

IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH

DATED THIS THE 19TH DAY OF DECEMBER, 2014

BEFORE:

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

M.F.A NO.22923/2009 (MV)

C/W.

M.F.A. NO.7451/2009 (MV)

IN M.F.A NO.22923/2009 (MV)

BETWEEN

SRI.UDAY S/O TIMMA NAIK
AGED ABOUT 45 YEARS,
OCC:BUSINESS CUM LORRY DRIVER
R/O SAKALBENA, AVERSA
ANKOLA -TQ, KARWAR. ... APPELLANT

(BY SRI S.C. BHUTI FOR SRI V P KULKARNI, ADV.)

AND

1. THE SECRETARY TO THE UNION
GOVT. OF INDIA
PARLIAMENTARY BUILDING
NEW DELHI
2. THE DEPUTY COMMISSIONER
UTTARA KANNADA

KARWAR TQ, KARWAR

3. COMMONDAR-IN-CHARGE
HQ FO(K), C/O NAVI OFFICE
NAVAL BASE, ARGA
KARWAR. ... RESPONDENTS

(BY SRI S N RAJENDRA FOR R1 & R3
SMT. VEENA HEGDE, HCGP FOR R2)

THIS MFA IS FILED U/S 173(1) OF MV ACT
AGAINST THE JUDGMENT AND AWARD DATED:03-04-
2009 PASSED IN MVC NO.37/2008 ON THE FILE OF
THE MEMBER, II-ADDL. MACT, KARWAR PARTLY
ALLOWING THE CLAIM PETITION FOR
COMPENSATION AND SEEKING ENHANCEMENT OF
COMPENSATION.

M.F.A. NO.7451/2009 (MV)
BETWEEN

COMMONDER INCHARGE
HQ FO(K), C/O NAVI OFFICE
NAVAL BASE, ARGA POST
KARWAR.

... APPELLANT

(BY SRI S N RAJENDRA, ADV.)

AND

UDAYA TIMMA NAIK,
 AGED ABOUT 46 YEARS,
 OCC: BUSINESS-CUM-LORRY DRIVER,
 R/O.SAKALBENA AVERSA,
 ANKOLA TALUK. ... RESPONDENT

(BY SRI S.C. BHUTI, FOR SRI V P KULKARNI, ADV.)

THIS MFA IS FILED U/S.173(1) OF THE M.V.ACT,
 AGAINST THE JUDGEMENT AND AWARD DATED: 03-
 04-2009, PASSED IN MVC NO.37/2008, ON THE FILE
 OF THE ADDL.CIVIL JUDGE (SR.DN) KARWAR,
 AWARDING COMPENSATION OF RS.4,19,046/- ALONG
 WITH INTEREST AT THE RATE OF 6% P.A. FROM THE
 DATE OF PETITION TILL DEPOSIT.

THESE APPEALS COMING ON FOR **ADMISSION**,
 THIS DAY, THE COURT DELIVERED THE FOLLOWING:

J U D G M E N T

These two appeals arising out of a common
 judgment and award passed in MVC No.37/2008 on the
 file of the II Addl. MACT, Karwar. Therefore, both the
 appeals are taken up together and a common judgment
 is passed.

2. For the purpose of convenience, I would like to refer the ranks of the parties as per their ranks before the Tribunal.

3. The appellant in MFA No.22923/2009 is the claimant before the Tribunal and the appellant in MFA No.7451/2009 is the 3rd respondent before the Tribunal.

4. The brief factual matrix of the case is that, the claimant in MFA No.22923/2009 was the driver of a lorry bearing Registration No.GDZ-5130 (hereinafter referred to as '**lorry**' for short). The claimant was driving the said lorry on the ill-fated day i.e., on 25.7.2007. He was proceeding towards Karwar side. When the lorry reached near Sankrubag Ghat road, the driver of the vehicle belonging to the 3rd respondent bearing Registration No.04D-161615K (hereinafter

referred to as '**Navy Vehicle**' for short) drove the vehicle in a rash and negligent manner with great speed coming from the opposite direction, while negotiating a curve saw oncoming vehicle and suddenly applied brake, due to which the lorry turned around and thereby the hind portion of the vehicle dashed to the front side of the lorry. Due to the impact of the accident, the claimant has sustained four fractures and four simple injuries. After the accident, he was shifted initially to Arga Navy Hospital, and thereafter to District Civil Hospital, Karwar and then to KMC Manipal Hospital. Immediately after the accident, one of the eye-witness to the incident by name Namdev Naik S/o. Khemu Naik, lodged FIR before the Karwar Rural Police Station. A case was registered against the driver of the Navy Vehicle and it is also not in dispute. Subsequently, after due investigation, charge sheet has also been laid

against the driver of the Navy Vehicle. For having sustained grievous injuries and simple injuries in the accident, the claimant has approached the Claims Tribunal seeking compensation.

