

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 05TH DAY OF APRIL, 2021

PRESENT

THE HON'BLE MR.JUSTICE ALOK ARADHE

AND

THE HON'BLE MR.JUSTICE M.G.S. KAMAL

M.F.A. NO.1014 OF 2017 (MV-I)

BETWEEN:

SRI. MAHAMMED IMARAN MAULANA
@ MAULANA IMRAN
S/O MAULANA IRFAN
AGED ABOUT 26 YEARS

REP. BY HIS NATURAL GUARDIAN
MOTHER SMT. ASMA
W/O MAULANA IRFAN
AGED ABOUT 48 YEARS

R/O MUBARAK MOHALLA
GANGOLLI VILLAGE
KUNDAPURA TALUK – 576 201.
UDUPI DISTRICT

...APPELLANT

(BY SRI. NAGARAJA HEGDE., ADVOCATE)

AND:

1. SRI. JAYANTH B. KUNDAR
S/O BACHCHU NAIK
MAJOR IN AGE
R/O SWATHI NILAYA

KUNDAR COMPOUND
NAVUNDA POST
KUNDAPURA TALUK – 576 201.
UDUPI DISTRICT.

2. THE UNIVERSAL SOMPO
GENERAL INSURANCE CO., LTD.,
BRANCH OFFICE: MANGALORE
OPP. CITY HOSPITAL
KADRI, MANGALORE – 575 003.

REP BY ITS BRANCH MANAGER.

....RESPONDENTS

(BY SRI. B.C. SHIVANNEGOWDA, ADVOCATE FOR R-2
R-1 SERVED UNREPRESENTED)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED:28.10.2016 PASSED IN MVC NO.896/2014, ON THE FILE OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL AND MEMBER ADDITIONAL MACT, UDUPI (SITTING AT KUNDAPURA) KUNDAPURA, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS MFA COMING ON FOR HEARING, THIS DAY, **M.G.S.KAMAL, J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal under Section 173(1) of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act', for short) has been filed by the claimant being aggrieved by

the judgment dated 28.10.2016 passed by the Motor Accident Claims Tribunal.

2. Facts giving rise to the filing of the appeal briefly stated are that on 15.12.2013, when the claimant was proceeding as a pillion rider on a motor-cycle bearing Registration No.KA-20-W-2806 ridden by his friend from Nagoor to Mangaluru, when they reached Navunda Petrol Bunk on NH.66 of Kundapura Taluk, a tipper lorry bearing No.KA-20-C-3583 driven by its driver in a rash and negligent manner, dashed against the motor-cycle. As a result of the aforesaid accident, the claimant sustained grievous injuries and fracture and was hospitalized.

3. The claimant filed a petition under Section 166 of the Act seeking compensation to the tune of Rs.75,00,000/-. It was pleaded that he sustained grievous injuries all over his body, deep head injury and lost consciousness and he was treated at different hospitals as inpatient for a period of about 210 days. It was further pleaded that the petitioner was working as Account and

Audit Assistant and was drawing a salary of Rs.15,000/- p.m. It was also pleaded that he has become permanently disabled to the extent of 100% and is unable to continue his work. It was also pleaded that he had spent huge amount towards medical expenses, conveyance, etc. It was further pleaded that the accident occurred purely on account of the rash and negligent driving of the offending tipper lorry by its driver.

4. On service of notice, the respondent No.1 remained absent and Respondent No.2 filed written statement denying the petition averments with regard to date, time and manner of accident and also age, avocation and injuries of the claimant, expenses incurred towards treatment and medical bills and the present physical condition of the injured. It was specifically contended by the Respondents No.2-Insurance Company that their liability is subject to the issuance of F.C, R.C of the offending vehicle and driving licence held by the driver of the offending vehicle and the liability is subject to terms

and conditions of the Insurance Policy. Hence, sought for dismissal of the petition against the Respondent No.2.

