



NC: 2024:KHC:46120
MFA No. 215 of 2013
C/W MFA No. 2900 of 2013
MFA No. 2901 of 2013

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF NOVEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA

MISCELLANEOUS FIRST APPEAL NO. 215 OF 2013 (MV-I)

C/W

MISCELLANEOUS FIRST APPEAL NO. 2900 OF 2013 (MV-I)

MISCELLANEOUS FIRST APPEAL NO. 2901 OF 2013 (MV-I)

IN MFA NO.215/2013

BETWEEN:

P. RAMACHANDRA
S/O. PAPANNA V.
AGED ABOUT 33 YEARS,
R/A. CHINNAPPA LAYOUT,
ANEKAL ROAD, ATTIBELE POST,
ANEKAL TALUK,
BANGALORE RURAL DIST - 562 106.

... APPELLANT

(BY SRI. PRAKASH M.H., ADVOCATE)

AND:

1. THE MANAGER.
UNITED INDIA INSURANCE CO. LTD.,
NO. 366/72, 19TH MAIN, 1ST BLOCK,
RAJAJINAGAR,
BANGALORE - 10.

2. SRINIVASA RAO R.
S/O. D.N. RAMA CHANDRA RAO
MAJOR,
NO.4, SITE NO.23, 7TH CROSS,
5TH MAIN, ARAFATH NAGAR,
WEST PADARAYANAPURA,
BANGALORE-26

...RESPONDENTS

(BY SRI O. MAHESH, ADVOCATE FOR R1;
V/O. DATED 19.03.2018 SERVED NOTICE TO R2
HELD SUFFICIENT)



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THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 28.05.2012 PASSED IN MVC NO. 5955/2010 ON THE FILE OF THE II ADDITIONAL JUDGE, COURT OF SMALL CAUSES, MEMBER MACT, BANGALURU, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

IN MFA NO.2900/2013

BETWEEN:

THE BRANCH MANAGER.
UNITED INDIA INSURANCE COMPANY LIMITED
NO. 366/72, 19TH MAIN, 1ST BLOCK,
RAJAJINAGAR, BANGALORE-560010
BY REGIONAL MANAGER
UNITED INDIA INSURANCE CO. LTD.,
5TH FLOOR, KRISHI BHAVAN,
NRUPATHUNGA ROAD, HUDSON CIRCLE,
BANGALORE – 560 027
BY ITS MANAGER.

... APPELLANT

(BY SRI. O. MAHESH, ADVOCATE)

AND:

1. P. RAMACHANDRA S/O. PAPANNA V.
AGED ABOUT 36 YEARS,
R/A. CHINNAPPA LAYOUT,
ANEKAL ROAD, ATTIBELE POST,
ANEKAL TALUK,
BANGALORE RURAL DIST.- 562 106.
2. R. SRINIVASA RAO.
S/O. D.N. RAMACHANDRA RAO
NO.4, SITE NO.23, 7TH CROSS,
5TH MAIN, ARAFATH NAGAR,
WEST PADARAYANAPURA,
BANGALORE – 560 026

...RESPONDENTS

(BY SRI. PRAKASH M.H., ADVOCATE FOR R1;
V/O. DATED 04.09.2015 NOTICE TO R2 IS HELD
SUFFICIENT)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 28.05.2012 PASSED IN MVC NO. 5955/2010 ON THE FILE OF THE II ADDITIONAL JUDGE,



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COURT OF SMALL CAUSES, MACT BANGALURU, AWARDED
COMPENSATION OF RS.13,24,000/- WITH INTEREST @ 6% P.A.
FROM THE DATE OF PETITION TILL THE DATE OF DEPOSIT WITH THE
TRIBUNAL.

IN MFA NO.2901/2013

BETWEEN:

THE BRANCH MANAGER.
UNITED INDIA INSURANCE COMPANY LIMITED
NO. 366/72, 19TH MAIN, 1ST BLOCK,
RAJAJINAGAR, BANGALORE-560010
BY
REGIONAL OFFICE,
UNITED INDIA INSURANCE CO. LTD.,
KRISHI BHAVAN, 5TH AND 6TH FLOOR,
NRUPATHUNGA ROAD, HUDSAON CIRCLE,
BANGALORE-560 027
BY IT'S MANAGER.

