



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 30TH DAY OF OCTOBER, 2024
BEFORE
THE HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA
MISCELLANEOUS FIRST APPEAL NO. 4259 OF 2016 (MV-I)
C/W
MISCELLANEOUS FIRST APPEAL NO. 5418 OF 2016 (MV-I)

IN MFA NO.4259/2016

BETWEEN:

SRI. SHIVARAJ NAGAPPA GONDA
AGED ABOUT 31 YEARS
S/O NAGAPPA GONDA
R/AT ALIVEKODI,
SHIROOR POST
AND VILLAGE,
KUNDAPURA TALUK
UDUPI DIST - 576 124

... APPELLANT

(BY SRI NAGARAJA HEGDE, ADV.)

AND:

1. SRI. GIRISH GONDA
MAJOR, S/O NAGAPPA GONDA
R/O MULLI MANE, KANMADLU
BELKE, BHATKAL,
U.K.DIST - 581 320.
2. THE UNITED INDIA INSURANCE CO. LTD.
DIVISIONAL OFFICE, JEWEL PLAZA
MARUTHI VEETHIKA,
UDUPI - 576 101
REP. BY ITS DIVISIONAL MANAGER

... RESPONDENTS

(BY SRI O. MAHESH, ADV. FOR R2;
R1 SERVED AND UNREPRESENTED)

Digitally signed by
PRAJWAL A.
Location: HIGH COURT
OF KARNATAKA



IN MFA NO.5418/2016

BETWEEN:

THE DIVISIONAL MANAGER
UNITED INDIA INSURANCE CO. LTD.
DIVISIONAL OFFICE, JEWEL PLAZA
MARUTHI VEETHIKA, UDUPI - 576 101

... APPELLANT

(BY SRI O. MAHESH, ADV. [VC])

AND:

1. SRI. SHIVARAJ NAGAPPA GONDA
AGED ABOUT 31 YEARS
S/O NAGAPPA GONDA
R/AT ALIVEKODI, SHIROOR POST
AND VILLAGE, KUNDAPURA TALUK
UDUPI DIST - 576 201

2. SRI. GIRISH GONDA
MAJOR, S/O NAGAPPA GONDA
R/O MULLI MANE, KANMADLU
BELKE, BHATKAL, U.K.DIST - 581 320

... RESPONDENTS

(BY SRI NAGARAJ HEGDE, ADV. FOR R1;
VIDE ORDER DATED 12.12.2017
NOTICE TO R2 HELD SUFFICIENT)

THESE APPEALS ARE FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 11.03.2016 PASSED IN MVC NO.477/2013 ON THE FILE OF THE SENIOR CIVIL JUDGE, MEMBER, MACT, KUNDAPURA, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION AND IN MFA NO.5418 OF 2016 AWARDED COMPENSATION OF RS.58,400/- WITH INTEREST AT 6% P.A., FROM THE DATE OF PETITION TILL DEPOSIT.

THESE APPEALS HAVING BEEN RESERVED FOR JUDGMENT COMING ON FOR PRONOUNCEMENT THIS DAY, **T.G.SHIVASHANKARE GOWDA, J.**, DELIVERED/PRONOUNCED THE FOLLOWING:

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



CAV JUDGMENT

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

In these two appeals, the petitioner is seeking enhancement of compensation, whereas the Insurance Company is questioning the award of compensation to the petitioner.

2. For the sake of convenience, the rank of the parties shall be referred to as per their status before the Tribunal.

3. Brief facts of the case are, on 27.03.2013 at about 1.15 p.m. while the petitioner was riding his motorcycle bearing Chassis No.02376 along with the first respondent as the pillion rider on Belke - Benandoor road within the limits of Bhatkala Taluk, in order to avoid an autorikshaw coming from the opposite direction, he took the motorcycle to the left side of the road, while doing so, he lost the control over the motorcycle, fell down and sustained the injuries. After taking treatment, he has approached the Tribunal under Section 163-A of the Motor Vehicles Act (for short, 'the M.V.Act') for grant of compensation of Rs.8,55,000/-. Claim was opposed by the Insurance Company, on the ground that



the accident took place due to negligence on the part of the petitioner and he being a tort-feasor, he cannot maintain a claim. The Tribunal, after taking the evidence and hearing both the parties allowed the claim petition, granting compensation of Rs.58,400/- with interest @ 6% per annum. Pleading inadequacy and seeking enhancement, the petitioner has filed MFA.No.4259/2016 and questioning the impugned judgment and award, the Insurance Company has filed MFA.No.5418/2016.

4. Heard the arguments of Shri O.Mahesh, learned counsel for the Insurance Company and Shri Nagaraja Hegde, learned counsel for the petitioner.

5. It is the contention of the learned counsel for the Insurance Company that, the claim under Section 163-A of the M.V.Act is not maintainable as the petitioner himself is the tort-feasor. No compensation is contemplated for the injuries that the petitioner has sustained. The petitioner is working in a company at Mangalore, post treatment he has become normal, still he is working in the same company and there is no disability affecting his earning capacity. The



Tribunal did not consider these aspects, assessed the loss of future earning and he sought for dismissal of the claim petition.

