

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19th DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE DR. JUSTICE K.MANMADHA RAO

MISCELLANEOUS FIRST APPEAL NO. 8230 OF 2015 (MV-I)

BETWEEN:

SRI PRAVEEN R
S/O. LATE RAMACHANDRA .G
AGE: 24 YEARS,
OCC: LABOUR AT BEL FACTORY,
R/AT 3RD BLOCK, DODDABOMMASANDRA,
VIDYARANYAPURA,
BENGALURU-560 097.

...APPELLANT

(BY SRI. SURESH M LATUR, ADVOCATE)

AND:

1. SMT SAVITHRAMMA
W/O. LATE RAMACHANDRA.G.
NO.5/249, 5TH MAIN,
CHAMUNDESHWARI LAYOUT,
VIDYARANYAPURA,
BENGALURU-560 097.

2. THE REGIONAL MANAGER
NEW INDIA ASSURANCE CO. LTD.,
UNITY BUILDING, MISSION ROAD,
BENGALURU-560 027.

...RESPONDENTS

(BY SRI. B C SEETHARAMA RAO, ADVOCATE FOR R2;
R1 – SERVED AND UNREPRESENTED)

THIS MISCELLANEOUS FIRST APPEAL IS FILED U/S
173(1) OF MOTOR VEHICLES ACT, 1988, JUDGMENT AND

AWARD PASSED BY THE IX ADDL. SMALL CAUSES JUDGE, MEMBER & XXXIV ACMM, MACT IN MVC NO.2881/2013, (SCCH-7) AT BENGALURU DATED 20-09-2014 MAY KINDLY BE SET ASIDE BY ALLOWING THIS APPEAL AND AWARD THE COMPENSATION OF RS.8,00,000/- WITH 18% IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 10.12.2025 AND COMING ON FOR PRONOUNCEMENT, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE DR. JUSTICE K.MANMADHA RAO

CAV JUDGMENT

This appeal is by the appellant/claimant under Section 173(1) of the Motor Vehicles Act (for short 'MV Act') seeking to allow the appeal and award the compensation of Rs.8,00,000/- with 18% p.a. by setting aside the judgment and award dated 20.09.2014 passed by the IX Addl. Small Causes Judge Member and XXXIV ACMM, MACT, Bangalore in MVC No.2881/2013 (for short, 'Tribunal'),

2. The parties are referred to as per their ranking before the Tribunal for easy reference.

The brief facts of the case are as under:

3. On 02.01.2013 at about 7.45 p.m., the petitioner/claimant was driving a car bearing Registration No.KA-50-N-4416 on Nelamangala-Tavarekere Road in a high speed and rash and negligent manner, at that time, when he reached near Jattipalya Cross, Tavarekere, he lost control over the vehicle and dashed against a tree on the road side. As an impact, he sustained grievous injuries and filed claim petition under Section 163(A) of M.V. Act, seeking for compensation of Rs.8,00,000/- with interest at the rate of 18% p.a.

4. After issuance of notice, the respondent No.1/owner of the offending vehicle remained absent and was placed *ex-parte*. Respondent No.2/Insurance Company has appeared through its counsel and filed written statement.

5. In order to substantiate the case of the petitioner, the petitioner got himself examined as PW-1

and has also examined two witnesses as P.W.2 and PW-3-doctor who treated the claimant, and got marked documents at Exs.P1 to P15. On the other hand, respondent No.2 has examined one witness as RW.1 and got marked Ex.R1 to Ex.R3.

6. On the basis of the pleadings of the parties, the Tribunal framed the issues and dismissed the claim petition on the ground that the claimant failed to prove permanent disablement to the whole body.

7. Learned counsel for the appellant/claimant submitted that it is mentioned in Ex.P1-FIR that in the said road traffic accident, the claimant has sustained only simple injuries. Ex.P3-Panchanama and Ex.P4 also disclose that the claimant sustained simple injuries. Ex.P6-Discharge Summary also discloses that in the said accident, the petitioner sustained deep CLW over lateral aspect on left knee measuring 6 x 3 cms., urethral trauma and during the course of treatment, he underwent wound debridement with suturing on deep CLW on left lateral knee and he was stable both intra OP and post OP and

discharged on his request. It is contended that the evidence of P.W.3-doctor Sri.B.Ramesh is disbelieved by the Tribunal, wherein the doctor has given disability certificate stating that claimant has sustained 20% disability to right lower limb and 10% to whole body. Further, the Tribunal has relied upon the contention of Insurance Company that wound certificate at Ex.R1 is not proved and claimant sustained only simple injuries which is not correct.