... APPELLANT

(BY SRI. O. MAHESH, ADVOCATE)

AND:

1. G.K. NAVEEN,
S/O. MADAN MOHAN REDDY,
AGE: 19 YEARS,
R/A. GUNJUR POST, VARTHUR,
HOBLI, BANGALORE-64
2. R. SRINIVASA RAO
S/O. D.N. RAMACHANDRA RAO
MAJOR
NO.4, SITE NO.23, 7TH CROSS,
5TH MAIN, ARAFATH NAGAR,
WEST PADARAYANAPURA,
BANGALORE-560 026

...RESPONDENTS

(BY SRI. PRAKASH M.H., ADVOCATE FOR R1;
V/O. DATED 31.08.2016 NOTICE TO R2 IS HELD SUFFICIENT)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT
AGAINST THE JUDGMENT AND AWARD DATED 28.05.2012 PASSED
IN MVC NO. 5954/2010 ON THE FILE OF THE II ADDITIONAL JUDGE,
COURT OF SMALL CAUSES, MACT BANGALURU, AWARDED



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COMPENSATION OF RS.2,60,000/- WITH INTEREST @ 6% P.A. FROM THE DATE OF PETITION TILL THE DATE OF DEPOSIT.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 23.09.2024 AND COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT', THIS DAY, THIS COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA

CAV J U D G M E N T

(PER: HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA)

In these appeals, the Insurance Company has challenged the judgment and award dated 28.05.2012 passed by the II Additional Judge, Court of Small Causes, Bengaluru (SCCH-13) (for short, 'Tribunal') in MVC.Nos.5954 and 5955 of 2010, whereas the petitioner in MVC.No.5955/2010 is seeking enhancement of compensation.

2. The rank of the parties shall be referred to as per their status before the Tribunal.

3. Brief facts of the case are, on 02.09.2010 at about 8.35 p.m., when the petitioners were riding the



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motorcycle bearing Reg.No.KA-01/Y-7474 on Sarjapura – Attibele road near L N T (L & T) concrete mixing factory, Maruti Omni bearing Reg.No.CTT-1155 came from Sarjapura side and dashed against the motorcycle, due to which they fell down and sustained fractures. They were admitted to Sparsh hospital, Sarjapura and were treated under hospitalization. The petitioner in MVC.No.5954/2010 was a 10th Standard student, doing agriculture work and earning Rs.4,000/- per month. Whereas the petitioner in MVC.No.5955/2010 was earning Rs.15,000/- per month by doing agriculture and real estate business. They have approached the Tribunal for grant of compensation of 5,00,000/- and 15,00,000/- respectively against the owner and insurer of the Maruti omni, claiming that the injuries sustained by them causing permanent disability. Claim was opposed by the insurer of the Maruti omni denying the negligence attributed against the said vehicle. The policy was in force and liability will be subject to terms and conditions of the policy and valid driving license.



3.1. The owner claims that the driver was holding valid driving license, policy of insurance is in force and the Insurance Company has to indemnify his liability. The Tribunal, after taking the evidence and hearing both the parties, allowed the claim petitions granting compensation of Rs.2,60,000/- in respect of petitioner in MVC.No.5954/2010 and Rs.13,24,000/- in respect of petitioner in MVC.No.5955/2010 with interest at 6% p.a. Pleading inadequacy and seeking enhancement, the petitioner in MVC.No.5955/2010 has filed MFA.No.215/2013, questioning involvement of the very vehicle and alleging fraud, the Insurance Company has challenged the award in both the claim petitions on various grounds.

4. Heard the arguments of Sri M.H. Prakash, learned counsel for the petitioner in MVC.No.5955/2010 and Sri O.Mahesh, learned counsel for the Insurance Company.



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5. It is the contention of the learned counsel for the injured-petitioner that, the accident took place at 8.35 p.m., on 02.09.2010, immediately both the injured were admitted to the Sparsh Hospital, Sarjapura road with a specific history of accident. Since the petitioners were under hospitalization, they were not allowed to go outside and only on 06.09.2010, the jurisdictional police have visited the hospital and recorded the statements of the petitioners and set the law into motion. The vehicle was traced and seized, the driver was apprehended and after the investigation, he has been charge sheeted. The petitioner was under hospitalization for a period of 70 days, he was hospitalized on 40 occasions, underwent 15 surgeries. When the petitioner has sustained such kind of serious injuries, it is too much to expect from him to go to the police station and to file a complaint on 02.09.2010 itself. These are the factors which are rightly considered by the Tribunal and accepted the accident as the driver of the maruti omni has been pleaded guilty before the jurisdictional Court.



5.1. The medical evidence is placed to explain that the petitioner has suffered 70 to 75% of bodily disability. He being an agriculturist who has suffered multiple fractures with shortening of right leg to an extent of 12 cms. The petitioner was aged 33 years and the nature of injury will certainly disable him 100% and a person with no proof of income in the year 2010 will earn not less than Rs.5,500/- per month, whereas the Tribunal has taken the monthly income of the petitioner only at Rs.4,000/-. Compensation awarded towards pain and suffering, loss of amenities and discomfort is on the lower side and he sought for enhancement.

