

**(2012) 06 KAR CK 0071**  
**In the Karnataka High Court**  
**Case No : MFA. No. 4260/06**

Radhakrishna Hegde

APPELLANT

Vs

K. Nagaraju C/o. A. S. Kuppuraju No, 160, D. V. Layout  
Kumara Park West Bangalore and Shivani, No. 98 16th Main,  
4th B Block Koramangala Bangalore

RESPONDENT

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**Date of Decision :** 04-06-2012

**Acts Referred:**

**Citation :** (2012) 06 KAR CK 0071

**Hon'ble Judges :** N. Kumar, J;H.S. Kempanna, J

**Bench :** Division Bench

**Advocate :** P.N. Hegde, for the Appellant; K.S. Mahadevan, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Kempanna, J.—This is a claimant's appeal seeking for enhancement of compensation in respect of the injuries sustained in a motor accident. For the sake of convenience, the parties in this appeal would be referred to by their rankings as they are arrayed in the claim petition before the Tribunal.

2. It is the case of the claimant that he is aged 24 years and a student prosecuting his studies in Chartered Accountancy. According to the claimant, on 09.02.2002 at about 12.15 p.m. he was proceeding as a pillion rider on a motor cycle. While their motor cycle was in front of St. John Medical College, situated on Sarjapura Road, a Maruthi 800 car bearing No. CKO 4653 owned by the first respondent at the relevant point of time driven by its driver at a high speed in a rash and negligent manner came and dashed against him. On account of the impact, he fell down and sustained injuries for which he took treatment in St. John. Medical College hospital. He spent more than Rs. 1,25,000/- towards medical treatment. Despite the same, the injuries are not completely cured. Therefore, he sought for compensation from the first respondent, who was the owner of the car at the time of the accident.

3. After service of notice, the first respondent appeared and contested the claim of the petitioner. He denied all the averments made in the claim petition except the one which are specifically traversed. He contended that the accident has not taken place on account of rash and negligent driving of the car by its driver. On the other hand, it was due to the fault of the rider of the motor cycle in which the petitioner was proceeding as a pillion rider. In sum and substance, he contended that the accident has not taken place on account of rash and negligent driving of the car by its driver and he is not liable to pay any compensation. Accordingly, he sought for dismissal of the petition.

4. The claimant in support of his case got himself examined as P.W.1 and the Medical Officer who had treated him as P.W.2. He produced in all six documents, which came, to be marked as Exs.P1 to P6. On behalf of the respondents, they examined two witnesses as R.Ws. 1 and 2 and produced one document, which came to be marked as Ex.R1.

5. The Tribunal thereafter on considering the oral and documentary evidence on record held that the accident in question has taken place on account of actionable negligence of the driver of the car bearing No.CKO 4653 resulting in the injuries to the claimant. Further, looking into the material on record, the Tribunal awarded in all a sum of Rs. 50,000/- under various heads with interest at 6% per annum from the date of petition till the date of realization. It further saddled the liability of payment of compensation on the first respondent-owner of the offending car.

6. The appellant-claimant being aggrieved by the quantum of compensation is in appeal before this Court.

7. The learned counsel appearing for the appellant-claimant contended that the Tribunal has erred in not awarding commensurate compensation to the claimant under all the heads despite he having placed clinching evidence supported with documents. Therefore, a case for enhancement is made out.

8. Per contra, the learned counsel appearing for the contesting owner supported the impugned judgment and award passed by the Tribunal.

9. Taking into consideration the rival contentions, the evidence and the documents on record the point that arises for consideration is:-

Whether the appellant-claimant has made out a case for enhancement?

10. The accident having taken place on account of actionable negligence of the driver of the car owned by the first respondent and the claimant having sustained injuries is not disputed before us.

11. It is the case of the claimants that in the impugned accident he has sustained fracture of left occipital bone, sub arachnoid haemorrhage with diffused cerebral oedema. He has produced wound certificate, which is at Ex.P4. In support of his claim in respect of the injuries sustained he has examined P.W.2-

the Medical Officer. The evidence of P.W.2 fortifies the testimony of the claimant in respect of the injuries he has sustained as reflected in Ex.P4. The Tribunal having regard to the nature of fractures the claimant has suffered and on coming to the conclusion that he has not suffered any permanent disability has awarded a sum of Rs. 25,000/- towards injuries, pain and suffering. The claimant has claimed that on account of the injuries sustained, he has suffered permanent disability to an extent of 25%. In support of this contention, he has examined P.W.2-the Medical Officer. No doubt, P.W.2 has testified that the disability that is suffered by the claimant would be to an extent of 25%. But, it is to be noted that P.W.2 is not a Neurosurgeon, who is competent to assess the disability suffered on account of the head injuries. Apart from this he has not placed any material to substantiate his claim that he has disability to an extent of 25%. On the other hand, the material on record reveals that he has no disability at all. In that view of the matter, the Tribunal is justified in not awarding any compensation to the claimant in respect of loss of future income/permanent disability. However, the Tribunal having regard to the nature of injuries has awarded a sum of Rs. 15,000/- towards loss of future amenities and further taking into consideration the nature of the injuries that he has sustained and the period for which he has taken treatment has awarded a SUM of Rs. 10,000/- towards conveyance, nourishment and attendant charges. These amounts having regard to the material on record and the injuries sustained is just and proper and do not call for any enhancement. It was contended before us that the claimant had incurred an amount of Rs. 1,25,000/- towards medical expenses. Out of that, it is the case of the claimants, an extent of 60% has been reimbursed by KSRTC as his father was working there. But the records placed before us reveal that there is no material placed by the claimant that he had actually spent Rs. 1,25,000/-. A perusal of Ex.P5 on which reliance is placed reveals that he has been reimbursed to an extent of 60% only. It does not disclose what is the total amount that he has incurred towards medical expenses out of which 60% only has been paid. In the absence of the same, we are unable to appreciate and accept the contentions urged on behalf of the appellant-claimant insofar as the medical expenses is concerned. Viewed from any angle the amount of compensation that has been awarded to the claimant in the facts and circumstances of the case being just and proper does not call for enhancement. Accordingly, we proceed to pass the following: -

#### ORDER

The appeal is dismissed.