

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF NOVEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

M.F.A.NO.3585/2017 (MV--I)

BETWEEN:

- 1 . KUMARASWAMY
S/O RAMANNA
AGED ABOUT 39 YEARS,
R/AT KONDLI CROSS
NITTUR HOBLI
GUBBI TALUK
TUMAKURU (D). ... APPELLANT

(BY SRI RAGHU R., ADVOCATE)

AND:

- 1 . THE EXECUTIVE ENGINEER (ELEC.,)
C.O. & BESCOM
RAMANAGARA DIVISION
NEAR RAILWAY STATION
RAMANAGARA-571511
- 2 . GOVT. OF KARNATAKA
INSURANCE DEPARTMENT,
MOTOR BRACH
VISHWESHWARAIAH KENDRA
DR.AMBEDKAR VEEDHI
BENGALURU-560 001 ... RESPONDENTS

(BY SRI H.V.DEVARAJU, ADVOCATE FOR R1;
SRI SNTHOSH KUMAR M.B., HCGP FOR R2)

THIS M.F.A IS FILED UNDER SECTION 173(1) OF MV ACT
AGAINST THE JUDGMENT AND AWARD DATED 13.02.2015
PASSED IN MVC NO.308/2012 ON THE FILE OF THE SENIOR

CIVIL JUDGE ADDITIONAL MACT-17 AT GUBBI, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS M.F.A. COMING ON FOR FINAL HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING:

J U D G M E N T

Heard the learned counsel appearing for the appellant, learned counsel appearing for respondent No.1 and the learned counsel appearing for respondent No.2.

2. This appeal is filed by the claimant challenging the judgment and award dated 13.02.2015 passed in M.V.C.No.308/2012 on the file of the Senior Civil Judge, Additional MACT-17, at Gubbi ('the Tribunal' for short).

3. The parties are referred to as per their original rankings before the Tribunal to avoid confusion and for the convenience of the Court.

4. The factual matrix of the case of the claimant before the Tribunal is that he met with an accident on 07.09.2011 and suffered the fracture of right trochanter, fracture shaft of right femur and the fracture of right tibial condyle and other injuries all over the body.

5. In support of his claim, he examined himself as P.W.1 and also examined the Doctor as P.W.2, who assessed the disability of 38% to the right lower limb and 12.66% to the whole body. The Tribunal after considering the material available on record, taken 13% disability and the income of Rs.8,000/- per month since he was running a Provision Store and awarded compensation of Rs.4,17,821/-. Hence, the present appeal is filed by the appellant – claimant before this Court challenging the quantum of compensation and contends that the compensation awarded was very meager and the Tribunal committed an error in taking the disability of 13% when he has suffered three fractures. Hence, it requires an interference of this Court.

6. *Per contra*, the learned counsel appearing for the respondents would submit that even in the absence of any documentary proof, the income taken by the Tribunal was Rs.8,000/- per month and the compensation awarded on all other heads are just and reasonable. Hence, it does not require any interference.

7. Having heard the respective counsel and on perusal of the material available on record, the injured was in the hospital for a period of 16 days and he was also subjected to surgery. Even Ex.P4-Wound Certificate reveals that he has suffered three fractures. When such being the case, when he has suffered the fracture of right trochanter, fracture shaft of right femur and the fracture of right tibial condyle and other injuries all over the body, the Tribunal assessed the disability at 13%, which is on lesser side. Though the Doctor has assessed the disability of 38% to the right lower limb and 12.66% to the whole body, the Tribunal lost sight of considering the nature of injuries i.e., three fractures that too a fracture of right trochanter, fracture shaft of right femur and the fracture of right tibial condyle. Hence, the disability is enhanced to 16% and this Court has to re-assess the compensation. The Tribunal taken the income of Rs.8,000/- in a case of the accident of the year 2011 and the Notional Income would be Rs.6,500/- per month. However, added Rs.1,500/- considering the business, which he has running viz., Provision Stores. Hence, I do not find any error in taking the income of Rs.8,000/- per month by the Tribunal. This Court after re-visiting, taken the income of

Rs.8,000/- per month with 16% disability and the relevant multiplier would be 16 since he was aged about 34 years at the time of the accident, the loss of future income due to permanent disability comes to **Rs.2,45,760/-**
 (6500+1500=8000x12x16x16%)/

8. The Tribunal awarded the compensation of Rs.50,000/- on the head of pain and sufferings. He was an inpatient for a period of 16 days. He has suffered the fracture of right trochanter, fracture shaft of right femur and the fracture of right tibial condyle. No doubt, the Tribunal considered the nature of injuries but awarded the lesser compensation. Hence, the same is enhanced to **Rs.60,000/-**.

9. The Tribunal has awarded compensation of Rs.3,200/- on the head of food and nourishment and attendant charges and Rs.5,000/- on the head of transportation charges. In all, Rs.8,200/-. When the injured was an inpatient for a period of 16 days, it is appropriate to award an amount of **Rs.15,000/-** on the head of food and nourishment and attendant charges and on the head of transportation charges.

10. The Tribunal has awarded compensation of Rs.24,000/- towards loss of income due to laid up period for a period of three months. Having considered the fact that he was suffered three fractures, it requires minimum 4 to 5 months time for uniting of fractures and for rest. Hence, this Court considered the income for a period of five months, it comes to **Rs.40,000/-** as against Rs.24,000/-.

11. The Tribunal awarded an amount of **Rs.95,941/-** towards medical expenditure based on the documentary evidence. Hence, I do not find any error committed by the Tribunal in awarding compensation under this head.

12. The Tribunal awarded an amount of Rs.20,000/- towards future medical expenses, the same is required for removal of implants and the Doctor has assessed the future medical expenses was Rs.35,000/-. Hence, it is appropriate to award an amount of **Rs.25,000/-** on this head.

13. However, the Tribunal committed an error in awarding compensation of Rs.20,000/- on the head of 'Loss of Amenities'. The injured was aged about 34 years and he has

suffered 16% disability. Hence, it is appropriate to award an amount of **Rs.40,000/-** on the head of 'Loss of Amenities'.

14. In view of the discussions made above, I pass the following:

ORDER

- (i) The appeal is allowed-in-part.
- (ii) The impugned judgment and award of the Tribunal dated 13.02.2015 passed in M.V.C.No.308/2012 is modified granting compensation of **Rs.5,21,701/-** as against Rs.4,17,821/- awarded by the Tribunal with interest at 6% per annum from the date of petition till its realisation.
- (iii) The respondent No.2 is directed to pay the compensation amount with interest within six weeks from today.
- (iv) The Registry is directed to transmit the records to the concerned Tribunal, forthwith.

**Sd/-
JUDGE**

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