



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF OCTOBER, 2024

BEFORE

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

MFA NO. 11485 OF 2012 (MV-I)

BETWEEN:

THE MANAGER
M/S ROYAL SUNDARAM ALLIANCE
INSURANCE COMPANY LIMITED
CORPORATE OFFICE, 'SUNDARAM
TOWERS' NO.45 AND 46, WHITE'S
ROAD, CHENNAI - 600 014
BY ROYAL SUNDARAM ALLIANCE
COMPANY LTD. SUBRAMANIAM
BUILDING, II FLOOR, NO.1
CLUB HOUSE ROAD, ANNSASALAI
CHENNAI 600 002, BY ITS MANAGER

... APPELLANT

(BY SRI. O. MAHESH, ADV.)

AND:

1. RENILSON JOSEPH
AGED ABOUT 37 YEARS
S/O P.A.JOSEPH, R/O NO.17-B
ROW HOUSES, TINITY FORTUNE
OPP. MANTRI SPLENDER
GEDDALAHALLI - KALYAN NAGAR
HENNUR MAIN ROAD
BANGALORE - 560 043

2. GNANAPRAKASHA, MAJOR
(FATHER'S NAME NOT KNOWN)
NO.117, T.C.PALYA POST
CHURCH STREET, K.R.PURAM
BANGALORE - 43

... RESPONDENTS

(BY SRI.NAVEED AHMED, ADV. FOR R1;
VIDE ORDER DATED 12.12.2012
NOTICE TO R2 DISPENSED WITH)

Digitally signed by
PRAJWAL A
Location: HIGH COURT
OF KARNATAKA



THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 06.09.2012 PASSED IN MVC NO.5680/2009 ON THE FILE OF THE VII ADDITIONAL JUDGE, MEMBER, MACT, COURT OF SMALL CAUSES, BANGALORE, AWARDED A COMPENSATION OF RS.17,93,460/- WITH INTEREST @ 6% P.A., FROM THE DATE OF PETITION TILL REALISATION.

THIS APPEAL HAVING BEEN RESERVED FOR JUDGMENT ON 30.07.2024, 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 this appeal, the Insurance Company is challenging the impugned judgment and award passed by the Tribunal.

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 20.01.2009 while the petitioner was driving his Lancer Car bearing No.TN-07/AJ-8479 along with his wife, daughter and a friend at 8th Main Junction of Sadanandanagar, a Maxi cab bearing Reg.No.KA-53/4315 came from opposite



direction and dashed against the Lancer Car, due to which, his wife and daughter succumbed to the death, he sustained injuries to left knee. After taking treatment at Manipal Hospital under hospitalization and also as a dependent of the deceased, he has approached the Tribunal for grant of compensation.

3.1. All the three claims were taken up together and which is opposed by the Insurance Company of the Maxi cab. The Tribunal, after taking the evidence and hearing on both the sides awarded compensation of Rs.17,93,450/- in respect of injuries sustained by the petitioner. Aggrieved by the same, the Insurance Company is before this Court on the ground of the income assessed is higher, disability is against the medical evidence and reimbursed medical bills have also been accepted.

4. Heard the arguments of Shri. O.Mahesh, learned Counsel for the Insurance Company, Shri Naveed Ahmed, learned counsel for the petitioner.



5. It is the contention of the learned counsel for the Insurance Company that, the petitioner is also contributed for the accident, the Tribunal did not consider the same. The medical evidence through PW.4-Dr.Rajesh Chowdari explains 21% of limb disability and 7% of whole body disability, whereas the Tribunal considered 10% as the limb disability and awarded the compensation contrary to the medical evidence. The petitioner is an Income Tax Assessee and his Income Tax Returns have been filed before the Tribunal which clearly indicate that the gross income of the petitioner at relevant point of time will be Rs.5,51,070/-, only post deduction of the tax, the income will be reduced to substantially wherein on the basis of the 2 pay slips which have not been proved, the Tribunal has considered income of the petitioner at Rs.81,000/-. A sum of Rs.97,756/- has been awarded as medical expenses. That the petitioner was working as Director of Strategic Planning in a Multi National Company. He has been fully reimbursed with the



medical bills. The Tribunal is error in awarding said compensation and seeks modification.

