

R

IN THE HIGH COURT OF KARNATAKA AT BANGALOREDATED THIS THE 26TH DAY OF NOVEMBER, 2013**: PRESENT :****THE HON'BLE MR. JUSTICE N.K. PATIL****AND****THE HON'BLE MR. JUSTICE BUDIHAL R.B.**

M.F.A.NO. 5545 OF 2012 (MV)
C/W. M.F.A. CROB NO. 135 OF 2012

M.F.A.NO. 5545 OF 2012 (MV)Between:

National Insurance Co., Ltd.,
Abharan Motor Pvt., Ltd.,
N.H-17, Nittur, Udupi-576 103,
Now rep. by its Regional Manager,
National Insurance Co., Ltd.,
Regional Office, Subharam Complex,
144, M.G.Road,
Bangalore-1.

... Appellant

(By Shri. A.N.Krishna Swamy, Advocate)

And:

1. K.G.Chethan,
K.G.Chandramohan,
Now aged about 24 years,
Student of 5th Semester B.E.,
Nitte Meenakshi Institute of Technology,
Yelahanka, Bangalore.
By next friend & natural guardian
Father, K.G.Chandramohan,
S/o. Late K.G. Shivalingappa,

Now aged about 63 years,
R/o. Kabbala Village, Doddaghatta
Post, Channagiri Taluk,
Davanagere District.

2. Anand Bhandarkar.B,
S/o. Rathnakar Bhandarkar,
Now aged about 28 years,
R/o. Girijananda Compound,
Kanwer Singh Road, Kundapura,
Udupi.
Also R/at. 723, 9th 'A' Road,
4th 'C' Cross, LPC Layout,
Vijayanagar,
Bangalore-40.

... Respondents

(By Shri. P.Narayana, Advocate for R1;
R2 served)

This MFA is filed U/S 173(1) of MV Act against the Judgment and Award dated: 16/01/2012 passed in MVC No. 51/2010 (old No.519/2009) on the file of the Senior Civil Judge, Motor Accident Claims Tribunal, Channagiri, awarding a compensation of ₹44,30,000/- with interest at 6% p.a. excluding the interest for future medical expenses, from the date of petition till realization.

M.F.A. CROB NO. 135 OF 2012

Between:

K.G.Chethan,
S/o. Sri. K.G.Chandramohan,
Aged 25 years,
Student of 5th Semester B.E.,
Nitte Meenakshi Institute of Technology,
Yelahanka, Bangalore.
Also at R/o. Kabbala Village,
Doddaghatta Post, Channagiri Taluk,
Davanagere District-577 002.

Rep. by next friend & natural guardian
 Sri. K.G.Chandramohan,
 S/o. Late K.G. Shivalingappa,
 Aged about 64 years,
 R/o. Kabbala Village, Doddaghatta
 Post, Channagiri Taluk,
 Davanagere District-577 002.

... Cross Objector

(By Shri. R.Narayana, Advocate)

And:

1. National Insurance Co., Ltd.,
 Having its office, Shubharam Complex,
 No.144, M.G.Road, Bangalore-1.
 Rep. by its Regional Manager.
2. Anand Bhandarkar,
 S/o. Sri. Rathnakar Bhandarkar,
 Aged about 29 years,
 R/o. Girijananda Compound,
 Karwar Singh Road,
 Kundapur, Udupi,
 Also R/at. No. 723, 9th 'A' Road,
 4th 'C' Cross, LPC Layout,
 Vijayanagar,
 Bangalore-40.

... Respondents

(By Shri. A.N. Krishna Swamy, Advocate for R1;
 Notice to R2 dispensed with v/o. dated 26/11/2013)

This MFA CROB in MFA No.5545/2012 is filed under Order 41 Rule 22 of CPC, against the Judgment and Award dated: 16/01/2012 passed in MVC No.51/2010 (old No.519/2009) on the file of the Senior Civil Judge, Motor Accident Claims Tribunal, Channagiri, partly allowing the claim petition for compensation and seeking enhancement of compensation.

The MFA along with MFA CROB coming on for Admission, this day, **N.K. PATIL. J.**, delivered the following:

J U D G M E N T

The appeal by the Insurer and the Cross objection by the injured claimant are directed against the same judgment and award dated 16th January 2012, passed in MVC No.51/2010 (old No.519/2009), by the Senior Civil Judge, Motor Accident Claims Tribunal, Channagiri, (for short, 'Tribunal').

While the Insurer has filed the appeal for reduction of compensation on the ground that, the compensation of ₹44,30,000/- with 6% interest per annum, awarded in favour of the injured claimant is excessive, exorbitant and on the higher side; the injured claimant has filed the cross objection, seeking enhancement of compensation on the ground that the compensation of ₹44,30,000/- awarded by Tribunal is inadequate.

