

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.668/2014 (MV-I)

BETWEEN:

SRI KRISHNEGOWDA
S/O KARIGOWDA @ CHIKKEGOWDA
AGED ABOUT 37 YEARS
R/AT SAMBUNAHALLI VILLAGE AND POST
PANDAVAPURA TALUK
MANDYA DISTRICT-571 401

... APPELLANT

(BY SMT. SREE VIDYA, FOR
SRI T.N.VISWANATHA, ADVOCATE)

AND:

- 1 . M/S ROYAL SUNDARAM ALLIANZ
GENERAL INSURANCE CO. LTD.,
SUNDARAM TOWERS
#45/46, WHITES ROAD
CHENNAI-600 014
- 2 . GHOUSE KHAN
S/O JALEEL SAB
MAJOR, NEAR ALFA MEDICAL STORES
BASAVANAGUDI BIDI
MADHUGIRI TOWN
TUMAKURU DISTRICT-572 132
- 3 . SHANKARAPPA
S/O GOVINDAPPA
#199, 21ST CROSS
24TH MAIN, PARANGIPALYA
BENGALURU-560 102

4 . M/S. IFFCO TOKIO GENERAL
INSURANCE CO. LTD.,
#41, 2ND FLOOR,
CRISTU COMPLEX,
LAVELLE ROAD
BENGALURU-560 001

... RESPONDENTS

(BY SRI O.MAHESH, ADVOCATE FOR R1;
SRI B. PRADEEP ADVOCATE FOR R4;
NOTICE TO R3 IS DISPENSED WITH
VIDE ORDER DATED 01.07.2016;
R2 IS SERVED & UNREPRESENTED)

THIS M.F.A., IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 30.08.2013 PASSED IN MVC NO.6834/2010 ON THE FILE OF THE 14TH ADDITIONAL JUDGE, MACT, COURT OF SMALL CAUSES, BENGALURU, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

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

J U D G M E N T

Though this matter is listed for admission today, with the consent of both the learned counsel it is taken up for final disposal.

2. Heard the learned counsel appearing for the appellant, the learned counsel appearing for respondent No.1-Insurance Company and the learned counsel appearing for respondent No.4-Insurance Company.

3. This appeal is filed by the claimant challenging the judgment and award dated 30.08.2013 passed in M.V.C.No.6834/2010 on the file of the MACT., Court of Small Causes, Bengaluru City (SCCH-10) ('the Tribunal' for short), questioning the quantum of compensation.

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

5. The Tribunal after considering both oral and documentary evidence, considered 15% disability as against the Doctor evidence of 42% to the whole body and taken the income of Rs.5,000/- per month and awarded compensation of Rs.3,14,000/- on all the heads. Hence, the present is filed by the claimant seeking for enhancement of compensation.

6. The learned counsel appearing for the appellant/claimant would vehemently contend that the claimant suffered the communitated fracture of proximal right tibia and fibula; communitated fracture of distal end of femur right leg; fracture of distal shaft of radius right hand and fracture of 2nd

metacarpal and proximal phalanx to II finger of left hand and the injuries to other parts of the body. The Doctor, who has been assessed the disability, in his evidence, he categorically deposes that there is a wasting of right thigh cough muscle shortening by 3 cms; malunited fracture of upper 1/3rd tibia and fibula and the malunited fracture of femur and assessed the disability of right lower limb 70% and right upper limb 20%. In all, he assessed the whole body disability of 42% and the functional disability of 90%. The Tribunal committed an error in taking the disability of 15% in a case of four fractures and those fractures are communitated fracture of proximal right tibia and fibula; communitated fracture of distal end of femur right leg; fracture of distal shaft of radius right hand and fracture of 2nd metacarpal and proximal phalanx to II finger of left hand. The Tribunal failed to take note of the functional disability of 90% as assessed by the Doctor. The compensation awarded by the Tribunal on other heads also very meager. Hence, it requires an interference of this Court. The learned counsel also would submit that in a case of disability to the extent of 42% to the whole body and 90% of the functional disability, the future prospects has to be added.

7. Per contra, learned counsel appearing for the respondent-Insurance Company would submit that though he has suffered communitated fracture of proximal right tibia and fibula; communitated fracture of distal end of femur right leg; fracture of distal shaft of radius right hand and fracture of 2nd metacarpal and proximal phalanx to II finger of left hand, the Tribunal considered the disability to the extent of 15%. Hence, it does not require any interference. The learned counsel also would contend that no material is placed before the Court with regard to the income is concerned and the Tribunal rightly taken the income of Rs.5,000/- per month.

