

**(2015) 01 KAR CK 0353**  
**In the Karnataka High Court**  
**Case No : M.F.A. No. 1229 of 2014 (MV)**

Sridhar Dasi Mogera

APPELLANT

Vs

Shekji Mohammed Tamji and Others

RESPONDENT

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**Date of Decision :** 08-01-2015

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 166

**Citation :** (2015) 01 KAR CK 0353

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

**Bench :** Division Bench

**Advocate :** S. Naveen Kumar for H. Pavana Chandra Shetty, for the Appellant

**Final Decision :** Partly Allowed

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## Judgement

N.K. Patil, J.—This appeal by the claimant is directed against the impugned judgment and award dated 21st December 2013, passed in MVC No. 312/2012, by the Additional District and Sessions Judge and Additional Motor Accident Claims Tribunal, Udupi, Sitting at Kundapura, Kundapura, (for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 1,62,230/-, awarded in his favour as against his claim for Rs. 23,40,000/-, is inadequate.

2. The appellant claims to be aged about 30 years, working as a coolie. He was hale and healthy prior to the date of accident. That at about 00:20 hours, on 25-01-2012, when the appellant was traveling in Autorickshaw bearing Registration No. KA-47/2454, from Sarpanakatta to Sodigadde side, on Sodigadde-Sarpanakatte road, Bhatkal, he met with an accident on account of rash and negligent driving by the rider of motor cycle bearing Registration No. KA-20/V-9080. Due to the impact, the appellant sustained grievous injuries and immediately, he was shifted to Government Hospital, Bhatkal and thereafter to Chinmayi Hospital, Kundapura, where he took treatment as in-patient.

3. It is the case of the appellant that he has spent considerable amount towards

conveyance, nourishing food and attendant charges including medical expenses and other incidental expenses and therefore, he has to be compensated adequately.

4. On account of the injuries sustained in the road traffic accident, the appellant filed the claim petition under Section 166 of the Motor Vehicles Act, before the Tribunal, seeking compensation of a sum of Rs. 23.40 lakhs against the respondents. The said claim petition along with other claim petitions had come up for consideration before the Tribunal on 21st December 2013. 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. 1,62,230/- with interest at 6% per annum on Rs. 1,51,230/-, from the date of petition till the date of deposit. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant is in appeal before this Court, seeking enhancement of compensation.

5. We have heard learned counsel for appellant and learned counsel for second respondent/Insurance Company, for considerable length of time.

6. The submission of the learned counsel appearing for appellant, at the outset is that, the Tribunal has erred in not assessing the reasonable income of the appellant inasmuch as the appellant was aged about 32 years, working as a coolie, earning a sum of Rs. 12,000/- per month. Further, he submitted that on account of the grievous injuries sustained in the road traffic accident, he was treated as in-patient in the Hospital and has spent huge amount towards medical expenses and other incidental expenses such as conveyance, nourishing food and attendant charges and other incidental expenses. Further, he submitted that, in support of the case of the appellant, he has examined the Doctor, who has assessed the permanent whole body disability at 10%. But, the Tribunal, without any justification, has re-assessed the whole body disability at 6%. Therefore, considering the age and nature of injuries sustained by the appellant coupled with the percentage of whole body disability assessed by Doctor, PW2, reasonable compensation be awarded towards loss of future income and other heads. Therefore, he submitted that the impugned judgment and award passed by Tribunal is liable to be modified, by enhancing just and reasonable compensation under all the heads.

7. Per contra, learned counsel appearing for second respondent/Insurer inter alia contended and sought to justify the impugned judgment and award passed by Tribunal, stating that the same is passed after due appreciation of the oral and documentary evidence available on file and submitted that the compensation awarded is just and reasonable and interference in the same is unwarranted.

8. After hearing the learned counsel for the appellant, learned counsel appearing for second respondent/Insurer and after perusal of the impugned judgment and award passed by Tribunal including the original records placed before us, the only point that arise for our consideration in this appeal is,

"Whether the quantum of compensation awarded by Tribunal is just and reasonable?" Facts in brief are that, occurrence of accident and the resultant injuries sustained by appellant are not in dispute. It is further not disputed that the appellant was aged about 32 years and working as a Coolie. It is further stated that he was earning Rs. 12,000/- per month. But, no documentary evidence is produced. In the absence of any credible documentary evidence, the Tribunal has assessed the income of the appellant at Rs. 4,500/- per month. The same is on the lower side, looking at the year of accident. Therefore, considering the age, avocation of the appellant and also the year of accident, we re-assess the monthly income of the appellant at Rs. 6,500/-, to meet the ends of justice.