6. *Per contra*, learned counsel for the Insurance Company has mainly canvassed on four grounds urged in the appeal particularly, there is a delay in filing the complaint; there is no explanation for belated complaint; the spot mahazar was drawn on 07.09.2010, no eye-witnesses were present to show the place of accident. On 25.10.2010, the motor vehicle examination was conducted



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and on the very same day, the maruti omni was seized at the police station at 11.53 p.m. Then how the Police came to know that the said vehicle was involved in the accident is not explained. The petitioner who is examined as PW.2 admitted that it was an head-on-collision at 8.35 p.m. on a 30 ft. width road and there was less traffic, only 2 ft. space was left towards his left side and inspite of it, PW.2 could not remember the registration of the vehicle. No MLC intimation was sent from the hospital, no persons from the Sparsh hospital are examined to explain why the intimation was not sent in time.

7. The FIR under Ex.P1, the registration number of the vehicle is not mentioned and how this registration number came to the knowledge of the police is not explained by examining the Investigating Officer. The petitioners in collision with the police have played fraud for the sake of compensation and interesting to note that the vehicle in question was also involved in a similar accident that had taken place on 27.04.2011 and this vehicle has



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been fixed knowing fully well that the vehicle was holding policy and the driver was holding a valid driving license. The petitioners have not proved the involvement of the vehicle. No explanation was offered for not intimating the police by the hospital in time, but the involvement of the same vehicle in the similar kind of accident is a case of fraud. The vehicle has been concocted for the sake of compensation and the claim petition is required to be dismissed with an exemplary cost.

8. I gave my anxious consideration to the arguments addressed by the learned counsel for both the parties and perused the records.

9. It is the specific case of the petitioners that there was an accident involving the motorcycle in which the petitioners were the riders hit by the maruti omni bearing No.CTT-1155 near L & T concrete mixing factory on Sarjapura road. Soon after the accident, the petitioners were admitted to the Sparsh hospital, Sarjapura road with a history of accident. The material on record clearly point



out that till 06.09.2010, no intimation was sent to the jurisdictional police by the hospital authority, only on 06.09.2010 the statement of the petitioner in MVC.No.5955/2010 was recorded by the Sarjapura police and registered FIR in Crime No.144/2010 under Sections 279, 337 of IPC read with Section 187 of Motor Vehicles Act.

10. The argument of the learned counsel for the Insurance Company that the vehicle number was not mentioned in the FIR, has found answer as there is a specific mentioning of registration number of the Maruti Omni No.CTT-1155 and the same has been found place in the FIR. Only the issue is regarding the delay in filing the complaint. The petitioner has explained that he was under hospitalization and he could not move out to file the complaint to the police. It is not the case of the petitioners that after discharge, they went to the police station and filed complaint.



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11. The medical record shows that the petitioner in MVC.No.5955/2010 has suffered type-III B compound (open) fracture of both the bones of right leg; Lisfrancs injury to right foot; right navicular dislocation; Avulsion injury of dorsum of right foot and he has suffered shortening of leg about 6 to 7 cms. The evidence of PW.4/ Dr.Ramachandra points out the whole body disability between 70 to 75%. A person who suffered such injuries and was under hospitalization for a period of 70 days, in as many as 40 occasions he has visited the hospital, underwent 15 surgeries and it is too much to expect from him that he should go to the police station and make a complaint on 02.09.2010 itself. The hospital records clearly point out that on 02.09.2010 at 11.15 p.m., the petitioners were admitted to Sparsh hospital with a clear history of 'RTA' near Sarjapura road. Under such circumstances, it is the duty cast upon the hospital authority to intimate the said accident to the Police. The explanation in the complaint that the police visited the hospital only on 06.09.2010 to record his statement for



which he cannot be blamed as he was under hospitalization and his first discharge was on 08.09.2010.

12. On perusal of the objection statement filed before the Tribunal, it is pertinent to note that the Insurance Company made a formal denial, admitted the policy of insurance and claimed that the liability will be subject to terms and conditions of the policy of the driving license. The petitioners who were examined as PWs.1 and 2 have been cross-examined on behalf of the Insurance Company. During the course of cross-examination, nothing has been elicited as argued by the learned counsel for the Insurance Company. It goes to show that the Insurance Company wants to build a case without any defense. The involvement of the Maruti Omni in a subsequent accident on 27.04.2011 cannot be a ground to doubt the veracity of the claim petition filed by these petitioners.