8. Learned counsel for the claimant has relied upon the Judgment **Raj Kumar Vs. Ajay kumar and another, reported in 2011 ACJ 1** regarding consideration of assessment of permanent disablement by the doctor who subsequently examined the injured:

"Principles are:

(i) xxx

(ii) xxx

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

16. We may in this context refer to the difficulties faced by claimants in securing the presence of busy surgeons or treating doctors who treated them, for giving evidence.

Most of them are reluctant to appear before the Tribunals for obvious reasons either because their entire day is likely to be wasted in attending the Tribunal to give evidence in a single case or because they are not shown any priority in recording evidence or because the claim petition is filed at a place far away from the place where the treatment was given. Many a time, claimants are reluctant to take coercive steps for summoning the doctors who treated them, out of respect and gratitude towards them or for fear that if forced to come against their wishes, they may give evidence which may not be very favourable. This forces the injured claimants to approach 'professional' certificate givers whose evidence most of the time is found to be not satisfactory. Tribunals should realize that a busy surgeon may be able to save ten lives or perform twenty surgeries in the time he spends to attend the Tribunal to give evidence in one accident case. Many busy surgeons refuse to treat the medico-legal cases out of apprehension that their practice and their current patients will suffer, if they have to spend their days in Tribunals giving evidence about past patients. Solution does not lie in coercing the doctors to attend the Tribunal to give evidence. The solution lies in recognizing the valuable time of doctors and accommodating them. Firstly, efforts should be made to record the evidence of the treating doctors on commission, after ascertaining their convenient timings. Secondly, if the doctors attend the Tribunal for giving evidence, their evidence may be recorded without delay, ensuring that they are not required to wait. Thirdly, the doctors may be given specific time for attending the Tribunal for giving evidence instead of requiring them to come at 10.30 a.m. or 11 am. and wait in the court hall. Fourthly, in cases where the certificates are not contested by respondents they may be marked by consent, thereby dispensing with the oral evidence. These small measures as also any other suitable steps taken to ensure the availability of expert evidence, will ensure assessment of just compensation and will go a long way in demonstrating that courts/Tribunals show concern for litigants and witnesses.

Assessment of compensation:

17. In this case, the Tribunal acted on the disability certificate, but the High Court had reservations about its acceptability as it found that the injured had been treated in the government hospital in Delhi whereas the disability

certificate was issued by a District Hospital in the State of Uttar Pradesh. The reason given by the High Court for rejection may not be sound for two reasons. Firstly, though the accident occurred in Delhi and injured-claimant was treated in a Delhi Hospital after the accident, as he hailed from Chirori Mandi in the neighbouring District of Ghaziabad in Uttar Pradesh, situated on the outskirts of Delhi, he might have continued the treatment in the place where he resided. Secondly, the certificate has been issued by the Chief Medical Officer, Ghaziabad, on the assessment made by the Medical Board which also consisted of an Orthopaedic Surgeon. We are, therefore, of the view that the High Court ought not to have rejected the said disability certificate.

Learned counsel relied upon the following Judgments

also:

1. National Insurance Co.Ltd., Vs. Mohd. Anwar Bhat and others reported in **2022 AAC 608(J & K)**

2. G.Gnanam Vs. Metropolitan Transport Corportation, reported in **2009 ACJ 852**

3. Aparna Das and others Vs. National Insurance Co. Ltd., and another reported in **2009 ACJ 856**

4. Manoj Rathaur Vs. Anil Raheja and others reported in **2012 ACJ 1459**

5. United India Insurance Co. Ltd., Vs. Bano and others reported in **2012 ACJ 1463**

6. Syed Sadiq and others Vs. Divisional Manager, United India Insurance Co. Ltd., reported in **2014 ACJ 627**

9. Learned counsel for the claimant further contended that relying upon **RAJ KUMAR** case supra, evidence of P.W.3-Dr.Ramesh should have been considered by the Tribunal regarding assessment of permanent disability at 10% to the whole body. Hence, he prays for allowing the appeal and enhance the compensation awarded by the Tribunal. The Judgments cited by the learned counsel for the claimant are not relevant to the facts of the case. In the present case, the treated doctor is not examined and some third doctor Dr.Ramesh has been planted as a witness P.W.3 by claimant himself which is not permissible in law. Dr.Ramesh is not the doctor who treated the claimant at any point of time.

