



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. 8036 OF 2013 (MV-I)

C/W

MISCELLANEOUS FIRST APPEAL NO. 7074 OF 2013 (MV-I)

IN MFA NO.8036/2013

BETWEEN

SRI. MOHAMMED ASHRAF,
@ MOULANA ASHRAF ALI
S/O. MOHAMMED FAKRUDDIN,
AGED ABOUT 33 YEARS,
NO. 33/1, 14TH CROSS,
LBF ROAD, DODDA MAVALLI,
BENGALURU.

... APPELLANT

(BY SMT. ANURADHA N.G., ADVOCATE)

AND

1. VELU G. S/O. GOVINDASWAMY
MAJOR, NO.9, NRR ILLAM PLAYA,
CV RAMAN NAGAR,
BENGALURU-2,
(MOTOR CYCLE OWNER-1ST RESPONDENT)
BEARING REG. NO.KA-03-HD-5568.



NC: 2024:KHC:46129
MFA No. 8036 of 2013
C/W MFA No. 7074 of 2013

2. THE REGIONAL MANAGER,
NATIONAL INSURANCE COMPANY LTD.,
M.G. ROAD, SUBBARAM COMPLEX,
BENGALURU-1,
(INSURER OF MOTOR CYCLE BEARING
REG.NO. KA-03-HD-5568, 2ND RESPONDENT)
POLICY NO.35070131096201185206
VALID FROM 17.11.2008 TO 16.11.2010.

...RESPONDENTS

(BY SRI. O. MAHESH, ADVOCATE FOR R2;
V/O. DATED 22.04.2019 NOTICE TO R1 IS
DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT
AGAINST THE JUDGMENT AND AWARD DATED 08.04.2013
PASSED IN MVC NO.1217/2011 ON THE FILE OF THE XVI
ADDITIONAL, JUDGE, MACT, BENGALURU, PARTLY ALLOWING
THE CLAIM PETITION FOR COMPENSATION AND SEEKING
ENHANCEMENT OF COMPENSATION.

IN MFA NO.7074/2013

BETWEEN

NATIONAL INSURANCE COMPANY LTD.,
REGIONAL OFFICE, NO. 144,
SUBBARAM COMPLEX, M.G. ROAD,
BENGALURU-560 001,
BY IT'S MANAGER

...APPELLANT

(BY SRI. O. MAHESH, ADVOCATE)



NC: 2024:KHC:46129
MFA No. 8036 of 2013
C/W MFA No. 7074 of 2013

AND

1. SRI. MOHAMMED ASHRAF,
@ MOULANA ASHRAF ALI
S/O. MOHAMMED FAKRUDDIN,
AGED ABOUT 33 YEARS,
R/AT: NO. 33/1, 14TH CROSS,
LBF ROAD, DODD MAVALLI,
BENGALURU-560 011.
2. VELU G. S/O. GOVINDASWAMY
R/AT: NO.9, NRR ILLAMPLAYA,
C V RAMAN NAGAR,
BENGALURU-560 002.,

...RESPONDENTS

(BY SMT. ANURADHA N.G. ADVOCATE FOR R1;
V/O. DATED 28.10.2015 NOTICE TO R2 IS ACCEPTED)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT
AGAINST THE JUDGMENT AND AWARD DATED 08.04.2013
PASSED IN MVC NO.1217/2011 ON THE FILE OF THE 16TH
ADDITIONAL, JUDGE, MACT, BENGALURU, AWARDING A
COMPENSATION OF RS.2,00,000/- WITH INTEREST @ 6% P.A
FROM THE DATE OF PETITION TILL THE DATE OF PAYMENT.

