

**(2015) 07 KAR CK 0399**

**In the Karnataka High Court**

**Case No :** Miscellaneous First Appeal No. 31883 of 2012(MV)

Mounesh

APPELLANT

Vs

Munna and Others

RESPONDENT

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**Date of Decision :** 16-07-2015

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 166

**Citation :** (2015) 07 KAR CK 0399

**Hon'ble Judges :** P.D. Waingankar, J

**Bench :** Single Bench

**Advocate :** Sachin M. Mahajan, for the Appellant

**Final Decision :** Partly Allowed

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## **Judgement**

P.D. Waingankar, J—This appeal is directed against the judgment and award dated 28.7.2012 in MVC No. 196/2011 on the file of Addl. District Judge and MACT, Raichur.

2. In a motor vehicle accident that occurred on 22.11.2009, at about 5.30 a.m., the appellant-claimant sustained fracture of scapula and injury over his face. He was shifted to Government Hospital, Lingsugur and for further treatment, he was shifted to Shivakrupa hospital, Hubli, where he was treated as inpatient from 23.11.2009 to 29.11.2009. He spent substantial amount for his treatment, he lost his earnings during the period of treatment and even after best treatment, he suffered disability. He filed claim petition under Section 166 of the M.V. Act. The claim petition was seriously contested by the insurer of the offending vehicle. It came up for consideration before the tribunal. The tribunal on appreciation of evidence while recording a finding as to the negligence on the part of the driver of the offending vehicle, awarded a total compensation of Rs. 1,17,565/- together with 6% interest thereon. The claimant not satisfied with the quantum of compensation awarded by the tribunal preferred this appeal.

3. I have heard both the learned counsel appearing for the appellant-claimant

and the respondent-Insurance company. Perused the records.

4. From Ex-P4 wound certificate, it is evident that the claimant sustained fracture of scapula and injuries over his face. He was initially treated in Lingsugur Government Hospital and thereafter he was shifted to Shivakrupa Hospital, Hubli, where he was treated as inpatient for about seven days. He took treatment from Orthopedic Surgeon for the fracture of scapula and from Dentist for his facial injuries. The tribunal upon consideration of the injuries, nature of treatment and the period of hospitalisation awarded a sum of Rs. 20,000/- towards "injury, pain and suffering", which appears to be on the lower side. Since he had fracture of scapula and fracture of medial and lateral walls of right orbit, that he underwent wound debridement and suturing under General anesthesia on 22.11.2009, I deem it just and proper to award a sum of Rs. 35,000/- under the head "injury, pain and suffering" as against Rs. 20,000/- awarded by the tribunal.

5. Though the claimant has produced bills worth Rs. 87,104/- the tribunal has awarded a sum of Rs. 36,365/- towards the inpatient bill issued by Shivakrupa Hospital, Hubli. The claimant has produced a bill for Rs. 18,000/- issued by Dr. S.M. Dugani, Neuro-Surgeon. There is no material for he having treated the claimant. In that case, the tribunal is right in rejecting the claim made in the bill issued by Dr. Dugani. But the fact remains that the claimant has produced medical bills for having purchased the medicines prescribed from time to time. There is no reason for the tribunal to reject the amount shown under those bills in respect of purchase of medicines. By deducting an amount of Rs. 18,500/-, the claimant is entitled for a sum of Rs. 68,604/- under the head "medical expenses" as against Rs. 36,365/- awarded by the tribunal.

6. On account of accidental injuries, the claimant must have been incapacitated from attending to his work for a period of two-three months and thereby he lost his earnings for the said period. Though the claimant has stated that he was working as mason, there is no material. Therefore, he has to be treated as a coolie. Since the accident had occurred in the year 2009, it is appropriate to take his income as Rs. 5,000/- p.m. So an amount of Rs. 15,000/- is awarded under the head "loss of earnings during the period of treatment".

7. Immediately after the accident, the claimant was taken to District Hospital, Lingsugur and thereafter he was taken to Shivakrupa Hospital, Hubli. Definitely, he must have spent some amount towards conveyance. Though he has not produced any vouchers or bills for having spent the amount, a sum of Rs. 3,000/- is awarded under the head "conveyance charges".

8. Since the claimant had fracture of scapula for which he had taken treatment in Shivakrupa Hospital, Hubli, he was in need of services of an attendant for a period of one month. So an amount of Rs. 3,000/- is awarded towards "attendant charges" at the rate of Rs. 100/- per day for a period of one month.

9. Since he had fracture, a sum of Rs. 20,000/- is awarded under the head loss of future amenities".

10. So, far as "loss of future income on account of disability" is concerned, the tribunal has awarded a sum of Rs. 61,200/- by taking the income as Rs. 3,000/- p.m. and the disability at 10%. If income is taken as Rs. 5,000/-, the total "loss of future income on account of disability" of the whole body comes to Rs. 85,000/- as against Rs. 61,200/- awarded by the tribunal.

11. Thus the claimant is awarded compensation under the various heads as follows:-

Thus the claimant is entitled for a total compensation of Rs. 2,29,604/- as against Rs. 1,17,565/- awarded by the tribunal. There shall be enhancement of compensation of Rs. 1,12,039/-.

12. Accordingly, I pass the following:-

The appeal is allowed-in-part. The judgment and award dated 28.7.2012 passed in MVC No. 196/2011 by Addl. District Judge and MACT, Raichur stands modified. The appellant-claimant is awarded enhanced compensation of Rs. 1,12,039/- over and above the compensation awarded by the tribunal with 6% interest per annum from the date of petition till the date of realisation.

The respondent-insurance company is directed to deposit the enhanced compensation within a period of two months from the date of receipt of a copy of this order.

In the event of deposit, the entire enhanced compensation shall be released in favour of the claimant.