

**(2015) 01 KAR CK 0012**  
**In the Karnataka High Court**  
**Case No : M.F.A. No. 9434 of 2011 (MV)**

M. Madaiah

APPELLANT

Vs

The Branch Manager, Reliance General Insurance Company  
Limited and Others

RESPONDENT

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**Date of Decision :** 29-01-2015

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 166

**Citation :** (2015) 01 KAR CK 0012

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

**Bench :** Single Bench

**Advocate :** T.C. Sathishkumar, Advocate, for the Appellant; H.S. Lingaraj,  
Advocate, for the Respondent

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## Judgement

N.K. Patil, J.—This appeal by the claimant is directed against the judgment and award dated 4th January 2011, passed in MVC No. 2336/2008, by the VIII Additional Judge, Member, Motor Accident Claims Tribunal, Court of Small Causes, Bangalore City, (for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 6,51,000/- with interest @ 6% p.a. awarded in favour of the claimant as against his claim for Rs. 16,50,000/-, is inadequate.

2. The appellant claims to be aged about 28 years and working as Supervisor in Garment factory, getting salary of Rs. 8,000/- per month and hale and healthy prior to the date of accident. That the occurrence of accident of appellant, at about 8:45 A.M, on 30-01-2008 when he was proceeding on a motor cycle as a pillion rider from Bellandur towards Sarjapura, near ambedkar Nagar Railway Gate, on account of rash and negligent driving by the driver of private Bus bearing No. KA-01/C-7653 is not in dispute. It is also not in dispute that the appellant has sustained grievous head injury and multiple fractures Due to the injuries sustained in the accident, he was shifted to St. John Hospital and during that time, he was conscious.

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

4. 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. 16,50,000/- against the respondents. The said claim petition had come up for consideration before the Tribunal on 4th January, 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. 6,51,000/- 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.

5. 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 the Insurer.

6. Learned counsel appearing for appellant vehemently submitted that the appellant has sustained grievous injuries as per Ex. P7, Wound Certificate, and undergone treatment as in-patient for a period of 58 days in the Hospital and underwent five surgeries and he was aged about 28 years, working as Supervisor in a Garment Factory as per Ex. P10 and he has suffered mental pain and agony during treatment period and he has examined in all, five Doctors. If the disability assessed by all the Doctors is taken into consideration, the average of it comes to 176% and therefore, at least 100% disability may be re-assessed towards whole body, having regard to the nature of injuries sustained by appellant in the road traffic accident. He further submitted that the appellant has spent huge amount towards conveyance, nourishing food and attendant charges apart from medical and other incidental expenses and since he has to take continuous follow-up treatment, reasonable compensation be awarded towards future medical expenses also. He also submitted that the monthly income assessed by Tribunal is also on the lower side and liable to be re-assessed having regard to the age, avocation and year of accident. Therefore, he submitted the impugned judgment and award passed by Tribunal is liable to be modified, awarding just and reasonable compensation for the grievous injuries sustained by the appellant in the road traffic accident.

7. As against this, learned counsel appearing for Insurer, inter alia contended and substantiated the judgment and award passed by Tribunal stating that the same is passed after due appreciation of the oral and documentary evidence available on file and after consideration of the entire material available on file and hence, the compensation awarded by Tribunal is just and reasonable and it does not call

for interference.

8. After hearing the learned counsel appearing for the appellant and the Insurer and after going through the impugned judgment and award passed by Tribunal, I am of the view that, the Tribunal, after assessing the oral and documentary evidence available on file, has erred in not awarding reasonable compensation under all the heads, having regard to the age, avocation, year of accident, nature of injuries, nature and duration of treatment undergone, disability assessed by Doctor, etc. Therefore, compensation has to be enhanced under all the heads.

9. Further, it can be seen that the Tribunal has failed to award any compensation towards loss of income during treatment period.. Admittedly, due to the road traffic accident, the appellant has sustained injury to his head with cerebral odema, deformed face and multiple fractures of face bones, right femur, right leforts, I, II and III, right mandible, right sided palatal split and lacerations on face, lip and thigh with avulsion of skin and muscle developing deformity in right thigh, left side chest hydropneumothorax and contusions etc. For treatment of the said injuries sustained in the road traffic accident, the appellant was inpatient from 30-01-2008 to 15-03-2008 and underwent several surgeries and still under treatment. During the period of treatment, the appellant must have undergone lot of unsaid pain and agony. Having regard to the nature of injuries sustained, I presume that he would have taken bed rest and follow-up treatment at least for a period of six months. Further, during the period of treatment, he would have spent reasonable sum towards conveyance, nourishing food and attendant charges apart from incidental and medical expenses.

