

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 6TH DAY OF AUGUST 2009

PRESENT

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

AND

THE HON'BLE MR.JUSTICE H.BILLAPPA

MFA.No.3975/2007 (MV)

BETWEEN:

Sri K N Rangaswamy,
S/o Nanjegowda,
Aged about 27 years,
Electric Contractor,
R/o Kaggere Village,
Nuggehalli Hobli,
Channarayapatna (Tq)
Hassan District,
Pin-573 116

...APPELLANT

(By Sri Venkatesh R Bhagat, Adv.,)

AND:

The Divisional Controller
K S R T C., Hassan Division
Hassan

...RESPONDENT

(By Sri K Nagaraj, Adv.,)



This MFA is filed u/s 173 (1) of MV Act against the Judgment and Award dated: 03/02/2007 passed in MVC No.91/2005 on the file of the Civil Judge (Sr.Dn) & Addl. MACT, Channarayapatna, partly allowing the claim petition for compensation & seeking enhancement of compensation.

This Appeal coming on for Final Hearing this day, H.Billappa, J. delivered the following:-

JUDGMENT

This appeal is directed against the Judgment and Award, dated 3.2.2007, passed by the Civil Judge (Sr.Dn) & Motor Accident Claims Tribunal, Channarayapatna, in M.V.C.No.91/2005.

2. By the impugned Judgment and Award, the Tribunal has assessed the compensation at Rs.4,45,600/- and deducting 50% towards contributory negligence, it has awarded a sum of Rs.2,22,800/- with interest at 6% p.a., from the date of petition till the date of deposit or payment.

3. Aggrieved by that, the appellant has filed this appeal, seeking enhancement.



4. In brief, the facts are; That on 25.10.2004, at about 7.35 a.m. the appellant was riding his Bajaj Scooter bearing No.KA-14-J-4821 from Kalkeri to Kaggeri Village and while he was proceeding near Soppinahalli, a KSRTC bus bearing No.KA-13-F-7680 came from the opposite direction, being driven by its driver in a rash and negligent manner and dashed against the Scooter of the appellant. As a result of that, the appellant sustained injuries. The appellant claimed compensation of Rs.10,86,162/-. The Tribunal has assessed the compensation at Rs.4,45,600/- and deducting 50% towards contributory negligence, it has awarded a sum of Rs.2,22,800/- with interest at 6% p.a., from the date of petition till the date of deposit or payment. Aggrieved by that, the appellant has filed this appeal, seeking enhancement.

5. The Learned Counsel for the appellant contended that the compensation awarded by the Tribunal towards nourishing food, conveyance and attendant charges is totally inadequate. He also submitted that the Tribunal has erred in



taking the income of the appellant at Rs.5,000/- p.m. and adopting the multiplier of 17. He submitted that the suitable multiplier is 18 and the Tribunal should have taken the income of the appellant at Rs.7,000/- per month. He also submitted that the Tribunal has not awarded any compensation towards Loss of Amenities to life which needs to be awarded. Further, he submitted that the finding of the Tribunal that the appellant has contributed for the accident is totally incorrect. He therefore submitted that the impugned Judgment and Award needs to be modified.

6. As against this, the learned Counsel for the respondent submitted that, the Tribunal on proper consideration of the material on record, has awarded just and reasonable compensation and therefore, it does not call for interference. Further, inviting our attention to Ex P3- Mahazar, he submitted that the accident has occurred in middle of the road and therefore, the Tribunal has rightly held that the appellant has contributed for the accident and



therefore, it does not call for interference. He therefore submitted that the impugned Judgement and Award does not call for interference.

7. We have carefully considered the submissions made by the learned Counsel for the parties.

8. The points that arise for our consideration are:-

(1) Whether the Tribunal was justified in holding that the appellant has contributed for the accident 50%?

(2) Whether the Tribunal has awarded just and reasonable compensation?

