

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17<sup>TH</sup> DAY OF FEBRUARY 2016

PRESENT

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

AND

THE HON'BLE MRS.JUSTICE RATHNAKALA

**MISCELLANEOUS FIRST APPEAL NO.7666 OF 2011(MV)**

BETWEEN:

B.S. RAVIKUMAR,  
S/O SUGGAYYA,  
AGED ABOUT 25 YEARS,  
RESIDING AT NO.5,  
2<sup>ND</sup> MAIN, 2<sup>ND</sup> CROSS,  
SEETHAPPA LAYOUT,  
CHAMUNDINAGAR,  
R.T.NAGAR POST,  
BANGALORE-560032.

...APPELLANT

(BY SRI. G. RAMANA, ADV.)

AND:

1. M/S. THE NEW INDIA ASSURANCE COMPANY LTD.,  
1<sup>ST</sup> FLOOR, MAYUR COMPLEX,  
NEXT TO PIA BHAVAN,  
PEENYA, BANGALORE-58.
2. SRI. AMJAD PASHA,  
S/O JAMEEL PASHA,  
MAJOR IN AGE,  
NO.465/1, KAREEMSAB LAYOUT,  
SRIGANDHADA NAGAR,  
HEGGANAHALLI,

BANGALORE DISTRICT,  
PIN-560058.

3. SRI. C.HANUMANTHARAYAPPA,  
S/O LAKKAIAH,  
MAJOR IN AGE,  
NO.139/1, HEGGANAHALLI,  
PEENYA II STAGE,  
BANGALORE-560058.

..... RESPONDENTS

(BY SRI. K.N. SRINIVASA, ADVOCATE FOR R1,  
NOTICE TO R2 AND R3 IS DISPENSED WITH V/O  
DT.10.12.13)

THIS MISC. FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT & AWARD DATED 15.02.2011 PASSED IN MVC NO.6716/2008 ON THE FILE OF THE MACT, COURT OF SMALL CAUSES, SCCH-6, BANGALORE, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS MISC. FIRST APPEAL COMING ON FOR ADMISSION THIS DAY, **N.K.PATIL J.**, DELIVERED THE FOLLOWING:

### **J U D G M E N T**

This appeal by the claimant is directed against the impugned judgment and award dated 15.02.2011 passed in MVC No. 6716/2008 on the file of the IV Addl. Judge & Member, MACT, Court of Small Causes (SCCH-6), Bangalore (hereinafter referred to as 'Tribunal' for short) for enhancement of compensation.

2. The Tribunal by its judgment and award has awarded a sum of Rs.1,38,500/- with interest at 6% p.a., from the date of petition till its realization, on account of the injuries sustained by him in the road traffic accident. He has presented this appeal on the ground that the quantum of compensation awarded by the Tribunal is inadequate and it requires for enhancement.

3. The brief facts of the case on hand are:

The appellant claims that he was aged about 24 years at the time of the accident, hale and healthy, working as Key Accountant in the Marketing Solutions and Private Ltd., Bangalore, and earning a sum of Rs.12,500/- per month. That on 01.05.2008, at about 5.45 p.m., when he was returning from Magadi towards Nelamangala on his motor bike bearing No.KA-04-ES-6807 along with his friend, with moderate speed by following the traffic rules and regulations, at that time, a Tempo bearing Reg. No.KA-09-C-7299 came behind his

bike in a rash and negligent manner and hit the rear portion of the claimant's bike, as a result, he fell down and sustained grievous injuries. Immediately, he was shifted to Akshaya Hospital for first aid treatment, thereafter, he was taken to Sarvodaya Hospital for further treatment. On 03.05.2008, the claimant was shifted to Apollo Hospital, Bangalore. It is further case of the appellant that due to the injuries sustained in the road traffic accident, he has lost the prospects of joining M/s. Goldman Sachs Pvt. Ltd., who had offered job on salary of Rs.50,000/- per month. The claimant has spent nearly Rs.10 Lakhs towards treatment, conveyance and nourishment expenses. Because of the injuries sustained, he has been permanently disabled and he has lost his future earnings which affected his future prospects of employment. He has undergone treatment in Apollo Hospital as an inpatient from 03.05.2008 to 21.06.2008. As advised by the doctor, he has to take bed rest for more than six months. Therefore, the appellant

was constrained to file a claim petition under Section 166 of MV Act, before the Tribunal claiming compensation of Rs.50,00,000/-. The said claim petition had come up for consideration before the Tribunal. The Tribunal after hearing both sides and after assessing the oral and documentary evidence, has allowed the claim petition in part and awarded a compensation of Rs.1,38,500/- with interest at 6% p.a. from the date of petition till its realization. Being dissatisfied by the quantum of compensation awarded by the Tribunal, the appellant has presented this appeal, seeking enhancement of compensation.

