

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 12TH DAY OF MARCH, 2018

BEFORE

THE HON'BLE MR. JUSTICE B.VEERAPPA

MFA NO.30537/2011 (MV)

C/W

MFA NO.30538/2011 & 30542/2011

MFA NO.30537/2011 (MV)

BETWEEN:

DATTU S/O. KABULAPPA JAMADAR
AGE: 48 YEARS, OCC: AGRICULTURE,
R/O. KANNOLLI, TQ. SINDAGI,
DIST. BIJAPUR, NOW RESIDING AT,
IBRAHIMPUR BIJAPUR.

... APPELLANT

(BY SRI.BABU H. METAGUDDA, ADVOCATE)

AND:

1. BASAYYA S/O. GURUPADAYYA HIEMATH
AGE: 43 YEARS, OCC: BUSINESS,
R/O. KUDAGI, TQ. B. BAGEWADI, DIST. BIJAPUR
2. THE BRANCH MANAGER
NEW INDIA INSURANCE CO. LTD.,
BRANCH OFFICE, GURUKUL, ROAD,
BIJAPUR.

... RESPONDENTS

(BY SMT. SUMITRA H., ADVOCATE FOR R2;
N/R1 D/W V/O DATED 04/09/2013)

THIS MFA FILED UNDER SECTION 173 (1) OF MV ACT PRAYING TO, ALLOW THIS APPEAL AND MODIFY THE JUDGEMENT AND AWARD DATED 10-12-2010 PASSED IN MVC.NO.451/2008 BY THE MOTOR ACCIDENT CLAIMS TRIBUNAL NO-VI BIJAPUR AND ENHANCING THE COMPENSATION FROM Rs.15,000/- WITH 6% INTEREST TO Rs.4,95,000/- WITH 12% INTEREST AND ETC.

MFA NO.30538/2011 (MV)

BETWEEN:

BASAVARAJ S/O. SIDRAM KONASIRASAGI
AGE: 30 YEARS, OCC: PRIVATE SERVICE AND
AGRICULTURE, R/O. S.R. COLONY, BIJAPUR
... APPELLANT
(BY SRI. BABU H. METAGUDDA, ADVOCATE)

AND:

1. BASAYYA S/O. GURUPADAYYA HIREMATH
AGE: 43 YEARS, OCC: BUSINESS,
R/O. KUDAGI, TQ. B. BAGEWADI, DIST. BIJAPUR
2. THE BRANCH MANAGER
NEW INDIA INSURANCE CO. LTD.,
BRANCH OFFICE, GURUKUL, ROAD,
BIJAPUR

... RESPONDENTS

(BY SMT. SUMITRA H., ADVOCATE FOR R2;
N/R1 D/W V/O DATED 06/12/2012)

THIS MFA FILED UNDER SECTION 173 (1) OF MV ACT PRAYING TO, ALLOW THIS APPEAL AND MODIFY THE JUDGEMENT AND AWARD DATED 10-12-2010 PASSED IN MVC.NO.453/2008 BY THE MOTOR ACCIDENT CLAIMS TRIBUNAL NO-VI BIJAPUR AND ENHANCING THE COMPENSATION FROM Rs.90,840/- WITH 6% INTEREST TO Rs.5,70,000/- WITH 12% INTEREST AND ETC.

MFA NO.30542/2011

BETWEEN:

SIDLINGAWWA W/O. MELAPPA BIRADAR
AGE: 37 YEARS, OCC: HOUSEHOLD WORK,
R/O. BAMMANJAGI, TQ. SINDAGI, DIST. BIJAPUR,
NOW AT – IBRAHIMPUR, BIJAPUR.

... APPELLANT
(BY SRI. BABU H. METAGUDDA, ADVOCATE)

AND:

1. BASAYYA S/O. GURUPADAYYA HIEMATH
AGE: 43 YEARS, OCC: BUSINESS,
R/O. KUDAGI, TQ. B. BAGEWADI, DIST. BIJAPUR
2. THE BRANCH MANAGER
NEW INDIA INSURANCE CO. LTD.,
BRANCH OFFICE, GURUKUL, ROAD,
BIJAPUR.

... RESPONDENTS

(BY SMT. SUMITRA H., ADVOCATE FOR R2;
N/R1 D/W V/O DATED 04/09/2013)

THIS MFA FILED UNDER SECTION 173 (1) OF MV ACT PRAYING TO, ALLOW THIS APPEAL AND MODIFY THE JUDGEMENT AND AWARD DATED 10-12-2010 PASSED IN MVC.NO.456/2008 BY THE MOTOR ACCIDENT CLAIMS TRIBUNAL NO-VI BIJAPUR AND ENHANCING THE COMPENSATION FROM Rs.64,800/- WITH 6% INTEREST TO Rs.5,70,000/- WITH 12% INTEREST AND ETC.

