



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. 7116 OF 2015 (MV-I)

BETWEEN:

SRI. NANJUNDANAIAK S/O. BASAVANAIAK
AGED ABOUT 47 YEARS,
R/AT: AREPURA VILLAGE,
GUNDLUPETE TALUK.

... APPELLANT

(BY SRI. H.V BHANU PRAKASH, ADVOCATE)

AND:

1. SRI. K. NANDISH S/O. KEMPANNA
AGED ABOUT 37 YEARS,
R/AT: NO.83, AREPURA VILLAGE,
BEGURU HOBLI,
GUNDLUPETE TALUK-571 111.

2. THE BRANCH MANAGER,
NEW INDIA INSURANCE CO. LTD.,
3RD CROSS, R.P.ROAD,
NANJANGUD-571 301.

... RESPONDENTS

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

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT
PRAYING TO, MODIFY JUDGMENT AND AWARD DATED 26.11.2014
PASSED IN MVC NO.503/2013 ON THE FILE OF THE MOTOR
ACCIDENT CLAIMS TRIBUNAL AT MYSURU (IN THE COURT OF THE
ADDITIONAL JUDGE SMALL CAUSES AND SENIOR CIVIL JUDGE AT
MYSURU).



THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 05.09.2024 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 petitioner is seeking enhancement of compensation and also questioning the dismissal of the claim petition against the insurance company.

2. The rank of the parties will be referred to as per their status before the Tribunal.

3. Brief facts of the case are, on 04.02.213, at about 12.00 noon, while the petitioner was traveling in a motorcycle bearing No.KA-10/J-8760 as a pillion rider near Arepura Gate, Gundlupete Taluk, the rider applied sudden break, due to sudden intervention of the cow. Due to which, the petitioner thrown out of the motorcycle and sustained injuries. He was treated at Government Hospital, Gundlupet, JSS Hospital, Mysuru and KR



Hospital, Mysuru. After the discharge, he was bedridden and complaint was filed to the police 30 days after the accident. Seeking grant of compensation of Rs.10,00,000/-, the petitioner approached the Tribunal. The claim was opposed by the owner and insurer of the motorcycle.

4. The Tribunal after considering the evidence and hearing both the parties, by the impugned judgment, allowed the claim petition against the owner of the motorcycle only by awarding compensation of Rs.1,28,208/- with interest at 6% p.a. and dismissed the claim against the insurance company on the ground that there is a doubt casted about the accident, documents have been fabricated and petition was cleverly drafted. Aggrieved by the same, the petitioner is before this Court.

5. Heard the arguments of Sri H.V. Bhanu Prakash, learned counsel for petitioner and Sri Ashok N. Patil, learned counsel for respondent-insurance company.



6. It is contended by the learned counsel for the petitioner that the petitioner was the pillion rider, soon after the accident, he was admitted to Government Hospital, Gundlupete with a history of road traffic accident. Immediately he was shifted to JSS Hospital and then to KR Hospital, Mysuru and he was under hospitalization and due to the injury to spinal cord, he was made to bed ridden. The history was properly furnished to the hospitals and in spite of it, the Tribunal has made its guess work without any evidence that the petitioner has fabricated the records. The compensation awarded is on the lower side in spite of the medical evidence is placed explaining the disability at 65% award of Rs.40,000/- towards future loss of income is on the lower side. There is no dispute as to the driving license of the rider of the motorcycle and the policy of insurance was in force. The insurance company cannot avoid its liability and he sought for interference.

7. *Per contra*, learned counsel for insurance company has contended that the owner of the motorcycle



is the relative of the petitioner. There is inordinate delay in filing the complaint. When the petitioner was brought to the Government Hospital, Gundlupete, the history was furnished as fall, later with connivance of police, the records have been tampered for the sake of compensation. The Tribunal has rightly evaluated the evidence and disallowed the claim of disability and exonerated the insurance company. As the petitioner colluded with the relatives for the sake of compensation, the owner of the motorcycle has to pay the compensation and he supported the impugned judgment.

8. I have given my anxious consideration to the arguments addressed by the learned counsel for both the parties and perused the material on record.

9. The material on record goes to show that there was an accident involving the petitioner and the motorcycle on 04.02.2013 at 12.00 p.m. There is no dispute that there is a delay in filing the complaint. The petitioner has offered explanation in the witness box. The



insurance company mainly harping upon on the OPD slip issued by the Government Hospital, Gundlupete on 04.02.2013 which refers the history as fall from the bike. It is pertinent to note that on 04.02.2013 itself the petitioner was brought to JSS Hospital, Mysuru. The accident case register of JSS Hospital has also made available which clearly goes to show that the petitioner was admitted to the hospital with a history as fall from the motorbike while he was riding as pillion rider, the motorcycle was hit against a cow which came across the bike and rider applied sudden break and pillion rider jumped out of the motorcycle. This history clearly points out that the petitioner being a pillion rider on account of the motorcycle hitting against the cow on the road, he jumped out of the motorcycle.

9.1 The inpatient record maintained by JSS Hospital and KR Hospital are identical in nature. The petitioner is injured and eyewitness to the accident. He is the best person to speak about the accident. In the witness box he



has reiterated the manner in which the accident had taken place. The cross-examination on behalf of the insurance company did not point out that there was no accident and the petitioner was not the pillion rider. The prosecution papers clearly point out that the rider of the motorcycle prosecuted for the actionable negligence. He has pleaded guilty on filing of the charge sheet. There is no need for any independent witness to explain the accident. Having regard to the cross-examination of the petitioner on behalf of the insurance company goes to explain the occurrence of accident in which the petitioner sustained injuries due to fall from the motorcycle as pillion rider.

