

**IN THE HIGH COURT OF KARNATAKA,  
DHARWAD BENCH**

DATED THIS THE 23<sup>rd</sup> DAY OF SEPTEMBER 2020

BEFORE

**THE HON'BLE MR. JUSTICE V. SRISHANANDA**

M.F.A.NO.24780/2012 (MV)

BETWEEN

RAVIKUMAR,  
S/O.SHANKARAPPA BAGALI,  
AGE: 11 YEARS, OCC: NIL,  
R/O.KADADI, TALUK: GADAG,  
SINCE MINOR,  
REP. BY HIS MINOR GUARDIAN  
NATURAL FATER  
SHANKRAPPA BHARAMAPPA BAGALI,  
AGE: 42 YEARS,  
OCC: AGRICULTURE,  
R/O.KADALI,  
TALUK & DIST: GADAG.

...APPELLANT

(BY SRI.DEEPAK C.MAGANUR, ADVOCATE)

AND:

1. THE DIVISIONAL MANAGER,  
NATIONAL INSURANCE COMPANY,  
NEAR SUJATHA TALKIES,  
HUBLI,  
DIST: DHARWAD.
2. PRAVIN A.NIRMAL,  
MAJOR,  
OCC: OWNER OF TATA SUMO,

R/O.VAKKALAGERI ONI,  
GADAG, TALUK & DIST: GADAG. ...RESPONDENTS

(BY SMT.VEENA HEGDE, ADVOCATE FOR R-1  
(THROUGH VC)  
NOTICE TO R2 DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173(1) OF M.V. ACT,  
AGAINST THE JUDGMENT AND AWARD DATED 8.3.2012  
PASSED IN MVC NO.38/2009 ON THE FILE OF THE DISTRICT  
JUDGE AND MEMBER, MACT, GADAG, PARTLY ALLOWING  
THE CLAIM PETITION FOR COMPENSATION AND SEEKING  
ENHANCEMENT OF COMPENSATION.

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

#### JUDGMENT

Though this matter is listed for orders today, with  
the consent of both the parties, matter is taken up for  
final disposal.

2. The brief facts, which are necessary for  
disposal of the appeal are as under:

A claim petition came to be filed under Section  
166 of the Motor Vehicles Act before the District and  
Sessions Judge and Member, MACT, Gadag (hereinafter  
referred to as "the Tribunal" for short) in MVC  
No.38/2009 towards injuries sustained by him in the

road traffic accident and it was partly allowed with costs, awarding a compensation of Rs.1,09,178/- with interest at the rate of 6% p.a., from the date of petition till realization.

3. In response to the notice issued, all the respondents appeared before the Tribunal and respondent No.1 filed written statement denying the petition averments. Based on the rival contentions, the Tribunal raised the following issues:

*“1. Whether the petitioner proves that the petitioner sustained injuries on 19.03.2007 at 6.00 pm., near Health Camp, Betageri on Pala-Badami raod, when a Tata Sumovehicle bearing No.KA-01/P-5752 driven by its driver in rash and negligent manner so as to endanger human life, dashed to petitioner while he was crossing the road to go to his sister in law’s house at Betageri?”*

*2. Whether petitioner is entitled to any compensation? If so, how much and from whom?*

*3. What order or award?"*

4. In order to prove the issues, father of the claimant got himself examined as PW.1 and relied on documentary evidence which were exhibited and marked as Exs.P.1 to P77(a). On behalf of the respondents, copy of Insurance Policy was marked as Ex.R1.

5. After hearing the parties and on perusal of the records, the Tribunal allowed the claim petition in part. It is that judgment which is under challenge in this appeal.

6. Learned counsel appearing for the appellant vehemently contended that the Tribunal has awarded meager compensation without taking into consideration future prospects of life, income should have been

assessed at Rs.3,000/- p.m. He further contended that in spite of evidence, 10% disability taken by the Tribunal is also not correct. Relying on doctor's assessment, at least 17% disability should have been taken and 18 multiplier should have been applied instead of 15 for calculating loss of future earning. It is further contended that the compensation awarded under conventional heads also calls for enhancement and prayed for allowing the appeal.

7. Per contra, the learned counsel for the respondents, vehemently contended that the Tribunal has properly taken into consideration the relevant materials on record and has allowed the just compensation and therefore, it does not require any further indulgence from this Court and prayed for dismissal of the appeal.

8. In view of the rival contentions of the parties, the following points would arise for consideration:

*“Whether the appellant has made out case for enhancement of the compensation?”*

9. The answer to the above point is in the affirmative for the following:

### REASONS

10. The purview of the appeal is narrowed down in view of the fact that the accident is not in dispute. So also the appellant sustaining injuries as is found in the wound certificate marked as Ex.P5, the only ground on which the appellant has sought for enhancement of compensation is that on the ground of disability, the Tribunal erred in allowing the compensation only to the tune of Rs.27,000/- and as the claimant has sustained 10% disability to the whole body, the appellant is entitled for minimum compensation of Rs.1,00,000/- following the dictum in *MALLIKARJUN vs. DIVISIONAL MANAGER, NATIONAL INSURANCE COMPANY LIMITED AND ANOTHER* reported in (2014) 14 SCC 396.

11. Award passed by the Tribunal in awarding a sum of Rs,27,000/- towards loss of future income is on the lower side and hence, that needs to be interfered with. Appellant is entitled for enhancement of Rs.73,000/-. Accordingly, the point is answered and following order is passed:

ORDER

*The appeal is allowed in part. In modification of the award of the Tribunal, appellants are entitled to a sum of Rs.1,82,178/- (Rs.1,09,178/- ordered by Tribunal plus Rs.73,000/- ordered in this appeal) with interest at 6% p.a., from the date of petition till realization. Judgment and award of the Tribunal is modified accordingly.*

*Respondent No.1-Insurance Company is directed to pay the compensation within*

*six weeks from the date of receipt of a copy  
of this order.*

**SD/-  
JUDGE**

bnv