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

JUDGMENT

The claimants have filed these appeals for enhancement against the judgment and award passed by Tribunal dated 10.12.2010 made in MVC.No.451/2008, MVC.No.453/2008 an MVC.No.456 /2008 on the file of Motor Accident Claims Tribunal No.VI Bijapur awarding compensation of Rs.15,000/-, Rs.90,840/- and Rs.64,800/- with interest @ 6% per annum from the date of petitions till payment till realization respectively.

2. It is the case of the claimants that on 11.05.2006 at about 09.00 a.m. the claimants were travelling in a Maxi-Cab bearing No.KA-28-3688. On that day, there was Sandy of Devarhipparagi village. When the said vehicle was proceeding on Devarhipparagi road, the driver of said Maxi-Cab was driving the said vehicle in a rash and negligent manner, so as to endanger human life and by witnessing the same. The inmates of the Maxi-Cab requested its driver to drive the vehicle in slow manner, but he did not heed to such request and continued same manner. When the said vehicle came near 02 Kms away from Devarhipparagi, the driver of the said Maxi-Cab lost his control over the same, when taking turn off the said vehicle toppled down it by the side of the road and caused accident. Due to this impact, claimants and other inmates of the said Maxi-Cab sustained injuries. Immediately they were shifted to Hospitals for treatment. The concerned police have registered the

case against the driver of Maxi-Cab. The respondents being owner and insurer of the said vehicle are liable to pay the compensation to the claimants.

3. In response to the notice issued by Tribunal the respondent No.1 appeared through counsel and filed written statement denying the averments made in the claim petitions. It was further contended that, the compensation claimed by the claimants under various heads are imaginary and are highly exorbitant. It was further contended that driver of Maxi-Cab was driving the said vehicle in slow manner on the date of accident, the bullock cart suddenly and abruptly came in front of the vehicle. So in order to save the bullock cart and pair of bullocks and the persons sitting on the bullock cart, he suddenly applied brakes by taking the said vehicle left side of the road. There was a rain at that time, so due to sudden brake applying, the tyres of the said vehicle slipped into rough road and thereby it took its

turn. There is no negligence on the part of the driver of the said vehicle. The vehicle was duly insured with respondent No.2. Therefore, sought for dismissal of the claim petition.

4. The Insurance Company filed its written statement denying the averments made in the claim petitions and contended that claim petitions are filed after two years of the accident. The claim petitions filed by the claimants are totally false, frivolous and contrary to the law and facts. The age, occupation and income of the claimants are denied. It was further contended that claimants were unauthorized passengers traveling illegally in the vehicle. The insurer of the vehicle No.KA-28-3688 has not undertaken to indemnify the death or injury to the occupants and passengers of the vehicle. Therefore, Insurance Company sought for dismissal of claim petitions.

5. Based on the aforesaid rival pleadings, the Tribunal framed the following issues;

- 01.** *Whether the petitioners proves that on 11.05.2006 about 09.00 a.m. on Sindagi to Devar-Hipparagi road, 2 Kms away from Devar-Hipparagi, the road traffic accident took place due to the actionable negligence of the driver of the Maxi-Cab bearing Reg.No.KA-28-3688, by which petitioners sustained injuries?*
- 02.** *Whether the petitioners are entitled for compensation, If so, what amount and from whom?*
- 03.** *What order or award?*

6. In order to establish the case of the claimants, all the claimants were examined as PW.1 to 10 and marked documents Exs.P.1 to 42. Respondents have not adduced evidence except marking Ex.R.1-policy, which was in force.

7. The Tribunal considering both oral and documentary evidence on record held that claimants have proved that accident occurred on 11.05.2006 due to rash and negligent driving of driver of Maxi-Cab bearing Reg.No.KA-28-3688 and claimants are entitled for compensation. Accordingly, the Tribunal has awarded compensation of Rs.15,000/-, Rs.90,840/- and Rs.64,800/- with interest @ 6% per annum from the date of petitions till realization respectively. Hence, the present appeals are filed for enhancement.

8. I have heard the learned counsel for the parties to the lis.

9. Sri.Babu.H.Metagudda, learned counsel for the claimants/appellants contended that the impugned judgment and award passed by the Tribunal granting compensation with 6% interest per annum is lower side and contrary to the material on record. He further contended that when Doctor examined and assessed

35% to 40% disability the Tribunal has taken only 6% to 8% disability, is erroneous and contrary to the material on record. It is further contended that Tribunal has proceeded to grant compensation towards Pain and Suffering and Loss of Amenities is on lower side. It is further contended that income of the claimant in MFA.No.30537/2011 (MVC.No.453/2008) is taken at Rs.3,000/- per month is without any basis. It is further contended that the Tribunal without any basis taken the income and granted meager compensation towards other heads. Therefore, he sought for enhancement of compensation by modifying the impugned judgment and award passed by the Tribunal.

