



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. 5887 OF 2016 (MV-I)

SHRIRAM GENERAL
INSURANCE COMPANY LIMITED.,
NO.5, 2ND FLOOR, MONARCH CHAMBERS,
INFANTRY ROAD,
BANGALORE – 560 001.

BY

SHRIRAM GENERAL INSURANCE CO. LTD.,
5/4, 3RD CROSS, S.V.ARCAD, E,
BELAKANAHALLI MAIN ROAD,
OPP. BANNERAGHATTA MAIN ROAD,
II M.B. POST, BANGALORE - 560 076.
BY ITS MANAGER

... APPELLANT

(BY SRI. O. MAHESH, ADVOCATE)

AND

1. SHIVAKUMAR S/O. NYANAPPA
AGE: 32 YEARS,
R/O: ABBENAHALLI VILLAGE,
MADIVALA POST, MALUR TALUK,
KOLAR DISTRICT - 563 101.
2. SHASHIKUMAR, S/O. SIDDALINGAPPA
AGE: 32 YEARS,
R/O: ABBENAHALLI VILLAGE,
MADIVALA POST, MALUR TALUK,
KOLAR DISTRICT – 563 101.

...RESPONDENTS

(BY SRI. N. GOPALKSRISHNA, ADVOCATE FOR R1;
R2 SERVED AND UNREPRESENTED)



THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 21.06.2016 PASSED IN MVC NO.7806/2012 ON THE FILE OF THE COURT OF SMALL CAUSES AND MOTOR ACCIDENT CLAIMS TRIBUNAL, BENGALURU, AWARDED COMPENSATION OF RS.6,87,200/- WITH INTEREST AT 9% P.A. FROM THE DATE OF PETITION TILL REALISATION.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 12.08.2024 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 this appeal, the Insurance Company has challenged the judgment and award dated 21.06.2016 passed in MVC.No.7806/2012 by the X Addl. Judge, Court of Small Causes (SCCH-16) Bangalore (for short, 'Tribunal').

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 06.09.2012 at about 8.30 a.m. near Vasu factory on Abbenahalli - Bhavanahalli road, Malur taluk, while the petitioner was



riding the motorcycle bearing Reg.No.KA-08/Q-3483 as pillion rider ridden by one Mr.Basavarajaiah, rider of the motor cycle dashed it against the road side electric pole, due to the impact, the petitioner was knocked down and sustained grievous injuries. After taking first aid at Government Hospital, Malur, he was admitted to St. John's Medical College Hospital Bengaluru and treated under hospitalization till 28.11.2012. After taking treatment, he has approached the Tribunal for grant of compensation of Rs.20,00,000/-. The claim was opposed by the Insurance Company on the ground that the vehicle was not involved in the accident, the petitioner in collusion with the police have falsely implanted the motorcycle in question. The petitioner himself in the hospital admitted that while he was riding the motorcycle hit by an autorickshaw and sustained injuries. The Tribunal, after taking the evidence and hearing both the parties, allowed the claim petition granting compensation of Rs.6,87,200/- with interest at 9% p.a. Aggrieved by the same, the Insurance Company is before this Court on various grounds.



4. Heard the arguments of Sri O. Mahesh, learned counsel for the Insurance Company and Sri N. Gopalkrishna, learned counsel for the petitioner.

5. It is the contention of the learned counsel for the Insurance Company that, in an accident of this nature the first victim shall be the rider, but herein this case the rider of the motorcycle has not sustained any injuries. When the petitioner was brought to the hospital he has furnished the history that he has sustained injuries while riding the motorcycle hit by a autorickshaw. Later different story has been created that the motorcycle was ridden by one Basvarajaiah and the petitioner as a pillion rider sustained injuries having hit against the road side electric pole. Fraud is played for the sake of compensation. The Tribunal has failed to consider the no damages on the motorcycle, the petitioner was the rider of the motorcycle being the tort-feasor. There is delay of 4 days in filing the complaint. The person who filed the complaint is one Mr.Subramani, the brother of the petitioner who is not an