9. It is relevant to note, the Tribunal considering the material on record has held ^{that} though it ought to have ~~awarded~~ held ^{that} the appellant has contributed 25% for the accident, but because of lack ^{of} knowledge of driving it attributes 50% to the appellant. The accident has occurred in the middle of the road. The Spot Mahazar shows that the accident has occurred in the middle of the road. Therefore, the Tribunal

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was justified in holding that the appellant has contributed for the accident. But, the Tribunal was not justified in holding that the appellant has contributed 50% to the accident. Keeping in view, the appellant was riding a two wheeler, we consider it proper to hold ^{that} the appellant has contributed 25% to the accident. Accordingly, we hold ^{that} the appellant has contributed 25% to the accident.

10. The Tribunal has awarded a sum of Rs.3,000/- towards nourishing food and a sum of Rs.3,000/- towards attendant charges. The appellant has taken treatment as inpatient for a period of 21 days and thereafter, follow up treatment for about six months. The appellant has spent considerable amount towards nourisious food, conveyance and attendant charges. Therefore, it is proper to award a sum of Rs.15,000/- towards nourishing food, conveyance and attendant charges and accordingly, it is awarded.

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11. The Tribunal has awarded a sum of Rs.2,55,000/- towards loss of future earnings, taking the income of the appellant at Rs.5,000/- p.m. and the disability at 25% and adopting multiplier of 17. The appellant has suffered permanent disability of 25% in respect of the whole body. Therefore, the Tribunal was justified in taking the disability at 25%. The income taken by the Tribunal is also proper. But, the multiplier adopted by the Tribunal is not correct. The appellant was aged 25 years at the time of accident. Therefore, the appropriate multiplier is 18. If the income of the appellant is taken at Rs.5,000/- p.m. and the disability is taken at 25% and multiplier of 18 is adopted, then, the compensation payable towards loss of future earnings comes to Rs.2,70,000/- and accordingly, it is awarded.

12. The Tribunal has not awarded any compensation towards loss of amenities of life, which needs to be awarded. The appellant has suffered fracture of right temporal bone, fracture of shaft of right femur and fracture of right Patella.



The appellant has taken treatment as inpatient for a period of 5 days. The doctor has assessed the disability at 25% in respect of the whole body and permanent disability to brain at 30% and right lower limb at 45%. The Doctor has deposed that there is restriction of movement of knee joint. The appellant is unable to sit and walk comfortably. The appellant has to suffer discomfort throughout his life. Therefore, in our considered view, having regard to the nature of disability and discomfort the appellant has to suffer, a sum of Rs.30,000/- would be a reasonable sum towards loss of amenities to life and accordingly, it is awarded.

13. The compensation awarded by the Tribunal towards pain and sufferings, medical expenses, loss of income during the period of treatment and loss of future medical expenses is just and proper and therefore, it does not call for interference.

14. The total compensation payable comes to Rs.4,99,600/- and the break up is as follows:-



a)	Towards pain and sufferings	Rs.70,000-00
b)	Towards medical expenses	Rs.84,600-00
c)	Towards nourishing food, Conveyance and attendant charges	Rs.15,000-00
d)	Towards loss of income during the period of treatment	Rs.15,000-00
e)	Towards loss of future earnings	Rs.2,70,000-00
f)	Towards future medical expenses	Rs.15,000-00
g)	Towards loss of amenities to life	Rs.30,000-00
Total		<u>Rs.4,99,600-00</u>

It is rounded off to Rs.5,00,000-00.

15. The appellant has contributed 25% to the accident. Therefore, if 25% is deducted from Rs.5,00,000/-, the compensation payable to the appellant comes to Rs.3,75,000/-

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16. Accordingly, the appeal is allowed and the impugned Judgment and Award, passed by the Tribunal in M.V.C.No.91/2005, stands modified, granting compensation of Rs.3.75,000/- instead of Rs.2,22,800/- with interest at 6% p.a. from the date of petition till the date of realisation. The respondent shall deposit the amount within six weeks from the date of receipt of a copy of this order. Out of the enhanced compensation amount, 50% shall be invested in Fixed Deposit in any Nationalised Bank for a period of three years. The appellant shall be entitled to withdraw the interest accrued on it. The balance amount shall be released in favour of the appellant.

Draw up the award, accordingly.

Sd/-
Judge

Sd/-
Judge

cp/JS