

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF OCTOBER, 2017

BEFORE

THE HON'BLE MR. JUSTICE B. SREENIVASE GOWDA

M.F.A. NO.3747/2010 (MVC)

BETWEEN;

Balachandra, Minor
D/o Shivappa Gowda,
Aged about 14 years,
Rptd., by Natural Guardian Father
Next friend, Shivappa Gowda
S/o Koragappa Gowda,
Aged about 42 years,
R/at Sarve Village and Post,
Puttur Taluk and D.K. District.

... Appellant

(By Smt. Haleema Ameen for
S. Vishwajith Shetty, advs.)

AND:

1. Rathna Rai,
W/o Gangadhara Rai,
Aged about 51 years,
R/at Belikkalamate House,
Keyyur Village,
Madavu Post,
Puttur Taluk, D.K.
2. The Manager,
United India Insurance Co. Ltd.,
Puttur Branch Office,
Main Road,
Puttur Taluk,
D.K. District.

3. Praveen,
S/o Shivappa Poojary,
Aged about 25 years,
R/at Chikkamundelu House,
Bulerikatte of Balnadu Village,
Puttur Taluk, D.K. ... Respondents
- (By Sri. S. Anantha Chandran for S. Srishaila,
adv. for R2, R1 & R3 are served)

This MFA is filed u/s 173(1) of MV Act against the judgment and award dated 27.07.2009 passed in MVC No.815/06 on the file of the member MACT, Puttur, D.K, 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

The claimant aggrieved by the quantum of compensation awarded by the Tribunal has preferred this appeal, seeking enhancement of compensation.

2. Heard Smt. Haleema Ameen for S.Vishwajith Shetty learned counsel appearing for the appellant/claimant and Sri. S. Anantha Chandran for

Sri. S. Srishaila learned counsels appearing for the respondent No.2/ insurer. Perused the judgment and award passed by the Tribunal.

3. As there is no dispute regarding certain injuries sustained by the claimant in a road traffic accident occurred on 06.11.2005 due to rash and negligent driving of a Maxi Cab Tempo bearing registration No.KA-21-4655 by its driver and liability of the insurer of the offending vehicle, the only point that arises for my consideration in the appeal is:

“Whether the compensation of Rs.12,000/- with interest at 6% per annum awarded by the Tribunal is just and reasonable or does it call for enhancement?”

4. In support of the contention of the claimant that he had sustained injuries and spent huge sum towards medical treatment the father of the claimant was examined as PW1 as claimant was minor and produced wound certificate and discharge summary at

Ex. P2 and P6 respectively. The Doctor who treated the claimant was not examined. As per the wound certificate produced at Ex. P2 and discharge card produced at Ex.P6 the claimant had sustained the simple injuries.

5. Considering the nature of injuries a sum of Rs.10,000/- is awarded towards pain and sufferings as against Rs.3000/- awarded by the Tribunal. As Rs.8,660/- awarded by the Tribunal towards medical expenses is as per medical bills produced by the claimant it is just and proper and there is no scope for enhancement under this head.

6. The claimant was treated as in-patient for three days. As he was minor he was looked after by his parents during the period of treatment leaving their regular work and therefore, a sum of Rs.10,000/- is awarded towards incidental expenses such as conveyance, nourishment and attendant charges

including loss of income of the parents as against Rs.600/- awarded by the Tribunal. Since Doctor was not examined regarding disability, awarding compensation towards loss of amenities and loss of future earning does not arise. Thus claimant is entitled for total compensation of Rs.28,660/- and after deducting the compensation awarded by the Tribunal claimant is entitled for an additional compensation of Rs.16,400/-.

7. Accordingly, appeal is awarded in part. Judgment and award of the Tribunal stands modified to the extent stated herein above.

8. The claimant is entitled for an additional compensation of Rs.16,400/- with interest at 6% p.a from the date of claim petition till the date of realization. Insurance company is directed to deposit the same with interest at 6% p.a from the date of claim petition till the date of payment but excluding interest for the period of

delayed period of 181 days and it shall be released in favour of claimant as he has attained majority subsequent to the filing of petition.

Sri. Srishaila, learned counsel who argued the case on behalf of the Insurance Company is granted two weeks time to file Vakalath.

No order as to costs.

**SD/-
JUDGE**

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