

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 19<sup>TH</sup> DAY OF JUNE, 2014

:PRESENT:

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

AND

THE HON'BLE MR. JUSTICE B. SREENIVASE GOWDA

MFA NO. 9036/2010 (MV)

BETWEEN:

SRI H S NANJUNDA SWAMY  
S/O SRI H S SRIKANTAPPA  
AGED 40 YEARS,  
R/BY THE NEXT FRIEND FATHER  
GUARDIAN SRI H S SRIKANTAPPA  
S/O LATE H D SHIVANANJAPPA,  
AGED 65 YEARS,  
R/O MYG II, VIJAYANAGAR EXTENSION,  
K.R.NAGAR,  
MYSORE DISTRICT

... APPELLANT

(BY SRI PUNDIKAI ISHWARA BHAT, ADVOCATE)

AND

1. SMT MANJULA W/O SRI RAGHU AJILA  
MAJOR,  
R/O PUTHILA HOUSE,  
PERAMUGERU POST,  
KEDHILA VILLAGE,  
BANTWAL TQ. D.K

2. UNITED INDIA INSURANCE COMPANY LTD  
 BRANCH OFFICE,  
 SALDANA BUILDING,  
 BALMATTA,  
 MANGALORE, D.K  
 REPRESENTED BY ITS  
 BRANCH MANAGER

... RESPONDENTS

(BY SRI M. ARUN PONNAPPA, ADVOCATE FOR R2;  
 R1-NOTICE DISPENSED WITH V/O. DTD.31.03.2011)

THIS MFA IS FILED U/S 173(1) OF MV ACT  
 AGAINST THE JUDGMENT AND AWARD  
 DATED:06.01.2010 PASSED IN MVC NO.1319/2005  
 ON THE FILE OF THE I ADDITIONAL DISTRICT  
 JUDGE, MEMBER, MACT, D.K., MANGALORE, PARTLY  
 ALLOWING THE CLAIM PETITION FOR  
 COMPENSATION AND SEEKING ENHANCEMENT OF  
 COMPENSATION.

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

**:JUDGMENT:**

Though this matter is posted for admission, it is  
 taken up for final disposal with the consent of the  
 learned counsel appearing for both the parties.

This appeal by the claimant is directed against  
 the impugned judgment and award dated 06.01.2010  
 passed in MVC No.1319/2005 on the file of the  
 Member, MACT-II & I Addl. District Judge, Mangalore,

D.K. (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.13,64,568/- under different heads with interest at 6% per annum from the date of petition till the date of deposit, as against the claim of the claimant on account of injuries sustained by him, in the road traffic accident.

3. In brief, the facts of the case are:

The appellant claims that he was aged about 35 years as on the date of accident, hale and healthy prior to the accident and was working as Government Surveyor. Be that as it may. On 04.05.2005 at about 7.15 p.m., when he was proceeding by riding his motorcycle bearing No.KA-21/H-2357 from Ujjire towards Belthangady near Koyyur Cross at Laila Village of Belthangady Taluk, he met with an accident due to rash and negligent driving by the driver of Tanker Lorry bearing No.KA-19/7134. Due to impact

he sustained fracture of the head on the right side, fracture of the right zygomatic arch, fracture of the right maxillary sinus and injuries on the upper eye lid and lower eye lid. Immediately he was shifted to Mangala Nursing Home, Mangalore, where he was admitted as inpatient and was in coma for 15 days. After 15 days he regained his consciousness. The X-ray of the head and the scanning show that there was fracture of head as stated above. He was admitted as an inpatient in the hospital from 04.05.2005 to 06.07.2005, for about 72 days. It is the case of the appellant that he has spent huge amount towards medical expenses and conveyance, nourishing food and attendant charges and suffered mental pain and agony during treatment period and he is bound to pull on the said difficulty through out his life. Now he is bed ridden and in a paraplegia state and entirely dependent on his father and another one attendant for his survival. Therefore, he filed a claim petition

under Section 166 of MV Act before the Tribunal claiming compensation of Rs.15,00,000/- against the respondents. The said claim petition had come up for consideration before the Tribunal. To substantiate his case, he examined his father-natural guardian as PW1 and other three witnesses as PWs.3 and 4 including doctor and placed reliance on Exs.P1 to P29. Whereas, the respondents neither entered into witness box nor produced any documents except marking the copy of the policy at Ex.R1. The Tribunal after hearing both sides and after appreciating the oral and documentary evidence, has allowed the said claim petition in part and awarded a sum Rs.13,64,568/- as compensation under different heads with interest at 6% p.a., from the date of petition till its realisation. Being dissatisfied with the quantum of compensation awarded by the Tribunal, appellant has presented this appeal, seeking enhancement of compensation.

