



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF SEPTEMBER, 2024

BEFORE

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

MISCELLANEOUS FIRST APPEAL NO.7944 OF 2014 C/W

MISCELLANEOUS FIRST APPEAL NO.1150 OF 2015 (MV-I)

IN MFA No.7944/2014

BETWEEN:

SRI RAJU,
S/O KRISHNAPPA @ NAGARAJAPPA,
AGED ABOUT 24 YEARS,
R/O 3RD MAIN ROAD, 18TH CROSS,
VINOBANAGAR, DAVANAGERE,
DAVANAGERE DISTRICT-577 513.

...APPELLANT

(BY SRI R SHASHIDHARA, ADVOCATE)

AND:

1. SRI SRINIVAS,
S/O NARASIMHAPPA,
AGED MAJOR,
R/O DOOR NO.550, 'B' BLOCK,
RAMANAGAR, DAVANAGERE,
(RIDER OF MOTOR CYCLE BEARING ITS
REG NO. KA-17/J-5798),
PIN-577 519.
2. SRI R.SHIVAKUMAR SWAMY,
S/O REVANASIDDAIAH,
AGED ABOUT 39 YEARS,
R/O KURKI VILLAGE,
DAVANAGERE TALUK AND DISTRICT.
(OWNER OF MOTOR CYCLE BEARING
ITS REG NO.KA-17/J-5798),
PIN-577 008.

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Location: HIGH COURT
OF KARNATAKA



NC: 2024:KHC:40298
MFA No. 7944 of 2014
C/W MFA No. 1150 of 2015

3. THE MANAGER,
NATIONAL INSURANCE COMPANY LTD.,
MCC 'B' BLOCK, MELAGIRI PLAZA,
DENTAL COLLEGE ROAD,
DAVANAGERE-577 004.

...RESPONDENTS

(BY NOTICE TO R1 & R2 IS DISPENSED WITH;
SRI S.SRISHAILA, ADVOCATE FOR R-3 [V/C])

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE
JUDGMENT AND AWARD DATED 17.10.2014 PASSED IN MVC
NO.309/2011 ON THE FILE OF THE II ADDITIONAL DISTRICT
AND SESSIONS JUDGE, MEMBER, MACT-III, DAVANAGERE,
PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION
AND SEEKING ENHANCEMENT OF COMPENSATION.

IN MFA NO.1150/2015

BETWEEN:

THE NATIONAL INSURANCE COMPANY LTD.,
MCC B BLOCK, MELAGIRI PLAZA,
DENTAL COLLEGE ROAD,
DAVANAGERE.
REP. BY ITS AUTHORISED REPRESENTATIVE
AT REGIONAL OFFICE NO.144,
SHUBHARAM COMPLEX, M G ROAD,
BANGALORE-560 001.

...APPELLANT

(BY SRI SRISHAILA S, ADVOCATE [V/C])

AND:

1. RAJU,
S/O KRISHNAPPA @ NAGARAJAPPA,
AGED ABOUT 25 YEARS,
R/O 3RD MAIN ROAD, 18TH CROSS,
VINOBHANAGAR, DAVANAGERE-577 001.



NC: 2024:KHC:40298
MFA No. 7944 of 2014
C/W MFA No. 1150 of 2015

2. SRINIVAS,
S/O NARASIMHAPPA,
AGED ABOUT 34 YEARS,
R/O D NO.550, 'B' BLOCK,
RAMNAGAR, DAVANAGERE-577 001.
3. R SHIVAKUMAR SWAMY,
S/O REVANASIDDAIAH,
AGED ABOUT 38 YEARS,
R/O KURKI VILLAGE,
DAVANAGERE TALUK & DISTRICT-577 423.

...RESPONDENTS

(BY SRI R SHASHIDHARA, ADVOCATE FOR R-1;
R-2& R-3 SERVED AND UNREPRESENTED)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 17.10.2014 PASSED IN MVC NO.309/2011 ON THE FILE OF THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, MEMBER, MACT-III, DAVANAGERE, AWARDED A COMPENSATION OF RS. 56,000/- WITH INTEREST @ 6% P.A FROM THE DATE OF PETITION TILL ITS DEPOSIT.

THESE APPEALS, COMING ON FOR HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

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

ORAL JUDGMENT

In these appeals, the petitioner is seeking for enhancement of compensation, wherein the Insurance Company is challenging the identity of the petitioner as pillion rider of the motorcycle.



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 07.12.2009 at about 4.45 pm., while the petitioner was riding the motor cycle bearing reg.No.KA-17/J-5798 as pillion rider from Anaji to Davanagere near Basavanal-Gollarahatti from opposite direction another motor cycle bearing reg.No.KA-17/Y-6912 dashed against him. Due to which, he sustained facial injuries. After taking treatment, he approached the Tribunal for grant of compensation of Rs.5,40,000/-. The claim was opposed by the Insurance Company questioning the identity of the petitioner and he was not the pillion rider, but he is the rider himself without driving licence. The Tribunal after taking the evidence and hearing both the parties allowed the claim and awarded compensation of Rs.56,000/- with interest at 6% percent per annum directing the Insurance Company to pay compensation. Pleading inadequacy and seeking



enhancement, the petitioner and questioning the petitioner as pillion rider, the Insurance Company have filed this appeal.