eye-witness. There are insertions in the medical records and the manner of accident is questionable so also the fraud played by the petitioner. The wound certificate is tampered with by an insertion and it is elicited from PW.2- Dr.Mahadev Kumar P. that when the petitioner was brought to the hospital he was conscious, gave information that the autorickshaw hit against the motorcycle in which he was riding. The motorcycle was not seized at the spot and the petitioner is unable to say damages on the part of the motorcycle. Compensation awarded by the Tribunal is on the higher side, no banks would have offered interest at 9% p.a. at relevant point of time and for the concoction and fraudulent act of the petitioner, the Court shall not encourage such claims, it has to be dismissed.

6. Per contra, learned counsel for the petitioner has contended that, when the petitioner was brought to the Government Hospital, Malur, history has been clearly furnished that the petitioner was the pillion rider hit against the road side electric pole by the rider



Basavarajaiah, due to which the petitioner sustained injuries. The history as furnished at St. John's Medical College Hospital Bengaluru cannot be relied as the author of Ex.R1-MLC extract is not examined. Neither the rider of the motorcycle nor the informant are examined on behalf of the Insurance Company.

6.1. It is further contended that, in the accident the petitioner has suffered fracture of right femur with bone loss; fracture of right tibia, fracture of right fibula; fracture of left inferior pubic ramus; fracture of right distal phalanx of 2nd finger and fracture of right 2nd and 3rd metacarpal. The medical evidence is placed before the Tribunal explaining that the petitioner has suffered 23% of the whole body disability. The Tribunal did not consider the same, considered only 15% and it has to be considered at 23%. The compensation awarded under different heads is inadequate and he sought for modification.



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

8. It is the specific case of the petitioner that he was the pillion rider in the motorcycle ridden by one Basavarajaiah. The petitioner having sustained serious injuries, he was treated at Government Hospital, Malur and then brought and admitted to the St. John's Medical College Hospital Bengaluru where he was under hospitalization till 28.11.2012. Initially, when the petitioner was taken to the Government Hospital, Malur with the history of accident is reported. Ex.P5-MLC extract shows history mentioned as 'RTA', particulars shown as petitioner had fallen from bike at 9-45 p.m. at Harohalli Cross while he was riding the bike as a pillion rider ridden by Basavarajaiah. From Government Hospital, Malur, on the next day, the petitioner was brought to the St. John's Medical College Hospital Bengaluru where the history was furnished as RTA on 06.09.2012. Since the petitioner was



under hospitalization, on 10.09.2012 his brother went to the police station and files the complaint, reporting that he came to know about alleged accident from his brother.

9. On behalf of the Insurance Company, emphasis is given on the Ex.R1-admission record of the St. John's Medical College Hospital Bengaluru. At the time of admission date was mentioned as on 07.09.2012 at 4.30 a.m., the history mentioned as RTA at 8.30 p.m. on 06.09.2012 due to collision of bike with autorickshaw. The history furnished to the Government Hospital, Malur, was not made available to the next Hospital. In the admission note there is no information who has furnished the said information at St. John's Medical College Hospital Bengaluru. The author of the note is not examined. The petitioner was brought to the hospital by Somashekar, the brother of the petitioner and history was furnished as RTA hit by auto, riders of two wheeler were not wearing helmet. Neither the person who made the entry nor who accompanied the injured are examined by the Insurance



Company. Under such circumstances, what weightage can be attached to Ex.R1 has to be considered.

10. When the material on record pertains to the Government Hospital, Malur history furnished in the form of Ex.P6, did not point out anything about the motorcycle hitting against the autorickshaw or autorickshaw hitting against the motorcycle. No weightage can be attached to Ex.R1. Hence, prosecution papers clearly point out and attributed negligence on the part of the rider of the motorcycle-Basavarajaiah and the Tribunal is right in accepting the accident. Hence, I do not find any force in the argument of the Insurance Company.