10. Per contra Smt.Sumitra.H., learned counsel for the respondent No.2-Insurance Company sought to justify the impugned judgment and award. She further contended that in the absence of any material documents to prove, the Tribunal has awarded

compensation. Therefore, claimants are not entitled any further enhancement. Therefore, she sought for dismissal of the appeal.

11. I have given my anxious consideration to the arguments advanced by the learned counsel for the parties and perused the entire material on record, carefully.

12. It is undisputed fact that present claimants and other inmates were sustained grievous injuries on account of rash and negligent driving of driver of Maxi-Cab bearing Reg.No.KA-28-3688. The Tribunal answered issue No.1 in the in the Affirmative against the driver of Maxi-Cab. The said finding recorded by the Tribunal holding that accident had taken place on account of rash and negligent driving of driver of Maxi-Cab which is not challenged.

13. It is specific case of the appellant in **MFA.No.30537/2011 (MVC.No.451/2008)** that he was agriculturist and depending upon agricultural work. He was hale and healthy prior to the accident. Therefore, he cannot able to work. PW.10 Doctor in his evidence stated that injured found tenderness present over the abdomen, he complains of difficulty in digesting the food, he complains of vomiting on and often with loose motion. The Doctor assessed disability at about 20% to 25% related to whole body. He has also issued disability certificate at Ex.P.30 wherein he reiterated the similar facts as stated in his affidavit. On perusal of Ex.P.14 would certificate, it discloses that, Abdomen present pain and opined that said injury is grievous in nature. X-ray report is produced at Ex.P.15. The Tribunal proceeded to grant global compensation of Rs.15,000/- towards all heads without dividing the heads. The

Tribunal has not considered the age, income of the injured and date of the accident. Therefore, claimant is entitled to further enhancement of compensation.

14. It is specific case of the appellant in **MFA.No.30538/2011 (MVC.No.453/2008)** that due to accident he sustained grievous injuries like lower 1/3rd left femur and fracture of condyl left tibia and other fractural injuries to all over the body. In support of his case, the claimant examined PW.4/Doctor who issued the disability certificate clearly indicates that old healed operated scar mark present over the left knee and thigh and leg, tenderness. Thickening present over the left femur at lower 4th and there is limitation of flexion of left knee after 60 degrees and movements of left knee are all painful and restricted and deformity present over the left knee joint and leg. It is further submits that claimant is permanently disability is 40% to 45% related to left lower limb. The Doctor issued disability certificate

at Ex.P.33. Ex.P.21 wound certificate discloses that claimant was sustained compound fracture lower 1/3rd left femur, with inter condylar fracture and injuries are grievous in nature. Ex.P.34 is x-ray film. The Tribunal has taken into consideration the age of the injured as 25 years and income as Rs.3,000/- per month and disability was taken into consideration at 8% and the multiplier is taken at 18. The Tribunal has proceeded to grant compensation of Rs.90,840/- which is on lower side including other heads and it requires further enhancement. The disability is taken into consideration at 8% instead of 12%. The accident was occurred in the year 2006. The monthly income ought to be taken into consideration at Rs.3,750/-. Therefore, claimant is entitled to further enhancement of compensation.

15. It is specific case of the appellant in **MFA.No.30542/2011 (MVC.No.456/2008)** due to the accident she sustained fracture of L1 and L2, T10, T12 vertebra and other fractural injuries to all over the body. In support of her case, the claimant examined the Doctor. In his evidence he stated that, claimant has sustained tenderness present over the thoracolumbar region. There is limitation of movements of back in all directions, the movements of back are all painful and restricted there is decreased sensation in both the lower Limbs by grade 4/5, she complains of tingling and numbness in both the lower limbs. The x-ray shows that old healed fracture L1, L2, T10 and T12 vertebra. The Doctor issued disability certificate at Ex.P.39 stating that claimant assessed the permanently disability of 35% to 40% related to spine as per the doctor's manual. Ex.P.25 wound certificate discloses that claimant was sustained compression fracture of T-10, T-12 Vertebra and fracture of L-1 and L-2 Vertebra

and opined that injuries are grievous in nature. Ex.P.40 is x-ray film. The Tribunal has taken into consideration the age of the injured as 34 years and income as Rs.30,000/- per annum and disability was taken into consideration at 6% and the multiplier is taken at 16. The tribunal has proceeded to grant compensation of Rs.64,800/- which is on lower side including other heads and it requires further enhancement. The disability is taken into consideration at 6% though Doctor stated that claimant is suffering 35% to 45% disability. Therefore, the Tribunal ought to have taken into consideration the disability at 10%. The accident was occurred in the year 2006. Therefore, claimant is entitled to further enhancement of compensation.

