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**(2017) 02 KAR CK 0056**  
**In the Karnataka High Court**  
**Case No : M.F.A. No. 5160 of 2011 (MV)**

Sri Reji Sebastian

APPELLANT

Vs

Mrs. Juby Mary Chackao Major

RESPONDENT

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**Date of Decision :** 09-02-2017

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 166, Section 168, Section 173

**Citation :** (2017) AAC 946

**Hon'ble Judges :** B. Manohar, J.

**Bench :** Single Bench

**Advocate :** Sri. Pundikai Ishwara Bhat, Advocate, for the Appellant; Sri. S.T. Rajashekar, Advocate, for the Respondent Nos. 2 and 4; Notice Dispensed With Vide Order Dated : 24.11.2011, for the Respondent Nos. 1 and 3

**Final Decision :** Allowed

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## Judgement

B. Manohar, J.—Appellant is the claimant, being not satisfied with the quantum of compensation awarded in the judgment and award dated 02-12-2010 made in MVC No. 320/2008 passed by the Motor Accident Claims Tribunal, D.K., Mangalore (hereinafter referred to as "the Tribunal" for short) filed this appeal seeking enhancement of compensation.

2. The appellant filed a claim petition contending that on 19-06-2007, while he was proceeding in Tata Indica Car bearing Registration No. KA-19/Z-0492 along with his friend Mohammed Althaf, near Kirawathi on Karwar-Bellary road, N.H.63, at about 6.00 a.m., a lorry bearing Registration No. KA-07/6847 driven by its driver in a rash and negligent manner came from opposite direction in a high speed and dashed against the Indica Car. Due to that, the driver of the car died on the spot and the claimant sustained fractured injuries. Immediately after the accident, the claimant was shifted to Primary Health Center at Yellapura and after first aid, he was shifted to Vivekanand General Hospital at Hubli and from there he was shifted to Yenepoya Hospital at Mangalore on 30-06-2007. Initially he took treatment as inpatient for a period of 12 days, subsequently once again

he got admitted to the hospital and took treatment as inpatient for a period of 10 days. In all, the claimant was treated as inpatient for a period of 22 days. At the time of accident, he was aged about 28 years, doing business of District Resources Money Power (RMP) and was earning a sum of Rs. 1,00,000/- p.m. In view of the injuries he has sustained, he has become permanently disabled to do any work and hence sought for compensation of Rs. 10,00,000/-.

3. The insurance company defended the case by filing the written statement.

4. After trial, the Tribunal taking into consideration the spot mahazar, statement of the parties and final report held that due to the actionable negligence on the part of driver of the offending lorry, the accident occurred and the claimant is entitled for compensation. With regard to quantum of compensation is concerned, the claimant has sustained loss of upper central incisor, fracture of left maxillary anterior and maxillary dental anterior process, fracture of alveolar process and also lacerated wound over the left forehead. He has submitted 24 medical bills for Rs. 71,191.97 pain and suffering. However, he has not examined the doctor. Dr. S.S. Mudakavi who is not the treated doctor was examined only for the purpose of production of documents, but he has not stated anything about the injuries sustained and treatment taken by the claimant. In view of that, the Tribunal has awarded compensation of Rs. 75,000/- with interest at the rate of 6% p.a. Since the offending vehicle is covered by the insurance policy, the liability was fastened on the insurance company to compensate the claimant. Being not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed this appeal seeking enhancement of compensation.

5. The advocate appearing for the appellant contended that the quantum of compensation awarded by the Tribunal is very meager. He further contended that the claimant took treatment as inpatient initially for a period of 12 days in Vivekananda General Hospital at Hubli and thereafter he took treatment as inpatient for a period of 10 days in Yenepoya Hospital at Mangalore. Thereafter, he has taken follow-up treatment. The wound certificate Ex. P8 clearly discloses that he has sustained two fractures and two lacerated wounds and also sustained loss of upper central incisor. Though the medical bills are produced, the Tribunal has not accepted the said medical bills since the doctor who treated the claimant was not examined and awarded very meager compensation of Rs.75,000/- which is contrary to law. Further, no compensation has been awarded for the fracture of maxillary dental anterior process. Due to the loss of one incisor, there is disfigurement of fact. No compensation has been awarded towards disfigurement and also loss of income during the laid up period, attendant charges, food and nourishment. Hence, sought for enhancement of compensation.

6. On the other hand, Sri. S.T. Rajasekhar, learned counsel appearing for Respondent Nos. 2 and 4 argued in support of the judgment and award passed by the Tribunal and contended that though the claimant has sustained fractured injuries, he has not examined the doctor who treated him to assess the disability. The doctor has not assessed the disability to award compensation. The

compensation awarded by the Tribunal is just and fair compensation and hence sought for dismissal of the" appeal.

7. I have carefully considered the arguments addressed by the learned counsel for the parties and perused the judgment and award, oral and documentary evidence adduced by the parties.

8. The dispute in this appeal is with regard to quantum of compensation is concerned.

9. The occurrence of the accident and the injuries sustained by the claimant is not in dispute. In the accident, the claimant has sustained following injuries:

- (i) fracture of left maxillary anterior;
- (ii) fracture of maxillary dental anterior process;
- (iii) fracture of alveolar process
- (iv) loss of upper central incisor; and
- (v) lacerated wound over the forehead.

Initially, he took treatment as inpatient from 19-06-2007 to 25-06-2007 and thereafter he once again got admitted to Yenepoya hospital on 26-06-2007 to 01-07-2007. The discharge summary clearly discloses that the claimant was treated for the fracture of left maxillary anterior and fracture of maxillary dental anterior process. Except the injuries referred to above, the claimant has not sustained any injuries. He has submitted the medical bills for a sum of Rs. 71,191/-. Looking into the injuries sustained, suffering undergone and the treatment he had taken, the claimant is entitled for medical bills of Rs. 71,191/-. The Tribunal has not assigned any reason for rejecting the said medical bills submitted by the claimant. The Tribunal has not awarded any compensation under different heads while awarding compensation. Hence, it is just and necessary to assess the compensation under the following heads:

(a) Pain and suffering

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Rs.40,000-00

(b) Medical expenditure

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Rs.71,191-00

(c) loss of amenities of life

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Rs.25,000-00

(d) loss of income during the laid-up period

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Rs. 10,000-00

(e) attendant charges and other incidental expenses

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Rs. 10,000-00

(f) liquid food and nourishment

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Rs.20,000-00

Total

Rs. 1,76,191-00

Hence, the claimant is entitled to compensation of Rs. 1,76,191/- as against Rs. 75,000/- awarded by the Tribunal, with interest at 6% p.a. Thereby, the claimant is entitled to enhanced compensation of Rs. 1,01,191/-.

10. Accordingly, I pass the following:

ORDER

The appeal is allowed in part. The judgment and award dated 02-12-2010 made in MVC No.320/2008 is modified and the claimant is entitled to compensation of Rs. 1,76,191/- as against Rs.75,000/- awarded by the Tribunal with interest at the rate of 6% p.a.

The 4th respondent-insurance Compaq is directed to deposit the entire award amount with accrued interest, within a period of four weeks from the date of receipt of a copy of this judgment.