5. On the basis of the pleadings of the parties, the Claims Tribunal framed the issues and thereafter recorded the evidence. The claimant examined Smt.Asma, the mother of the claimant as PW-1 and Mohammed Talah as P.W.2 and marked documents, viz., Ex.P1 to Ex.P29. Four Court witnesses viz., Dr.Jamuna Rajeshwaran, K.V.Jijimon, Dr.Ganesh.H.K, Dr.Rakshith C.Kedambadi were examined as CWs.1 to 4 respectively and got exhibited documents, namely, Ex.C1 to C13. The respondents neither lead any evidence nor produced any documents. The Claims Tribunal, by the impugned judgment, *inter alia*, held that the accident took place on account of rash and negligent driving of the offending vehicle, as a result of which, the claimant sustained injuries. The Tribunal further held that the claimant is entitled to a compensation of Rs.24,94,600/- along with interest at the rate of 8% p.a. and directed the

Respondents 1 and 2 to deposit the compensation amount along with interest. Being aggrieved, this appeal has been filed.

6. The claimant had filed certain interlocutory applications, namely, I.A.No.1/2017 and I.A.No.2/2020 under Order 41 Rule 27 of CPC seeking production of additional documents with regard to claimant having spent additional sum of money for his treatment. On 20.01.2021, this Court had allowed the said applications and had directed the Tribunal to forward its finding on the additional evidence by 31.03.2021. Accordingly, the Tribunal has forwarded its finding with regard to the additional medical expenses incurred by the claimant to the tune of Rs.55,972/-. It is observed by the Tribunal that the said sum was spent by the claimant before passing of Judgment dated 28.10.2016 and has held the claimant being entitled for a compensation of Rs.12,48,572/- under the head of expenses towards medical treatment and total compensation awarded by the

Tribunal on 28.10.2016 to the tune of Rs.24,97,600/- with interest has been enhanced to Rs.25,53,572/- with interest.

7. The learned counsel for the claimant submitted that the Tribunal erred in awarding insufficient, inadequate and disproportionate compensation to the actual loss and damage sustained by the appellant. Even though the doctors have assessed the disability of the claimant at 100% to the whole body, the Tribunal has assessed the same at 50% to the whole body. It is further submitted that the Tribunal erred in assessing the income of the claimant at Rs.5,000/- p.m., without considering the evidence of C.W.3 and the document Ex.C2 evidencing the earning of the claimant at Rs.15,000/- p.m. It is also submitted that due to the accident, the claimant has sustained grievous injuries and he was treated as inpatient for more than 7½ months and that he had been taking follow up treatment. However, the Tribunal has granted insufficient compensation under the heads of 'future

medical expenses', 'future attendant charges', 'nourishment diet and conveyance charges' and 'future prospectus' are on the lower side. It is also urged that no compensation is awarded towards the loss of marriage prospects as the claimant is a bachelor and the Tribunal has not awarded any amount towards 'future medical expenses'. Hence, the learned counsel for the claimants has sought for allowing the appeal.

8. Learned counsel for the respondent submitted that the claimant has not produced justifiable evidence with regard to his income and the notional income taken by the Tribunal is just and proper. It is further submitted that the Tribunal has rightly assessed the income of the claimant notionally and award made by the Tribunal is just and reasonable and it does not call for interference. Hence, he has sought for dismissal of the appeal.

9. We have considered the submissions made by the learned counsel for the parties and have perused the records. It is not in dispute that the accident has occurred

due to rash and negligent driving of the tipper lorry. We have perused the evidence of Dr.Jamuna Rajeshwari, Professor, Department of Neuro Psychology, NIMHANS who has been examined as C.W.1. The document Ex.C1 has been marked which indicates the tests and assessment conducted by her on the claimant. She has deposed that on IQ assessment, the patient had mental age of 01 year 04 months and got IQ of '8' indicating profound mental retardation. She has further deposed that the claimant has cognitive disability of 100%. She has also deposed that the patient requires continuous treatment and that the claimant requires assistance for all the activities of daily living. Similarly, Dr.Ganesh.H.K, Endocrinologist examined as C.W.2 has deposed that the claimant has fluctuating sodium level which is due to the hypothalamic injury (head injury) suffered due to road traffic accident. Dr.Rakshit.C Kedambadi who has been examined as C.W.4 has deposed that the claimant has severe global cognitive deficit amounting to 100% disability and he requires regular follow-up and has to take medicine life-long. He is

