



NC: 2026:KHC:53070
MFA No. 1057 of 2013

CNR: KAHC010114102013

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

MISCELLANEOUS FIRST APPEAL NO.1057 OF 2013 (MV)

BETWEEN:

SRINIVAS Y.,
S/O YELLAPPA
AGED ABOUT 36 YEARS
NO.94, VENKATAPPA BUILDING
SANTHE BEEDI
RAMAMURTHY NAGARA
BANGALORE - 65.

...APPELLANT

(BY SRI K.SHANTHARAJ, ADVOCATE)

AND:

1. ORIENTAL INSURANCE CO. LTD.,
BO ADUGODI, NO.6, 7TH MAIN
ABOVE SPENCERS NO.6, 80 FT ROAD,
3RD 'B' BLOCK, 7TH MAIN
KORAMANAGALA, BANGALORE - 34
REP BY ITS BRANCH MANAGER.
2. MOHAN C.,
S/O CHINNARAJ
MAJOR, NO.7, RCC 206/261
S G MUTT ROAD
CHAMARAJPET, BANGALORE - 45.

...RESPONDENTS

(BY SMT.S.SUJATHA PANDIT, ADVOCATE FOR (VC)
SRI K.SRIDHARA, ADVOCATE FOR R1;
V/C/O DATED 10.07.2011 NOTICE TO R2 IS D/W]

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE
JUDGMENT AND AWARD DATED 13.11.2012 PASSED IN MVC

Digitally signed
by ANUSHA V
Location: High
Court of
Karnataka



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NO.3436/2010 ON THE FILE OF THE I ADDITIONAL SMALL CAUSES JUDGE, 27TH ACMM, MACT, BANGALORE, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

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

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL JUDGMENT

Challenging judgment and award dated 13.11.2012 passed by Motor Accident Claims Tribunal, Bangalore (SCCH-11) ('**Tribunal**'), in MVC no.3436/2010, this appeal is filed.

2. Sri K Shantharaj, learned counsel for appellant submitted that appeal was by claimant for enhancement of compensation as well as challenging finding on negligence.

3. Brief facts leading to this appeal as stated are that at 4:15 p.m. on 28.11.2009 when claimant was riding motorcycle no.KA-04/EV-2807 on Hebbal Ring Road towards Hebbal flyover in front of Lumbini Garden Park, road at that spot was separated by median and due to loose, motorcycle hitting loose median stone claimant and pillion rider were



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thrown onto other side of road and before they could rush back to median, driver of Lorry no.KA-20/B-9993 drove it in rash and negligent manner and it ran over legs of rider/pillion rider and caused accident. Due to injuries sustained in accident, pillion rider died. Claimant sustained grievous injuries and despite treatment at Columbia Asia Hospital, he did not recover fully and sustained permanent physical disability and loss of earning capacity. Claiming compensation, he filed claim petition in MVC no.3436/2010 under Section 166 of Motor Vehicles Act, 1988 ('**MV Act**') against owner and insurer of lorry.

4. Despite service of notice, owner did not appear and was placed *ex-parte*. Only insurer opposed claim petition on all grounds.

5. Based on pleadings, Tribunal framed following:

ISSUES

1. *Whether the petitioner proves that on 28.11.2009 at about 4:15 p.m., on Hebbal Ring road, in front of Loombini Garden Part, Hebbal, Bangalore petitioner being rider of the vehicle, bearing Regn.No.KA-04-EV-2807 had met with an accident due to rash and negligent driving of the vehicle bearing Regn.No.KA-21-B-9993 by its driver and sustained injuries as averred?*



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2. *Whether the petitioner is entitled to for compensation and if so, what amount and from whom?*
3. *What order?*

6. Claimant examined himself and two other witnesses including Dr.Navinchand as PWs.1 to 3 and got marked Exs.P1 to P18. In rebuttal, insurer examined its official as RW.1 and got marked Exs.R1 and R2.

7. On consideration, Tribunal answered issues regarding occurrence of accident and claimant being entitled to compensation and apportioned negligence between claimant and driver in ratio of 60:40 and awarded compensation. Assailing same, this appeal was filed.

8. It was submitted that as on date of accident claimant was 36 years of age and earning Rs.1,00,000/- per month as a building material supplier/plumber who sustained fracture of right femur, right tibia, right clavicle, both bone of left leg upper third and crushed injury of left leg and foot. PW.2 - Doctor assessed limb disability at 35%. However, Tribunal considered loss of earning capacity at only 15%. Monthly



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income at only Rs.4,000/-, applying incorrect multiplier by determining his age incorrectly as more than 46 and applied incorrect multiplier of '11' and awarded inadequate compensation. And though accident occurred due to negligence of driver of lorry, Tribunal erroneously held claimant contributed to accident to extent of 60% and held insurer of lorry liable to pay 40% of compensation. It was submitted, compensation awarded towards pain and suffering, conveyance, amenities, future medical expenses were on lower side and no compensation awarded towards loss of income during laid-up period. On said grounds sought for allowing appeal.

9. On other hand, Smt.Sujatha Pandit, learned counsel appearing through Video Conferencing for Sri K Sridhara, advocate for respondent no.1 - insurer opposed appeal. It was submitted, accident occurred when claimant's motorcycle dashed against median and claimant was thrown onto opposite side road where insured vehicle was plying. Due to sudden appearance of claimant leaving insufficient time for lorry driver, accident occurred. In view of above, apportionment of



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negligence by Tribunal was justified. It was further submitted that Tribunal had assessed compensation under each of heads separately and awarded adequate compensation and same did not call for enhancement.

10. Heard learned counsel, perused impugned judgment, award and record.

11. From above and since appeal by claimant is both on finding of contributory negligence as well as for enhancement, points that arise for consideration are:

1. Whether finding of Tribunal on negligence calls for modification?
2. Whether claimant is entitled for enhancement of compensation?

