



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 9TH DAY OF JANUARY 2026

BEFORE

THE HON'BLE MRS JUSTICE GEETHA K.B.

MISCELLANEOUS FIRST APPEAL NO. 101496 OF 2014 (MV-I)

BETWEEN:

GANGAPPA
S/O. AJJAPPA,
AGE: 51 YEARS,
OCC: OWNER OF TRACTOR AND
TRALEE BEARING NO.KA.35/T-4089
AND TRALEE NO.35/T-4090,
R/O. CHIRABI VILLAGE,
KUDLIGI TALUKA,
BELLARY DISTRICT.

...APPELLANT

(BY SRI. J.M. ANILKUMAR, ADVOCATE)

AND:

1. EDDAPPARA HEMANNA
S/O. LAKSHAMAPPA,
AGE: 27 YEARS,
OCC: COOLIE,
R/O. CHIRABI VILLAGE,
KUDLIGI TALUKA,
BELLARY DISTRICT.
2. KAJJI NINGAPPA
S/O. MOOGAPPA

CHANDRASHEKAR
LAXMAN
KATTIMANI


Digitally signed by
CHANDRASHEKAR
LAXMAN KATTIMANI
Location: HIGHCOURT
OF KARNATAKA
DHARWAD BENCH
DHARWAD



AGE: 33 YEARS,
OCC: DRIVER OF THE TRACTOR AND
TRALEE BEARING NO.KA.35/T-4089
AND TRALEE NO.35/T-4090,
R/O. CHIRABI VILLAGE,
KUDLIGI TALUKA,
BELLARY DISTRICT.

3. THE MANAGER,
NATIONAL INSURANCE COMPANY LTD.,
BRANCH OFFICE, PLOT NO.13C,
DOOR NO.22/18, MAIN ROAD,
PARVATHI NAGAR,
BELLARY-583103.

...RESPONDENTS

(BY SRI. M.Y. KATAGI, ADVOCATE FOR R3;
NOTICE TO R1 & R2 IS SERVED)

THIS MFA IS FILED UNDER SECTION 173(1) OF MVC ACT,
PRAYING TO SET ASIDE JUDGMENT AND AWARD
DATED:28.08.2013 IN MVC.NO.1245/2009 PASSED BY THE
LEARNED SENIOR CIVIL JUDGE AND MACT KUDLIGI AND MAY
KINDLY BE PLEASED TO SET ASIDE THE SAID JUDGMENT AND
AWARD BY ALLOWING THIS APPEAL, IN THE INTEREST OF
JUSTICE AND EQUITY.

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



ORAL JUDGMENT

(PER: THE HON'BLE MRS JUSTICE GEETHA K.B.)

This is the appeal filed under Section 173(1) of Motor Vehicles Act, 1988 (for short 'M.V. Act') praying for setting aside the judgment and award dated 28.08.2013 in M.V.C No.1245/2009 on the file of Senior Civil Judge and M.A.C.T., Kudligi (for short the 'Tribunal') by the owner/appellant.

2. Parties would be referred with their ranks as they were before trial Court for the sake of convenience and clarity.

3. After service of notice of appeal, the respondent Nos.1 and 2 - the claimant and driver of the alleged tractor respectively have not contested the appeal.

4. The claimant has filed a claim petition U/S.166 of M.V. Act praying for compensation in respect of injuries sustained by him in the accident that had taken place on 02.01.2009 at about 4 p.m. on Chiribhi Road near Dodda-Kariyappara Land near Chiribhi involving tractor - trolley bearing No.KA-35/T-4989.



5. It is the contention of claimant that claimant along with one Benki Hanumanthappa while returning to their village from the field while they are passing Chiribhi road near Dodda Kariyappara land, the tractor-trolley by loading material was driven by its driver in a rash and negligent manner and came from opposite side and dashed to the claimant and because of that he sustained grievous injuries and had taken treatment at SS Hospital, Davanagere by spending about Rs.2,00,000/- and he is not in a position to do any work and sustained disability and hence prayed for compensation.

6. After service of summons, respondent No.1-driver and respondent No.2-owner have not contested the petition. It is respondent No.3-the insurer appeared through its counsel and filed written statement wherein respondent No.3 has denied the entire petition averments and further took contention that claimant was traveling in the tractor as an unauthorized occupant and because of fall from the tractor sustained injuries and thus insurance company is not



liable to pay any compensation. It also took contention that driver of the tractor was not having valid and effective driving license at the time of accident and took other contentions available for the owner and the insurer and prayed for dismissal of the petition.

