

**(2012) 01 KAR CK 0146**

**In the Karnataka High Court**

**Case No :** Miscellaneous First Appeal No. 8392 of 2010 (MV)

Sri Kishan @ Krishnan

APPELLANT

Vs

Manjula G. and M/s. United India Insurance Co. Ltd.

RESPONDENT

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**Date of Decision :** 04-01-2012

**Acts Referred:**

**Citation :** (2012) 01 KAR CK 0146

**Hon'ble Judges :** A.S. Pachhapure, J

**Bench :** Single Bench

**Advocate :** Vasanthappa, for the Appellant; Praveen Kumar, for R1 and Sri. A.M. Venkatesh, for R2, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

A.S. Pachhapure

1. The appellant dissatisfied with the amount of compensation awarded by the Tribunal for the injuries sustained in a motor vehicle accident has preferred this appeal seeking enhancement. It is on 27.7.2007 at about 11.30 p.m., when the appellant was proceeding as a pillion rider on the motor cycle on Benniganahalli-Kasturinagar 2nd Main Road, the driver of Tata Sumo Jeep bearing Registration No.KA-03 B-8922 came from the opposite direction driven in a rash and negligent manner and hit the motor cycle. The appellant sustained severe injuries. He was treated at St.John's Medical College Hospital. He suffered disability and hence he claimed the compensation for the injuries sustained.

2. The respondents appeared before the Tribunal and contested the claim. During the enquiry, the appellant examined himself as PW. 1 and the Doctor PW.2 and in the evidence got marked Exs.P. 1 to P. 13. The Tribunal on appreciation of the material on record granted compensation of Rs. 1,17,000/- with interest at 6% p.a. Dissatisfied with the amount of compensation, the present appeal has been filed.

3. I have heard the learned counsel for both the parties. The point that arise for

my consideration is:

Whether the appellant is entitled to the enhanced compensation? If so, to what extent?

4. The actionable negligence on the part of the driver of the Jeep has attained finality. Hence, the question is only with regard to the quantum of compensation. The appellant has sustained the fracture of right leg both bones and fracture of proximal phalynx right leg big toe in addition to the other simple injuries. Considering the nature of the fracture and the period of treatment, the Tribunal has granted compensation of Rs.36.000/- for pain and suffering and it appears to be just and reasonable.

5. The appellant has produced the bills worth Rs.19,580/- and the Tribunal has granted Rs.21,000/- as compensation towards the medical expenses, conveyance, food and nourishment, charges. I think an additional amount of Rs.2,000/- has to be paid under this head.

6. So far as the assessment of income is concerned, the Tribunal has assessed the income at Rs.3,000/- p.m. The appellant was an interior decorator. No documents have been produced to substantiate his claim much less the documents in proof of his educational qualification. Therefore, his claim that he was earning Rs.6,000/- cannot be accepted. The accident is of the year 2007 and taking into consideration the wages of an ordinary man, Rs.3750/- is reasonable as income per month. I think it is just and proper to assess the disability at 35% of the lower limb, though there is 1 /3 of the disability of the particular limb and the whole body disability would be 11.5%. But giving margin to the exaggeration made for claiming more compensation. I think it is just and proper to consider the disability at 10%. Considering the income at Rs.3.750/-, the disability at 10% and adopting the multiplier of 17 and also the annual income, the loss of future income would be Rs.76,500/-. Deducting the amount of compensation granted under this head, the appellant is entitled to an additional compensation of Rs.39,780/- towards the loss of future income.

7. The Tribunal has not considered the loss of income during the period of treatment. After the fracture, the appellant might not have been in a position to assume normal duties after a period of three months. Hence, I think it just and proper to grant compensation of Rs. 10.000/- towards loss of income during the period of treatment.

8. The Tribunal has granted compensation of Rs. 18,000/ towards loss of amenities. It appears to be exorbitant. In view of the fact that the loss of future earnings is granted by this Court, while the Tribunal did not consider the loss of future income, the loss of amenities will have to be reduced to Rs. 10,000/-. The Tribunal has granted just compensation under other heads. Thereby, the appellant is entitled to an additional sum of Rs.43,780/- with interest at 6% p.a. from the date of petition till payment. Hence, I answer the point in affirmative and proceed to pass the following:

## ORDER

The appeal is allowed in part. In addition to the compensation, of Rs. 1,17,000/- awarded by the Tribunal, the appellant is entitled to a sum of Rs.4.3,780/- with interest at 6% p.a. from the date of petition till payment. The appellant is permitted to with draw the amount enhanced.