6. Per contra, learned counsel for the petitioner has contended that, the petitioner has suffered injuries all over the body particularly fracture of ribs and tendon injury to the right knee. The medical evidence is placed explaining the whole body disability of 12%. Since the petition is under Section 163-A of the M.V.Act, compensation has to be awarded under structured formula by taking the disability at 12%. The Tribunal has taken it at 8%, is on the lower side and sought for enhancement.

6.1. To support his contention, he has relied on the judgment of Hon'ble Apex Court in **United India Insurance Company Ltd. -vs- Sunil Kumar and Another**¹, to effect that there is no defense available to the Insurance Company to raise a plea of negligence on the part of the petitioner as the claim is under 'no fault liability.'

¹ 2019 (12) SCC 398



7. I have given my anxious consideration to the arguments addressed on behalf of both parties and perused the records.

8. There is no dispute as to the accident, in the accident, the petitioner has suffered fracture of 6th rib with plural collection of his right chest, haemothorasis of right knee with collateral ligament injury. PW.2-Dr.Dinesh Kumar Shetty, the Orthopedic Surgeon, Chinmayi Hospital, Kundapura, where the petitioner has taken treatment, entered the witness box explaining 12% right lower limb disability sustained by the petitioner. The Tribunal has considered it at 8%. Having regard to the fracture of ribs and also ligament injury to the right knee, the whole body disability assessed by the Tribunal at 8% is proper.

9. As rightly contended by the learned counsel for the petitioner that in the light of the judgment of the Hon'ble Apex Court in **Sunil Kumar's** case (supra), in a claim petition filed under Section 163-A of the M.V.Act, it is not open for the Insurance Company to raise any defense of



negligence on the part of the victim as the claim is under 'no fault liability'. In view of the law being laid down, it is not open for the Insurance Company to raise any defense regarding negligence.

10. It is argued on behalf of the Insurance Company that, there a discrepancy in the pleadings that the petitioner claims that while avoiding the autorickshaw, he fell down and sustained the injuries. Whereas in a claim petition filed in MVC.No.530/2013 before the same Tribunal by the pillion rider, different story has been narrated. In this regard, careful perusal of the prosecution papers and on perusal of the complaint, which is filed by the pillion rider, a specific allegation is made against the petitioner who was the tort-feasor, and at his fault the motorcycle capsized and for this reason, he has been charge sheeted post investigation.

11. The prosecution papers sufficiently explained that there is no discrepancy in the pleadings of the petitioner. When a claim petition under Section 163-A of the M.V.Act, irrespective of the petitioner being the tort-feasor, entitled to



claim compensation under structured formula where compensation is to be determined as per the formula and there is a clear cap for assessment of compensation towards pain and suffering maximum at Rs.5,000/-, medical expenses of Rs.15,000/- and disability with restriction on income at Rs.40,000/- per annum. Here also, the petitioner claims his income at Rs.40,000/- per annum and there is no evidence on record that in which company the petitioner was working and it is specifically pleaded that even if the petitioner is doing coolie in the same company, it does not gives him the permanent job. He being the coolie, sustained the ligament injury to the right knee, fracture of right 6th rib certainly affect his earning capacity and having regard to the medical evidence, whole body disability of 8% is proper. When the medical officer himself speaks the limb disability of 12%, the argument of the petitioner that the functional disability has to be considered at the higher rate cannot be sustained.

12. The Tribunal, considering all these aspects has rightly assessed the compensation of Rs.5,000/- towards



pain and suffering and Rs.38,400/- towards loss of future income. The medical bills constitutes a sum of Rs.8,513/-, whereas the Tribunal awarded Rs.15,000/- and a sum of Rs.6,487/- is on the higher side. Hence, the medical expenses has to be restricted at Rs.8,513/- only. Then the total compensation comes to Rs.51,913/- as against Rs.58,400/-, thereby reduction of Rs.6,487/-.

13. As regarding liability is concerned, the policy is in force, there is no issue regarding the driving licence. Insurance Company is required to indemnify the 1st respondent, who is the owner. There is no scope for enhancement of compensation, rather there is a scope for reduction.

14. In the light of the above, the appeal filed by the Insurance Company deserves merit consideration and that of the petitioner is devoid of merits, in the result, the following:

ORDER

- (i) M.F.A.No.5418/2016 is allowed in part;
- (ii) M.F.A.No.4259/2016 is dismissed;



- (iii) The impugned judgment and award is modified;
- (iv) The petitioner would be entitled to compensation of Rs.51,913/- with interest at the rate of 6% per annum from the date of petition till deposit;
- (v) The Insurance Company is directed to deposit entire compensation with interest within eight weeks from the date of receipt of certified copy of this judgment.
- (vi) Amount in deposit shall be transmitted to the Tribunal.

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

MKM/-
CT:HS