7. On behalf of claimant, claimant was examined as PW1 apart from examining the doctor who issued disability certificate as PW.2 and marked Exs.P.1 to P.23 and closed his side before the Tribunal. On behalf of respondents, two witnesses were examined as RW.1 and RW2, apart from marking Exhibit R.1.

8. After recording evidence of both sides and hearing arguments of both sides, the Tribunal came to the conclusion that the claimant has sustained injuries in the accident that had taken place on 02.01.2009 involving the tractor-trolley bearing No.KA-35/T-4989. But, it is because the claimant fall from the tractor and he was not the pedestrian and thus saddled liability on the owner and



awarded compensation of Rs.3,72,400/- and exonerated the insurer.

9. Aggrieved by the said judgment and award, the appellant/owner of the tractor-trolley has filed the present appeal.

10. Heard arguments of both sides.

11. Learned counsel for the appellant Sri.J.M.Anil Kumar would submit that as per complaint averments, the claimant was pedestrian and there was no fall from the tractor; further, charge-sheet is filed against the driver of the tractor. The insurance company has not challenged the charge sheet. Hence, liability ought to have been fastened on the insurance company. The tractor-trolley in question was duly insured with respondent No.3 and hence prayed for allowing the appeal.

12. Learned counsel for the appellant would further submit that the disability assessed by the trial Court is incorrect. As per the evidence of doctor, it is only 35 to 40% and when there is no specific mention that whether it



is for whole body or for particular limb, it is to be considered for particular limb and thus disability to the whole body should be construed as $\frac{1}{3}$ rd of it and thus, the disability taken by the Tribunal at 20% is incorrect and it should be taken at 12%.

13. Learned counsel for insurer Sri.M.Y.Katagi would submit that the respondent No.3 has produced the records from SS Hospital, Davanagere as per Ex.R.3 and it clearly indicates that the claimant had fall from the tractor and because of that fall, he sustained injuries and hence considering these aspects rightly, the Tribunal has fastened the liability only on the owner of the vehicle and the insurer is not liable to make compensation because the policy coverage is only for owner cum driver and one employee which includes the driver and not to any other third party travelling in the tractor-trolley. The claimant might be the employee under respondent No.1 or might be the unauthorised passenger in the tractor cum trolley and hence, it is not liable to pay compensation.



14. Even after service of notice, the claimant and driver of the tractor-trolley remain absent and unrepresented.

15. Having heard the arguments of both sides and verifying the appeal papers and also trial Court records, the points that arise for consideration are:

- 1) Whether fastening the liability on owner by the Tribunal is incorrect?
- 2) Whether the disability assessed by the Tribunal is proper?

16. My answer to **Point No.1** is in the **Negative** and **Point No.2** in the **affirmative** for the following:

REASONS:

The case of claimant before the trial Court in nutshell is that, claimant with another person while going on the road near Chiribi road near the land of Dodda Kariappara, the tractor cum trolley bearing No.KA-35/T-4989 came from



opposite side and hit the claimant and thereby he sustained the accident. Even though the accident occurred on 02.01.2009, the complaint was being registered on 12.01.2009. The certified copy of FIR and complaint as per Ex.P.1 and P.2 reveal that while the claimant was taking treatment in the SS Hospital, Davanagere by receiving the MLC memo, the police officials had been to the hospital and recorded the statement of claimant and then the case was registered.

17. Exhibit R.3 produced by the respondent No.3 is the admission record of the claimant. It reveals that claimant had sustained accident on 02.01.2009 at 05.00 p.m. and he was examined in the hospital on the same day at 10.15 p.m. and admitted to the hospital on 11.10 p.m. The history of the accident is narrated as fall from tractor to the ground in Chiribi village, Kudligi taluk, Bellary District and sustained injury over lower abdomen and left upper part of thigh; he had passed blood while passing urine. After completion of X-ray, it is reported that the claimant



has sustained fracture of superior and inferior of ramii of both pelvic bones; fracture of right side sacrum and prostatic urethra has been damaged. The wound certificate as per Ex.P.4 issued by the same Hospital establishes the same injuries with some multiple abrasions. These documents clearly establish that immediately after the accident, the claimant was taken to SS Hospital, Davanagere, wherein MLC No.1424/2009 is given and thus it was the duty of the Hospital Authorities to immediately send MLC report to police officials and also the responsibility of concerned police officials to come to the hospital and to record the statement of claimant immediately. It may be because of lapse of hospital authorities or police authorities, there is delay of 10 days in lodging the complaint and as claimant was in the hospital, there was no occasion for him to go to the police station to lodge the complaint. Hence, delay in lodging the complaint itself cannot be a ground to disbelieve the version of claimant that he sustained injuries in the accident.



