the head Medical Expenses remains intact.

8. Accordingly, this Court re-determines the compensation as under:-

1.	Pain and Agony (Rs.20,000/- for injury fracture of Nasal bone and Rs.4,000/- each in respect of Injury No.2 and 3)	20,000 + 8,000	Rs.28,000/-
2.	Food, Nourishment and Attendant Charges	12,000 + 3,000	Rs.15,000/-
3.	Medical Expenses	Rs.1,01,867	Rs.1,01,867/-
4.	Towards Laid-up period	7,000 X 3	Rs.21,000/-
5.	Loss of amenities	25,000	Rs.25,000/-
	Total:		Rs.1,90,867/-
	(Less) Compensation awarded by the Tribunal:		- Rs.1,41,867/-
	Enhanced compensation awarded by this Court:		Rs.49,000/-



Having regard to the facts and circumstances of the case and the prevailing rate of interest during the relevant time, this Court deems it appropriate to award interest at the rate of 6% per annum on the enhanced compensation amount from the date of claim petition till realization.

9. Hence, the following:

ORDER

1. The Miscellaneous First appeal is ***allowed in part*** and the Judgment dated:18.08.2015 passed by the Court of Senior Civil Judge and XIV MACT, Tiptur in M.V.C No.851/2013 is modified to the extent stated hereinabove.

2. The claimant is entitled for the enhanced compensation of Rs.49,000/- (Rupees Forty Nine Thousand only) with interest at the rate of 6% per annum from the date of the claim petition till the date of realization.



3. The second respondent - Insurance Company shall deposit the enhanced compensation amount along with 6% interest within a period of two months from the date of receipt of the certified copy of this Judgment.

4. The Registry to draw the modified award accordingly.

5. Office is directed to transmit the original records to the concerned Tribunal forthwith.

Sd/-
JUDGE

TKN
List No.: 1 Sl No.: 41