4. Sri. G. Ramana, learned counsel for the appellant, at the outset, submitted that the Tribunal has erred in not awarding reasonable compensation under the head of pain and suffering and the same is on the lower side. The Tribunal has not considered the evidence of PW3-Doctor, who opined that the appellant has

suffered 90% injury to the head and also erred in not considering the salary of the appellant. He has spent huge amount towards medical expenses, conveyance, nourishment etc. He has taken treatment in three different hospitals. But, the Tribunal without considering the material on record, has awarded a meager compensation of Rs.1,38,500/-. Therefore, he submitted that the impugned judgment and award is liable to be modified by enhancing just and reasonable compensation.

5. As against this, Sri.K.N.Srinivasa, the learned counsel appearing for 1<sup>st</sup> respondent-insurer inter-alia contended and sought to substantiate that the impugned judgment and award stating that the same has been passed by the Tribunal after due consideration of the oral and documentary evidence and hence, interference by this Court is not called for.

6. After careful consideration of the submissions made by the learned counsel appearing for both the parties and on perusal of the material available on record, including the impugned judgment and award passed by the Tribunal, the only point that arises for consideration is:

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

7. The injuries sustained in the road traffic accident that occurred on 01.05.2008 are not disputed. It is further not in dispute that the appellant was aged about 24 years at the time of accident, hale and healthy, working as Key Accountant in the Marketing Solutions and Private Ltd., Bangalore, and earning a sum of Rs.12,500/- per month. He met with an accident on 01.05.2008 and sustained the following injuries:

*i) Detailed Neuropsychological assessment is enclosed.*

*ii) gait ataxia and*

*iii) desparthia present.*

It is further not in dispute that the appellant took treatment from 03.05.2008 to 21.06.2008 as inpatient in Apollo Hospital. Due to the injuries sustained in the road traffic accident, he has suffered pain and mental agony and also unhappiness during the treatment period. He was advised by the Doctor to take bed rest at least for a period of six months. Due to discomfort and unhappiness on account of injuries sustained, he is unable to continue his work. In spite of having sufficient opportunity, he has not produced credible documents. As per Ex.P16, even during his college period he was just above average and on 2 occasions he failed in the exams. He has not examined neurophysiologist nor did he enter the witness box in support of the report prepared by her, which is at Ex.P22. On account of head injury, he is not in a position to take up further studies and it affects his future prospects. It is stated that he has been selected at M/s. Goldman Sachs Pvt. Ltd., who had



offered a job on salary of Rs.50,000/- per month. But to substantiate the same, he has not produced any documents. As per Exs.P19 and P20-salary certificate issued by the Marketing Solutions Pvt. Ltd., he was getting a salary of Rs.12,500/- per month. Injury No.1 is grievous in nature and other 11 injuries are simple in nature. He has to suffer disability throughout his future life. Taking into consideration all these aspects and after re-appreciation of the material on record, we deem it fit to award another sum of Rs.1,25,000/- with 6% interest per annum from the date of petition till realization

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

The judgment and award dated 15.02.2011 passed in MVC No. 6716/2008 on the file of the IV Addl. Judge & Member, MACT, Court of Small Causes, SCCH-6, Bangalore is hereby modified, awarding additional compensation of **Rs.1,25,000/-** with interest @ 6% p.a. from the date of petition till realization.

The respondent No.1-insurer is directed to deposit the enhanced compensation of Rs.1,25,000/- with interest at 6% p.a. from the date of petition till the date of realization, within three weeks from the date of receipt of a copy of this judgment.

The enhanced compensation amount with interest shall be released in favour of the appellant immediately on deposit made by the first respondent/insurer.

Draw the award, accordingly.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

JTR/-