2. The facts in brief are that, at about 11:30 P.M. on 01-05-2008, when the injured claimant was

proceeding on his motor cycle bearing Registration No.KA-01.R-4252, in order to move towards the western side in the 4th and 6th Main Road junction in RPC Layout, Bangalore, he stationed his motor cycle. At that time, the driver and owner of the Maruthi Swift Car, bearing registration No.KA-20/N-4531, drove the same at high speed, in a rash and negligent manner and by coming to the extreme right side of the road, dashed against the injured claimant. As a result, he was thrown to an electric pole situated abutting the footpath and caused grievous injuries to his head, which resulted in loss of consciousness and caused permanent disability. Immediately, he was shifted to Vijayanagar Hospital, Bangalore and as per the advise of the Doctor, he was shifted to BGS Global Hospital, Bangalore, where he took treatment as in-patient from 01-05-2008 to 28-05-2008 and thereafter shifted to Bapuji Hospital, Davangere, where he took treatment as inpatient from 29-05-2008 to 17-11-2008. Subsequently, the injured claimant was taken to KMC Hospital Manipal, where he

was treated as inpatient from 17-11-2008 to 28-11-2008. As there was no medical improvement, the injured claimant was sent back again to Bapuji Hospital, Davangere where he took treatment as inpatient from 28-11-2008 to 11-03-2009. Since November 2008, the injured claimant is mobilised on wheel chair with physiotherapy and the Doctors attending on him have opined that he has to pull on the life with persistent treatment and his physical condition can be maintained only with the continued physiotherapy and follow-up treatment.

3. It is the case of the injured claimant that, he was aged about 22 years and hale and healthy prior to the date of accident, which resulted in causing the grievous injures and that he was prosecuting 4th semester of B.E. course in Computer Science.. On account of the injuries sustained, he has spent considerable amount towards conveyance, nourishing food and attendant charges apart from other incidental expenses and that in view of the grievous injuries

sustained and also permanent 100% disability, he has to be compensated reasonably towards future attendant charges also.

4. On account of the injuries sustained, the injured claimant filed the claim petition before the Tribunal, seeking compensation of a sum of ₹93,51,119-61 against the owner and Insurer of the offending vehicle. The said claim petition had come up for consideration before the Tribunal on 16th January, 2012. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of ₹44,30,000/- under different heads, with 6% interest per annum, from the date of petition till the date of deposit. Being aggrieved by the quantum of compensation awarded by the Tribunal, the Insurer is in appeal before this Court, seeking reduction of compensation and the injured claimant has filed the cross objection, seeking enhancement of compensation.

5. We have heard Shri. A.N. Krishna Swamy, learned counsel appearing for Insurer and Shri. P. Narayana, learned counsel appearing for injured claimant, gone through the grounds urged in the memorandum of appeal and also cross objection carefully and perused the impugned judgment and award passed by Tribunal.

6. Learned counsel appearing for Insurer vehemently submits that the Tribunal has grossly erred in awarding exorbitant compensation, resulting in serious miscarriage of justice. To substantiate the said submission he submitted that the Tribunal has erred in taking the income of the injured claimant at Rs.12,000/- per month, when in fact, he was aged about only 22 years and pursuing his IV semester B.E. course. Having regard to the age, avocation and the year of accident, the monthly income assessed by Tribunal at Rs.12,000/- is liable to be re-assessed. Further, he vehemently submitted that the Tribunal committed a grave error in awarding exorbitant

compensation towards injury, pain and sufferings, conveyance, nourishing food and attendant charges, loss of future income on account of disability, etc. The same is disproportionate to the nature of injuries sustained and disability and also contrary to the oral and documentary evidence and also well settled law laid down by the Hon'ble Apex Court in catena of decisions. Therefore, he submits that the compensation awarded under the said heads is also liable to be reduced considerably and the impugned judgment and award is liable to be modified.

7. As against this, learned counsel appearing for injured claimant submits that the Tribunal, after critical evaluation of the oral and documentary evidence available on file, has rightly awarded compensation under the said heads and in fact, the Tribunal has failed to award any compensation towards loss of education and future attendant charges. What is awarded is only towards future medical expenses. He vehemently submitted that the injured claimant has

sustained 100% disability and in a vegetable state and has to depend upon an assistant through out his life for his day to day activities. Therefore, reasonable enhancement may be made by awarding reasonable compensation under the said heads and interference is not called for under other heads.

8. After hearing the rival contentions of the parties, after perusal of the impugned judgment and award passed by Tribunal and after re-appreciation of the oral and documentary evidence available on file, the only point that arise for our consideration in the appeal and the cross objection is:

Whether the quantum of compensation awarded by Tribunal is excessive and liable to be reduced?

