

**Ramesha Vs. Nagaraja and Another**

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**Court :** Karnataka

**Decided On :** Apr-28-2017

**Judge :** B. Manohar

**Appeal No. :** MFA No. 9832 of 2013 (MV)

**Appellant :** Ramesha

**Respondent :** Nagaraja and Another

**Judgement :**

1. Appellant is the claimant. Being not satisfied with the quantum of compensation awarded in judgment and award dated 5-1-2012 made in MVC No.117/2010 by the Senior Civil Judge and Motor Accident Claims Tribunal, Belur (for short 'Tribunal'), he has filed this appeal seeking enhancement of compensation.

2. The appellant filed a claim petition contending that on 26-4-2010, while he was proceeding on the left side of the road in front of United Academy School, at that time, a motorcycle bearing Registration No. KA-46-E-5662 being ridden by the rider in a rash and negligent manner dashed the claimant. Due to that the claimant fell down and sustained grievous injuries all over the body. Immediately after the accident, he was shifted to Government Hospital, at Arasikere. He claims that he has spent more than Rs.30,000/- towards treatment/medical expenses. In view of the accident, injuries he has sustained, he is permanently disabled to work which he was doing prior to the date of the accident. Hence he sought for a

compensation of Rs.6,00,000/-.

3. In pursuance of the notice issued by the Tribunal, the insurance company defended the case by filing written statement.

4. After the trial, the Tribunal held that due to the actionable negligence on the part of the rider of the motorcycle, the accident has occurred and the claimant sustained. Hence he is entitled for compensation.

5. With regard to the quantum of compensation is concerned, in the said accident, the claimant has sustained fractured of 4th and 5th Meta tarsal bone of right foot and L1 vertebra. The doctor who has treated the claimant assessed the disability to an extent of 30% to the particular limb. The Tribunal without taking into consideration the disability as assessed by the doctor awarded a sum of Rs.60,000/- towards loss of future earning and amenities by taking monthly income of the claimant at Rs.4,500/- per month, a sum of Rs.25,000/- towards Pain and Suffering, a sum of Rs.5,000/- towards Medical Expenses., Rs.5,000/- towards Food and Nourishment, Conveyance and Attendant charges and a sum of Rs.9,000/- towards loss of income during the laid up period. In all, a sum of Rs.1,04,000/- was awarded with interest at 8% p.a. The claimant being not satisfied with the quantum of compensation has filed this appeal.

6. I have carefully considered the arguments addressed by the learned counsel appearing for the appellant and perused the judgment and award and oral and documentary evidence.

7. The main contention of the appellant is that the accident occurred in the year 2010. The Tribunal reckoning the income of the appellant-claimant at Rs.4,500/- per month awarded a meager compensation. Further, no compensation is awarded towards loss of amenities of life and the compensation awarded towards loss of income during the laid up period is on lower side and sought for enhancement of the compensation.

8. Though the claimant claims that he was earning Rs.10,000/- per month by doing agricultural work, no document is produced to substantiate the same. Even though

claimant has not produced any document, the Tribunal ought to have taken reasonable income while awarding compensation, Even for the daily wage employees working in various Government Departments and Lok Adalaths, their income is taken at Rs.5,500/- per month. In the instant case, taking into consideration the income of the claimant as Rs.5,500/- p.m., taking the disability to an extent of 10% and applying the multiplier at '17', (Rs.5,500 x 12 x 10% x 17), he is entitled for a compensation of Rs.1,12,200/- towards 'loss of future earning' as against Rs.60,000/- awarded by the Tribunal. Further, the claimant is entitled for a sum of Rs.20,000/- towards 'loss of amenities of life'. Further, Rs.9,000/- is awarded by the Tribunal towards loss of income during laid up period. He has taken treatment for more than one month. Therefore, he is entitled for a sum of Rs.5,000/- towards 'loss of income during laid up period' and a sum of Rs.5,000/- towards 'conveyance and attendant charges'. Hence the claimant is entitled for a compensation of Rs.1,86,200/- in total and enhanced compensation of Rs.82,200/- . Accordingly, I pass the following:

## **ORDER**

The appeal is allowed-in-part. The judgment and award dated 5-1-2012 made in MVC No.117/2010 passed by the Senior Civil Judge and Motor Accident Claims Tribunal, Belur, is modified. The claimant is entitled for enhancement of compensation of Rs.82,200/- in addition to Rs.1,04,000/- awarded by the Tribunal with interest at 6% p.a.

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