4. Sri Pundikai Ishwara Bhat, learned counsel appearing for the appellant at the outset submits that, the Tribunal has erred in not awarding reasonable compensation towards injury, pain and sufferings and erred in not awarding any compensation towards loss of amenities, discomfort and unhappiness. What is awarded towards future medical expenses including attendant charges and loss of future income is on the lower side and contrary to the evidence of doctor PW2 who has assessed 100% disability and the claimant has discontinued his service, as he is fully dependent on his father and another assistant for his survival. He cannot lead a normal life on account of injuries sustained in the road traffic accident as referred above and also he has lost matrimonial life. Therefore, he submits that, the impugned judgment and award passed by the Tribunal is liable to be modified by enhancing the compensation substantially under all heads.

5. Per contra, Sri M. Arun Ponnappa, learned counsel appearing for the second respondent, inter alia, contended and sought to substantiate that, the impugned judgment and award passed by the Tribunal is just and proper. It is passed after due appreciation of the oral and documentary evidence available on record considering the age, avocation, nature of injuries sustained and duration of treatment undergone by the claimant. Therefore, interference by this Court is not called for.

6. After considering the submissions made by the learned counsel appearing for both the parties and on perusal of the materials 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. Occurrence of the accident resulting in the injuries to the appellant is not in dispute. Further it is not in dispute that, the appellant was aged about 35 years as on the date of accident, hale and healthy prior to the accident and was working as a Government Surveyor and getting salary of Rs.6,776/- per month as per Ex.P. 21-Salary Certificate. On account of disability sustained in the accident he has discontinued his job as he was dependent on his father and one attendant for his survival. PW3-Doctor after clinical and medical examination has assessed 100% disability. The appellant was treated as inpatient for about 72 days on different occasions. After microscopic evaluation of the oral and documentary evidence available on record, it emerges that the medical board has given a certification that the claimant is unfit to continue his job. Further after going through the evidence of PWs.1 and 2 nothing worthwhile is elicited by the learned counsel



appearing for the insurer as to whether he was getting pension or is there any exaggeration. The claimant has to endure the pain and agony, discomfort and unhappiness through out his life and he is not in a position to lead a normal life and he has to depend on others through out his life to carry on his day-to-day activities. These aspects are neither looked into nor considered nor appreciated by the Tribunal. After re-appreciation of the entire material as referred above, there is no doubt that, the claimant who is aged about just 35 years is unfit to lead a normal life. Further, due to disability on account of accidental injuries he has lost marriage prospects. He is nothing but a vegetable in nature and he may require reasonable amount for future medical and incidental expenses including attendant charges. Taking into consideration all these aspects, we deem it fit to award Rs.1,50,000/- towards pain and suffering as against Rs.35,000/-, Rs.50,000/- towards incidental

expenses as against Rs.15,000/-, Rs.1,50,000/- towards future medical expenses including attendant charges as against Rs.25,000/- awarded by the Tribunal. Further, it is just to award Rs.1,00,000/- towards loss of amenities, comfort and happiness. Accepting 100% permanent disability we award Rs.12,89,472/- (Rs.6,716/- x 12 x 16) towards loss of future income due to disability. However, the Tribunal has rightly awarded a sum of Rs.3,00,000/- towards medical expenses as per medical bills and therefore interference by this Court is not called for.

8. Having regard to the facts and circumstances of the case as stated above, appeal is allowed in part. The impugned judgment and award dated 06.01.2010 passed by the Tribunal in MVC No.1319/2005 is hereby modified. The total compensation payable comes to Rs.20,39,472/- with 6% interest per annum, as against Rs.13,64,568/- and the break- up is as follows:

Towards pain and sufferings	Rs. 1,50,000/-
Towards medical expenses	Rs. 3,00,000/-
Towards incidental charges	Rs. 50,000/-
Towards loss of amenities & Happiness	Rs. 1,00,000/-
Towards loss of future income due to disability	Rs. 12,89,472/-
Towards future medical expenses including attendant charges	Rs. 1,50,000/-
<b>Total</b>	<b>Rs.20,39,472/-</b>

The enhanced compensation comes to Rs.6,74,904/-. The 2<sup>nd</sup> respondent-Insurer is directed to deposit the enhanced compensation of Rs.6,74,904/- with interest at 8% p.a., from the date of petition till the date of realisation, within three weeks from the date of receipt of a copy of this judgment.

Out of the enhanced compensation, Rs.5,00,000/- with proportionate interest shall be invested in the Fixed Deposit in any Nationalized or Scheduled Bank, in the name of the appellant for a period of ten years and renewable for another five years, with liberty to the natural guardian father of

the claimant to withdraw the interest accrued on it to the welfare of the claimant.

The remaining Rs.1,74,904/- with proportionate interest shall be released in favour of the natural guardian if the appellant, immediately, on deposit by the Insurer.

Draw the award, accordingly.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

*Sbs\**