

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF APRIL 2019

BEFORE

THE HON'BLE Dr. JUSTICE H.B.PRABHAKARA SASTRY

MFA No.5281 OF 2012 (MV)

BETWEEN:

Shifa D/o.M.Khalid,
Aged about 12 years,
Minor,
Guardina Mother Yasmin,
D/o.Meer Hussain,
R/o.S.N.Nagar, 4th Cross,
Sagar.

.. Appellant

(By Sri. Nataraj C.D. for
Sri Pruthvi Wadeyar, Advocate)

AND:

1. K.Janardana
S/o Krishnappa,
Aged about 24 years,
Auto Driver,
R/o.3rd Cross, K.H.B.Colony,
Gandi Nagar,
Sagar Town.
Driver of the Motorcycle
No.KA-15/K-1782.
2. Samshu Tabriz,
S/o Syed Ahamed,
R/o.3rd Cross,

Gandi Nagar,
Sagar Town.
Owner of the Motorcycle
No.KA-15/K-1782.

3. The Manager,
National Insurance Co. Ltd.,
S.S.Complex, B.H.Road,
Shivamogga.

.. Respondents

(By Sri. M.Ravindranath, Advocate For R-2,
Sri M.Sowri Raju, Advocate for R-3,
Service of notice to R-1 held sufficient
Vide order dated 5.12.2015).

This MFA is filed under Section 173(1) of Motor Vehicles Act against the Judgment and award dated:29.2.2012, passed in MVC No.964/2010,, on the file of Presiding Officer, Fast Track Court, Member, Additional MACT-8, Sagar, partly allowing the claim petition for compensation and seeking enhancement of compensation.

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

JUDGMENT

This appeal is filed under Section 173 (1) of the Motor Vehicles Act, 1988, seeking enhancement of the compensation awarded by the learned Presiding Officer, Fast Track Court & Member, Addl.MACT-8, Sagar, (hereinafter for brevity referred to as 'Tribunal'), by

judgment and award dated 29.02.2012, passed in MVC No.964/2010.

2. The summary of the case of the claimant in the Tribunal is that on 22.3.2009, at about 8.30 p.m., while she was going to city in a motorcycle bearing registration No.CTQ/7888, near Ram Temple, Avinahalli Road, S.N.Nagar of Sagar Town, respondent No.1 came on a motorcycle bearing registration No.KA-15/K-1785, in a rash and negligent manner and dashed to the motorcycle upon which she was travelling as a pillion rider. Due to the said accident, she sustained grievous injuries and was treated in the hospital nearly for a month and took bed-rest for sixty days. She has also stated that she has spent a sum of ₹2 lakhs towards medical expenses and expecting future medical expenses of a sum of ₹1 lakh. With that, she has claimed compensation of ₹10 lakhs from the

respondents holding them liable as the rider, owner and insurer of the offending motorcycle respectively.

3. After analysing the evidence and the materials placed before it, the Tribunal has awarded the compensation under the following heads with the sum shown against them:

Amount (₹)	
Pain and sufferings	50,000-00
Medical expenses	36,458
<i>Total</i> [The Tribunal has totalled it for ₹86,459/- instead of ₹86,458/-]	86,459-00 <i>Rounded of to</i> <i>87,000-00</i>

4. The Tribunal awarded compensation of a sum of ₹87,000/- with interest at 6% per annum thereupon, holding the driver and owner of the offending vehicle as jointly and severally liable to pay the said compensation and directed the Insurer to deposit the award amount and to recover the same from the owner of the offending

vehicle. It is against the said judgment and award passed by the Tribunal, the claimant has filed this appeal seeking enhancement of compensation.

5. Though this appeal is coming on for admission, with the consent from both sides, the matter is taken up for final disposal.

6. Heard the arguments from both sides and perused the materials placed before this court.

7. Learned counsel for the appellant/claimant in his argument submitted that the compensation awarded by the Tribunal is on the lower side and it has not awarded the compensation towards 'loss of amenities' and also towards 'food, nourishment and attendant charges'.

8. Learned counsel for the respondent-Insurance Company vehemently submitted that the compensation awarded by the Tribunal is just and reasonable.

9. The appellant/claimant in his memorandum of appeal has taken a contention that the quantum of compensation awarded by the Tribunal under various heads are all meager. Further stating that the Tribunal ought to have awarded the compensation as claimed by him, has prayed for allowing the appeal.

10. The present appeal being the claimant's appeal and the respondents having not preferred either cross-objection or a counter appeal, the question of occurrence of accident on the date, time and place as alleged by the claimant and also the alleged rash and negligent driving on the part of the driver of the offending vehicle is not in dispute. Therefore, the question of occurrence of accident and the alleged liability of the respondent-Insurance Company to pay compensation to the injured claimant for the injuries sustained by him in the accident need not be

re-analysed again. The only question that remains to be considered is about the quantum of compensation awarded by the Tribunal.

11. The copy of the wound certificate at Ex.P-5 produced by the learned counsel for the appellant go to show that in the accident in question, the claimant had sustained contusion over skull and there was bleeding from nose and contusion was found on the left frontal bone. It is shown that, claimant was treated at Father Muller Hospital, at Mangaluru, wherein she has undergone diagnosis, including radiological tests. However, there are no medical records to show that she sustained permanent disability. Considering these aspects, the Tribunal has awarded compensation of a sum of ₹50,000/- towards 'pain and suffering', which I find reasonable and just, as such, it does not warrant any interference.

12. Towards medical expenses, after going through the medical records produced by the claimant at Ex.P-7, which was for a sum ₹36,707, the Tribunal has awarded a compensation of ₹36,458/-. Since the same is based on actuals, I do not want to modify the same.

13. The learned counsel for the appellant vehemently argued that due to the accident, the minor girl, apart from sustaining injuries, has also lost amenities in life which has not been considered by the Tribunal, so also, the expenses incurred towards food, diet, nourishment and attendant charges also have not been considered.

14. Considering the nature of the injuries and the fact that the Tribunal has noticed that she was inpatient in the hospital for a period of twentythree days, I am of the view that the claimant is entitled for compensation both towards 'loss of amenities' and 'food, diet,

nourishment and attendant charges'. As such, towards 'loss of amenities', I award a compensation of a sum of ₹15,000/- and towards 'food, diet, nourishment and attendant charges', for a period of twentythree days, I award another sum of ₹4,000/-.

15. Barring the above, the claimant/appellant is not entitled for compensation under any other heads or for enhancement of compensation under any other heads. Thus, in total, she is entitled for enhancement of compensation in a sum of ₹19,000/-.

Accordingly, I proceed to pass the following order :

ORDER

The Appeal is *allowed in part*.

The judgment and award dated 29.02.2012, passed by the learned Presiding Officer, Fast Track Court & Member, Addl.MACT-8, Sagar, in MVC.No.964/2010,

is modified to the extent that the compensation awarded at ₹87,000/- is enhanced by a sum of ₹19,000/-, thus fixing the total compensation at ₹1,06,000/- (Rupees one lakh six thousand only).

The rest of the order of the Tribunal with respect to fixing the liability upon the respondents and directing the respondent-Insurance Company to deposit the awarded amount and to recover the same from the owner of the offending vehicle, awarding the interest, its rate, terms regarding release of the amount awarded shall remain unaltered.

Draw modified award accordingly.

**Sd/-
JUDGE**

bk/