

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 04TH DAY OF FEBRUARY 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE RAVI V. HOSMANI

MFA NO.5134 OF 2015 (MV-I)

BETWEEN:

SRI. PUTTASWAMY
S/O MARIGOWDA,
AGED ABOUT 54 YEARS,
R/AT CHEERANAKUPPE VILLAGE,
KASABA HOBLI, KANAKAPURA TALUK,
RAMANAGARAM DISTRICT.

...APPELLANT

(BY SRI. JAGADISH G, ADVOCATE)

AND:

1. THE MANAGER,
UNITED INDIA INSURANCE CO., LTD.,
NO.1, 1ST FLOOR, 3RD CROSS,
100 FEET RING ROAD,
(NEAR PESIT), HOSAKEREHALLI,
BENGALURU -560 085.

2. SRI. RAMESH NAIK,
S/O. REVA NAIK,
AGE MAJOR, R/AT NO.81,
DODDATHANDYA VILLAGE,
KANAKAPURA TALUK,
RAMANAGARAM DISTRICT -571 511.

...RESPONDENTS

(BY SRI. U. ABDUL KHADER, ADVOCATE FOR R1
(ABSENT); V/O DATED 19.08.2015 NOTICE TO R2 IS
D/W)

THIS MFA IS FILED UNDER SECTION 173(1) OF
MOTOR VEHICLES ACT AGAINST THE JUDGMENT AND
AWARD DATED 20.01.2015 PASSED IN MVC
NO.5970/2011 ON THE FILE OF THE III ADDITIONAL
SENIOR CIVIL JUDGE, MACT, COURT OF SMALL
CAUSES, BENGALURU PARTLY ALLOWING THE CLAIM
PETITION FOR COMPENSATION AND SEEKING
ENHANCEMENT OF COMPENSATION.

THIS APPEAL COMING ON FOR ADMISSION, THIS
DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

Sri. Jagadish G., learned counsel for the appellant.

None for the respondents.

This appeal has been filed under Section 173(1) of
Motor Vehicles Act, 1988 by the claimant seeking
enhancement against the judgment dated 20.01.2015
passed by the Motor Vehicles Accident Tribunal
(hereinafter referred to as 'Claims Tribunal for the sake
of brevity).

2. Facts giving rise to the filing of this appeal
briefly stated are that on 08.09.2011 at about 11.00
a.m., the claimant was walking on the extreme left side

of the road. When he reached near Forest Office, Kanakapura Town, at that time rider of the motorcycle bearing registration No. KA-27-J-3296, was driving the motorcycle in rash and negligent manner and dashed against the claimant. As a result of the aforesaid accident, claimant sustained grievous injuries to his head and all over his body. The claimant was shifted to Government Hospital, Kanakapura and thereafter was shifted to NIMHANS Hospital, there he has taken treatment as an inpatient for two days and later was shifted to KIMS Hospital and received treatment as inpatient.

3. The claimant has filed a claim petition under Section 166 of the Motor Vehicle Act, 1988, *inter-alia*, on the ground that he was aged about 50 years and was working as agriculturist and was also carrying on business and was earning Rs.20,000/- p.m. It was further averred that on account of injury sustained by him he has become completely disabled and was not in a

position to work. Accordingly, compensation was sought to the tune of Rs.20,00,000/- along with interest.

4. In response to the notice, the respondents appeared before the Claims Tribunal and filed their statement of objections. Respondent No.1 denied the averment made in the claim petition in totality. The issuance of policy in respect of the offending vehicle was admitted and it was pleaded that the liability of the Insurance Company if any, is subject to the terms and conditions mentioned in the policy. It was further submitted that the accident did not take place on account of rash and negligent driving of the rider of the motorcycle. Accordingly, prayer was made for dismissal of the petition. Respondent No.2 denied the age, occupation and income of the deceased as well as medical expenses incurred by the claimant. It was further pleaded that the offending vehicle was insured with respondent No.1 and policy was in force at the time of accident. Therefore, compensation is liable to be paid by respondent No.1.

5. On the basis of the pleadings of the parties, Claims Tribunal framed issues and recorded the evidence. The claimant examined five witnesses and marked documents, namely, Exs.P1 to P20. The respondents did not lead any oral or documentary evidence. Claims Tribunal vide impugned judgment, *inter-alia*, held that on account of rash and negligent driving of the bike by its driver, the claimant sustained injuries. It was further held that the claimant is entitled to a sum of Rs.3,12,000/- along with interest at the rate of 9% p.a. as compensation. Being aggrieved, the claimant has filed this appeal.

6. Learned counsel for the claimant submitted, even though the Doctor-PW3, Dr. Nagesh has stated that the appellant on account of injury sustained, physical disability to the extent of 43%, yet the Tribunal has taken it at 23%. It is further submitted that notional income of the claimant has been taken at Rs.4,000/- p.m. Whereas the same ought to have been taken at

Rs.6,500/- p.m. as the accident has taken place in the year 2011.

7. We have considered the submissions made by the learned counsel for the appellant and have perused the records. PW-3, namely Dr. Nagesh, who is a Neurosurgeon has stated in his evidence that claimant has suffered disability to the extent of 43%. Since, the aforesaid witness is a Neurosurgeon and not a Neuro-psychiatrist, Tribunal has taken the disability at 25%. On the basis of evidence on record and taking into account the fact that PW-3-Dr. Nagesh is a Neurosurgeon and has assessed the disability of the claimant, we find that Tribunal is not justified in reducing the disability to 25% only on the ground that PW-3 namely Dr. Nagesh was not a Neuro-psychiatrist. It is also pertinent to note that the accident has taken place in 2011, claimant has not adduced any evidence with regard to income. Therefore, his notional income has to be taken into account, which has to be assessed at Rs.6,500/- p.m. instead of Rs.4,000/- as per the

guidelines issued by the Karnataka State Legal Services Authority.

8. If the notional income of the claimant is taken to be as Rs.6,500/- and disability is assessed at 40%, the claimant is entitled to Rs.4,05,000/-, on account of loss of future income. Similarly the claimant is also entitled to a sum of Rs.39,000/- on account of loss of income during laid up period. Needles to state that the enhanced amount of compensation shall carry interest at the rate of 6% p.a.. form the date of filing of the petition till the payment is made to the claimant.

To the aforesaid extent the judgment passed by the Claims Tribunal is modified.

Accordingly the appeal is disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

BVK