

**(2016) 03 KAR CK 0177**

**In the Karnataka High Court**

**Case No : M.F.A. No. 1427 of 2012 (MV).**

**K. Sathyanarayana - Appellant @HASH Regional Manager, National Insurance Co. Ltd. Bangalore and another**

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**Date of Decision : 11-03-2016**

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 166

**Citation : (2016) AAC 2327**

**Hon'ble Judges : N.K. Patil, J.**

**Bench : Single Bench**

**Advocate : Pardeep Naik, Advocate, for the Appellant; K. Sridhara, Advocate, for the Respondent**

**Final Decision : Disposed Off**

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## **Judgement**

N.K. Patil, J. - This appeal by the claimant is directed against the judgment and award dated 2nd July, 2011, passed in MVC No.2420/2010, by the 14th Additional Judge, Court of Small Causes, Motor Accident Claims Tribunal, Bengaluru City (SCCH-10), (for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 1,30,200/- with interest @ 6% p.a. awarded in favour of the claimant as against his claim for Rs. 5,00,000/-, is inadequate.

2. The appellant claims to be aged about 45 years and hale and healthy prior to the date of accident. That the occurrence of accident of the appellant at about 9:45 a.m., on 28-01-2010, when the appellant was riding Honda Activa bearing Registration No.KA- 05/EL-3658 from Navarang Circle to proceed towards Harishchandra Ghat on MKK Road on the left side of the road, in a slow and cautious manner, abiding all traffic rules and regulations, near S.N. Kova Shop, on account of rash and negligent riding by the rider of motor cycle bearing Registration No.KA-53/K-8373, is not in dispute. It is also not in dispute that, on account of the road traffic accident, the appellant sustained grievous injuries and immediately he was shifted to Panacea Hospital, Bangalore for treatment, where he took treatment as inpatient from 28-01-2010 to 03-02-2010. After diagnosis,

it was found that the appellant sustained abrasion over the base of right great toe for 2x 1 cms.bright red in colour, pain, swelling ;ind restricted movements at right knee and communitied fracture of patella, hemathrosis, open reduction with internal fixation with TBW after implant removal of old TBW done under spinal anesthesia and discharged.

3. It is his further case that, on account of the injuries sustained in the accident, he has undergone severe pain and agony and for the treatment of the said injuries, he has spent reasonable amount towards conveyance, nourishing food and attendant charges including medical expenses and other incidental expenses and therefore, he has to be compensated reasonably.

4. The learned counsel for appellant contends that, the Tribunal has erred in not awarding reasonable compensation towards injury, pain and sufferings, loss of amenities, discomfort and unhappiness, loss of earning during treatment and also loss of future earning capacity. Further, he submitted that the monthly income of the appellant assessed by Tribunal is also on the lower side and the Tribunal is not justified in re-assessing the disability at 10%, when the appellant has sustained 24% permanent partial disability towards right lower limb. Fuither, he submitted that the appellant has undergone treatment for a period of five days in the Hospital, and the compensation awarded towards conveyance, nourishing food and attendant charges, along with the medical expenses is also on the lower side and liable to be enhanced. Considering the nature of injuries sustained and also the permanent partial disability, the compensation awarded by Tribunal under various heads is on the lower side and liable to be enhanced, by modifying the impugned judgment and award passed by Tribunal.

Regarding rate of interest also, he submitted that the Tribunal is not justified in awarding 6% interest per annum as the accident is of the year 2010. Therefore, in the light of the law laid down by the Hon''ble Apex Court and this Court in catena of decisions, rate of interest may be awarded at 8% to 10% per annum.

5. As against this, learned counsel appearing for first respondent/insurer, inter alia sought to substantiate the impugned judgment and award passed by tribunal, stating that the same is passed after due consideration of the oral and documentary evidence available on tile and also taking into consideration the age, avocation, year of accident, nature of injuries, nature and duration of treatment undergone, percentage of permanent functional and whole body disability, etc. and therefore, interference in the same is uncalled for.

6. On account of the injuries sustained in the accident, the appellant filed the claim petition under Section 166 of the Motor Vehicles Act, before the Tribunal, seeking compensation of a sum of Rs. 5,00,000/- against the respondents. The said claim petition had come up for consideration before the Tribunal on 2nd July, 2011. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of Rs. 1,30,200/- under different heads, with

interest at 6% per annum from the date of petition till the date of realization. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant is in appeal before this Court, seeking enhancement of compensation.

7. I have gone through the grounds urged in the memorandum of appeal and the impugned judgment and award passed by Tribunal and heard the learned counsel appearing for the appellant and also Insurer.

8. After careful perusal of the impugned judgment and award passed by Tribunal, it can be seen that, the Tribunal, after assessing the oral and documentary evidence available on file, has erred in not awarding reasonable compensation. Admittedly, due to the road traffic accident, the appellant has sustained abrasion over the base of right great toe for 2x1 cms. bright red in colour, pain, swelling and restricted movements at right knee and communitied fracture of patella, hemarthrosis, open reduction with internal fixation with TBW after implant removal of old TBW done under spinal anesthesia and discharged. The appellant was inpatient in the Hospital for a period of five days. During the treatment period, he would have spent reasonable amount towards conveyance nourishing food and attendant charges. The Doctor has assessed the permanent partial disability at 24% towards right lower limb and 8% towards whole body and Tribunal has assessed the whole body disability at 10%. The appellant being aged about 45 years, has to endure the permanent disability for the rest of his life and it would be difficult for him to perform his day-to-day activities, as earlier. Therefore, having regard to the nature of injuries sustained, age, avocation of the appellant and nature and duration of treatment, disability and also the fact that he cannot to do his work as effectively as he was doing earlier, I deem it fit to award a global compensation of a sum of Rs. 50,000/-, with interest at 6% per annum, in addition to the compensation awarded by Tribunal.

9. As rightly pointed out by the learned counsel appearing for appellant, the rate of interest awarded by Tribunal at 6% per annum is on the lower side. In the light of the judgments of the Apex Court and this Court in host of judgments, I award rate of interest at 8% per annum on the enhanced compensation.

10. In the light of the facts and circumstances of the case, as stated above, the appeal filed by appellant is allowed in part. The impugned judgment and award dated 2nd July, 2011, passed in MVC No.2420/2010, by the 14th Additional Judge, Court of Small Causes, Motor Accident Claims Tribunal, Bengaluru City (SCCH-10), is hereby modified, awarding compensation of a sum of Rs. 50,000/-, with interest at 8% per annum, from the date of petition till the date of realization, in addition to the compensation awarded by Tribunal.

11. The first respondent-Insurer is directed to deposit the enhanced compensation of Rs. 50,000/-, with interest thereon at 8% per annum, from the date of petition till the date of realization, within three weeks from the date of receipt of copy of the judgment.

12. On such deposit by the Insurer, the entire sum shall be released in favour of the appellant, immediately.
13. Office to draw award, accordingly.