THESE APPEALS HAVING BEEN HEARD AND RESERVED
FOR JUDGMENT ON 02.08.2024 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

In these appeals, the Insurance Company is challenging involvement of the vehicle in question, whereas the injured petitioner 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 03.06.2010 at about 00.45 a.m., while the petitioner was riding the Honda Activa bearing Reg.No.KA-05/HB-9410 near Queens road Circle, another motorcycle bearing Reg.No.KA-03/HD-5568 came from Kasturba road from the opposite direction and dashed against the motorcycle of the petitioner, due to which, he sustained injuries to the right leg and he was admitted to Shifaa Hospital, Bengaluru, which is situated near the place of the accident and was treated under hospitalization. After taking treatment, the



petitioner has approached the Tribunal for grant of compensation of Rs.5,00,000/-. Claim was opposed by the Insurance Company. The Tribunal, after taking the evidence and hearing both the parties, by the impugned judgment allowed the claim petition granting compensation of Rs.1,99,570/- (rounded off to Rs.2,00,000/-) with interest at 6% p.a. Questioning the very involvement of the vehicle in the accident and alleging fraud, the Insurance Company has filed MFA.No.7074/2013, whereas pleading inadequacy and seeking enhancement, the petitioner has filed MFA.No.8036/2013.

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

5. It is the contention of the learned counsel for the Insurance Company that, the accident was involving a car bearing Reg.No.KA-03/HD-5568 versus Honda Activa bearing Reg.No.KA-02/ES-1382. When the petitioner was



brought to Shifaa Hospital, history was furnished and same was recorded in the hospital records. Later both the vehicles have been replaced, hospital records have been tampered and there was no motor vehicle inspection conducted on the car as well as the motorcycle in question. The spot mahazar came out in the questionable circumstances. The petitioner and the owner of the vehicle have colluded with each other have played fraud. According to the petitioner, the auto drivers have brought and admitted him to the hospital and they were not examined as eyewitness to the incident. The statement of the complainant was recorded at 3.00 p.m. on the next day morning. The brother of the petitioner Mohammad Hussain has given information to the hospital that the car bearing Reg.No.KA-05/HD-9565 was caused the accident. The motorcycle in question was subsequently implanted, the petitioner has failed to prove the involvement of the motorcycle in question, there are overwriting in the hospital records. Therefore, the petitioner cannot enrich



himself by playing fraud and claim petition ought to have been dismissed.

6. Per contra, learned counsel for the petitioner has contended that, the petitioner himself is an eyewitness to the incident. Soon after the accident he was brought to the hospital at 3.00 a.m., on the next day the police have visited the hospital, recorded the statement of the petitioner as he was informed by the auto drivers that the vehicle number was correctly given to the Shifaa hospital and no car was involved in the accident, motorcycle bearing Reg.No.KA-03/HD-5568 had hit against the motorcycle ridden by the petitioner bearing Reg.No.KA-05/HB-9410, the petitioner is not responsible for the overwriting in the hospital records. The discharge summary, wound certificate and prosecution papers go to explain that the petitioner was riding the Honda Activa bearing Reg.No.KA-05/HB-9410 at the time of accident and it was hit by the motorcycle bearing Reg.No.KA-03/HD-5568. Accordingly, the rider of the motorcycle was



prosecuted by the police and the petitioner having sustained fracture of both the bones of right leg, was treated under hospitalization for a period of 28 days, there was no occasion for him to tamper the medical records which were not under his custody.

6.1. The medical evidence is placed through PWs.2 and 3 that the petitioner has suffered 39.4% of the limb disability and 20% of the whole body disability, whereas the Tribunal has taken only at 15%. The petitioner was working as a teacher in a Mavalli Masjid, earning salary of Rs.8,000/- per month. But the Tribunal has taken at Rs.4,000/- is on the lower side. The compensation assessed under different heads is on the lower side and she sought for enhancement with a direction to the respondents to deposit the compensation as there is no issue regarding the driving licence and the policy of insurance.



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 definite case of the petitioner that, at the early morning of 02.06.2010 i.e. 00.45 a.m. on 03.06.2010 near Queens road Circle, there was an accident in which the petitioner has sustained fracture of both the bones of his right leg. The petitioner is before the Tribunal on the ground that while he was riding the motorcycle bearing Reg.No.KA-05/HB-9410, another motorcycle bearing Reg.No.KA-03/HD-5568 dashed against him. According to the petitioner, nearby the place of accident, there were auto drivers present who carried him to the Shifaa hospital. The petitioner in the witness box has asserted that the auto drivers have given information to his brother-Mohammad Hussain, who has informed the same to the hospital authorities and as well as the Police. The petitioner admits that his brother Mohammad Hussain was not an eyewitness. Before the



Tribunal, the petitioner himself claims to be the eyewitness and no other eyewitnesses are examined, only the prosecution papers are relied upon by the petitioner.