9. Further, so far as the compensation awarded under loss of future earnings, injury, pain and sufferings, loss of income during treatment period, future medical expenses and conveyance, nourishing food and attendant charges is concerned, the same is on the lower side and needs to be re-determined. Admittedly, in view of the road traffic accident, the appellant has sustained the following injuries as per the evidence of the Doctor, PW2.

1. Face swollen, cannot open mouth both upper and lower jaw abnormal mobility;
2. Swelling tenderness over lower jaw abnormal mobility with mandible parasymphysis fracture;
3. Upper jaw abnormal mobility with swelling in face bleeding from nose; left-1 fracture of maxilla;
4. Loosening of lower incisor and canine teeth;
5. Loosening of Upper incisor and canine teeth.

10. As per the evidence of Doctor, PW2, all the aforesaid injuries are grievous in nature. The Doctor has assessed 10% permanent physical disability in respect of whole body. But, the Tribunal, after assessing the oral and documentary evidence available on file and also considering the nature of injuries has assessed the whole body disability at 6%. The same, in our opinion, is just and proper and accepted. The appellant being aged about only 32 years at the time of accident has to endure the said disability for the rest of his life. Because of the grievous injuries sustained and looking at his age, we presume that he must have been away from work for a period of not less than four months.

11. Further, it is stated that the appellant took treatment as in-patient for a period of ten days on account of the grievous injuries sustained in the road traffic accident. During this period, he must have undergone lot of unsaid pain and agony and must have also spent reasonable sum towards conveyance, nourishing food and attendant charges apart from incidental expenses. Since the appellant was aged about 32 years at the time of accident, the proper multiplier applicable is "16" as per the decision of the Hon'ble Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, .

12. Therefore, having regard to the age, avocation, nature of injuries, permanent whole body disability assessed, nature and duration of treatment undergone and the facts and circumstances of the case on hand, we award a sum of Rs. 30,000/- towards injury, pain and sufferings as against Rs. 20,000/-; Rs. 26,000/- towards loss of income during treatment period, at the rate of Rs. 6,500/- per month for a period of four months as against Rs. 15,000/-; Rs. 15,000/- towards loss of amenities, discomfort and unhappiness as against Rs. 10,000/-; Rs. 74,880/- (i.e. Rs. 6,500/- x 12 x "16" x 6/100) towards loss of future income as against Rs. 15,840/- awarded by Tribunal and Rs. 12,000/- towards future medical expenses as against Rs. 11,000/- awarded by Tribunal.

13. However, the Tribunal, after assessing the oral and documentary evidence available on file, has rightly awarded compensation of a sum of Rs. 41,388/- towards medical expenses, as per the medical bills and prescriptions and Rs. 10,000/- towards conveyance, nourishing food and attendant charges. Hence, interference in the same is uncalled for.

14. Further, learned counsel appearing for claimant vehemently submitted that the rate of interest awarded by Tribunal at 6% p.a. is also on the lower side as the accident has occurred on 25-01-2012. In view of the ratio of law laid down by the Hon''ble Apex Court and this Court in catena of decisions, at least 8% or 9% interest may be awarded in the instant case, to meet the ends of justice and the impugned judgment and award be modified accordingly.

15. As rightly pointed out by learned counsel appearing for claimant, the rate of interest at 6% per annum awarded by Tribunal is on the lower side, as the accident has occurred on 25-01-2012. Therefore, as per the ratio of law laid down by the Hon''ble Apex Court and this Court in catena of decisions and also considering the facts and circumstances of the case, we deem it fit and proper to award rate of interest at 9% per annum as against 6% per annum, awarded by Tribunal, on the entire compensation.

16. 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 21st December 2013, passed in MVC No. 312/2012, by the Additional District and Sessions Judge and Additional Motor Accident Claims Tribunal, Udupi, Sitting at Kundapura, Kundapura, is hereby modified, awarding a sum of Rs. 2,09,268/- as against Rs. 1,62,230/- awarded by Tribunal. There would be enhancement of compensation by Rs. 47,038/-.

The break-up is as follows:

The second respondent/Insurance Company is directed to deposit the enhanced compensation of Rs. 47,038/-, with interest thereon at 9% per annum on the entire compensation of Rs. 2,09,268/-, within a period of three weeks from the date of receipt of copy of the judgment.

On such deposit by the Insurance Company, the entire sum shall be released in

favour of the appellant, immediately.

Office to draw award, accordingly.