16. The material on record clearly indicates that the claimants have produced both oral and documentary evidence at Exs.P.1 to 42 which clearly indicates that accident occurred on account of rash and

negligent driving of driver of Maxi-Cab. The claimant in MVC.No.451/2008 specifically stated that he is the agriculturist, claimant in MVC.No.453/2008 stated that he is having private service and claimant in MVC.No.456/2008 stated that she is having household work. Taking into consideration the accident occurred in the year 2006, the Tribunal ought to have taken into consideration the income of the claimants as Rs.3,750/- per month. Taking into consideration the evidence adduced by the Doctor and all the claimants it clearly indicates that the compensation awarded by the Tribunal is on lower side, it requires further enhancement of compensation in view of the peculiar circumstances and facts of the case.

17. After re-assessing the entire material on record, the appellant in MFA.No.30537/2011 (claimant in MVC.No.451/2008) is entitled to compensation as under :-

Sl. No.	Heads	Amount
01.	Towards laid up period (3,750x3)	Rs.11,250/-
02.	Towards loss of amenities	Rs.10,000/-
03.	Towards attendant charges	Rs.10,000/-
04.	Towards pain and suffering	Rs.15,000/-
	Total	Rs.46,250/-
	Compensation awarded by the Tribunal	Rs.15,000/-
	Total	Rs.31,250/-

18. After re-assessing the entire material on record, the appellant in MFA.No.30538/2011 (claimant in MVC.No.453/2008) is entitled to compensation as under :-

Sl. No.	Heads	Amount
01.	Towards Pain and Suffering	Rs.30,000/-
02.	Towards attendant charges	Rs.10,000/-
03.	Towards Loss of Amenities	Rs.25,000/-
04.	Towards Loss of earning during the period of treatment	Rs.11,250/-
05.	Towards Loss of future earning capacity due to disability (3,750x12x18x12/100)	Rs.97,200/-
06.	Towards Medical Expenses	Rs.03,000/-
	Total	Rs.01,76,450/-
	Compensation awarded by the Tribunal	Rs.90,840/-
	Total	Rs.,85,610/-

19. After re-assessing the entire material on record, the appellant in MFA.No.30542/2011 (claimant in MVC.No.456/2008) is entitled to compensation as under :-

Sl. No.	Heads	Amount
01.	Towards Pain and Suffering	Rs.40,000/-
02.	Towards medical expenses	Rs.02,000/-
03.	Towards attendant charges	Rs.10,000/-
04.	Towards loss of amenities and future discomfort	Rs.15,000/-
05.	Towards loss of earning during the period of treatment	Rs.11,250/-
06.	Towards loss of future earning capacity due to disability of (Rs.3,750x12=45,000 x 10 x 16/100)	Rs.72,000/-
	Total	Rs.1,50,250/-
	Compensation awarded by the Tribunal	Rs.64,800/-
	Total	Rs.85,450/-

20. Thus the appellant in MFA.No.30537/2011 (claimant in MVC.No.451/2008) is entitled to total compensation of Rs.46,250/- as against Rs.15,000/- awarded by the Tribunal.

21. Thus the appellant in MFA.No.30538/2011 (claimant in MVC.No.453/2008) is entitled to total compensation of Rs.1,76,450/- as against Rs.90,840/- awarded by the Tribunal.

22. Thus the appellant in MFA.No.30542/2011 (claimant in MVC.No.456/2008) is entitled to total compensation of Rs.1,50,250/- as against Rs.64,800/- awarded by the Tribunal.

23. For the reasons stated above, the appeals are ***allowed in part.***

The impugned judgment and award dated 10.12.2010 made in MVC.No.451/2008 on the file of the Motor Accident Claims, Tribunal No.VI Bijapur, is modified holding that the claimant is entitled to total compensation of Rs.46,250/- as against Rs.15,000/- awarded by the Tribunal. The claimant is entitled for the enhanced compensation of Rs.31,250/- with interest at 6% per annum from the date of petition till realization.

The impugned judgment and award dated 10.12.2010 made in MVC.No.453/2008 on the file of the Motor Accident Claims, Tribunal No.VI Bijapur, is modified holding that the claimant is entitled to total compensation of Rs.1,76,450/- as against Rs.90,840/- awarded by the Tribunal. The claimant is entitled for the enhanced compensation of Rs.85,610/- with interest at 6% per annum from the date of petition till realization.

The impugned judgment and award dated 10.12.2010 made in MVC.No.456/2008 on the file of the Motor Accident Claims, Tribunal No.VI Bijapur, is modified holding that the claimant is entitled to total compensation of Rs.1,50,250/- as against Rs.64,800/- awarded by the Tribunal. The claimant is entitled for the enhanced compensation of Rs.85,450/- with interest at 6% per annum from the date of petition till realization.

Ordered accordingly.

**Sd/-
JUDGE**

KJJ