10. Learned counsel for respondent No.2-Insurance Company submitted that there is no illegality or infirmity in the Judgment of the Tribunal and the Tribunal has rightly dismissed the claim petition filed by the claimant.

11. Heard the learned counsel appearing for the appellant and respondent No.2-Insurance Company and perused entire material on record.

12. As observed by this Court, there is no dispute regarding the occurrence and date of accident and involvement of Car bearing Registration No.KA-50-N-4416. Ex.P5-MVI report clearly discloses the damages caused to the said car. Ex.P10-Driving licence also discloses that the claimant was possessing valid and effective driving licence to drive the said car. It is observed that the FIR, Ex.P3-Panchanama and Ex.P4 disclose that the claimant sustained simple injuries. It would be relevant to refer to the Judgment of Hon'ble Apex Court in ***Ningamma and another v United India Insurance Company Limited*** reported in ***(2009) 13 SCC 710*** maintainability for the claim by the owner under Section 163(A) of the M.V.Act. Relevant paragraphs No.22 to 25 are extracted hereunder:

22. In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided

under Section 163-A. But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163-A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the MVA.

23. When we apply the said principle into the facts of the present case we are of the view that the claimants were not entitled to claim compensation under Section 163-A of the MVA and to that extent the High Court was justified in coming to the conclusion that the said provision is not applicable to the facts and circumstances of the present case.

24. However, the question remains as to whether an application for demand of compensation could have been made by the legal representatives of the deceased as provided in Section 166 of the MVA. The said provision specifically provides that an application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 may be made by the person who has sustained the injury; or by the owner of the property; or where death has resulted from the accident, by all or any of the legal representatives of the deceased; or by any agent duly authorised by the C person injured or all or any of the legal representatives of the deceased, as the case may be.

25. When an application of the aforesaid nature claiming compensation under the provisions of Section 166 is received, the Tribunal is required to hold an enquiry into the claim and then proceed to make an award which, however, would be subject to the provisions of Section 162, by determining the amount of compensation, which is found to be just. Person or persons who made claim for compensation would thereafter be paid such amount. When such a claim is made by the legal representatives of the deceased, it has to be proved that the deceased was not himself responsible for the accident by his rash and negligent driving. It would also be necessary to prove that the deceased would be covered under the policy so as to make the insurance company liable to make the payment to the heirs.

13. In view of the above circumstances, the appellant is the driver and owner of the vehicle, in such case, the owner would not himself be a recipient of compensation as the liability to pay the same is on him. This proposition of law is apparently clear on reading Section 163(A) of the M.V.Act. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner could not have claimed compensation under Section 163(A) of the M.V.Act. The Tribunal has rightly dismissed the claim petition under Section 163(A) of the Motor Vehicles Act. The proposition of law as held in ***Ningamma's*** case is squarely applicable to the case on hand.

14. The learned counsel for the appellant submitted that this Court is not inclined to interfere in this appeal and further submitted that to give liberty to file fresh application for demand of compensation under any other provisions of the M.V.Act. In view of the above submission, this Court by relying upon ***Ningamma's*** case, granted permission to the appellant for filing an

application for demand of compensation under Section 165 and 166 of M.V.Act within a period of six weeks from the date of receipt of this Judgment and further directed the Tribunal to hold an enquiry into the claim and then proceed to make an award which, however, would be subject to the provisions of Section 163(A) and 166 of the M.V.Act, by determining the amount of compensation, which is found to be just.

With the above observations, the appeal is ***disposed of.***

**Sd/-
(DR.K.MANMADHA RAO)
JUDGE**

BNV