



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO.7054 OF 2022(MV-I)

BETWEEN:

SRI. SHIVASHANKAR @ SHIVA,
S/O LATE SANJAPPA,
NOW AGED ABOUT 30 YEARS,
R/AT NO.149, RMC ROAD,
MARUTHINAGARA,
MULBAGAL TOWN,
KOLAR DISTRICT.

...APPELLANT

(BY MS. SUSHMITHA G., ADVOCATE FOR
SRI. GOPAL KRISHNA N., ADVOCATE)

AND:

1. SRI. G. VENKATESH,
S/O GANGAPPA,
MAJOR BY AGE,
R/AT NO. 188,
K. BAYYAPALLI ROAD,
MULBAGAL TOWN,
KOLAR DISTRICT - 563 131.
2. THE UNITED INDIA
INSURANCE COMPANY LTD.,
REGIONAL OFFICE, 5TH FLOOR,
KRUSHI BHAVANA,
NRUPATHUNGA ROAD,
HUDSON CIRCLE,
BENGALURU - 560 001,
REP. BY ITS MANAGER.

...RESPONDENTS





(BY SRI. K. NAGARAJAIAH, ADVOCATE FOR R2;
NOTICE TO R1 IS DISPENSED WITH, VIDE ORDER
DATED 01.02.2024)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 02.07.2019 PASSED IN MVC NO.4196/2016 ON THE FILE OF THE ADDITIONAL SMALL CAUSES JUDGE AND MOTOR ACCIDENT CLAIMS TRIBUNAL, BENGALURU (SCCH-13), PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

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

JUDGMENT

This appeal is preferred by the claimant challenging the judgment and award dated 02.07.2019 passed by the Additional Small Causes Judge and Motor Accident Claims Tribunal, Bengaluru (for short 'the Tribunal') in MVC No.4196/2016. This appeal is founded on the premise of inadequacy of compensation. Hence, the appellant seeks enhancement of compensation.

2. Parties to the appeal shall be referred to as per their status before the Tribunal.

3. Brief facts of the case are as under;



That on 21.02.2016 at about 9.00 p.m., the claimant was a rider of the motor cycle bearing registration No.KA-07-Q-4098 on NH-4 near Asali Athikunte village on KGF-Mulabagilu Road, Mulabagilu Taluk, Kolar District, at that time, the driver of Tata Sumo bearing registration No.KA-05-C-4138 driven the same with high speed in a rash and negligent manner, lost control and dashed against the claimant's motor cycle from behind and caused the accident. Due to the said impact, the claimant fell down and sustained grievous injuries. Immediately, he was shifted to R.L.Jalappa Hospital, Kolar, wherein first aid treatment was given. Thereafter, to Chinmaya Mission Hospital, Bengaluru, wherein, he has taken treatment as an inpatient and spent huge amount towards medicines, conveyance and nutritious food.

3.1 It is stated that the claimant was hale and healthy prior to the occurrence of accident. He was working as a mason and earning an income of Rs.12,000/- per month. Due to the occurrence of accident and injuries



suffered, the claimant is unable to do his work normally as he was doing prior to the occurrence of accident. Hence, the claimant filed a claim petition seeking compensation.

3.2 On service of notice, respondent No.1 remained absent and he was placed *ex parte*. Respondent No.2- Insurance Company appeared through its counsel and filed statement of objections denying the averments made in the claim petition including age, avocation, income and the same being excessive, exorbitant and arbitrary. Hence, sought for dismissal of the claim petition.

3.3 On the basis of pleadings, the tribunal framed relevant issues for consideration.

3.4 In order to substantiate the issues and to establish the case, claimant got examined himself as PW.1 and two Doctors were examined as PWs.3 and 4 and got marked documents as Exs.P1 to P20. On the other hand, respondent No.2 examined two witnesses as RWs.1 and 2 and got marked document as Ex.R1.



3.5 On the basis of material evidence, both oral and documentary and on hearing the submissions of learned counsel for both parties, the tribunal awarded compensation of Rs.3,50,685/- with interest @ 6% p.a. from the date of petition till its realization and also held respondent No.2-Insurance Company is liable to pay the compensation to the claimant and directed to deposit the amount within two months.

3.6 Being aggrieved by the meager compensation awarded by the tribunal, the claimant is before this Court challenging the impugned judgment and award.

4. It is the vehement contention of the learned counsel for appellant-claimant that the tribunal has committed an error in awarding meager compensation, which calls for interference at the hands of this Court. Accordingly, he seeks enhancement of compensation.

