

**IN THE HIGH COURT OF KARNATAKA AT BANGALORE**

DATED THIS THE 20<sup>th</sup> DAY OF JUNE 2012

BEFORE

**THE HON'BLE MR. JUSTICE L.NARAYANA SWAMY**

**MFA NO.5487/2010**

BETWEEN :

SHRI NARASIMHA MURTHY K N  
S/O NARASAPPA  
R/AT KESTUOOR KODIGEHALLI POST  
KASABA HOBLI, DODDABALLAPUR TALUK,  
BANGALORE RURAL DISTRICT.  
...APPELLANT  
( BY SRI. T. N. VISWANATHA, ADV. )

AND :

1. M/S THE NEW INDIA ASSURANCE CO LTD  
BY ITS DIVISIONAL MANAGER  
DIVISIONAL OFFICER XII,  
KIADB BUILDING, MAYOOR COMPLEX,  
NEXT TO PIA BHAVAN, PEENYA  
INDUSTRIAL AREA,  
BANGALORE 560 058
2. SMT RANGAMMA  
W/O SRINIVASA MURTHY  
MAJOR  
R/AT "MARUTHI KRUPA",

SHRI RANGANATHA TRANSPORT  
SHRI KRISHNA NAGAR 7TH CROSS  
SIT EXTENSION, TUMKUR.

...RESPONDENTS

(BY SRI. M. P. SRIKANTH, ADV., FOR R1 )

THIS MFA IS FILED UNDER SECTION 173(1) OF M.V. ACT AGAINST THE JUDGMENT AND AWARD DATED 19.01.2010 PASSED IN MVC NO. 3612/2009 ON THE FILE OF THE XVI ADDITIONAL JUDGE, MACT, BANGALORE, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

This APPEAL COMING ON FOR ADMISSION THIS DAY, THE COURT DELIVERED THE FOLLOWING:

### J U D G M E N T

Appeal for enhancement of compensation.

2. learned counsel for the appellant submits that The injured suffered a road traffic accident on 21.02.2009 and sustained Lacerated wound 6x0.5cm present at junction of middle and lower 1/3<sup>rd</sup> in anterio lateral aspect of ankle, Tenderness present over the junction of middle and lower 1/3<sup>rd</sup> of left leg, Fracture middle 1/3<sup>rd</sup> left tibia. Exs. P5 and P6 are

the wound certificate and the discharge certificate issued by the KIMS Hospital, Bangalore. He was an inpatient for about 29 days i.e., from 21.01.2009 and discharged on 19.02.2009. X-Ray has been examined and confirmed the fractures. He was working as a mason. He was earning about Rs.7,500/- per month. The doctor PW2 who examined him has opined that the injured has suffered 15% disability to the whole body. He suffers loss of discomforts and results in loss of income. On the basis of the declaration made in the evidence that he was a mason and a resident of Tumkur, his monthly income should have been taken at Rs.6,000/-. Hence the learned counsel submitted that the disability and the income has to be assessed properly. It is submitted, compensation awarded under the head pain and sufferings is on lower side.

3. Learned counsel for the insurance submitted to dismiss the appeal, since the tribunal has considered the disability and assessed income on the basis of the evidence

and materials produced. He also submitted that the injured has suffered only one fracture by considering the same the Tribunal has awarded a just compensation and it does not require any modification.

4. I have heard both the counsels. It is found from the judgment that the injured has not proved his income. However, by taking note of the year of accident, i.e., 2009, and the place of residence and also on the basis of declaration made in the claim petition income at Rs.200/- per day has to be taken. Accordingly it comes to Rs.6,000/- per month. Then the calculation for assessing Future Loss of Income would be  $6000 \times 12 \times 17 \times 11/100 = 1,34,640/-$ . The same is awarded as against Rs.89,760/- awarded by the Tribunal. Loss of earning during laid off period also requires to be enhanced, when the monthly income is assessed at Rs.6,000/-. Then it comes to  $6000 \times 3$  months, Rs. 18,000/-. The claimant is the resident of Tumkur and he got admitted in

KIMS Hospital, Bangalore for which it has to be assumed that he would have spent considerable amount towards traveling, attendant and incidental charges. Therefore, another sum of Rs. 15,000/- is awarded towards Food, Nourishment and Incidental Charges. The compensation awarded towards other heads remains undisturbed.

The total compensation comes to:

Sl. No.	Conventional Head	Amount in Rs.
1	Pain and Suffering	25,000/-
2	Loss of income during treatment period (6000 x 3 months )	18,000/-
3	Medical Expenses	40,000/-
4	Future Loss of Earning	1,34,640/-
5	Loss of Amenities	25,000/-
6	Conveyance, Nourishment, Attendant's Charges and Diet	25,000/-
7	Future Surgery	10,000/-
	<b>Total</b>	<b>2,77,640/-</b>

with interest @ 6% P.A.

The appeal is allowed-in-part.

**Sd/-  
JUDGE**

Bsv