5. The respondents have appeared before the Tribunal and contested the proceedings and in fact raised the question of liability on the ground that there was a contributory negligence on the part of the driver of the lorry, has not been properly considered by the Tribunal. Written statement was also filed by the respondents before the Tribunal alleging contributory negligence on the part of the driver of the lorry and claimed for exoneration on that ground. Further the claim petition was also contested on the ground of quantum of compensation. After the evidence being recorded and after going through the material on record, the Tribunal has come to the conclusion that the

accident was mainly due to the rash and negligent driving of the Navy Vehicle by its driver and the Tribunal assessed the compensation under several heads and awarded a sum of Rs.4,19,046/-.

6. The claimant in MFA No.22923/2009 has approached this court for enhancement of compensation, whereas the claimant in MFA No.7451/2009 (respondent No.3 before the Tribunal) has approached this court questioning the liability as well as quantum awarded by the Tribunal.

7. I have heard the arguments of the learned Counsel for the claimants and also the respondent. I have carefully perused the material on record. It is an undisputed fact that the accident took place at Shankru Ghat and two vehicles were involved in the accident. It is an undisputed fact that a person by name Namdev

Naik S/o. Khemu Naik has filed FIR making allegations against the driver of the Navy Vehicle. It is explained in the FIR as to how the accident had happened. On perusal of the FIR marked at Ex.P1 and also the panchnama of the criminal court marked at Ex.P5, it is clear that the claimant was driving the lorry which was loaded with some coconut waste/outer layer of the coconut (Pakashi). The said lorry was negotiating a curve in the down gradient, the Navy Vehicle was negotiating the curve on up-gradient, both the vehicles collided. It is categorically stated that the driver of the Navy Vehicle was negotiating the curve downwards could not control the vehicle and not reduced the speed, and in the same speed, he took turn and applied brake suddenly, due to which, the hind portion of the said Navy Vehicle dashed against the front portion of the lorry which was being driven by the claimant.

8. Looking to the above said factual aspects, as per the criminal case records and also the evidence of PW2 Namdev Naik, who lodged the complaint before Police, who has deposed before the Tribunal as to how the incident has happened, coupled with Exs.P1 and P5, it is crystal clear that the negligence was fastened on the part of the driver of the Navy Vehicle.

9. Per contra, the driver of the Navy Vehicle was neither made as a party to the claim petitions nor he was examined by the respondents before the Tribunal or they have lodged any complaint against the driver of the lorry in order to implicate the lorry driver, fastening contributory negligence on his part also. I think only for the sake of taking defence during the course of trial before the Tribunal, objections were filed to the main petition alleging that the driver of the lorry has also contributed negligence. Except the pleadings in the

petition, there is nothing on record to show driver of the lorry was also negligent. The driver of the Navy Vehicle or the 3rd respondent in order to bring the factual aspects exactly showing how the lorry driver has also contributed in the accident has not stepped into the box. In the absence of such elucidation of facts and in the presence of evidence of PWs.1 & 2 as well as FIR and panchnama, in my opinion, the Tribunal has properly appreciated the materials and came to the conclusion that the driver of the Navy Vehicle was at fault and due to his rash and negligent driving of the vehicles the accident had occurred. So far as that contention taken by respondent No.3 has not been proved before the Tribunal.

10. Now, coming to the quantum of compensation awarded by the Tribunal, there is no dispute as such that the lorry driver has sustained severe injuries. PW5

Dr.Shamsundar Bhat, who was examined before the Tribunal has also substantiated the injury certificate issued. On reading of the evidence and also the documents produced, they clearly disclose that the claimant has suffered the following injuries:

- (1) Fracture of shaft of right femur
- (2) Transverse fracture of right patella.
- (3) Fracture of shaft of 3rd and 4th metatarsal bones (right)
- (4) Dislocation of 2nd metatarsophallangeal joint right.
- (5) Type III B fracture of right ulna with anterior dislocation of right radius
- (6) Lacerated wound over dorsum of right foot and other four simple injuries.

It is stated that four fractures and one dislocation are grievous in nature. Totally, he suffered five grievous injuries and four simple injuries. It is also there in the material on record that he was earlier admitted to Arga

Navy hospital and thereafter to District civil Hospital, Karwar and from there to Manipal Hospital. Necessary documents have also been produced before the Tribunal to substantiate that he has taken treatment in the above said Hospitals. He was in-patient in the Hospitals for about 56 days in total. The doctor has also stated in his evidence about the problems that may arise in future to him and also with regard to pain and sufferings during the laid up period and etc., On overall analysis of the entire material on record, the Tribunal has awarded compensation under the following heads:

| Sl. No. | Heads | Amount in Rs. |
|---------|---------------------------------|---------------|
| 1 | Pain and agony | 70,000/- |
| 2 | Loss of future income | 1,56,000/- |
| 3 | Conveyance | 25,000/- |
| 4 | Loss of income during treatment | 9,335/- |

| | | |
|---|-------------------|------------|
| 5 | Attendant charges | 5,600/- |
| 6 | Medical expenses | 1,23,111/- |
| | Total | 4,19,046/- |