4. Heard the arguments of Shri R.Shashidhara, learned counsel for the petitioner and Shri S.Srisha, learned counsel for respondent No.3-Insurance Company.

5. It is contended by the learned counsel for the petitioner that the accident took place at 4.45 pm, the injured was taken to the hospital immediately and by 6:00 pm., as per the hospital intimation, the police visited the hospital and recorded the statement of the injured pillion rider of the opposite vehicle G.H.Munawar. In the complaint, it is specifically stated that the petitioner was the pillion rider of the opposite vehicle. The medical records also shows that the petitioner was riding the motor cycle and there is no specific mentioning that he was not the pillion rider, but the petitioner having sustained facial injuries, disability has been explained through P.W.2-Dr.Nitin N.B., to the extent of 27%. No



future loss of income is assessed by the Tribunal and he sought for enhancement.

6. Per contra, learned counsel for the Insurance Company has contended that, the father name of the petitioner is Nagarajappa, wherein the injured is stated to be Raju S/o Krishnappa. Both the parties are different. The petitioner is not injured in the accident and there is impersonation. The learned counsel relying on Ex.R3-case sheet argued that in the hospital, the petitioner has stated that he was driving the motor cycle. Firstly, explained that the petitioner was the rider and not the pillion rider. For the reason that the petitioner is not holding the driving license, he has been shifted as pillion rider for the sake of compensation and thereby fraud has been played by the petitioner, therefore, he is not entitled for compensation. This aspect is not taken into consideration by the Tribunal while assessing the compensation. Therefore, he sought for dismissal of the claim petition with exemplary cost.



7. I have given my anxious consideration to the arguments addressed on behalf of both sides and also perused the materials on record.

8. The accident is not in dispute and also the involvement of two motor cycles. Two points that arise for consideration is, whether the petitioner was the rider or the pillion rider and the quantum of compensation awarded by the Tribunal is correct or not.

9. As regarding the identity of the petitioner as the pillion rider, it is relevant to read the complaint as per Ex.P.1. There is no dispute that one G.H.Munawar sustained injuries in the accident as a pillion rider of the opposite vehicle. He has given statement in the hospital that one Raju the pillion rider of the opposite vehicle has sustained injuries. The said Raju is none other than the petitioner. The entire defence of the Insurance Company is based on Ex.R3 and recitals of Ex.R3 reads as follows:



"H/o RTA at 4.30 pm., 7.12.2009 at Anaji to Davanagere when patient was driving a two wheeler & hit by a two wheeler coming in opposite direction".

10. The word "*driving*" is interpreted by the Insurance Company as "*rider*". Generally, we call the motorist as rider and no one will drive the motor cycle and he will ride the motor cycle. The nomenclature "*driver*" does not mean that the petitioner is the rider of the motor cycle. Even before such entry, within one hour of the accident, the pillion rider of the opposed vehicle was identified as pillion rider of the opposite vehicle. When such being the case, the ambiguity mentioned in Ex.R3 gets clarification by itself. Therefore, the Insurance Company has misconceived in taking such a defence and the petitioner has to be treated as a pillion rider and there is no dispute as to his identity.

11. As regarding quantum of compensation is concerned, the medical record goes to show that the petitioner has suffered facial injuries including multiple



fractures. The fractures mentioned in the medical records reads as follows:

- i.About 3 cms lacerated wound on right eyebrow.*
- ii.About 3 cms lacerated wound on the left forearm*
- iii.Tenderness on back of chest.*

12. This has been ratified by P.W.2-Dr.Nitin N.B., who is the plastic and cosmetic surgeon and assessed 27% of limb disability. The petitioner has rightly explained such injuries as to in what manner affecting his earning capacity. Hence, it is only the case of loss of amenities and discomfort and not the case of assessing the loss of disability on account of the aforesaid injuries. The petitioner was in hospital for a period of 6 days. He being a mason, he could not attend to his work for a period of three months as the injury certainly kept him away from the regular work. Hence, the petitioner is to be awarded with just compensation.



13. With regard to the nature of injuries and disability, the petitioner has to be compensated with Rs.25,000/- towards pain and suffering, Rs.10,000/- towards medical expenses, Rs.5,000/- towards incidental expenses and Rs.12,000/- towards loss of income for three months laid up and Rs.25,000/- towards loss of amenities and discomfort. Total compensation comes to Rs.77,000/- as against Rs.56,000/- awarded by the Tribunal and thereby enhancement of **Rs.21,000/-**

14. In view of the above discussion, the appeal filed by the petitioner merits consideration, the appeal filed by the Insurance Company is devoid of merits, in the result, the following

ORDER

- i. MFA.No.7944/2014 is ***allowed-in-part***.
- ii. MFA.No.1150/2015 is ***dismissed***.
- iii. The impugned judgment and award is modified.



- iv. The petitioner is entitled for enhanced compensation of **Rs.21,000/-** with interest at 6% p.a., from the date of petition till the date of deposit.
- v. The Insurance Company shall deposit the entire compensation with interest within a period of eight weeks from the date of receipt of certified copy of this judgment.
- vi. The amount in deposit shall be transmitted to the Tribunal.

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

PB
List No.: 1 Sl No.: 20