9. On careful evaluation of the evidence of the petitioner, it is pertinent to note that the auto driver has brought the motorcycle which caused the accident near the hospital and on the same day, the police have recorded his statement but he has not informed to the police about the vehicle number. Contrary, the police have informed the vehicle registration number. Ex.P1 is the statement of the petitioner recorded in the Shifaa Hospital. On perusal of the same, it is pertinent to note that while the petitioner was riding his friend's Honda Activa bearing Reg.No.KA-05/HB-9410 near Queens road Circle, motorcycle bearing Reg.No.KA-03/HD-5568 came from Kasturba road and dashed against his motorcycle. The auto drivers who were present near the place of accident have brought and admitted to the Shifaa Hospital and



accordingly the actionable negligence attributed against the driver of the offending motorcycle.

10. From the recital found in Ex.P1, the statement attached to the FIR, it can be noticed that the petitioner was not aware of the registration number of the motorcycle, the auto drivers have given information to his brother Mohammad Hussain, who informs the hospital authorities. There is inconsistency in the evidence of the petitioner to that of the recital of the averments made in the complaint. In this regard, it is very relevant to peruse the evidence of PW.3-Dr. Mohamad Irshad, the Medical Officer who admitted the petitioner to the hospital soon after his arrival. He is examined as PW3, whose testimony goes to show that when brought to the Hospital, the petitioner was conscious and he himself informed that the car had hit against his motor cycle. Accordingly, note was recorded and police intimation was sent as per Ex.R1 on 02.06.2010 itself.



11. In this regard, it is very relevant to refer the information furnished to the hospital authorities under Ex.R1. Ex.R1 was the document issued by Shifaa Hospital, Bengaluru wherein the petitioner was attended by his friends and the accident details are recorded as "the "patient had RTA by the car No.KA-05/MD-9410 / KA-03/HD-5568 near Dickenson / Milkenson road around 12.00 midnight Activa KA-02/ES-1382". It is pertinent to note that originally the note was written as "the patient had RTA by KA-03/HD-5568 near Milkinson road around the 12.00 midnight Activa KA-02/ES-1382" The car Reg.No.KA-03/HD-5568" by showing the arrow mark upwards, it is written as "KA-03/HD-5568" again it was over written as "KA-05/HD-9410", the Milkinson road is made as a Dickenson road.

12. Interesting to note that "KA-05/HB-9410" is not the car, it is Honda Activa said to have been ridden by the petitioner. If the recitals of Ex.R1 is appreciated along with the statement of PW.3-Dr.Mohamed Irshad, the Medical



Officer of the Shifaa Hospital that the petitioner was hit by the car, then the bonafides in Ex.P1 has been contrary to the recital in Ex.R1. The cross-examination of PW.3 makes out that it is the petitioner himself, who informed him that he was hit by the car and the car registration number is also ascertained by the Insurance Company by producing Exs.R3 to R5, the RTO records. Ex.R3 point out that KA-03/MD-5568 is a Maruti Esteem car belonging to one Ismail Baig. Ex.R4 indicates that KA-05/HD-9410 is the Honda Activa belonging to one Subramani K. Ex.R5 indicates that KA-02/ES-1382 is the Honda Activa belonging to one Nandish Eshwar. Whereas the respondent No.1 and the Insurance Company arrayed in this case as the owner and the insurer of the motorcycle Reg.No.KA-03/HD-5568 which belonging to one Velu G, the first respondent.

13. From the above records, it is thus clear that there is tampering of hospital records. Soon after the accident, the petitioner was taken to the Shifaa Hospital



with the history that car bearing Reg.No.KA-03/MD-5568 had hit against the Honda Activa motorcycle bearing Reg.No.KA-02/ES-1382. By the time the police have entered the hospital at 1.00 p.m. on 03.06.2010, the car has been replaced with motorcycle bearing Reg.No.KA-03/HD-5568 and the Honda Activa bearing Reg.No.KA-05/HB-9410. The motorcycle ridden by the petitioner as well as the offending motorcycle have been completely replaced, there is no explanation for such replacement. No eyewitnesses are examined. The accident took place in the midnight. The evidence clearly point out that fraud has been played by the petitioner for the sake of compensation. Insurance Company is right in arguing that the vehicle had been replaced for the sake of compensation.

