



NC: 2026:KHC:54856
MFA No. 2449 of 2014

CNR: KAHC010176022014

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

MISCELLANEOUS FIRST APPEAL NO. 2449 OF 2014 (MV)

BETWEEN:

SRI BADYA NAIK
S/O TARYA NAIK
AGE: 49 YEARS,
OCC: AUTO DRIVER,
NO.2, 1ST MAIN ROAD,
P.G.HALLI, SESHADRIPURAM,
BANGALORE - 560 003.

...APPELLANT

[BY SRI SURESH M LATUR, ADVOCATE (VC)]

AND:

1. SMT.MANJULA B
W/O APPANNA GOWDA
NO.59/B, GUNDEGOWDANA
KOPPALU, BYPASS ROAD,
HASSAN - 573 201.
2. THE REGIONAL MANAGER
UNITED INDIA INSURANCE CO., LTD.,
5TH AND 6TH FLOOR,
KRISHI BHAVAN,
NRUPATHUNAGA ROAD,
HUDSON CIRCLE,
BANGALORE - 560 001.

...RESPONDENTS

[BY SRI S SRISHAILA, ADVOCATE FOR R2 (VC);
R1 - NOTICE SERVED AND UNREPRESENTED]

Digitally signed
by ANUSHA V
Location: High
Court of
Karnataka



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THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 16.11.2013 PASSED IN MVC NO.2509/2012 ON THE FILE OF THE VIII ADDL. SCJ & XXXIII ACMM, BANGALORE, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL IS 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 16.11.2013 passed by VIII Addl.Small Causes Judge & XXXIII ACMM, Member-MACT, Bengaluru in MVC no.2509/2012, this appeal is filed.

2. Sri Suresh M Lathur, learned counsel for appellant submitted that appeal is by claimant challenging finding of Tribunal on liability as well as for enhancement of compensation.

3. Brief facts leading to this appeal as per claimant are that at 12:30 a.m. on 01.12.2011, when claimant was driving Auto-rickshaw (**auto**) no.KA-04-B-6267 near Hanumantha Nagar, Bengaluru, driver of Tata Winger no.KA-13-A-9004



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drove it in rash and negligent manner and it dashed against auto causing accident. In accident, claimant sustained injuries. Even auto sustained substantial damage. He spent Rs.12,000/- towards medical expenses at Victoria Hospital, Bengaluru and Rs.38,000/- towards repair of auto. He filed claim petition against owner and insurer of Tata Winger under Section 166 of Motor Vehicles Act, 1988 (**MV Act**).

4. Despite service of notice, owner did not appear and was placed *ex-parte*. While insurer, though appeared did not file objections. Tribunal framed following issues:

1. *Whether the claimant bodily wounded and his autorickshaw bearing registration No.KA.04.B.6267 was damaged in on above road traffic accident that occurred due to use and negligent act of Tata Winger bearing registration No. KA.13.A.9004 of 1st respondent?*
2. *If so, whether claimant is entitled for compensation? What quantum of from whom?*
3. *What order or award?*

5. Claimant examined himself and repairer as PWs.1 and 2 and got marked Exhibits P1 to P12. Respondent did not either cross-examine claimant/witnesses nor lead evidence.



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6. On consideration, Tribunal held claimant had sustained injuries and auto sustained damages and assessed Rs.5,000/- as compensation towards personal injuries and Rs.20,000/- towards damages to auto and on ground that Ex.P3 - charge sheet showed driver of Tata Winger was arraigned for Section 181 of MV Act also held insurer not liable to indemnify and dismissed claim petition against insurer. Aggrieved thereby, appeal is filed.

7. It was submitted, occurrence of accident due to rash and negligent driving of insured vehicle and claimant/his auto sustaining injuries/damages were not in dispute. Only reason assigned by Tribunal for dismissal of claim petition against insurer was prosecution of driver under Section 181 of MV Act. It was submitted that since claimant was third party, dismissal of claim petition was not justified.