13. PWs.1 and 2 are the eye-witnesses to the accident and their evidence goes to show that there was an head-on-collision. In the hospital they have clearly



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mentioned the history and in the complaint, the vehicle number has been clearly mentioned and the owner of the vehicle did not admit the accident, he contested the claim. For the first time in the appeal, the Insurance Company had taken a defense which has not been pleaded before the Tribunal. It is not proper on the part of the Insurance Company to attack on the impugned judgment on a ground which was not placed before the Tribunal. Contrary, the prosecution papers coupled with the evidence of PWs.1 and 2 takes support and corroboration from the hospital records that both the petitioners have sustained injuries in the accident involving the motorcycle and the Maruti Omni. The evidence on record persuaded to accept the alleged accident and there is no force in the argument employed by the Insurance Company.

Re: MVC.No.5954/2010:

14. The petitioner has not preferred any appeal, wherein he has suffered fracture of right femur and type-I compound fracture of right leg and fracture of proximal



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phalanx of little toe of right foot. PW.3-Dr.Ramachandra has assessed the limb disability at 47.4% and 25% to the whole body. The petitioner was 16 year old student. The Tribunal, considering all these factors and the medical bills itself constituting a sum of Rs.1,10,000/- awarded Rs.2,60,000/- as compensation under various heads and same is found reasonable and just.

Re: MVC No.5955/2010:

15. As observed above, the petitioner has suffered multiple injuries, was under hospitalization for 70 days, underwent 15 surgeries and visited the hospital on 40 times. PW.4-Dr.Ramachandra, the medical officer has given the opinion that the petitioner has suffered shortening of right leg by 6 to 7 cms, being 33 years old, an agriculturist has suffered 70 to 75% of the whole body disability. Having regard to the nature of injuries, the period of treatment and his avocation, the Tribunal has rightly appreciated that the functional disability at 40%.



16. As rightly argued by the learned counsel for the petitioner that the petitioner though he has not produced any evidence in proof of his income, a person with no proof of income in the year 2010 will earn not less than Rs.5,500/- per month. Whereas the Tribunal has assessed the income at Rs.4,000/- per month is on the lower side. Hence, the notional income of the petitioner has to be considered at Rs.5,500/- per month.

17. Since the functional disability is considered at 40%, for the age of 33 years, future prospects of 40% has to be considered for the purpose of calculation. The medical bills constitutes a sum of Rs.6,81,524/-, whereas the Tribunal has awarded Rs.7,25,000/- including incidental expenses. The incidental expenses has to be calculated separately. The Tribunal has awarded a sum of Rs.80,000/- towards pain and suffering, which has to be kept in tact. The medical expenses of Rs.6,81,524/- has to be reimbursed to the petitioner. Towards attendant charges at Rs.13,000/-, conveyance at Rs.20,000/- and



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food and nourishment at Rs.20,000/- has to be compensated for 70 days of hospitalization and in all, incidental expenses comes to Rs.53,000/-. The petitioner was under hospitalization for 70 days and he will be laid up for not less than 8 months and he has to be compensated with Rs.44,000/- (Rs.5,500/- x 8 months) towards loss of income during laid up. The loss of amenities and discomfort has to be compensated at Rs.1,00,000/- and the petitioner is required undergo further surgery and he has to be compensated with Rs.50,000/- towards future medical expenses.

18. As regarding loss of future income is concerned, notional income is Rs.5,500/-, functional disability at 40%, then it comes to Rs.5,500/- + Rs.2,200/- (40%) = Rs.7,700/- x 12 x 16 x 40% = 5,91,360/-. If all these compensation are put together, the petitioner would be entitled to Rs.15,99,884/- as against Rs.13,24,000/-, thereby enhancement of Rs.2,75,884/- rounded of to Rs.2,76,000/-. It is the just compensation which the



petitioner is entitled to, under the facts and circumstances of the case.

19. As regarding liability is concerned, there is no dispute that the policy is in force and the driver of the Maruti Omni was holding effective driving licence. Therefore, the owner of the maruti omni is liable to pay compensation and the Insurance Company being the insurer is held liable to indemnify the insured.

20. In view of the above discussion, the appeal filed by the Insurance Company is devoid of merits and the appeal filed by the petitioner in MVC.No.5955/2010 merits consideration, in the result, the following:

ORDER

- i. MFA.Nos.2900 and 2901 of 2013 are **dismissed;**
- ii. MFA.No.215/2013 is **allowed in part;**
- iii. The impugned judgment and award passed by the Tribunal is modified;



- iv. The petitioner in MVC.No.5955/2010 would be entitled to enhanced compensation of Rs.2,76,000/- with interest at 6% p.a. from the date of petition till the date of deposit excluding interest on future medical expenses of Rs.50,000/-;
- v. The Insurance Company is directed to deposit the entire compensation along with interest within 8 weeks from the date of receipt of certified copy of this judgment;
- vi. Amount in deposit shall be transmitted to the Tribunal along with records forthwith.

Sd/-
(T.G. SHIVASHANKARE GOWDA)
JUDGE

MKM
Ct-cmu