

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20<sup>TH</sup> DAY OF JANUARY 2017

BEFORE

THE HON'BLE MR. JUSTICE ARVIND KUMAR

MFA No.9814/2010

BETWEEN:

SMT. BHARATHI S. PATIL,  
W/O SHIVANAGOWDA PATIL,  
AGED ABOUT 56 YEARS,  
R/AT C/O SANDEEP KUDACHI,  
NO.45, 13<sup>TH</sup> A CROSS,  
IST MAIN ROAD, KONANAKUNTE,  
BENGALURU – 62.

... APPELLANT

(BY SRI SHRIPAD V. SHASTRI, ADV.,)

AND:

1. ORIENTAL INSURANCE CO. LTD.,  
REGIONAL OFFICE,  
LEO COMPLEX, NO.44/45,  
RESIDENCY ROAD,  
BENGALURU – 560 025.  
BY ITS MANAGER.

2. NARAYANA P.M.,  
S/O LATE SUBBA POOJARY,  
M/S. SUGAMA TOURIST,  
NO.513, 8<sup>TH</sup> BLOCK,  
OPP. POST OFFICE,  
KORAMANGALA,  
BENGALURU – 05.

... RESPONDENTS

(BY SRI R. RAJAGOPAL, ADV.,)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE  
JUDGMENT AND AWARD DATED 02.07.2010 PASSED IN MVC  
NO.5645/2009 ON THE FILE OF III ADDITIONAL JUDGE &  
MACT, COURT OF SMALL CAUSES, BANGALORE, PARTLY

ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS MFA COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING: -

**ORDER**

This is a claimant's appeal for enhancement of compensation, not being satisfied with quantum of compensation awarded by III Additional Judge & MACT, Court of Small Causes, Bengaluru, by Judgment and Award dated 02.07.2010 in MVC No.5645/2009.

2. I have heard the arguments of Sri. Shripad V. Shastri, learned counsel appearing for appellant/claimant and Sri. R. Rajagopal, learned counsel appeared for first respondent, since it was duly served and had been unrepresented.

3. Claimant sought for award of compensation Rs.13,00,000/- by filing a petition under Section 166 of the Motor Vehicles Act and contended *inter alia* that in a road traffic accident that occurred on 24.08.2008 at about 06.15 A.M, claimant has suffered grievous

injuries and consequently became disabled permanently and as such sought for compensation.

4. Insurer appeared and filed its written statement denying the averments made in the claim petition. The owner of the offending vehicle had been placed ex-parte before the Tribunal. On the basis of pleadings of parties Tribunal framed issues and claimant got himself examined as PW1 and examined two witnesses namely her daughter and the doctor, who treated the claimant for the facial injuries, and in all got marked Exs.P1 to 28. On behalf of the Insurer none appeared and no oral or documentary evidence was tendered.

5. Tribunal on appreciation of entire evidence tendered by the parties by its judgment and award in question has awarded a total compensation of Rs.5,32,600/- under the following heads :-

- a. Pain and suffering - Rs.40,000/-
- b. Loss of amenities of life - Rs.15,000/-
- c. Medicine and hospital expenses - Rs.3,83,000/-
- d. Conveyance, Nourished food and  
and incidental expenses Rs. 25,000/-

e. Loss of earning for the laid up Period	Rs. 15,000/-
f. Future loss of earning	Rs.39,600/-
g. Future medical expenses	Rs.15,000/-

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Total - Rs.5,32,600/-

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6. It is the contention of Sri Shripad V. Shastri, learned counsel appearing for the claimant that claimant had sustained facial soft tissue injury, comminuted fracture of mandible, fracture of both maxilla and she had undergone surgery more than twice and as such Tribunal ought to have awarded just and reasonable compensation towards pain and suffering and what has been awarded is on the lower side, he would also submit that on account of injuries sustained claimant is unable to chew hard substances and even disfiguration has resulted in loss of comforts in life to her and as such Tribunal ought to have awarded reasonable compensation towards 'loss of amenities in life', since what has been awarded by the Tribunal is on

the lower side. He would also submit that no compensation is awarded towards disfiguration and as such Tribunal ought to have granted compensation towards the same.

