

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**DATED THIS THE 14<sup>TH</sup> DAY OF SEPTEMBER, 2015

:PRESENT:

**THE HON'BLE MR. JUSTICE N.K. PATIL****AND****THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR**M.F.A.No. 9512 of 2012 (MV)Between:

Syed Nawab,  
S/o. Late Sri. Syed Ahamed,  
Age: 24 years,  
R/at. No.14/219,  
II Cross, 6<sup>th</sup> Block,  
Rajajinagar,  
Bangalore-560 010.

....Appellant

(By Sri. A. Dhananjaya, Advocate)

And:

1. R. Sharvana,  
Major,  
Father's name not known to the appellant,  
R/at. No.55, BWSSB Staff Quarters,  
C.J.F Block, 18<sup>th</sup> Cross,  
Malleswaram,  
Bangalore-560 055.
2. M/s. National Insurance Co. Ltd.,  
Regional Office,  
Shubharam Complex,  
No.144, 2<sup>nd</sup> Floor, M.G. Road,  
Bangalore-560 001.

Rep. by its Manager.

....Respondents

(By Smt. Manjula.N. Tejaswi, Advocate for R2;  
Notice to R1 dispensed with v/o. dated 11/09/2015)

This MFA is filed U/s. 173(1) of MV Act against the Judgment and Award dated: 14/12/2011, passed in MVC No.9168/2010, on the file of the IV Additional Judge, Court of Small Causes and Member, Motor Accident Claims Tribunal, Bangalore (SCCH-6), partly allowing the claim petition for compensation and seeking enhancement of compensation.

This M.F.A. coming on for Admission, this day, **N.K. PATIL J**, delivered the following:

**:J U D G M E N T:**

This appeal by the claimant-appellant for enhancement of compensation is directed against the impugned common judgment and award dated 14/12/2011, passed in MVC No.9168/2010, by the IV Additional Judge, Court of Small Causes and Member, Motor Accident Claims Tribunal, Bangalore (SCCH-6), (hereinafter referred to as 'Tribunal' for short).

2. The Tribunal, by its judgment and award has awarded a sum of ₹3,55,520/- under different heads

with interest at 6% p.a., from the date of petition till payment as against the claim of ₹25,00,000/-, on account of the injuries sustained by him in the road traffic accident.

3. In brief, the facts of the case are:

The appellant claims to be aged about 20 years at the time of the accident. He was hale and healthy prior to the accident, working as loader and unloader and earning ₹6,500/- per month. That on 19.11.2010 along with others was proceeding in Maruthi Omni bearing Reg.No.KA.05.MC.2947 to a Darga in Tamilnadu from Bangalore and the same was driven by one Asadulla Khan. When they were proceeding at about 1.15 a.m. they came near Maidwala check post at Hosur road, at that time, the driver of maxi cab bearing Reg.No.KA.04.B.7985 came in a rash and negligent manner and dashed to the Maruthi omni. Due to which, appellant and others sustained injuries and both the vehicles were damaged. Immediately,

appellant was shifted to St. Johns hospital where he took treatment as inpatient, underwent surgery, implants were inserted and thereafter, on the advise of the Doctor, he has taken bed rest and follow up treatment.

4. It is the further case of the appellant that, he spent considerable amount towards medical expenses, conveyance and other incidental charges. On account of the injuries sustained by the appellant in the said accident, he has suffered permanent disability. The Doctor has assessed the physical disability at 40% to right lower limb and at 25% to left lower limb and at 22% to the whole body. Therefore, appellant has filed a claim petition before the Tribunal under Section 166 of M.V. Act, claiming compensation against the respondents.

5. The said claim petition had come up for consideration before the Tribunal. The Tribunal, after hearing both sides and after assessing the oral and

documentary evidence, has allowed the said claim petition in part and awarded a sum ₹3,55,520/- as compensation under different heads with interest at 6% p.a., from the date of petition till its payment and directed the Insurer to deposit the compensation amount.

6. Being dis-satisfied with the quantum of compensation and the rate of interest awarded by the Tribunal, the appellant has presented this appeal.

7. The submission of the learned counsel Shri. A. Dhananjaya, appearing for appellant, at the outset is that, the Tribunal has erred in not awarding reasonable compensation towards injury, pain and suffering, towards conveyance, nourishing food and attendant charges, towards loss of income during treatment period, towards loss of amenities, discomforts and unhappiness and towards loss of future earnings and what is awarded is inadequate and it requires to be

enhanced reasonably. To substantiate the said submission, he submitted that, appellant was aged about 20 years, working loader and unloader, hale and healthy prior to the accident and drawing the salary of more than ₹10,000/- per month, but the Tribunal has assessed the notional income at ₹4,000/- per month and the same has to be re-assessed reasonably. Further, he submits that, on account of grievous injuries sustained by the appellant, he has taken treatment as inpatient for 13 days, undergone surgery, implants were inserted. He examined the Doctor, who has assessed the permanent disability at 40% to right lower limb, at 25% to the left lower limb and at 22% to the whole body. But the Tribunal has erred in assessing the disability at 18% to the whole body. Due to which, he has underwent lot of pain and agony, spent reasonable amount towards medical expenses, conveyance and other incidental expenses, taken bed rest and follow up treatment atleast for six months,

discomforts and unhappiness persists through out his life, it would affect his earning capacity and now he is not in a position to do his work as he was doing earlier and. But these aspects of the matter have not been considered or appreciated by the Tribunal while awarding compensation under different heads. He further submits that the rate of interest awarded by the Tribunal is on the lower side and is liable to be enhanced atleast to 8 to 9% in the light of the judgments of the Apex Court and this Court since the accident has occurred in the year 2010. Therefore, he submitted that the impugned judgment and award is liable to be modified.