8. Having heard the arguments of the respective counsel and on perusal of the materials available on record, the points that would arise for consideration of this Court are:

- (i) Whether the Tribunal has committed an error in not awarding the just and reasonable compensation and whether it requires an interference of this Court?
- (ii) What order?

Point No.(i):

9. Having heard the respective counsel and on perusal of the material available on record, particularly, Wound Certificate, which is marked as Ex.P5 discloses that he has suffered communitated fracture of proximal right tibia and fibula; communitated fracture of distal end of femur right leg and fracture of distal shaft of radius right hand. Apart from that, fracture of 2nd metacarpal and proximal phalanx to II finger of left hand. Hence, it is clear that in respect of both right lower limb and right upper limb he has sustained the fractures. The Doctor assessed the disability of 42% to the whole body. Considering the disability in respect of both right lower limb and right upper limb and when he has suffered communitated fracture of proximal right tibia and fibula; communitated fracture of distal end of femur right leg and fracture of distal shaft of radius right hand, fracture of 2nd metacarpal and proximal phalanx to II finger of left hand, the Tribunal committed an error in taking the disability of 15% in a case of communitated fractures of both right lower limb and right upper limb. Hence, rightly assessed the disability by the Doctor to the extent of 42% and though not accepted the functional disability of 90% as claimed by the

claimant. The material also discloses that there is a malunited fracture of upper 1/3rd tibia and fibula and malunited fracture of femur. When such being the case, in a case of malunion, the Court has to take the additional disability. Hence, this Court added 3%. Hence, 45% disability is considered on re-visiting the material on record.

10. Coming to the quantum of compensation is concerned, the Tribunal awarded an amount of Rs.70,000/- on the head of pain and sufferings. He was an inpatient in two spells for a period of 28 days. Hence, I do not find any error committed by the Tribunal in awarding an amount of **Rs.70,000/-** on the head of pain and sufferings.

11. The Tribunal awarded an amount of **Rs.70,000/-** towards medical expenses and other incidental charges, which is not just and reasonable. The Tribunal while awarding this compensation also added the incidental expenses, the period of admission of 28 days has not been considered. With regard to the incidental expenses i.e., food and nourishment, conveyance and other attendant charges, awarded an amount of Rs.25,000/- in all, it comes to **Rs.95,000/-** on this head.

12. The Tribunal awarded an amount of Rs.10,000/- on the head of loss of amenities and future discomfort. Having 42% disability to the whole body and the injured is aged about 34 years at the time of the accident, the Tribunal committed an error in awarding only Rs.10,000/- on this head, the same is re-considered and awarded an amount of **Rs.50,000/-** as against Rs.10,000/- awarded by the Tribunal.

13. The Tribunal awarded an amount of Rs.10,000/- on the head of loss of earning during the treatment period only for a period of two months. There were four fractures, it requires minimum six months time for uniting of fractures and for rest. Hence, considering the income of Rs.5,500/- per month, it comes to **Rs.33,000/-** (5500x6) on this head.

14. The Tribunal awarded an amount of Rs.10,000/- on the head of future medical expenses. The Doctor in his evidence has deposed that Rs.40,000/- required for removal of implants. Having considered the accident of the year 2010, it is appropriate to award an amount of **Rs.25,000/-** as against Rs.10,000/-.

15. With regard to the loss of future earning capacity due to disability is concerned, the Tribunal has awarded an amount of Rs.1,44,000/-. In view of the judgment of the Apex Court in the case of **ERUDHAYA PRIYA v. STATE EXPRESS TRANSPORT CORPORATION LTD.** reported in **2020 SCC Online SC 601**, in a case of more than 31% disability, future prospects has to be added. Hence, it is a fit case to add future prospects. After adding 40% to his income of Rs.5,500/-, it comes to Rs.7,700/-. Considering the disability of 45% and the multiplier of 16, it comes to **Rs.6,65,280/-** (5500 + 40% = 7700 x 12 x 16 x 45%).

Point No.(ii)

16. 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 30.08.2013 passed in M.V.C.No.6834/2010 is modified granting compensation of **Rs.9,38,280/-** as against Rs.3,14,000/- awarded by the Tribunal with

interest at 6% per annum from the date of petition till payment.

- (iii) The respondent No.1 – 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**

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