8. On quantum, it was submitted that as per Ex.P7 - wound certificate, claimant had sustained injury to his right thigh and as per Ex.P12 - bill estimation, Rs.37,270/- towards



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vehicle repairs. Therefore, same was required to be granted. On above grounds, sought for allowing appeal.

9. On other hand, Sri Srishaila, learned counsel for respondent - insurer opposed appeal. It was submitted, Ex.P7 - wound certificate indicates nature of injuries sustained by claimant as simple. Therefore, award of Rs.5,000/- was justified. Insofar as damages to auto, it was submitted, PW.2, though deposed that Ex.P12 was bill for repairs, Tribunal noted that it was estimate and not bill and therefore, disbelieving same, granted global compensation of Rs.20,000/- which was justified. It was further submitted, Ex.P3 - charge sheet relied on by claimant itself showed that driver of offending vehicle had caused accident without driving licence and therefore, award was justified and did not warrant interference.

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

11. From above and since claimant is in appeal challenging finding of Tribunal on liability as well as on quantum, points that arise for consideration are:



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(i) Whether dismissal of claim petition against insurer is justified?

(ii) Whether claimant is entitled for enhancement of compensation?

Reg.Point no.1:

12. To establish actionable negligence against respondents, claimant relied on prosecution records namely, FIR, complaint, charge sheet, panchanama, Accident Spot Sketch and Motor Vehicle Inspector's Report as Exs.P1 to P6. Perusal of Ex.P3 - charge sheet would indicate that driver of insured vehicle was arraigned for offences under Sections 279, 337 of Indian Penal Code, 1860 apart from Section 3(1) read with Section 181 of MV Act. There is no material produced either by claimant or by respondent to indicate that driver of insured vehicle was having valid and effective driving licence at time of accident. Indeed, claimant would be third party insofar as contract of insurance policy issued to offending vehicle. But, at same time, insurer would not be fully liable. Under above circumstances, while holding that dismissal of claim petition against insurer was not justified, it would only be appropriate to follow it up with an observation that insurer though liable to



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pay compensation to claimant in first place, would be entitled to recover it from insured without need for separate proceedings. Point no.1 is answered accordingly.

Reg. Point no.2:

13. As rightly submitted, Ex.P7 would describe injury sustained by claimant as simple. Therefore, award of Rs.5,000/- towards same would be justified. Insofar as damages, however, claimant deposed as PW.1 and also examined repairer as PW.2. In their deposition, they stated that due to accident, auto had sustained damages and was got repaired by spending money. Said assertion is in tune with pleadings in claim petition. Neither of two witnesses have been cross-examined by insurer. In fact, it is glaring to observe that insurer did not even file written statement or placed on record insurance policy as if to invite liability. Though there is contradiction between deposition of PW.2 that he had issued bill towards repairs and Ex.P12 being an estimate, assertion in claim petition and deposition of PW.1 as well as oral statement of PW.2 in tandem with contents of Exs.P11 and P12 would not justify total rejection on sole ground that there was no cross-



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examination of witnesses, about vehicle sustaining damages and need for carrying out repairs. Further, replacement of parts estimated would be a question of fact and in absence of cross-examination would have to be held admitted by respondents. Hence, point no.2 is answered *partly in affirmative*.

14. Compensation towards damages is enhanced from Rs.20,000/- to **Rs.37,270/-**. Though it was also contended that auto had remained idle for a period of 20 days during repairs and lost earning, in absence of any specific evidence, I do not see any good grounds to consider same. Repairs appear to have been carried out expeditiously would also fortify my conclusion. In view of above, following:

ORDER

- (i) Appeal is ***allowed in part***;
- (ii) Claimant is held entitled for **Rs.42,270/-**
i.e., Rs.5,000/- towards personal injuries and
Rs.37,270/- towards damages sustained by
auto and same shall carry interest at 8% p.a.
from date of petition till deposit;



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(iii) Insurer is held liable to pay same to claimant
and thereafter, would be at liberty to recover
it from insured without recourse to separate
proceedings.

**Sd/-
(RAVI V HOSMANI)
JUDGE**

AV
List No.: 1 Sl No.: 31