# IN THE HIGH COURT OF KARNATAKA AT BENGALURU

## DATED THIS THE 22ND DAY OF JANUARY, 2018

#### **BEFORE**

#### THE HON'BLE MR.JUSTICE K.SOMASHEKAR

### MFA NO. 4977/2016 (MV)

### **BETWEEN**

SRI. RAGHAVENDRA M.E., S/O ERAPPA, AGED ABOUT 30 YEARS, R/O MADDIHALLI VILLAGE, HIRIYUR TALUK – 572 143, CHITRADURGA DIST.

... APPELLANT

(BY SRI. V.B. SIDDARAMAIAH, ADVOCATE)

#### AND

1. THE ORIENTAL INSURANCE CO. LTD., BRANCH OFFICE, SHARADA COMPLEX, OPP: KSRTC BUS STAND, CHITRADURGA – 577 501.

REP. BY ITS BRANCH MANAGER.

2. SRI. P. MANJUNATHA, S/O PUTTARAJU, AGE NOT KNOWN TO THE APPELLANT, R/O BEHIND GANESH TEMPLE, VEGETABLE MARKET ROAD,

## HIRIYUR TOWN – 572143 CHITRADURGA DISTRICT.

... RESPONDENTS

(BY SRI. ASHOK N. PATIL, ADVOCATE FOR R1. NOTICE TO R2 D/W VCO DATED 27.10.2016.)

THIS MFA IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT, AGAINST THE JUDGEMENT AND AWARD DATED 26.10.2015 PASSED IN MVC NO. 75/2013 ON THE FILE OF THE C/C. SENIOR CIVIL JUDGE, & MACT, HIRIYUR, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS MFA COMING ON FOR ADMISSION THIS DAY, THE COURT DELIVERED THE FOLLOWING:

## **JUDGMENT**

Though the matter is listed for admission, with consent of both the parties, the same is heard for final disposal.

- 2. Heard the learned counsel for the claimant-appellant and the learned counsel for the contesting 1st respondent-insurer, perused the records.
- 3. The injured-claimant has preferred this appeal, being not satisfied with the quantum of

compensation awarded in the impugned Judgment dated 26.10.2015, passed by the Senior Civil Judge and Motor Accident Claims Tribunal, Hiriyur, made in MVC No.75/2013, seeking enhancement of compensation.

4. The facts of the case are that on 31.05.2006 at about 5.00 p.m, when the injured-claimant was waiting for the bus at APMC yard, the rider of the motorcycle bearing No.KA-16/Q-1910, rode the same in a rash and negligent manner with high speed and dashed to the claimant. Due to the impact, the claimant sustained injury to vertebral body i.e., fracture of L-1, L-4-5. Immediately he was shifted to Government hospital at Hiriyur and thereafter, Harshit Ortho care Davanagere wherein underwent surgery and thereafter he took further follow up treatment at Dr. Ambarish and Dr. Venkatashiva Reddy, at Chitradurga. On account of disability sustained by him, he completely disabled to do any work and even not able to attend nature

calls and hence, he filed claim petition under Section-166 of the M.V. Act, seeking compensation of Rs.17,00,000/-.

- After service of notice, the owner of the offending vehicle, though appeared through an Advocate, did not file any objections to the claim petition. However, the insurer appeared before the Tribunal, filed their written statement and contested the claim petition. During the enquiry before the Tribunal. the claimant has established the occurrence of the accident, actionable negligence on the part of the rider of the offending motorcycle and its insurance coverage with the 1st respondent herein and the same has remained unchallenged either by the owner of the vehicle or by the insurer.
- 6. The Tribunal, after evaluation of the oral and documentary evidence has held that the accident had occurred due to rash and negligence of the rider of motorcycle and consequently awarded total compensation of Rs.2,70,200/- with interest at 7.5%

per annum from the date of petition till the date of deposit under the following heads.

Sl.	Headings	Amount
No		Rs.
1	Loss of future income due to	2,05,200
	disability	
2	Pain and sufferings	50,000
3	Conveyance, attendant	15,000
	charges and nourishment	
	Total	2,70,200

The learned counsel for the appellant 7. vehemently submitted that the claimant was earning sum of Rs.10,000/- per month by doing agricultural work and hence, the income assessed by the Tribunal at Rs.5000/- per month is on the lower side. Further, PW.2, the doctor assessed permanent disability sustained by the claimant at 57% for his lumber spine and on account of the permanent disability, he cannot squat and cross leg, cannot walk, cannot sit for long duration. Despite such categorical medical evidence, the Tribunal erred in assessing the permanent disability at 19% (1/3rd of 57%). Since the claimant sustained permanent disability to his spinal card, the Tribunal ought to have assessed the disability at 100% to determine the compensation payable towards 'loss of future earning capacity' and hence, the compensation awarded towards 'loss of future earnings' on account of disability is on the lower side. He further submits that the Tribunal erred in not awarding any compensation towards 'loss of amenities' and 'loss of income during treatment' and prays for enhancement in the compensation.

