

**(2013) 12 KAR CK 0358**

**In the Karnataka High Court**

**Case No :** Miscellaneous First Appeal No. 9741 of 2011 (MV)

Smt. Malini

APPELLANT

Vs

Sri. Suryanarayana Reddy M.V. and The Manager, Universal  
Sompo General Insurance Co. Ltd.

RESPONDENT

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**Date of Decision :** 12-12-2013

**Acts Referred:**

**Citation :** (2013) 12 KAR CK 0358

**Hon'ble Judges :** N.K. Patil, J; Budihal R.B., J

**Bench :** Division Bench

**Advocate :** D.L. Jagadeesh, for the Appellant; Adi Narayan, for A.N.N. Associates for R-1 and Sri. Raghu R. for Sri. Ravi. S. Samprathi for R-2, for the Respondent

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## **Judgement**

N.K. Patil, J.—Though this appeal is posted for admission, by consent of learned counsel appearing for the parties, it is taken up for hearing and disposed off by this judgment. This appeal by the claimant is directed against the impugned judgment and award dated 3.8.2011 passed in MVC No. 3159/2010 on the file of the VII Additional Judge, Member, MACT, Court of Small Causes, Bangalore (SCCH-3).

2. The Tribunal by its impugned judgment and award has awarded a sum of Rs. 6,99,662/- with interest at 8% p.a. from the date of petition till its realization, on account of the injuries sustained by the claimant in the road traffic accident.

3. The claimant on the ground that the quantum of compensation awarded by the Tribunal is inadequate and it requires enhancement, has presented this appeal.

4. The brief facts of the case on hand are, appellant claims that she was aged 48 years as on the date of accident and was hale and healthy and that on 26.1.2010 at about 10.30 a.m. while she was walking on the foot path in front of Arun's Samsung Co., 80 feet road, RMV II Stage, Bangalore, at that time, a Maruthi

Omni car bearing registration No. KA-50-M-6002 came in a high speed in a rash and negligent manner and hit from behind, due to the impact, she fell down and sustained grievous injuries. Immediately, she was shifted to M.S. Ramaiah Hospital and took treatment as inpatient for a period of 30 days and also undergone surgeries. She has examined the P.W. 2-Dr. Naresh Shetty, who has assessed the permanent disability at 20% to the whole body. It is the case of the appellant that she has spent reasonable amount towards conveyance, attendant charges and nourishing food and also spent huge amount towards medical expenses. At the advice of the Doctor she has taken bed rest and also follow up treatment for a period of three months and suffered pain and agony, discomfort and unhappiness and has to pull on the said disability in her future also. She may also require reasonable amount towards future medical expenses. On all these relevant factors, claim petition was filed u/s 166 of the MV Act claiming compensation against the respondents. The said matter had come up before the Tribunal for consideration. The Tribunal after hearing both sides and after appreciating the oral and documentary evidence on record, has allowed the claim petition and awarded Rs. 6,99,662/- under different heads with 8% interest from the date of petition till its realization. Being dissatisfied with the impugned judgment and award passed, the appellant/claimant has filed this appeal seeking enhancement of compensation.

5. It is the submission of the learned counsel for the appellant Sri D.L. Jagadeesh at the outset that the Tribunal has erred in not awarding reasonable compensation towards injury pain and suffering, conveyance, nourishing food and attendant charges, loss of future income and loss of amenities and also the income taken at Rs. 3,000/- per month is on the lower side. She was doing household work and was also an agriculturist looking after the coffee plantation. She was aged 48 years and committed. This aspect has not been looked into by the Tribunal. Therefore her income is liable to be reassessed reasonably and awarded reasonable compensation taking into consideration, the age, avocation year of accident and nature of injuries sustained and the duration of treatment undergone and also pain and agony undergone, by modifying the judgment and award.

6. As against this, learned counsel appearing for the 2nd respondent-Insurer inter alia contended that substantial amount has been awarded by the Tribunal, after due consideration of the oral, documentary and other evidence on record and also by considering the age of the deceased, his avocation and date of the accident. Therefore, interference is uncalled for.

7. After careful consideration of the submissions of learned counsel for both the parties and after perusal of the impugned judgment and award the point that would arise for consideration is:

Whether the quantum of compensation awarded by the Tribunal is just and reasonable?

8. The occurrence of the accident resulting in injuries to the claimant in the road traffic accident is not in dispute. Further, it is not in dispute that appellant was aged about 48 years and by profession she was a housewife and also an agriculturist looking after the coffee plantation and was hale and healthy prior to the accident. She met with an accident on 26.1.2010 on account of the rash and negligent driving by the driver of Maruthi Omni vehicle and has sustained following injuries:

1. Fracture both bones of right forearm.
2. Radial N Palsy (rt)
3. Fracture both superior and inferior pubic rami
4. Fracture acetabulum
5. Fracture of left 4th to 8th ribs
6. Degloving injury left arm
7. Retroperitoneal hemorrhage
8. Deep abrasion over chest/abdomen
9. Loss of tooth

After medical examination, the Doctor has opined 20% permanent disability to the whole body. Same is accepted. Having regard to the age, avocation and year of accident, we can re-assess the income of the appellant at Rs. 5,000/- per month instead of Rs. 3,000/- p.m. to meet the ends of justice. She might have spent reasonable amount towards medical expenses on account of injuries sustained and she has taken treatment as inpatient for 30 days in the hospital. She might have suffered pain and suffering and might have spent reasonable amount towards incidental expenses. We presume that on the advice of the Doctor she might have taken bed rest and follow up treatment atleast for a period of three months. She has to suffer discomfort and unhappiness throughout her life and she may not be in a position to do work as effectively as she was doing earlier being an agriculturist. Taking all these aspects into consideration Rs. 75,000/- is awarded towards injury, pain and suffering as against Rs. 50,000/-, and Rs. 10,000/- towards conveyance, nourishing food and attendant charges as against Rs. 5,000/-, Rs. 15,000/- towards loss of income during the laid up period for a period of three months at the rate of Rs. 5,000/- per month as against Rs. 9,000/-, Rs. 50,000/- towards loss of amenities, discomfort and unhappiness as against Rs. 40,000/-, Rs. 1,56,000/- (5000 x 12 x 13 x 20/100) towards loss of future income taking the appropriate multiplier of 13, as against Rs. 70,200/-. The Tribunal is justified in awarding Rs. 5,10,462/- towards medical expenses and Rs. 15,000/- towards future medical expenses and as such, interference is not called for. Having regard to the facts and circumstances of the case as stated above, the impugned judgment and award dated 3.8.2011 passed by the VII Additional Judge, Member, MACT, Court of

Small Causes, Bangalore in MVC No. 3159/2010 is hereby modified. The total compensation payable to the claimant would be Rs. 8,31,462/- as against Rs. 6,99,662/- and the break-up is as follows:

The enhanced compensation comes to Rs. 1,31,800/- with interest at 8% per annum from the date of petition till realization. The 2nd respondent-Insurer is directed to deposit the enhanced compensation, with interest at 8% within three weeks from the date of receipt of a copy of this judgment.

Out of the enhanced compensation, 50% with proportionate interest shall be deposited in the name of the appellant for a period of 5 years renewable for another 5 years in any of the nationalized or scheduled bank and she is entitled to withdraw the interest periodically.

Remaining 50% with proportionate interest shall be released in favour of appellant immediately, after deposit by the 2nd respondent-Insurer.

Draw the award, accordingly.