8. Per contra, learned counsel Smt. Manjula N. Tejaswi, appearing for insurer, inter- alia, contended and submitted that, the Tribunal, taking into consideration the nature of injuries sustained by the appellant, the nature and duration of treatment taken

by him and after due appreciation of the oral and documentary evidence available on file, has justified in awarding reasonable compensation under different heads and therefore, it does not call for interference.

9. After careful consideration of the submission made by learned counsel appearing for the appellant, learned counsel appearing for Insurer and after perusal of the materials available on record, including the impugned judgment and award passed by the Tribunal, the only point that arises for our consideration is:

Whether the compensation awarded by the Tribunal is just and reasonable?

10. The occurrence of the accident and the resultant injuries sustained by the appellant as per Ex.P5-wound certificate are not in dispute. It is also not in dispute that, appellant was aged about 20 years and working as loader and unloader and hale and healthy prior to the accident. In the accident, appellant has



sustained fracture of right femur segmental and comminuted, fracture of left femur, premolar fracture, lower jaw with multiple abrasions, fracture of right maxillary wall, ethmoidal bone and nasal bone and other injuries. The Tribunal has assessed the income at ₹4,000/- per month which is on the lower side and is liable to be enhanced reasonably. Having regard to the age and occupation of the appellant and the year of accident, we re-assess his income at ₹6,500/- per month to meet the ends of justice. On account of injuries sustained by the appellant in the accident, he has taken treatment as inpatient for 13 days, underwent surgery and implants were inserted. During the said period, he might have undergone lot of pain and agony, he might have spent considerable amount towards medical expenses, conveyance and other incidental expenses, and as per the advice of the Doctor he might have taken bed rest and follow-up treatment atleast for six months, during the said period, he might

have incurred financial loss as he could not have attended his work regularly. Further, it is the case of the appellant that, on account of grievous injuries sustained by him in the accident, he has suffered permanent disability. To prove the same, he examined the Doctor as PW4, who after clinical examination has assessed the permanent disability at 40% to the right lower limb, 25% to the left lower limb and at 22% to the whole body and we accept the same, instead of 18% whole body disability assessed by the Tribunal. Discomforts and unhappiness persists through out his life and it would affect his happiness in future life and also affects his earning capacity. As per the evidence of the Doctor, appellant has to undergo one more surgery and for that, he may require some reasonable amount towards medical and incidental expenses. Therefore, the appellant has to be compensated reasonably. The proper multiplier applicable is '18' as rightly adopted by the Tribunal since appellant was aged about 20 years

as on the date of the accident and we accept the same. Taking all these aspects into consideration, we award a sum of ₹75,000/- towards injury, pain and suffering as against ₹60,000/-, ₹39,000/- towards loss of income during the treatment period at the rate of ₹6,500/- per month for six months, ₹10,000/- towards conveyance, nourishing food and attendant charges as against ₹5,000/-, ₹3,08,880/- ( $₹6,500/- \times 12 \times 18 \times 22\%$ ) towards loss of future earnings as against ₹1,55,520/-.

11. The Tribunal after due appreciation of the oral and documentary evidence available on file has justified in awarding a sum of ₹50,000/- towards medical expenses, ₹50,000/- towards loss of amenities, discomforts and unhappiness due to disability and ₹15,000/- towards future medical expenses and therefore, it does not call for interference.

In all, the appellant is entitled to the total compensation of ₹5,47,880/- instead of ₹3,55,520/- and the break- up is as follows:

Towards injury, pain and sufferings	₹ 75,000/-
Towards medical expenses,	₹ 50,000/-
Towards conveyance, nourishing food and attendant charges	₹ 10,000/-
Towards loss of income during the period of treatment	₹ 39,000/-
Towards loss of amenities	₹ 50,000/-
Towards loss of future earnings	₹ 3,08,880/-
Towards future medical expenses	₹ 15,000/-
<b>Total</b>	<b>₹ 5,47,880/-</b>

12. Regarding rate of interest, as rightly pointed out by the learned counsel appearing for the appellants, 6% interest per annum awarded by the Tribunal is on the lower side, since the accident is of the year 2010. In the light of the judgment of Apex Court and this Court, we award the rate of interest at 8% per annum on the enhanced compensation instead of 6% awarded by the Tribunal.

13. Having regard to the facts and circumstances of the case, the appeal filed by the appellant is allowed in part. The impugned common judgment and award dated 14/12/2011, passed in MVC No.9168/2010, by the IV Additional Judge, Court of Small Causes and Member, Motor Accident Claims Tribunal, Bangalore (SCCH-6), stands modified, awarding the compensation of ₹5,47,880/- instead of ₹3,55,520/- as awarded by the Tribunal. There would be an enhancement of ₹1,92,360/- with interest at 8% p.a., from the date of petition till its realization.

The second respondent-Insurer is directed to deposit the enhanced compensation of ₹1,92,360/- with interest at 8% p.a., from the date of petition till the date of realization, within three weeks from the date of receipt of a copy of this judgment and award.

Immediately on such deposit by the Insurer, out of the enhanced compensation of ₹1,92,360/-, a sum of ₹1,00,000/- with proportionate interest shall be

invested in the Fixed Deposit in the name of the appellant in any Nationalized or Scheduled or Grameena bank, for a period of 10 years and renewable by another 05 years, with liberty reserved to the appellant to withdraw the interest accrued on it, periodically.

Remaining sum of ₹92,360/- with proportionate interest shall be released in favour of the appellant.

Draw the award, accordingly.

SD/-  
JUDGE

SD/-  
JUDGE

tsn\*