5. *Per contra*, the learned counsel for respondent-Insurance Company contends the tribunal has awarded



just and reasonable compensation on the basis of materials placed on record, as no proof of income was placed before the Court. It is contended that the tribunal has taken correct notional income, so also the tribunal assessed the correct disability, which do not call for interference and in all other heads, the tribunal has awarded reasonable compensation. Therefore, on these grounds, he seeks dismissal of the appeal.

6. Having heard the learned counsel for appellant-claimant and learned counsel for respondent-Insurance Company, on perusal of the Exs.P1 to P20, it is apparently seen that FIR and charge sheet have been laid against the driver of the offending vehicle, negligence is rightly attributed. The medical bills to show the expenditures met by the claimant and the evidence of the Doctor go to show the disability encountered by the claimant. Therefore, negligence is rightly attributed as against the driver of the offending vehicle.



7. Now coming to the aspect age, avocation and income, it is stated that the income taken by the tribunal is Rs.9,000/- per month as notional income. No documentary proof is produced before the tribunal to show the income. However, the notional income chart of the Legal Services Authority prescribes the income of Rs.9,500/- for the accident year 2016. Accordingly, income is taken as Rs.9,500/-. The age of the claimant was 28 years at the time of accident. The tribunal has rightly applied the multiplier at '17', which does not call for interference.

8. The tribunal has reduced the disability to 8% by deducting $1/3^{\text{rd}}$ to the disability assessed by PW.2-Doctor at 24%, considering the fact that PW.2-Doctor has not opined disability to a particular limb. Therefore, the disability assessed by the tribunal at 8%. On careful perusal of the injuries suffered by the claimant, it is seen that the claimant being a Mason by profession, he has sustained serious injuries to his fracture shaft of right



femur, type-III-A compound fracture dislocation of right ankle. He was admitted and underwent surgery for IM Nailing right femur plus external fixator application right ankle and an inpatient for 11 days. On these basis, it can be seen that common sense would show that the claimant was a mason and his entire work would depend upon the strength and ability of his lower part of the body i.e., legs without which he will not be able to do his regular work either by moving, walking or by sitting and doing the mason work. The fact also remains that PW.2-Doctor has not clearly stated the disability to a particular limb, but he assessed the disability to the whole body at 24%. Be that as it may, this Court deems it appropriate to take disability at 10%, considering the injuries sustained by the claimant being a Maison. Therefore, the loss of future income due to disability would be **Rs.1,93,800/-** (Rs.9,500/- x 12 x 17 x 10%) as against Rs.1,46,880/- awarded by the tribunal.



9. The tribunal awarded Rs.50,000/- towards pain and suffering. I deem it appropriate to award an additional amount of Rs.10,000/-. In all, the claimant would be entitled to **Rs.60,000/-** under this head.

10. Towards medical expenses, Rs.1,03,805/- is awarded by the tribunal on the basis of actual bills produced by the claimant, which also does not call for interference and the same is retained.

11. The tribunal awarded a sum of Rs.30,000/- towards conveyance, nourishment and nutritious food, which does not call for interference and the same is retained.

12. The tribunal awarded Rs.20,000/- towards loss of amenities. I deem it appropriate to award an additional amount of Rs.20,000/-. In all, the claimant would be entitled to **Rs.40,000/-** under this head.

13. The tribunal has not awarded any compensation towards loss of income during laid up period. In view of



enhancement of the income by this Court to Rs.9,500/- per month, the claimant would require atleast four months period to recuperate and to get back to his normal day to day activities. Therefore, claimant would be entitled to **Rs.38,000/-** (Rs.9,500/- x 4) under the head loss of income during laid up period.

14. In view of the above, the claimant would be entitled to a total compensation of **Rs.4,65,605/-** as against Rs.3,50,685/- as mentioned in the table below:

Heads	Amount in Rs.
Pain and sufferings	60,000-00
Loss of future income due to disability	1,93,800-00
Medical expenses	1,03,805-00
Conveyance, nourishment and nutritious food	30,000-00
Loss amenities	40,000-00
Loss of income during laid up period and rest period	38,000-00
TOTAL	4,65,605-00

15. Accordingly, I pass the following:

ORDER

- i) The appeal is ***allowed-in-part***;



- ii) The judgment and award dated 02.07.2019 passed by Additional Small Causes Judge and Motor Accident Claims Tribunal, Bengaluru in MVC.No.4196/2016 is modified;
- iii) The claimant would be entitled to a sum of **Rs.4,65,605/-** as against Rs.3,50,685/-;
- iv) The enhanced compensation amount shall be paid by the respondent-Insurance Company with interest @ 6% per annum within a period of four weeks from the date of receipt of a copy of this order;
- v) The enhanced compensation amount shall be released in favour of the claimant, upon proper verification.

Sd/-
JUDGE

CPN
CT:SNN