

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF AUGUST 2015

PRESENT

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

AND

THE HON'BLE MRS. JUSTICE RATHNAKALA

MISC. FIRST APPEAL NO.11221/2012 (MV)

BETWEEN:

SHASHIKALA S.J.,
W/O NARAYANA H.N.,
AGED ABOUT 40 YEARS
BRAMHANARA BEEDI,
SALIGRAMA HOBLI AND VILLAGE,
K.R.NAGARA TALUK,
MYSORE DISTRICT – 571 426.

...APPELLANT

(BY SRI S.A.SABOOR, ADV.)

AND:

1. SANTOSH S.R.,
S/O RAJEGOWDA
AGED ABOUT 25 YEARS
D.NO.210,
SALIGRAMA VILLAGE AND HOBLI,
K.R.NAGARA TALUK,
MYSORE DISTRICT – 571 426.

(OWNER CUM RIDER OF HERO HONDA
PASSION PLUS KA-45J-0425)

2. UNITED INDIA INSURANCE COMPANY
BRANCH OFFICE HEAD POST OFFICE ROAD,
HUNSUR CLUB COMPLEX,
HUNSUR – 571 105

(POLICY NO.070602/31/11/0200008718
VALID FROM 26.09.2011 TO 26.09.2012)

...RESPONDENTS

(BY SRI JANARDHAN REDDY, ADV. FOR R2;
NOTICE TO R1 DISPENSED WITH V/O DTD13/06/2014)

THIS M.F.A. IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 29.08.2012 PASSED IN MVC NO.169/2012 ON THE FILE OF THE PRESIDING OFFICER, FAST TRACK COURT-II AND MEMBER, ADDITIONAL MACT, MYSORE, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS MFA HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 10/08/2015 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **RATHNAKALA J.**, DELIVERED THE FOLLOWING:-

J U D G M E N T

This appeal is directed against the judgment and award dated 29th August 2012 passed in M.V.C.No.169/2012 on the file of the Presiding Officer, Fast Track Court-II and Member, Additional M.A.C.T., Mysore ('the Tribunal' for short) being dissatisfied with the compensation awarded by the Tribunal.

2. The petitioner herein filed a petition before the Tribunal under Section 166 of the Motor Vehicles Act, seeking compensation in respect of injuries sustained by her in a vehicular accident that occurred on 8.10.2011 at about 12.30 p.m. Her case was, on 8.10.2011 at 11.30 p.m., she was riding her two wheeler vehicle bearing registration No.KA-45/K-8421 carefully towards Saligrama; near Hashthanthara Road Hostel, the first respondent drove the Hero Honda Passion Plus bearing registration No.KA-45/J-0425 in a rash and negligent manner, came from opposite side and dashed against her vehicle; consequently, she fell down and sustained injuries and was initially treated at General Hospital, Saligrama and further at K.R.Nagara General Hospital, Mysore as inpatient. She has incurred medical expenses to a tune of Rs.1,00,000/-. Prior to the accident, she was earning Rs.20,000/- per month as a social worker, Bank President and also Grama Panchayat Member. Due to the accidental injuries, she lost her earning capacity and unable to do her normal activities.

The petition was contested. The Tribunal after enquiry on a overall consideration of the mater has awarded a compensation of Rs.67,000/- with cost and interest at 6% per annum.

3. Sri.S.A.Saboor, learned Counsel appearing for the appellant submits that, the compensation awarded by the Tribunal is inadequate. She has placed evidence before the Tribunal to the effect that her monthly income was Rs.20,000/- but overlooking the said aspect of the matter, the Tribunal has worked out the compensation by assuming her notional income as Rs.3,000/- per month and the interest awarded is also on lower side having regard to the recent judgments of the Apex Court and this Court. In view of the permanent disability suffered, the appellant is disabled to earn and to do her daily routine on her own. Under the circumstance, the compensation may be enhanced by reasonable amount.

4. Sri.Janardhan Reddy, learned Counsel appearing for second respondent/insurer while substantiating the judgment and

award of the Tribunal submits that, there is no documentary proof about the income of the appellant except her self-serving statement. The compensation assessed commensurates with the actual medical expenses borne by her and she is suitably compensated in respect of pain and suffering and also loss of amenities of her future life. Hence, the impugned judgment and award does not call for interference.

5. In the light of the submission made at the Bar and also on a perusal of the impugned judgment and award, the sole point that arises for our consideration is:

“Whether the quantum of compensation awarded by the Tribunal is just and reasonable ?

6. Now the parties are not at dispute that the appellant suffered chip fracture of posterior part of tibia right knee; the subsequent x-ray taken on 16.8.2012 shows that the fracture site is normal. Though the Doctor calculates her permanent disability at 16%, pain - 6%, neurological deficit – 5% and movement disorder -

5%, the Tribunal taking note of the fact that the above percentage of disability is in reference to the particular part and as per the Doctor's evidence, she can do work which she was doing earlier to the accident without difficulty has not worked out the loss of future income on account of the disability. However, considering that there may be some difficulty in discharging her day-to-day activities has awarded Rs.15,000/- towards loss of amenities in future life. While landing up to the said conclusion, the Tribunal has lost sight of the factor that the nature of the injuries suffered by the claimant has restricted her free movement at least for three months which ought to have been compensated. Though she claims to be 'active in social work', President of Bank and a member of the Grama Panchayat, those positions cannot be considered as her profession. The Tribunal in such circumstance has considered her notional monthly income as Rs.3,000/-, which in our opinion, is less, having regard to the date of accident. Accordingly, we assume that her notional income was Rs.5,000/- per month at the relevant time, wherefore, she is entitled for

Rs.15,000/- towards loss of income during laid up period for three months as against Rs.9,000/- awarded by the Tribunal. While endorsing that she is not entitled for loss of future income, we hold that she is entitled for Rs.30,000/- towards loss of amenities in future life as against Rs.15,000/- awarded by the Tribunal, in the light of her permanent disability of restriction of knee joint movement with neurological deficit on account of the injuries, as surfacing from the medical evidence. In respect of the pain and suffering Rs.25,000/- is awarded, which does not call for interference. Rs.15,000/- is awarded towards medical expenses and Rs.3,000/- is awarded towards incidental expenses, which we do not propose to interfere.

However, the rate of interest awarded at 6% per annum is on a lower side; in the light of the date of accident and in view of the recent judgments of the Apex Court in respect of interest in road traffic accident cases, the interest shall be enhanced to 8% on the entire compensation amount from the date of filing of the petition.

7. In the light of the above, there would be enhancement of Rs.21,000/- with interest @ 8% per annum on the entire compensation.

For the foregoing reasons, the instant appeal filed by the appellant is allowed in part.

The judgment and award dated 29th August 2012 passed in M.V.C.No.169/2012 on the file of the Presiding Officer, Fast Track Court-II and Member, Additional M.A.C.T., Mysore, is hereby modified.

The appellant is entitled for total compensation of Rs.88,000/- as against Rs.67,000/- with interest at the rate of 8% p.a. on the entire compensation, less the interest amount she has already drawn in respect of Rs.67,000/-, from the date of claim petition till the date of deposit.

The second respondent / insurer is directed to deposit the enhanced compensation of Rs.21,000/- along with interest @ 8%

per annum on the entire compensation amount from the date of the petition, within 3 weeks from the date of receipt of the copy of this judgment and award.

The enhanced compensation amount with interest so deposited shall be disbursed in favour of the appellant on deposit made by the second respondent/insurer.

Office to draw the award, accordingly.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

KNM/-