

IN THE HIGH COURT OF KARNATAKA  
CIRCUIT BENCH AT DHARWAD  
DATED THIS THE 6<sup>th</sup> DAY OF JANUARY, 2010  
BEFORE  
THE HON'BLE MR. JUSTICE V. JAGANNATHAN  
MISCELLANEOUS FIRST APPEAL NO.8892/2005(MV)

BETWEEN:

RAJAN, S/O SOMASHEKHAR MOOGI  
AGE 18 YEARS, OCC: STUDENT  
R/O M.B.NAGAR, KOPPA TANK, DHARWAD.

....APPELLANT

(BY SRI. F.V.PATIL, ADV.)

AND:

1. K.H. ARAB, AGE MAJOR,  
OCC: BUSINESS, R/O H.NO.31/1,  
MANKILLA STREET, DHARWAD.
2. THE NEW INDIA ASSURANCE CO.  
BY ITS DIVISIONAL MANAGER,  
SAVITRI SADAN, OPP. KITTLE COLLEGE,  
P.B. ROAD, DHARWAD.

...RESPONDENTS

(BY SRI. K. SURYANARAYANA RAO, ADV. & SRI LAXMAN B.  
MANNODDAR, ADV. FOR R2 )

THIS APPEAL IS FILED UNDER SECTION 173(1) OF MV ACT  
AGAINST THE JUDGMENT AND AWARD DATED 20.7.05 PASSED IN  
MVC NO.398/2003 ON THE FILE OF THE 1 ADDL. CIVIL JUDGE(SR.DN)  
AND CJM, MACT, DHARWAD, PARTLY ALLOWING THE CLAIM  
PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF  
COMPENSATION.

THIS APPEAL COMING ON FOR HEARING THIS DAY, THE  
COURT DELIVERED THE FOLLOWING:

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

Heard learned counsel for the parties in respect of the appeal preferred by the appellant for enhancement of compensation. The liability is not in dispute.

2. Learned counsel for the appellant Sri. F.V.Patil submitted that the MACT has failed to award compensation towards loss of future earning capacity and towards loss of amenities of life. In this regard medical evidence of Doctor was referred to by the appellant's Counsel.

3. On the other hand, submission of the learned counsel for the insurance company is that the Tribunal has awarded excess amount under the head of pain and suffering and so far as the disability is concerned, the Court may consider the medical evidence.

4. Having thus heard both sides so far as the disability is concerned, PW-2 has put it 10% for the whole body and taking the notional income at Rs.15,000/- p.a., towards loss of future earning capacity, the appellant will be



entitled to Rs.27,000/-. On account of the disability, appellant, according to the Doctor, has lost sensation of smelling and some times he also behaves in an aggressive manner and taking these facts into account, towards loss of amenities of life, a sum of Rs.20,000/- is awarded. Thus, the claimant is entitled to Rs.47,000/- on these two counts. At the same time, the amount is on the higher side under the head of pain and suffering and the same is reduced to Rs.30,000/-. Thus, excess under this head will be Rs.34,500/-. However, the <sup>that increase in the</sup> compensation will be Rs.12,500/-. The said amount will carry interest at 6%.

Appeal is allowed thus in part.

Sd/-  
Judge

kmv