

**(2013) 07 KAR CK 0216**  
**In the Karnataka High Court**  
**Case No : M.F.A. No. 4335 of 2009 (MV)**

Sri. Elson Vas

APPELLANT

Vs

Sri. Robert D'Souza and The Oriental Insurance Co. Ltd.

RESPONDENT

**Date of Decision :** 19-07-2013

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 166

**Citation :** (2013) 07 KAR CK 0216

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

**Bench :** Single Bench

**Advocate :** Pundikai Ishwara Bhat, for the Appellant; K. Sridhara, Advocate for R2, for the Respondent

## **Judgement**

N.K. Patil, J.—This appeal by the claimant is directed against the judgment and award dated 22nd September 2008, passed in MVC No. 340/2003, by the II Additional District Judge, Member, Motor Accident Claims Tribunal-III, Dakshina Kannada, Mangalore, (for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 50,200/- with interest @ 6% p.a. awarded in favour of the claimant as against his claim for Rs. 2,00,000/-, is inadequate. The appellant claims to be aged about 21 years and working as an Electrician, earning a sum of Rs. 2,500/- per month and was hale and healthy prior to the date of accident. That the occurrence of accident at about 2:30 P.M., on 13-08-2002, near Bejai Kambla Cross Road on KSRTC KPT Road, on account of rash and negligent driving by the driver of Bus bearing Registration No. KA-19K/9347 is not in dispute. It is also not in dispute that the appellant has sustained lacerated Wound on the lateral aspect of right foot, chip fracture of lateral condyle of femur on right side as per Ex. P6 wound Certificate. Due to the injuries sustained in the accident, he was shifted to Fr. Mullers Hospital, Kankanady, Mangalore, where he was admitted as in-patient.

2. It-is his further case that, on account of the accident, he sustained injuries stated above 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.

3. On account of the injuries sustained in the accident, the appellant filed the claim petition u/s 166 of the Motor Vehicles Act, before the Tribunal, seeking compensation of a sum of Rs. 2,00,000/- against the respondents. The said claim petition had come up for consideration before the Tribunal on 22nd September, 2008. 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. 50,200/- 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.

4. 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.

5. Learned counsel appearing for appellant vehemently submitted that the Tribunal grossly erred in not awarding reasonable compensation towards injury, pain and sufferings, conveyance, nourishing food and attendant charges, loss of income during treatment period and therefore, it requires enhancement. Further, he submitted that the Doctor has assess 15% disability towards right hand and 5% in respect of whole body, but the Tribunal has not awarded any compensation towards loss of amenities, discomfort and unhappiness on account of disability. To substantiate the said submission, he" has taken through the Wound Certificate and submitted that the appellant has sustained the injuries as stated in the Wound Certificate and for the said treatment, he has spent huge sums and was also in-patient for some period. Therefore, the Tribunal ought to have taken into consideration the pain and agony suffered by the appellant during the treatment period, the loss of amenities, discomfort and unhappiness and also the fact that he would not be in a position to perform his duties as effectively as he was doing earlier, on account of the disability. Therefore, he submitted that the impugned judgment and award passed by Tribunal is liable to be modified by enhancing the compensation reasonably.

6. As against this, learned counsel appearing for Insurer sought to justify the impugned judgment and award, stating that the same is passed after due appreciation of the oral and documentary evidence available on file and hence, interference in the same is not called for.

7. 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 rightly awarded compensation of Rs. 27,000/-

towards loss of earning capacity. Hence it does not call for interference. However, so far as other heads are concerned, the Tribunal erred in not awarding reasonable compensation and therefore, it requires enhancement.

8. After perusal of the impugned judgment and award passed by Tribunal, it can be seen that the appellant has sustained lacerated wound on the lateral aspect of right foot and chip fracture of lateral condyle of femur on right side, as per Ex. P6-wound certificate. PW 2, Doctor has deposed that that lower limb of the appellant was sounding like in grinding sensation and movement of right lower limb is restricted and he is not able to walk and to stand for long time. Thus, the Doctor assessed the functional disability at 15% towards right hand and 5% towards whole body. The appellant, being aged about only 21 years, has to endure this disability for the rest of his life. It can be seen that the appellant was working as an Electrician. For doing the said job, functioning of the hands is very important. In the case on hand, he has sustained injuries to his right hand and doctor has assessed 15% functional disability in respect of right hand. Therefore, the appellant is definitely entitled to some compensation towards loss of amenities, discomfort and unhappiness on account of disability. Admittedly, due to the injuries sustained in the accident, the appellant was inpatient in the Hospital for some period. 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 three 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. Therefore, having regard to the nature of injuries sustained, age, avocation and the nature and duration of treatment, I award a sum of Rs. 15,000/- towards loss of amenities, discomfort and unhappiness on account of disability; Rs. 25,000/- towards pain and sufferings as against Rs. 15,000/-; Rs. 7,500/- towards loss of income during treatment period, at the rate of Rs. 2,500/- per month for a period of three months as against Rs. 5,000/- Rs. 5,000/- towards medical expenses, including conveyance, nourishing food and attendant charges as against Rs. 3,200/- awarded by Tribunal. Thus, the appellant in all, would be entitled to a compensation of Rs. 79,500/-, with interest at 6% per annum as against Rs. 50,200/- awarded by Tribunal, and the break up is as follows:

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 22nd September 2008, passed in MVC No. 340/2003, by the II Additional District Judge, Member, Motor Accident Claims Tribunal-III, Dakshina Kannada, Mangalore, is hereby modified, awarding compensation of a sum of Rs. 79,500/-, with interest at 6% per annum, as against Rs. 50,200/-, awarded by Tribunal. There would be an enhancement of compensation of Rs. 29,300/-, rounded off to Rs. 30,000/- with 6% interest per annum.

The second 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, within three weeks from the date of receipt of copy of the judgment.

On such deposit by the Insurer, the entire sum shall be released in favour of the appellant, immediately.

Office to draw award, accordingly.