7. Per contra, Sri R. Rajagopal, learned counsel appearing for respondent No.1 - Insurer would submit that compensation granted by the Tribunal itself is on the higher side and there is no need to enhance the compensation. Hence, he prays for dismissal of the appeal.

8. Having heard the learned counsel appearing for the parties and on perusal of the records of Tribunal, which has been since secured by this Court, it would disclose that claimant was shifted to Government Hospital, Sira, and later shifted to Vinayaka Hospital and then shifted to Manipal Hospital Bangalore. As could be seen from the medical records she has sustained comminuted fracture of mandible and maxilla; she has undergone suffering. Wound debridement has been conducted; open reduction with

internal fixation of mandible was also done under general anesthesia. That apart claimant has undergone plastic surgery for spilt skin grafting, and has taken follow-up treatment several times and she has suffered permanent disability on account of accidental injuries. She was in-patient at Manipal Hospital from 26.08.2008 to 10.09.2008 and her daughter, who was taking care of her has appeared as PW2 and has supported the claim of the claimant. Dr. Sunil Kumar, who has been examined as PW3 has stated on oath that claimant has undergone surgery and contents of the medical records produced has been re-iterated by him and he has assessed the permanent disability to the face at 40%. He has also deposed that claimant has to undergo one more surgery for removal of implants. Tribunal on evaluation of entire evidence has assessed the compensation as already noticed herein above.

9. However, taking into consideration that on account of the surgeries that claimant has undergone on three occasions, this Court is of the considered view,

that compensation awarded by the Tribunal towards 'pain and suffering' is marginally on the lower side and same requires to be enhanced. Accordingly, compensation amount of Rs.20,000/- is awarded towards 'pain and suffering'.

10. It is not in dispute that the injury sustained by the claimant has resulted in claimant being unable to chew hard substances and that apart disfiguration caused to the face would also result in certain comforts of life being lost through out her life. As such, compensation awarded towards 'loss of amenities' requires to be enhanced and on account of compensation having not been awarded 'towards facial disfiguration', considering the nature of injuries sustained by the claimant as could be seen from the photograph Exs.P11 and P12 reasonable compensation requires to be awarded. This Court is of the considered view, that a sum of Rs.10,000/- towards 'Facial disfiguration' and Rs.10,000/- towards 'Loss of amenities' has to be

awarded as it would meet the ends of justice. Hence, same is awarded.

11. Insofar as the compensation awarded towards 'Food, conveyance and nourishment' under the head 'Incidental expenses' is marginally on the lower side. Claimant was inpatient at Manipal Hospital from 26.08.2008 to 10.09.2008 as per the Discharge Summary - Ex.P7. It is not only claimant who would have spent money towards her food and nourishment but also her daughter, who was taking care of claimant would have also spent including conveyance charges. As such, this Court is of the considered view, that additional compensation of Rs.5,000/- can be awarded, which would be just and reasonable. Thus in all, claimant would be entitled to additional compensation of Rs.45,000/- under the following heads :

1. Towards Facial disfiguration- Rs.10,000/-
2. Towards Pain and Suffering – Rs.20,000/-
3. Towards Loss of amenities- Rs.10,000/-
4. Towards Food, conveyance  
and Nourishment – Rs.5,000/-



12. Hence, the following :-

ORDER

(i) Appeal is hereby ***allowed in part.***

(ii) Judgment and award dated 02.07.2010 passed by the III Addl. Senior Civil Judge & MACT, Bengaluru, in MVC No.5645/2009 is hereby modified and additional compensation of Rs.45,000/- is hereby awarded with interest at 6% per annum from the date of the petition till the date of deposit.

(iii) Insurer is hereby directed to deposit the compensation amount with interest before the jurisdictional Tribunal within an outer limit of six weeks from the date of receipt of certified copy of this order.

(iv) Registry to retransmit the records  
to jurisdictional Tribunal forthwith.

**SD/-  
JUDGE**

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