14. The Co-ordinate Bench of this Court in **Veerappa and another -vs- Siddappa and another**¹, has held that the person who assists the petitioner for the sake of

¹ ILR 2009 KAR 3562



compensation, has to pay compensation and the claim petition shall not be dismissed. Accordingly, the first respondent being the owner of the motorcycle bearing Reg.No.KA-03/HD-5568, who has connived with the petitioner, is liable to pay the compensation. The Insurance Company has to be exonerated. The petitioner cannot be allowed to get windfall on account of the fraudulent accident from the hands of the Insurance Company.

15. As regarding entitlement of the petitioner, the claim is genuine insofar as injuries sustained by the petitioner, he has to be awarded with just compensation. The medical records show that the petitioner was aged 31 years, he has suffered fracture of both the bones of right leg and right malleolus. He was under hospitalization for 3 days from 02.06.2010 to 16.06.2010 for 14 days, from 02.08.2010 to 08.08.2010 for 7 days and 17.04.2011 to 24.04.2011 for 7 days, totally 28 days. The medical bills



issued by the Shifaa Hospital indicates Rs.1,51,950/- that has to be reimbursed.

16. PW.2-Dr.Ramachandra and PW.3-Dr.Mohamad Irshad, both have explained that the injuries sustained at 39.4% of limb disability and 20% of the whole disability, whereas the Tribunal has considered it at 15%. Having regard to the fracture of both the bones of right leg and the petitioner being a teacher in a Mavalli Masjid, the functional disability assessed by the Tribunal at 15% is proper and the same has to be kept in-tact.

17. The accident is of the year 2010. A person with no proof of income in the year 2010 will earn not less than Rs.5,500/- per month. The Tribunal has taken Rs.4,000/- as the income of the petitioner is on the lower side. Though the petitioner claims that he is earning Rs.8,000/- per month as a teacher at Mavalli Masjid, there is no proof of income. Hence, the notional income of the petitioner has to be taken at Rs.5,500/- and for his age, the applicable multiplier is 16.



18. As regarding compensation is concerned, the petitioner has to be assessed at Rs.60,000/- towards pain and suffering, medical expenses at Rs.1,51,950/- and attendant charges at Rs.5,000/-, food and nourishment at Rs.5,000/-, conveyance expenses at Rs.2,000/-, loss of amenities and discomfort at Rs.50,000/- and the petitioner will be laid up for minimum of 4 months and Rs.22,000/- (Rs.5,500/- x 4 months) towards loss of income during laid up. The loss of future income will be Rs.5,500/- x 12 x 16 x 15% = Rs.1,58,400/-, then the total compensation comes to Rs.4,54,350/- as against Rs.1,99,570/-, thereby enhancement of Rs.2,54,780/-. It is the just compensation the petitioner is entitled to, in the facts and circumstances of the case.

19. The petitioner claims damage to his motorcycle. The evidence points out that the Honda Activa bearing Reg.No.KA-05/HD-9410 belonging to one Subramani K. and not the petitioner. The damage to the said vehicle has



to be claimed by the RC owner and not the petitioner and the petitioner cannot seek damages for the same.

20. As regarding liability is concerned, in view of the above discussion, that the fraud has been played by the petitioner in collusion with the owner of the vehicle-Velu G, the first respondent, he has to recover the compensation from the owner of the vehicle and not from the insurer. The Insurance Company has to be exonerated from its liability.

21. In view of the above discussion, both the appeals merit consideration, in the result, the following:

ORDER

- i. Both the appeals are **allowed in part**;
- ii. The impugned judgment and award passed by the Tribunal is modified;
- iii. The petitioner would be entitled to total compensation of Rs.4,54,350/- with interest at 6% p.a. from the date of petition till the date of deposit;



- iv. Claim petition against the Insurance Company is hereby dismissed;
- v. The petitioner is entitled to recover the compensation from respondent No.1, the RC owner of the motorcycle bearing Reg.No.KA-03/HD-5568;
- vi. The respondent No.1 shall deposit entire compensation with interest within eight weeks from the date of receipt of certified copy of this judgment;
- vii. Amount deposited by the Insurance Company shall be returned to it.

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