

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 2<sup>ND</sup> DAY OF NOVEMBER, 2011

BEFORE

THE HON'BLE MR. JUSTICE B.SREENIVASE GOWDA

Miscellaneous First Appeal No. 4855 OF 2011 (MV)

**BETWEEN**

THIPPESWAMI,  
AGED ABOUT 55 YEARS,  
S/O. THIMMAPPA,  
AGRICULTURIST,  
R/O. CHITRADURGA TOWN,  
NOW R/O AT ADANUR VILLAGE,  
HOLALKERE TALUK - 577 526.

... APPELLANT

(By Sri. R SHASHIDHARA, ADV.)

**AND**

1. GIRISH H. M.  
S/O. H. G. MRUTHYUNJAYA,  
AGE: MAJOR,  
OWNER OF CAR BEARING NO.AP-09-AK-0568,  
R/O. P.B. NO.2, PADMAJA COLONY,  
TARBUND, SECUNDARABAD, HYDERABAD,  
ANDRA PRADESH STATE.
2. THE GENERAL MANAGER,  
BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.,  
BAGIC, K.N.V COMPLEX, 4<sup>TH</sup> CROSS,  
VIDYA NAGAR,  
B H ROAD, TUMKUR.

... RESPONDENTS

(By Sri. H. L. LINGARAJ, ADV. FOR R.2,  
R.1 NOTICE DISPENSED WITH)



THIS MFA FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 14.2.2011 PASSED IN MVC NO.148/2010 ON THE FILE OF SENIOR CIVIL JUDGE & ADDITIONAL MACT, HOLALKERE, 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**

This appeal is by the claimant seeking enhancement of compensation awarded by the Tribunal.

2. Heard. The appeal is admitted and with the consent of learned Counsel appearing for the parties, the appeal is taken up for final disposal.

3. For the sake of convenience parties are referred to as they are referred to in the claim petition before the Tribunal.

4. As there is no dispute regarding injuries sustained by the claimant in a road traffic accident occurred on 17.01.2010 due to rash and negligent



driving of Maruthi Zen car bearing registration No. AP-09-AK-0568 by its driver and liability of the insurer of the offending vehicle, the only point that remains for my consideration in the appeal is:

Whether quantum of compensation awarded by the Tribunal is just and proper or does it call for enhancement?

5. After hearing the learned Counsel for the parties and perusing the judgment and award of the Tribunal, I am of the view that the compensation awarded by the Tribunal is not just and reasonable, it is on the lower side and therefore it is deserved to be enhanced.

6. As per wound certificate Ex. P 9 the claimant has sustained simple injury and fracture of right tibia. Injuries sustained and treatment taken by him are also evident from medical certificates Ex. P 42 to P 44, discharge card Ex. P 45, x-rays Ex.P.49 to P 56 and supported by oral evidence of the claimant examined as P.W 2. He has not examined the doctor regarding disability.



7. Considering the nature of injuries, Rs.28,999/- awarded by the Tribunal towards pain and suffering is just and proper and there is no scope for enhancement.

8. As Rs.10,197/- awarded by the Tribunal towards medical expenses is as per medical bills produced by the claimant, the same is just and proper and therefore, there is no scope for enhancement.

9. Claimant was treated as inpatient in Chikkajajur Govt. Hospital and Holakere Govt. Hospital for 26 days. Considering the nature of injuries and duration of treatment, a sum of Rs.12,000/- is awarded towards incidental expenses such as conveyance, nourishment and attendant charges as against Rs.7,000/- awarded by the Tribunal.

10. The claimant is a Govt. servant, the Tribunal calculating the number of days of leave availed by him for treatment in terms of money has rightly awarded Rs.51,238/- towards loss of income during laid up period and there is no scope for enhancement.



11. The claimant has not examined the doctor regarding disability and after sustaining injuries he continued his employment and awarding compensation towards loss of amenities and loss of future income do not arise.

12. Considering the nature of injuries <sup>a sum of</sup> ~~(and evidence of the doctor)~~ Rs.5,000/- is awarded towards future medical expenses.

13. Accordingly the appeal is allowed in part and the judgment and award of the Tribunal is modified to the extent stated herein above. The claimant is entitled for an additional compensation of Rs. <sup>10,000/- \*</sup> ~~5,000/-~~ with interest at 6% p.a. from the date of claim petition till the date of realisation.

14. The Insurance Company is directed to deposit the additional compensation amount with interest within two months from the date of receipt of a copy of this judgment and the same is ordered to be released in favour of the claimant.

Corrected vide Court order dt - 5-12-11.

*(Signature)*

15. Sri H. S. Lingaraju, learned Counsel, who was directed to take notice for R 2 and argued the case on behalf of R 2 is permitted to file vakalath for R 2 within two weeks.

No order as to costs.

Vb/-

Sd/-  
JUDGE