10. PW2, Facial Surgeon at St. John's Hospital has deposed that the appellant was found to be having difficulties in chewing food due to loss of teeth and speech and assessed the maxillo facial disability at 6%; PW3, Ophthalmologist has deposed that the appellant has sustained a blunt injury to cornea causing corneal oedema and also having severe irreversible visual activity and loss of vision in the right eye due to choroidal rupture and assessed the disability at 30% due to loss of vision in one eye. PW4, Orthopaedic Surgeon, has deposed regarding fracture i.e. closed comminuted fracture shaft of right femur and assessed 20% functional disability to his right lower limb and 6.5% to the whole body. PW5, Doctor has deposed that due to head injury, the appellant is unable to perform simple tasks like buttoning or unbuttoning his shirt or hold a glass of water with his left hand due to the neurological deficits and he assessed the functional disability at 60% towards left limb due to loss of one hand function. It is further observed by Tribunal that the appellant has lost teeth and cannot have food in a normal way and has lost eight teeth, 7 upper and one lower. Thus, considering the nature of injuries sustained by appellant coupled with the evidence of five Doctors, the Tribunal has assessed the whole body disability at 50%. The same in my opinion is on the lower side. Considering the nature of injuries, age of the appellant being 28/29 years, avocation, year of accident, gravity of the injuries, impact on eye and other organs of the body, I re-assess the whole body disability

at 75% to meet the ends of justice. Further, the monthly income of Rs. 3,000/- assessed by Tribunal is on the lower side. Considering the age, avocation and also the year of accident, I re-assess the monthly income of appellant at Rs. 6,000/-, to meet the ends of justice. Since the appellant was aged about 28/29 years, the proper multiplier applicable is "17" as per the Apex Court decision in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , as rightly adopted by Tribunal. Therefore, having regard to the nature of injuries sustained, gravity and its impact on other organs of the body, age, avocation and the nature and duration of treatment, I award a sum of Rs. 1,00,000/- towards loss of amenities, discomfort and unhappiness as against Rs. 25,000/-; Rs. 1,50,000/- towards pain and sufferings as against Rs. 50,000/-; Rs. 3,00,000/- towards medical expenses including conveyance, nourishing food and attendant charges as against Rs. 2,50,000/-; Rs. 9,18,000/- (i.e. Rs. 6,000/- x 12 x T7" x 75/100) towards loss of future income as against Rs. 3,06,000/-; Rs. 1,00,000/- towards future medical and attendant expenses as against Rs. 20,000/- awarded by Tribunal and Rs. 36,000/- towards loss of income during treatment period, at the rate of Rs. 6,000/- per month for a period of six months as nothing has been awarded by Tribunal under this head. Thus, the appellant in all, would be entitled to a total compensation of Rs. 16,04,000/-, with interest at 6% per annum as against Rs. 6,51,000/- awarded by Tribunal, and the break up is as follows:

11. 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 4th January 2011, passed in MVC No. 2336/2008, by the VIII Additional Judge, Member, Motor Accident Claims Tribunal, Court of Small Causes, Bangalore City, is hereby modified, awarding compensation of a sum of Rs. 16,04,000/-, with interest at 6% per annum, as against Rs. 6,51,000/-, awarded by Tribunal. There would be an enhancement of compensation of Rs. 9,53,000/- with 6% interest per annum, excluding interest for the delayed period of 130 days in filing the appeal.

The first respondent - Insurer is directed to deposit the enhanced compensation, with interest thereon at 6% per annum, from the date of petition till the date of realization, excluding interest for the delayed period of 130 days in filing the appeal, within three weeks from the date of receipt of copy of the judgment and award.

On such deposit by the Insurer, a sum of Rs. 8,00,000/- shall be deposited in the name of the appellant in Fixed Deposit, in any nationalized or scheduled or Grameena Bank, for a period of ten years, renewable for another ten years, with liberty reserved to the appellant to withdraw the periodical interest.

Remaining Rs. 1,53,000/- shall be released in favour of the appellant, immediately.

Office to draw award, accordingly.