10. On behalf of the insurance company, the doctor who treated the petitioner at JSS Hospital, Mysuru has examined as DW-1. DW-1 Dr. Shivanna, Medical Officer of JSS Hospital, Mysuru has clearly narrated that on 04.02.2013, the petitioner was admitted to JSS Hospital having fallen from the motorcycle which hit against the cow which came across the road and he was treated till



07.02.2013 as inpatient. DW-1 is the witness for the insurance company and his evidence did not point out that the petitioner had fallen on his own somewhere else contrary, it explains that while the petitioner being the pillion rider of the motorcycle fallen from the motorcycle on 04.02.213 and sustained injuries. The medical records clearly point out that the petitioner has suffered compression fracture of C5 vertebra body with below C6 level and neurological deficit. Thus, the evidence on record unequivocally explains the accident and injuries sustained by the petitioner.

11. Now the point is regarding delay in filing of complaint. The petitioner had suffered spinal cord injury and he was under hospitalization at JSS Hospital and KR Hospital, Mysuru and thereafter he was also treated at Bengaluru also. The petitioner was suffering from spinal cord injury and he cannot be expected to move around immediately to file complaint. The complaint is filed by the son of the petitioner. It is pertinent to note that when



the petitioner was brought to the Government Hospital at Gundlupete, history of accident is furnished and MLC was recorded and he was treated as OPD case of spinal cord injury and he was referred to JSS Hospital. On 04.02.2013 itself on 7.30 p.m., the petitioner was shifted to JSS hospital with the history of road traffic accident. Even in the JSS Hospital, it is made clear that it is a MLC case and the petitioner thereafter admitted to KR Hospital and MLC case was registered that he sustained injuries in the road traffic accident. However, it is brought out that neither the Medical Officer at Government Hospital, Gundlupete nor the Medical Officers at K.R. Hospital and JSS Hospital, Mysuru intimated the jurisdictional police which forced the petitioner to file complaint after one month. Hence, the explanation offered for the delay is reasonable and there is no doubt about the bonafides of the petitioner.

12. The accident involving the motorcycle where the petitioner was riding as pillion rider and ridden by his



relative belonging to his one of the relative is quite natural. The petitioner was traveling in the bike of a relative which does not mean that the petitioner has colluded with the owner of the motorcycle. The rider of the motorcycle is not necessary party to settle the claim under the Motor Vehicle Act. The Tribunal has unnecessarily made certain observations which are contrary to the evidence on record.

13. The medical records clearly show that the petitioner suffered compression fracture of C-5 and neurological deficit of C-6. PW-2 Dr.Kaladagi P.S. is treated doctor who has clearly spoken that the nature of injuries caused 65% of the permanent disability. The cross-examination of PW-2 on behalf of the insurance company did not deny the injuries and the history of the accident. The disability assessed by the doctor at 65%, if $\frac{1}{3}^{\text{rd}}$ is taken as the whole body disability will come around 21.6%. Having regard to the nature of injuries,



avocation and age of the petitioner, it is proper to assess 20% as functional disability of the petitioner.

14. The medical bills produced by the petitioner point out a sum of Rs.20,784/- has been spent and the petitioner was under hospitalization for more than 13 days. Money was spent towards traveling, food and nourishment and attendant charges. The petitioner would have been laid up for a minimum period of four months during the treatment. The accident is of the year 2013. Though the petitioner claims that he was a coolie earning a sum of Rs.10,000/- p.m., there is no proof of the same. Hence, he has to be treated as a person with no proof of income. The accident is of the year 2013 and income for a person with no proof of income is to be considered at Rs.8,000/- p.m. and accordingly, it is considered.

15. The medical records show the age of the petitioner was 45 years. Hence, the applicable multiplier is 14. The petitioner having sustained fracture, he is required to be compensated adequately and it should be just



compensation. The Tribunals are not giving any charity to the person of victim of an accident. He must be compensated with just compensation. Hence, towards pain and suffering a sum of Rs.40,000/-, towards medical expenses a sum of Rs.20,784/-, towards loss of income for 4 months during laid up a sum of Rs.32,000/-, towards loss of amenities and discomfort a sum of Rs.40,000/-, towards incidental expenses such as traveling, food and nourishment and attendant charges a sum of Rs.20,000/- is awarded and the loss of future income is calculated as under: $\text{Rs.}8,000 \times 12 \times 14 \times 20\% = 2,68,800/-$

16. There are reasons to award compensation under different heads. Hence, the petitioner is entitled to total compensation of Rs.4,21,584/- as against Rs.1,28,208/- thereby Rs.2,93,376/- enhancement. It is just compensation that the petitioner is entitled in the facts and circumstances of the case.

17. As regarding liability is concerned, the charge sheet did not point out the allegation against the rider of



the motorcycle that he was not possessing valid and effective driving licence. The insurance company did not deny the policy of insurance. The owner of the motorcycle is liable for the act of riding and insurance company being the insurer liable to indemnify the insured. Hence, both the respondents are jointly and severally liable to pay the compensation. The order of the Tribunal dismissing the claim against the insurance company is liable to be set aside.

18. In view of the above, the appeal is merits consideration, in the result, the following:

ORDER

- (i) Appeal is allowed;
- (ii) The impugned judgment and award is modified;
- (iii) The order of dismissal of the claim petition against the insurance company is set aside;
- (iv) The petitioner is entitled to total compensation of Rs.4,21,584/- as against Rs.1,28,208/- awarded by the Tribunal with interest at 6%



p.a. from the date of petition till the date of deposit;

- (v) Both the respondents are jointly and severally liable to pay the compensation;
- (vi) The insurance company is directed to deposit the compensation with interest within eight weeks from the date of receipt of a copy of this judgment.

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

NAA