Point no.1:

12. To establish actionable negligence against owner/insurer of offending vehicle, claimant relied on prosecution records namely FIR, complaint, charge sheet, accident spot sketch, mahazar, motor vehicle inspector's report marked as Exs.P1 to P6. Ex.P2 - complaint would reveal that



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complaint was given by a third party independent eyewitness. As per version of said witness, accident occurred due to motorcycle colliding with median, throwing rider and pillion rider onto opposite road and before passers by could assist victims, lorry ran over legs. Ex.P3 - charge sheet arraigns rider of motorcycle as well as driver of lorry to have contributed to accident. Perusal of Ex.P4 - accident spot sketch would indicate that accident spot is at a distance of 4 feet from the edge of median and at 4:15 p.m. In course of cross-examination of PW.1, though insurer made upteen suggestions about occurrence of accident due to negligence of rider of motorcycle, no evidence was led by insurer to establish occurrence of accident despite due care by driver of insured vehicle. Neither of parties sought to examine complainant. Material on record i.e. contents of charge sheet imputations and accident spot sketch though indicate that rider/pillion rider of motorcycle fell onto opposite road their motorcycle dashed against median, it is not in dispute that accident was due to collision of motorcycle with median, even if same were due to riding of motorcycle in high speed, same would not by itself imply negligence on part



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of claimant, he may at best be held to have contributed to accident. Offending vehicle is a heavy container vehicle, driver of heavy vehicle is expected to drive heavy vehicles more carefully/cautiously than other vehicles.

13. There is no material to indicate that accident occurred despite driver of insured vehicle taking all due care and caution. Under above circumstances, apportionment of negligence between claimant and driver of insured vehicle at 60:40 does not appear to be just and proper. Taking note of totality of circumstances of case, it is found appropriate to re-apportion it in ratio of 40% against claimant and 60% against lorry driver. Point no.1 is answered accordingly.

Point no.2:

14. As per claimant, he was 36 years of age working as a building material supplier/plumber and earning Rs.1,00,000/- per month. But there is absolutely no material to substantiate said income. In absence, Tribunal would be justified in assessing his monthly income notionally. But notional income for year 2009 is Rs.5,000/-, same has to be considered. As per



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medical records and deposition of PW.2, claimant sustained fracture of right femur, right tibia, clavicle, both bones of left leg and fractured injury of left foot. He has also noted restriction of movements of hip, knee and ankle. Ex.P13 - photographs would indicate amputation of forefoot, fusion of skin on left thigh, thickening of both legs. Under above circumstances, award of Rs.60,000/- towards pain and suffering would be grossly inadequate. It is found fit to enhance it **Rs.1,00,000/-**.

15. PW.2 deposed claimant had sustained permanent physical disability to extent of 35% to affected limb. It is seen that claimant sustained fracture and not only amputation of left foot, but also fractural injuries on right leg and considering extent of restriction movement of left leg and fusion of skin as noted from Ex.P13, it is found appropriate to assess physical disability to extent of 40%. Hon'ble Supreme Court in case of **Erudhaya Priya v. State Express Transport Corporation Ltd.**, reported in **2020 SCC OnLine SC 601** has held that even in personal injury claims, claimants would be entitled for addition of future prospects. Though age of claimant is stated



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to be 34 years in police investigation records and 36 years in treatment records, Tribunal looking at Ex.P13 -photographs, assessed his age to be more than 46 years and applied multiplier of '11' which does not appear justified. When there is some material about age, Tribunal cannot overlook same without assigning specific reasons. Taking note of age of claimant in medical records as 36 years, appropriate multiplier applicable would be '15'. Thus compensation towards future loss of income would be $\text{Rs.}5,000/- + 40\% \times 12 \times 15 \times 40\%$ **=Rs.5,04,000/-**.

16. Tribunal has awarded **Rs.2,50,000/-** towards medical expenses in full reimbursement of bills produced, leaving no scope for interference. Tribunal has awarded **Rs.20,000/-** towards conveyance, attendance and other incident expenses, which appears just and proper. Tribunal has awarded Rs.30,000/- only towards loss of amenities. Considering extent of disability sustained and fusion of skin and amputation of left foot, award is found grossly inadequate, it is found appropriate to enhance it to **Rs.1,00,000/-**. Ex.P13 as well as PW.2 would disclose that claimant would require future



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treatment for removal of implants since treatment would be required for both limbs, it is found appropriate to enhance future medical expenses to **Rs.50,000/-**. Taking note of nature of injuries sustained and period of treatment, it is found appropriate to consider period of 4 months as layoff. Therefore, claimant would be entitled for **Rs.20,000/-**. Thus, claimant would be entitled for total compensation of **Rs.10,44,000/-**. Point no.2 is answered partly in affirmative.

17. Consequently, following:

ORDER

- i) Appeal is ***allowed in part***; judgment and award dated 13.11.2012 passed by Tribunal in MVC no.3436/2010 stands ***modified***.
- ii) Claimant is held entitled to reassessed compensation of **Rs.10,44,000/-** as against Rs.4,69,200/- awarded by Tribunal.
- iii) Insurer is held liable to extent of 60% of negligence. Thus, claimant would be entitled to compensation of **Rs.6,26,400/-** from insurer with interest



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at 6% per annum from date of claim
petition till deposit.

iv) Insure is directed to deposit enhanced
compensation before Tribunal within Six
weeks.

v) On deposit, entire enhanced
compensation with interest is ordered to
be released in favour of claimant through
electronic means.

Sd/-
(RAVI V HOSMANI)
JUDGE

GRD
List No.: 1 SI No.: 16