11. In order to explain the injuries, the petitioner has produced huge medical records which goes to explain that the petitioner has sustained type-III open fracture distal femur with bone loss, both bones fracture of right leg, fracture of pubic ramus left, fracture of phalangeal right, fracture of right II metacarpal, fracture of right III metacarpal. He was under hospitalization soon after the



accident till 28.11.2012. Medical bills constitutes a sum of Rs.1,85,000/- which has been considered by the Tribunal and same has to be kept in tact. The accident is of the year 2012, the petitioner has to be compensated with Rs.60,000/- towards pain and suffering, loss of amenities and discomfort at Rs.50,000/-, loss of income during laid up for 9 months at Rs.63,000/- (Rs.7,000/-x 9 months) and towards incidental expenses such as attendant, food and nourishment and conveyance at Rs.50,000/- has to be assessed. The compensation awarded by the Tribunal towards future medical expenses at Rs.20,000/- is kept in tact.

12. The petitioner was aged 28 years, he claims to be the mason earning Rs.10,000/- per month, he has not placed any proof of his income and he has to be treated as a person with no proof of income in the year 2012. Hence, the notional income of the petitioner at Rs.7,000/- has to be considered and for the age of 28 years, applicable multiplier is 17. As regarding disability is concerned, apart



from medical records, the petitioner also placed medical evidence in the form of PW.2-Dr.Mahadeva Kumar P., the Orthopedic Surgeon of the St. John's Medical College Hospital, Bengaluru who refers the injuries mentioned supra and made an assessment at 46.64% of lower limb disability and he considered it at 50% of whole body disability. Having regard to the age and avocation of the petitioner, 15% has to be considered as functional disability. Accordingly, the Tribunal has considered it at 15%, the nature of injuries will certainly affect his earning capacity and therefore it is proper to maintain the disability suggested by the medical evidence. Then loss of future income will be $\text{Rs.7,000/-} \times 12 \times 17 \times 15\% = \text{Rs.2,14,200/-}$ and thereby total compensation comes to Rs.6,42,200/- as against Rs.6,87,200/- awarded by the Tribunal, thereby reduction of Rs.45,000/-.

13. As regarding rate of interest is concerned, the Tribunal has awarded interest at 9% p.a. In the year 2012, no banks would have offered such rate of interest.



Unless the Tribunal gives a reason, interest at 9% p.a. cannot be awarded.

14. In this regard, the Division Bench of this Court in **Ms. Joyeeta Bose and Ors. -vs- Venkateshan V. and Ors.** in MFA.No.5896/2018 c/w MFA.Nos.4444/2018 and 4659/2018 (MV) DD 24.08.2020 with reference to Section 149(1) of Motor Vehicles Act, 1988, Rule 253 of Karnataka Motor Vehicles Rules, 1989 and Section 34 of Civil Procedure Code, at para 52 held as under:

"52.Thus, under Section 34 of CPC being squarely applicable to the interest awarded by the Tribunal and Section 34 empowering the Tribunal to award pendent lite interest and discretion being vested with the Court/Tribunal to award interest from the date of suit or petition is to be maximum extent of 6% p.a. or in other words, not exceeding 6% p.a., the contention raised by the learned Advocates appearing for the Insurance Company deserves to be accepted and according, it is accepted "

In the light of the above, since the Tribunal has not assigned any reasons for awarding higher rate of interest,



the petitioner is entitled for interest at 6% p.a. instead of 9% p.a.

15. In view of the above discussion, the appeal merits consideration, in the result, the following:

ORDER

- i. The appeal is **allowed in part**;
- ii. The impugned judgment and award is modified;
- iii. The petitioner would be entitled to compensation of Rs.6,42,200/- instead of Rs.6,87,200/- with interest at 6% per annum from the date of petition till the date of deposit excluding interest on future medical expenses of Rs.20,000/-;
- iv. Both respondents are jointly and severally held liable to pay compensation;
- v. Insurance Company is directed to deposit the compensation amount with interest within eight weeks from the date of receipt of certified copy of this judgment.

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