11. The learned Counsel for the claimant contended that the injured was a driver and he was earning more than Rs.10,000/- per month. The claimant was not only doing the work of driver but also doing business of latrite stones. But the Tribunal has not properly appreciated the said fact and only taken Rs.5,000/- as his income per month. Therefore, awarding of compensation towards loss of future income is on the lower side. The award so far as other heads are concerned, he has submitted that the Tribunal has awarded compensation on the lower side. Therefore, on all other heads, this court has to re-assess the

compensation and award just and necessary compensation.

12. Per contra, the learned Counsel for the respondent No.3 has argued that the Tribunal in fact has granted more compensation towards loss of future income. No material is placed before the court to show that he was earning Rs.10,000/- per month. The other heads also with regard to conveyance and loss of future happiness and pain and agony, the court has awarded more money. Therefore, there is no reason to interfere with the order of the Tribunal or the compensation awarded by the Tribunal on the other hand requires to be reduced.

13. On careful perusal of the records, PW4 Sri Renuka Dhaku Naik has deposed that the claimant was the driver in the lorry and he was paying salary of

Rs.5,000/- per month and Rs.100/- as batta per day. But PW4 has not produced any material before the court to show that he was paying salary of Rs.5,000/- per month and Rs.100/- batta per day. But in the normal course, the owners of the lorry in moffusal areas will not issue any receipts with regard to the payment of salary and etc., In the usual course, they pay salary in cash and it cannot be expected that they should maintain books or any document in this regard. It is not in dispute that PW4 is not the owner of the lorry and the claimant was not the driver of the said lorry. When such relationship is not disputed and when exorbitant amount is not stated by her, then the court could not have disbelieved the said lady. The Tribunal has taken into consideration only Rs.5,000/- as the income of the driver of the lorry as if no other materials are placed before the court. It goes without saying and

it is a practice that batta will be paid to the driver everyday apart from the salary. The claimant also doing some latrite stone business. Though no material is produced, but that has not been subjected to serious cross examination. But the Tribunal ought to have taken some amount towards that business also. Therefore, taking income of the claimant per month as Rs.5,000/- is on the lower side. Therefore, it is just and necessary to take Rs.6,000/- per month as the income of the claimant, as this court has been consistantly taking such income, pertaining to the accident of the year 2008.

14. It goes without saying that the salary would have been increased in future. Therefore, future prospects also should have to be taken into consideration. In my opinion 30% is taken as future prospects, it would meet the ends of justice. Therefore,

the total income of the claimant shall be taken as Rs.7,800/- per month. The doctor has stated that he has suffered 22% disability. The court has taken 20% and the said percentage taken by the Tribunal is correct and therefore, I do not want to interfere on this aspect. Considering the age of the claimant, multiplier '**13**' has been applied by the Tribunal is also proper. Therefore, 'loss of future income' on account of disability on calculations comes to **Rs.2,43,360/-**. The Tribunal has awarded a sum of Rs.1,56,000/-. Therefore, the claimant is entitled for the difference of **Rs.87,360/-**. Further the claimant was awarded a sum of Rs.70,000/- towards pain and agony. Looking to the nature of injuries sustained, it is just and reasonable to award another sum of **Rs.30,000/-** under the said head. The claimant has taken treatment for more than 56 days in the Hospital. The Tribunal has awarded a

sum of Rs.25,000/- towards conveyance and it appears to be reasonable. Towards future unhappiness and amenities, the Tribunal has awarded a sum of Rs.30,000/-, it is on the lower side, another sum of **Rs.20,000/-** deserves to be awarded under this head. The Tribunal has awarded a sum of Rs.9,335/- under the head 'loss of income during treatment'. Since the claimant was in the Hospital for more than 56 days, another sum of Rs.**9,000/-** requires to be awarded under this head. Towards attendant charges, the Tribunal has awarded a sum of Rs.5,600/-, another sum of Rs.**4,400/-** requires to be added under this head. The Tribunal has not awarded any compensation towards future Medical expenses. Hence, a sum of **Rs.15,000/-** requires to be awarded under this head. Therefore, in all, the claimant in MFA No.22923/2009 is

entitled to the enhanced compensation of
Rs.1,65,760/- rounded off to **Rs1,66,000/-**.

In view of the above, MFA No.22923/2009 is allowed in par enhancing compensation of Rs.1,66,000/- in addition to what has been awarded by the Tribunal along with admissible interest at 6%. MFA No.7451/2009 filed by the respondent No.3 is dismissed. In respect of release of the amount, the order of the Tribunal holds good.

SD/-
JUDGE

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