

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.2911/2017 (WC)

BETWEEN:

SHIVANNA @ SHIVAMURTHY,
S/O GODAPPA,
NOW AGED ABOUT 23 YEARS,
R/O KUNCHIGANAHALU VILLAGE,
CHITRADURGA TALUK-577501.

...APPELLANT

(BY SRI RANGEGOWDA N.R., ADVOCATE)

AND:

1. G.M. THIPPESWAMY,
S/O MARAPPA,
AGED MAJOR,
R/AT KUNCIGANAHALU VILLAGE,
CHITRADURGA TALUK-577501.

2. THE BRANCH MANAGER,
NEW INDIA ASSURANCE CO. LTD.,
BRANCH OFFICE, BESIDE TALUK OFFICE,
VASAVI CIRCLE, CHITRADURGA-577501.

...RESPONDENTS

(BY SRI C. SHANKAR REDDY, ADVOCATE FOR R2,
R1 IS SERVED AND UNREPRESENTED)

THIS M.F.A IS FILED UNDER SECTION 30(1) OF EMPLOYEES COMPENSATION ACT, AGAINST THE JUDGMENT AND AWARD DATED 19.01.2016 PASSED IN ECA.NO.196/2014 ON THE FILE OF THE II ADDITIONAL SENIOR CIVIL JUDGE AND CFEC, CHITRADURGA, PARTLY ALLOWING THE CLAIM PETITION FOR 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 for the appellant and the learned counsel for respondent No.2.

2. This appeal is filed challenging the judgment and award dated 19.01.2016, passed in E.C.A.No.196/2014, on the file of the II Additional Senior Civil Judge and CFEC, Chitradurga, ('the Commissioner' for short) questioning the quantum of compensation.

3. The claimant before the Commissioner contended that on account of the accident which took place on 08.10.2006, he had suffered grievous injury, as a result, he is unable to do the job of autorickshaw driver. In support of his contention, he examined the doctor as P.W.2, who assessed the disability of 25% to 30% and the Commissioner has taken the disability of 15% and calculated the loss of income taking the income of Rs.3,000/- per month and awarded 9% interest and hence the present appeal is filed.

4. The main contention of the learned counsel for the appellant is that the Commissioner committed an error in taking

the income of Rs.3,000/- per month and also committed an error in taking the 15% disability while calculating the loss of income and awarding 9% interest from the date of petition. The learned counsel submits that apart from the income of Rs.4,000/- per month, the claimant was also getting Rs.50/- per day bata and hence total income of the claimant is Rs.5,500/- per month and hence the compensation has to be enhanced.

5. Per contra, the learned counsel for respondent No.2 submits that no document has been placed before the Court that he was earning Rs.5,500/- per month as contended by the learned counsel for the appellant. The learned counsel submits that the Tribunal has rightly taken the income of Rs.3,000/- per month and disability of 15%. However, he fairly submits that the interest awarded at 9% per annum is erroneous and should have awarded 12% interest from the date of 30 days after the accident.

6. Having heard the respective learned counsel and also on perusal of the material available on record, it is the claim of the claimant that he was an auto rickshaw driver and while driving the vehicle, the accident was occurred. In order to

prove his contention, he has also produced the driving licence Ex.P.9. In the year 2006 when the accident was taken place, the wages was fixed by the Government at Rs.4,000/- per month and the same has not been considered. The Commissioner has taken the income of Rs.3,000/- per month and hence the same is erroneous and ought to have taken the wages fixed by the State i.e., Rs.4,000/- per month.

7. The injured sustained the injuries i.e., contusion and tenderness of right shoulder and neck, contusion and tenderness on left side of chest and lacerated wound to the right side of scalp. In support of the injuries, he examined the doctor as P.W.2, who assessed the disability of 25% to 30% and having considered the material on record, particularly, the evidence of P.W.2, the Commissioner assessed the disability of 15% and hence, I do not find any error committed by the Commissioner in taking 15% disability considering the nature of injuries sustained by him.

8. In view of re-assessing the income of Rs.4,000/- per month and taking 60% of the income and disability of 15% and applying the factor of 219.95, the compensation comes to

Rs.79,182/- (Rs.4,000/- x 60% x 219.95 x 15%) as against Rs.59,400/-. The Commissioner committed an error in allowing the interest at 9% per annum and when the claim is made under the Employees Compensation Act, the interest would be 12% per annum from the date of 30 days after the accident.

9. The Commissioner while considering the liability is concerned directed the insured to pay the compensation only on the ground that the vehicle was plied outside the permitted area. In view of the judgments rendered by this Court in the case of **THE DIVISIONAL MANAGER, UNITED INDIA INSURANCE CO. LTD., v. SMT. JAYAMMA AND OTHERS** reported in **ILR 2018 KAR 1849** and in the case of **S.N. KENCHANNA v. ANITHA & OTHERS** reported in **ILR 2018 KAR 3921**, in case of deviation it is held that it is not a fundamental breach and it is only an infraction. When such being the principles laid down in the judgments referred supra, the Commissioner has committed an error in fixing the liability on the insured instead of the Insurance Company. Hence, the liability of the insured is set aside and the liability is fixed on the Insurance Company to pay the compensation.

10. 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 19.01.2016, passed in E.C.A.No.196/2014, is modified granting compensation of **Rs.79,182/-** as against Rs.59,400/- with interest at 12% per annum from the date of 30 days after the accident.
- (iii) The Insurance Company 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**

MD/CP