18. However, it is to be noticed that in the complaint that the claimant has stated that he has sustained injury while he was pedestrian and the tractor came from opposite side and dashed against him. But, Ex. R.3 establishes that it is the claimant himself has stated that he had fall from the tractor and sustained injuries. It is to be noted here that Ex.R.3 establishes that the information was given by claimant himself to the doctor. Under those circumstances, stating before police that he was pedestrian is definitely an afterthought.

19. The insurance Company has also taken this plea in its objection statement. In this regard, the administrative officer of the insurer was examined as RW.1 and stated these facts in his affidavit evidence. In this regard, he denied the suggestion that the patient has not given the history of incident. As discussed above, Ex.R.3 clearly establishes that the information was given by the claimant himself and not by any other person.



20. Considering these aspects, rightly the Tribunal came to the conclusion that the claimant was passenger in the tractor and fall from tractor and thus, Insurance Company is not liable to make good any compensation because the insurance coverage is only to the owner cum driver and the employee, that means any driver and not to any other employee. Furthermore, it is not the contention of claimant that he was the employee going in a tractor. Hence, the insurance Company is not liable to pay compensation, but, it is the owner has to pay compensation.

21. The learned counsel for appellant would further submit that as per the evidence of the doctor and disability certificate as per Ex.P.5, the disability is 35 to 40%. But, the Tribunal has taken disability to the whole body at 20% without any basis.

22. The Tribunal in the judgment has only stated that the doctor has given disability of 35% and it is on higher side and has not given disability to the whole body and



hence Tribunal has taken the disability to whole body at 20%. It appears to be incorrect because if a disability to a particular limb is given; then, 1/3rd of it is to be taken for the whole body. As per the evidence of doctor, it is 35 to 45%. Hence, the disability to whole body ought to have been taken at 12% instead of 20%.

23. Except modification of this percentage of disability, the compensation awarded by Tribunal on other heads is proper and it requires no interference.

24. Thus, the loss of income due to disability is
 $\text{Rs.}54,000 \times 18 \times 12\% = 1,16,640/-$.

2. Thus, the claimant is entitled for total compensation at Rs.2,94,640/- as against Rs.3,72,400/- awarded by the Tribunal as under:

Sl. No.	Heads	Compensation awarded by the Tribunal (Rs.)	Compensation awarded by this Court (Rs.)
1	Pain sufferings and	50,000-00	50,000-00
2	Attendants charges	10,000-00	10,000-00



3	Loss of unhappiness and discomfort	10,000-00	10,000-00
4	Future Medical expenses	25,000-00	25,000-00
5	Loss of income during inpatient	10,000-00	10,000-00
6	Towards medical expenses	73,000-00	73,000-00
7	Loss of income due to disability.	1,94,400-00	1,16,640-00
	Total	3,72,400-00	2,94,640-00

3. In view of the aforesaid discussion, I pass the following:

ORDER

- 1) The **appeal** filed under Section 173(1) of the Motor Vehicles Act, 1988 is ***allowed in part*** by modifying the judgment and award passed in MVC No.1245/2009 dated 28.08.2013 on the file of Senior Civil Judge, and MACT, Kudligi.
- 2) Claimant is entitled for total compensation of Rs. 2,94,640-00 as against Rs. 3,72,400-00 awarded by the Tribunal.



- 3) The compensation shall carry interest at the rate of 6% per annum from the date of petition till the date of disbursement of compensation.
- 4) Owner of the vehicle i.e., present appellant shall deposit the compensation amount within eight weeks from the date of receipt of certified copy of this order.
- 5) Deposit and disbursement shall be made as per the award of the Tribunal.
- 6) Amount in deposit if any shall be transmitted to the Tribunal.
- 7) Draw modified award accordingly.

Sd/-
(GEETHA K.B.)
JUDGE

HMB
LIST NO.: 1 SL NO.: 12