- 8. Per Contra, Sri. Ashok N. Patil, learned counsel appearing for the insurer submitted that the Tribunal, on appreciation of the evidence and material on record in proper perspective, has rightly assessed the income of the injured and awarded just and fair compensation, which does not call for interference and prays for dismissal of the appeal.
- 9. On a careful evaluation of the material on record, particularly, wound certificate Ex.P.5, disability certificate Ex.P.10, X-ray film Ex.P.11 and

medical certificate Ex.P.12, coupled with the evidence of the doctor (PW.2) it is seen that the injured claimant had sustained 57% permanent physical disability for vital organ of the body i.e., his lumber spine. According to doctor (Pw.2), the injured having weakness in both lower limbs, he cannot walk for long distance, cannot bend forward, numbness in both the legs and issued disability certificate as at Ex.P.10. On account of permanent physical disability sustained by him, the claimant being an agriculturist cannot do his agricultural work as he was doing earlier to the accident and he has to depend on other during his future life and he had undergone mental agony and on account permanent disability suffered by him he has to suffer during his life time. Under such circumstances, the Tribunal was not justified in not awarding any compensation towards 'loss of amenities' and 'loss of income during the period of treatment'. regard to the totality of the facts and circumstances, this Court is of the considered view that the

compensation awarded by the Tribunal towards 'loss of future earning capacity', is on the lower side and requires enhancement.

10. The doctor assessed permanent physical disability at 57% to lumbar spine and keeping in view the nature of injuries and consequential permanent physical disability sustained by the claimant to his spinal card and period of treatment, it would be just and proper to assess the permanent physical disability sustained by the claimant at 30% as against 19% assessed by the Tribunal. The claimant was aged 27 years at the time of accident and hence, as per the dictum of the Apex Court in Saral Verma's case, the appropriate multiplier that would be made applicable is 17 and not 18, as applied by the Tribunal. Hence, the claimant-appellant is entitled of Rs.3,06,000/to а sum (Rs.5000x12x30x17/100=3,06,000/-towards floss of the contraction offuture earning capacity due to disability', as against Rs.2,05,200/- awarded by the Tribunal. Having

regard to the period of treatment, the claimant is entitled to a sum of Rs.25,000/- (5000x5-25000/-) towards 'loss of income during laid up period' and another sum of Rs.25,000/- towards Keeping in view the period of treatment amenities'. underwent by the claimant, it would be appropriate to award a sum of Rs.21,000/- towards 'conveyance, charges, transportation, attendant food and nourishment charges' as against Rs.15,000/awarded by the Tribunal. However, the compensation of Rs.50,000/- awarded by Tribunal towards 'pain and suffering' is just and reasonable and the same shall remain un-changed. Thus, in all, the claimant is entitled to a total compensation of Rs.4,27,000/- (Rupees four lakhs thousand twenty seven only) as against Rs.2,70,200/- awarded by the Tribunal. The compensation enhanced would comes to Rs.1,56,800/- rounded up to Rs.1,57,000/-.

Accordingly, the appeal is allowed in part. modification of the impugned Judgment and award dated 26.10.2015, passed by the Senior Civil Judge and MACT., Hiriyur in M.V.C. No.75/2013, the compensation payable to the claimant is enhanced from Rs.2,70,200/- to Rs.4,27,000/- (Rupees four lakhs twenty seven thousand only). The enhanced compensation comes to Rs.1,56,800/- rounded up to Rs.1,57,000/- (Rupees one lakh fifty seven thousand only). The 1st respondent-insurer shall deposit the enhanced compensation with interest at the rate of 6% per annum, only on the enhanced compensation, before the Tribunal within three months from the date of receipt of a certified copy of this Judgment and on such deposit, the same shall be disbursed to the claimant, on proper identification. However, the impugned judgment and award, in so far as it relates to deposit is concerned, shall remain unaltered. It is made clear that the claimant-appellant is entitled to interest at the rate of 6% per annum only on the enhanced compensation of Rs.1,57,000/-.

There shall be no order as to the costs. Office to draw the decree accordingly.

Sd/-JUDGE

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