

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31<sup>ST</sup> DAY OF OCTOBER, 2017

BEFORE

THE HON'BLE MR. JUSTICE L. NARAYANA SWAMY

**MISCELLANEOUS FIRST APPEAL No.2793/2015 (MV)**

BETWEEN:

SRI.MOHAMMED ASHWAQ @ ASHU  
S/O ABDUL SALAM,  
AGED ABOUT 30 YEARS,  
R/AT NO.25, 2<sup>ND</sup> CROSS,  
YARAB NAGAR,  
BANASHANKARI 2<sup>ND</sup> STAGE,  
K GANESH S/O R KUMAR,  
BENGALURU - 560 070

...APPELLANT

(BY SMT. SREEVIDYA, ADV, FOR SRI.T N VISWANATHA, ADV.)

AND:

1. M/S THE IFFCO TOKIO GENERAL  
INSURANCE COMPANY LIMITED,  
NO.41,CRISTU COMPLEX,2<sup>ND</sup> FLOOR,  
LAVELLE ROAD,  
BENGALURU - 560 001

2. MR.ALTHAF ULLA KHAN  
S/O PAREJAN ,MAJOR,  
R/AT NO.292,NEAR CHANNAKESHWARA  
TEMPLE, ATTIBELE, ANEKAL TALUK,  
BENGALURU RURAL DISTRICT,  
PIN - 562 123

... RESPONDENTS

(BY SRI. E I SANMATHI, ADV. FOR R1)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST  
THE JUDGMENT AND AWARD DATED:02.01.2015 PASSED IN

MVC NO.4421/2013 ON THE FILE OF THE JUDGE, COURT OF SMALL CAUSES, & XXVI ACMM, MACT, BANGALORE, 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**

The claimant, for having suffered right distal femur intra-articular comminuted fracture and other injuries including loss of muscle power, in the road traffic accident that occurred on 29<sup>th</sup> June 2013, he made claim petition before the Motor Accident Claims Tribunal, Bangalore. The learned counsel appearing for the appellant submits that though in the claim petition the claimant has stated that he was earning Rs.1,000/- per day by doing welding work, the Tribunal has assessed the income at Rs.6,000/- and has awarded compensation of Rs.2,92,000/- which is very meager. It is also his further case that the compensation awarded under the other heads is on the lower side. Hence, he prays for enhancement of the compensation.

2. The learned counsel appearing for the respondent-Insurance Company seeks to dismiss the appeal. He supports the order passed by the Tribunal. He submits that in the

absence of any documentary proof, the Tribunal has assessed the proper income and has awarded the just compensation which does not call for interference in this appeal.

3. Heard the learned counsel for the parties. I find there is some force in the submission of the learned counsel for the claimant. In support of his claim, the injured has examined Doctor as PW2 and produced the wound certificate. Doctor has opined that the claimant has suffered disability to the whole body from the right lower limb at 19%. Considering the injuries and the disability suffered by the claimant, the amount awarded by the Tribunal under the head of pain and suffering is on the lower side. Accordingly, another sum of Rs.5,000/- is awarded under the said head. Towards attendant charges, nutrition and transportation Rs.40,000/- is awarded since the petitioner was an inpatient for a period of 40 days. Towards Medical expenditure Rs.50,000/- is awarded. Though there is no proof as regards income, considering the year of accident, which is 2013, income is assessed at Rs.8,000/- per month. Accordingly, loss of future income due to permanent disability comes to Rs.8,000/- x 12 x 10% X 17 i.e. Rs.1,63,200/- and the same

is awarded. Towards loss of income during the laid up period Rs.32,000/- is awarded. Towards future medical expenses Rs.10,000/- is awarded. Compensation is enhanced accordingly. It is made clear the enhanced amount carries interest at the rate as is awarded by the Tribunal.

Appeal is allowed in part.

**Sd/-  
JUDGE**

Inn