also suffering from neurogenic bladder. He has also deposed that the claimant needs Rs.8,000/- to Rs.10,000/- towards cost of medicine per month and that the disability is permanent in nature and the claimant needs help of an attendant through out his life. Certificate issued by the doctor as Ex.C3 has been identified and signature of the witness has been marked as Ex.C3A. Further, medical files ten in number have been marked as Ex.C4 to C13. He has deposed that he has assessed the disability on the basis of clinical assessment and neuro psychological reports of NIMHANS. It is pertinent to note that in the cross-examination, nothing has been elicited to discredit the said witnesses regarding the disability of the complainant. The Tribunal, though has appreciated the evidence and the records made available with regard to assessment of the disability of the claimant, has however, assessed the disability of the claimant to the extent of 50% to the whole body. In view of the evidence of C.W.1, C.W.2 and C.W.4 who are the experts in the field and in consideration of the material placed by them regarding the injuries and

permanent disability suffered by the claimant, the disability requires to be assessed at 100%. On account of the said permanent disability, the claimant is deprived of getting married and having a normal family life. His capacity to earn has also been completely diminished. Further, the claimant needs to be on a permanent support and dependant for his daily activities.

10. As regards income of the claimant, the notional income of Rs.10,000/- p.m., assessed by the Tribunal is maintained as just and proper and the same do not warrant any interference. The age of the claimant on the date of the accident was about 23 years, for which multiplier of '18' is applicable. Thus, the future income of the claimant would come to Rs.21,60,000/- (Rs.10,000/- x 12 x 18). In view of the law laid down by the Hon'ble Supreme Court of India in the case of **V.MEKALA vs. M.MALATHI AND ANOTHER (2014) 11 SCC 178**); **PARMINDER SINGH vs. NEW INDIA ASSURANCE COMPANY LIMITED AND OTHERS (2019)7 SCC 217**

and **ERUDAYA PRIYA vs. STATE EXPRESS TRANSPORT CORPORATION (2020 SCC ONLINE (SC) 601)** and considering the age of the claimant, qualification and avocation, future prospects on the said sum is to be added at the rate of 40%. Thus, the claimant is entitled for a sum of Rs.30,24,000/- (Rs.21,60,000 + Rs.8,64,000/-) under the head 'loss of future earning capacity'. The claimant has suffered disability to the extent of 100%. Therefore, the question of compensation under the head 'loss of income during the period of treatment' does not arise and Rs.50,000/- awarded by the Tribunal under the said head is set aside.

11. The claimant has suffered grievous injuries like deep lacerated wound over the head, contusion on the right shoulder, fracture of right temporal bone, contusion on frontal region, fracture of right shoulder, abrasion over the right elbow and other abrasion and head injury. He has also suffered diffused axonal injury with intermittent hyponatremia. In view of the finding of the Tribunal with regard to the additional expenses incurred by the claimant

to the tune of Rs.55,972/- and holding that the claimant is entitled for a compensation of Rs.12,48,572/- under the head of 'expenses towards medical treatment', the same is maintained as it appears to be just and proper.

12. The amount awarded by the Tribunal under the heads of 'pain and suffering', 'medical treatment', 'future attendant charges', 'nourishment, diet and conveyance' are maintained. Consequently, the total compensation is enhanced to Rs.45,07,572/- in place of Rs.24,97,600/-.

13. Thus, the claimant is entitled to the following compensation:

Compensation under different Heads	As awarded by the Tribunal (Rs.)	As awarded by this Court (Rs.)
Pain and sufferings	75,000	75,000
Loss of income during treatment	50,000	-
Medical Treatment	11,92,600	12,48,572
Loss of future earning capacity	10,20,000	30,24,000
Future medical expenses	60,000	60,000
Future attendant charges, nourishment, diet and conveyance	1,00,000	1,00,000
Total	24,97,600	45,07,572

The claimant is entitled to a total compensation of Rs.45,07,572/-.

14. The respondent No.2-Insurance Company is directed to deposit the compensation amount along with interest within a period of four weeks from the date of receipt of copy of this judgment. Needless to state that the enhanced amount of compensation shall carry interest at the rate of 6% p.a., from the date of petition till payment is made.

15. To the aforesaid extent, the judgment of the Claims Tribunal is modified.

16. Accordingly, the appeal is **allowed in part**.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

bnv