6. Per contra, learned counsel for the petitioner has contended that, the accident took place on the complete right side of the maxi cab wherein the Lancer car was going on the left side of the road, the complete negligence is on the driver of the maxi cab. The petitioner has produced the pay slips as per Ex.P5, it shows that the petitioner was earning more than Rs.81,000/- at the relevant point of time. The Tribunal has rightly taken his income. The Tribunal has assessed 10% of physical disability and not the functional disability, whatever the reimbursement made was deducted and remaining medical expenses has been assessed by the Tribunal. The compensation awarded under different heads are meager and if those heads are balanced, assessed compensation is perfect and there is no need for interference.



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

8. The occurrence of the accident is not in dispute. The Insurance Company has raised four major points for consideration:

- (i) contributory negligence on the part of the petitioner;
- (ii) Percentage of disability;
- (iii) Medical bills; and
- (iv) Income of the petitioner;

9. The prosecution papers show that the driver of the Maxi cab has been charge sheeted for the offences under Sections 279, 337, 338, 304 of IPC. Spot mahazar and the sketch clearly point out that where the accident took place there is a right turn, the maxi cab was coming from the left side and it was required to take right turn, Lancer Car was coming on the left side and to pass through that turning. The maxi cab



has come to the off side of the road to its direction while hitting against the Lancer car. The spot sketch clearly points out that the negligence on the part of the maxi cab only and no negligence on the part of the petitioner in driving the Lancer car. Accordingly point of negligence is answered.

10. As regarding disability is concerned, PW.4 is the Medical Officer, who treated the petitioner. The petitioner has sustained open comminuted fracture of left patella. He was under hospitalization for 3 days only for the reason that in the very accident he lost his wife and minor child. PW.4, the doctor who treated the petitioner has assessed 21% of limb disability and 7% of whole body disability. The discussion of the Tribunal clearly goes to show that the Tribunal did not understand the distinction between the physical disability and the functional disability. It has observed that the petitioner has suffered 10% of limb disability, if that is so, the Tribunal ought to have taken whole body disability at 3%, that is not a proper discussion



on the part of the Tribunal. On appreciation of the evidence of PW.4, having regard to the comminuted fracture of patella, the medical evidence clearly points out 7% whole body disability and it can be considered as a functional disability instead of 10% having regard to the age and avocation of the petitioner.

11. As regarding medical bills are concerned, the petitioner has produced medical bills for a sum of Rs.97,756/-. The Insurance Company claims that the petitioner has got the reimbursement. That the Ex.P20 bills issued by the Manipal Hospital and there is no mentioning of the reimbursement. On calculation of actual medical bills expenses comes to Rs.87,756/- instead of Rs.97,756/- and hence the petitioner is entitled to the same.

12. As regarding income is concerned, Ex.P5 indicate the pay slip pertains to the petitioner but the author of the said document is not examined before the Tribunal. The Income Tax Returns are available on



record as per Ex.P20. The Income is reported to the Income Tax Department, rather relying on the pay slips, it is proper to rely on tax returns. Tax returns indicate that, Rs.5,51,070/- as gross income of the petitioner at relevant point of time. Rs.62,475/- is tax component. If that is excluded the actual income of the petitioner comes to Rs.4,88,595/-. If that is taken into consideration, monthly income of the petitioner comes to Rs.40,716/- whereas the Tribunal has taken it as Rs.81,000/- on the higher side and accordingly it is calculated.

13. As regarding quantum of compensation is concerned, the accident is of the year 2009. The petitioner has suffered open comminuted fracture of left patella. Hence, he has to be compensated with Rs.30,000/- towards pain and suffering. He was laid up for minimum of 3 months and loss of income during laid up will be Rs.1,22,148/-, medical expenses as per medical bills at Rs.87,756/-, the incidental expenses such as attendant, traveling and food and nourishment



at Rs.20,000/-, loss of amenities and discomfort at Rs.30,000/-. Monthly income of the petitioner is assessed at Rs.40,716/-, he was aged 34 years, applicable multiplier is 16 and functional disability is 7% and future loss of income will be $\text{Rs.}40,716/- \times 12 \times 16 \times 7\% = \text{Rs.}5,47,223/-$. Total compensation comes to Rs.8,37,127/- as against Rs.17,93,450/- assessed by the Tribunal, thereby reduction of Rs.9,56,323/-.

14. 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 total compensation of Rs.8,37,127/- instead of Rs.17,93,450/- awarded by the Tribunal with interest at 6% p.a. from the date of petition till the date of deposit;



(iv) The Insurance Company shall deposit entire compensation with interest within eight weeks from the date of receipt of certified copy of this judgment.

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

MKM
List No.: 19 Sl No.: 1