After careful perusal of the impugned judgment and award passed by Tribunal including the original records placed before us, it can be seen that, the occurrence of accident and the resultant grievous head

injuries sustained by injured claimant are not in dispute. It is further not disputed that the injured claimant was aged about 22 years, prosecuting his IV semester B.E. course and hale and healthy prior to the accident. It is also not disputed that he met with a road traffic accident on the ill-fated day, i.e. on 01-05-2008 on account of rash and negligent driving by the driver of Maruthi Swift Car. On account of the accident, he has sustained grievous head injury, resulting in unconsciousness. Thereby, the injured claimant has been 100% disabled and requires the assistance of an attendant throughout his life. In support of the said disability, he has examined PW2, Doctor, who in turn, after clinical medical examination has assessed the permanent disability at 90%-95% and opined that he is unlikely to make any future neurological recovery. The Tribunal, taking into consideration the oral evidence of PWs 1 and 2 and disability Certificate at Ex.P31 and considering the nature of injuries sustained and also the fact that that the injured claimant is in a vegetable

condition and also the fact that he has to entirely depend on others for his day-to-day activities, assessed the whole body disability at 100%. Having regard to the facts and circumstances of the case, we hold it just and proper and accept the same.

9. Further, after perusal of the entire material on file, it can be seen that, the Tribunal, after critical evaluation of the oral and documentary evidence available on file, has rightly awarded compensation of a sum of ₹3,00,000/- towards future medical expenses, ₹6,38,000/- towards medical expenses as per medical bills, ₹1,00,000/- towards loss of marriage prospects, and ₹1,00,000/- towards loss of amenities, discomfort and unhappiness on account of disability. Hence, interference in the same is not called for.

10. However, so far as the compensation awarded towards loss of future income, injury, pain and sufferings and conveyance, nourishing food and attendant charges is concerned, we have no hesitation in observing that the Tribunal committed grave error in

awarding higher compensation towards the said heads. Therefore, the same is liable to be re-determined.

11. Further, it can be seen that the Tribunal, after assessing the oral and documentary evidence available on file, grossly erred in assessing the monthly income of the claimant at ₹12,000/-. The same in our opinion, having regard to the facts and circumstances of the case, is on the higher side and liable to be re-assessed. As stated earlier, the injured claimant was aged about 22 years, prosecuting his IV semester B.E. course. Therefore, having regard to the age, avocation and year of accident, permanent disability and peculiar facts and circumstances of the case, we can safely re-assess the income of the injured claimant at ₹7,000/- per month, to meet the ends of justice and to safeguard the interest of both the parties.

12. Further, it can be seen that, the Tribunal slipped into an error in awarding exorbitant compensation towards injury, pain and sufferings, conveyance, nourishing food and attendant charges and

loss of future income. The injured claimant was hospitalized in various hospitals on various occasions and was in all hospitalized for a period of 171 days. During this period, he would have spent reasonable amount towards conveyance, nourishing food and attendant charges apart from medical and incidental expenses. Further, he would have undergone lot of unsaid pain and agony during the treatment period.

13. Further, it can be seen that, the injured claimant was prosecuting his IV semester B.E. and on account of the injuries sustained in the road traffic accident, he would have lost his education. But, the Tribunal has failed to award any compensation towards the said head. As the injured claimant was aged about 22 years, as on the date of accident, the proper multiplier applicable is '18' as per the decision of the Hon'ble Apex Court in Sarla Verma's case (2009 ACJ 1298). Therefore, having regard to the age, avocation, year of accident, nature of injuries sustained, nature and duration of treatment undergone, disability

assessed by Doctor and peculiar facts and circumstances of the case, we award a sum of ₹2,00,000/- towards injury pain and sufferings as against ₹5,00,000/-; ₹1,00,000/- towards conveyance, nourishing food and attendant charges as against ₹2,00,000/-; ₹15,12,000/- (i.e. ₹7,000/-x12x18x100%) towards loss of future earnings as against ₹25,92,000/- awarded by Tribunal and a sum of ₹50,000/- towards loss of education.

14. Thus, the total compensation works out to ₹30,00,000/- as against ₹44,30,000/- awarded by Tribunal, with interest at 6% per annum, from the date of petition till the date of realization. There would be reduction of compensation by ₹14,30,000/-.

15. In the light of the facts and circumstances of the case, as stated above, the appeal filed by the Insurer is allowed in part and the cross objection filed by the injured claimant/cross objector is dismissed. The impugned judgment and award dated 16th January 2012, passed in MVC No.51/2010 (old No.519/2009),

by the Senior Civil Judge, Motor Accident Claims Tribunal, Channagiri, is hereby modified, reducing the total compensation from ₹44,30,000/- awarded by Tribunal, to ₹30,00,000/- (reduction being ₹14,30,000/-), with interest at 6% per annum, from the date of petition till the date of realization.

The Insurer is directed to deposit the remaining compensation with interest at 6% per annum, after deducting the amount already deposited by it, within three weeks from the date of receipt of copy of the judgment and award.

The apportionment and the manner of disbursement of compensation ordered by Tribunal would be proportionately reduced to the extent of reduction of compensation made by this Court.

The statutory amount in deposit by the Insurer in M.F.A.No.5545/2012 is directed to be transmitted to the jurisdictional Tribunal, forthwith.

Office to draw award, accordingly.

Shri.A.N. Krishna Swamy, learned counsel is permitted to file vakalath on behalf of Respondent No.1/Insurer in M.F.A. Crob.No.135/2012, within four weeks from today.

SD/-
JUDGE

SD/-
JUDGE

BMV*