



CNR: KAHC010280762014

NC: 2026:KHC:53791
MFA No. 5175 of 2014
C/W MFA No. 1944 of 2015

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

MISCELLANEOUS FIRST APPEAL NO.5175 OF 2014 (MV-I)

C/W

MISCELLANEOUS FIRST APPEAL NO. 1944 OF 2015 (MV-I)

IN MFA No. 5175/2014

BETWEEN:

BRANCH MANAGER
NATIONAL INSURANCE CO.LTD.,
I FLOOR, SHANKARA BUILDING
MOSQUE ROAD, UDUPI,
NOW REPRESENTED BY ITS
REGIONAL MANAGER
NATIONAL INSURANCE CO LTD.,
REGIONAL OFFICE,
SUBHARAM COMPLEX, 144,
M.G. ROAD, BANGALORE-560 001.

(BY SRI. A N KRISHNA SWAMY.,ADVOCATE)

...APPELLANT

AND:

1. PRASHANTH SHETTY
S/O SHESHU SHETTY,
NOW AGED ABOUT 30 YEARS,
R/O MELGAYADI, BIJUR VILLAGE,
& POST, KUNDAPURA TALUK,
UDUPI DISTRICT-576 201.

Digitally signed
by ANUSHA V
Location: High
Court of
Karnataka



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2. K. SEETHARAMA SHETTY
S/O LATE TEJAPPA SHETTY,
NOW AGED ABOUT 56 YEARS,
R/O 11-ULLURU VILLAGE & POST
KUNDAPURA TALUK-576 201.

...RESPONDENTS

(BY SRI. S.M. ANFAL., ADVOCATE FOR
SRI. K PRASANNA SHETTY.,ADVOCATE FOR R1;
VIDE COURT ORDER DATED 13.03.2017
NOTICE TO R2 IS DISPENSED WITH)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE
JUDGMENT AND AWARD DATED 04.06.2014 PASSED IN MVC
NO.686/2012 ON THE FILE OF THE SENIOR CIVIL JUDGE,
MEMBER, ADDITIONAL MACT, KUNDAPURA, AWARDING
COMPENSATION OF Rs.4,93,670/- WITH INTEREST w 6% P.A.
FROM THE DATE OF PETITION TILL DEPOSIT IN TRIBUNAL.

IN MFA NO. 1944/2015

BETWEEN:

MR. PRASHANTH SHETTY
S/O SHESHU SHETTY,
AGED ABOUT 30 YEARS,
R/AT MELGAYADI,
BIJOOR VILLAGE & POST,
KUNDAPURA TALUK,
UDUPI DISTRICT - 572 101.

...APPELLANT

(BY SRI. S.M. ANFAL., ADVOCATE FOR
SRI. K PRASANNA SHETTY.,ADVOCATE)

AND:

1. MR.K. SEETHARAM SHETTY
S/O LATE TEJAPPA SHETTY,
AGED ABOUT 56 YEARS,



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R/AT 11, ULLURU VILLAGE & POST,
KUNDAPURA TALUK,
UDUPI DISTRICT - 572 101.

2. NATIONAL INSURANCE CO. LTD.,
BRANCH OFFICE: 1ST FLOOR,
SHANKAR BUILDING,
MOSQUE ROAD, UDUPI - 572 101
REP BY ITS BRANCH MANAGER.

...RESPONDENTS

(BY SRI. A.N. KRISHNA SWAMY.,ADVOCATE)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 04.06.2014 PASSED IN MVC NO.686/2012 ON THE FILE OF THE SENIOR CIVIL JUDGE AND MEMBER ADDITIONAL MACT, KUNDAPURA, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THESE APPEALS, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL JUDGMENT

Challenging judgment and award dated 4.6.2014 passed by Senior Civil Judge and Member, Additional MACT, Kundapura, in MVC no.686/2012, these appeals are filed. MFA 5175/2014 is filed by insurer and MFA no.1944/2015 is filed by claimant. Both appeals are on quantum.



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2. Brief facts as per claimant are that at 12:30 p.m. on 28.04.2012, when claimant was riding motorcycle no.K0-03-HM-1926 from Arehole cross towards Herooru, rider of another motorcycle no.KA-20-EB-3901 rode it in rash and negligent manner and it dashed against claimant's motorcycle. In accident, claimant sustained grievous injuries and despite treatment at Chinmayi Hospital, Kundapura, did not recover and sustained permanent physical disability. Claiming compensation he filed claim petition against owner and insurer of offending motorcycle under Section 166 of MVA Act.

3. On appearance, claim petition was opposed on all grounds. Based on pleadings, Tribunal framed issues and recorded evidence. Claimant along with Dr.Dinesh Kumar Shetty deposed as PW1 and PW2 and got marked Exs.P1 to P13. Respondents did not lead evidence. On consideration, Tribunal held accident had occurred due to rash and negligent riding of insured motorcycle by its rider, claimant had sustained permanent physical disability/loss of earning capacity and was entitled for compensation as below:



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1.	Pain and sufferings	Rs.35,000-00
2.	Medical expenses	Rs.31,470-00
3.	Loss of earning during the laid up period	Rs.45,000-00
4.	Loss of future earning capacity	Rs.3,67,200-00
5.	Loss of amenities	Rs.15,000-00
	Total	Rs.4,93,670-00

Dissatisfied with same, appeals were filed.

4. Sri AN Krishna Swamy, learned counsel for appellant-insurer in MFA no.5175/2014 submitted that as on date of accident claimant was 28 years of age, working as Ceramist earning 2,700 dirhams per month. It was submitted that Ex.P11-passport would indicate that even after accident, claimant went back to United Arab Emirates for work. Ex.P8-salary certificate would also indicate same. In view of claimant having continued in employment there would be no loss of earning. Consequently, award of compensation towards future loss of income would not be justified. It was alternatively submitted that PW2 had assessed limb disability of 16%. Even



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if it is moderated, disability to whole body would be substantially less and compensation awarded would be excessive. On said grounds sought for reduction.

5. On other hand, Sri SM Anfal, learned counsel appearing for Sri K Prasanna Shetty, advocate for respondent-claimant would oppose insurer's appeal and submitted that compensation assessed by Tribunal was on lower side and called for enhancement. It was firstly submitted as per Ex.P8-salary certificate, claimant was earning 2,700 dirhams with conversion rate of 14.54 i.e. Rs.39,258/-. In view of same assessment of monthly income at Rs.15,000/- by Tribunal was not justified. It was further submitted, claimant had sustained fracture of tibial plateau and avulsion of right knee. PW.2, who had examined claimant had stated that there was restriction of movement of right knee. Since occupation of Ceramist would involve substantial use or dependence on lower limbs, assessment of disability by Tribunal would require escalation. It was submitted that compensation awarded towards pain and suffering and loss of amenities was grossly inadequate. It was further submitted, claimant had stated that due to accidental



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injuries, he was laid off for a period of five months. Therefore award of compensation for only three months would be inadequate and sought enhancement. On above grounds sought for allowing claimant's appeal and for dismissal of insurer's appeal.

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

7. From above and since both insurer as well as claimants are assailing award on quantum, common point that would arise for consideration is,

"Whether assessment of compensation by Tribunal calls for modification?"

8. Claimant stated that he was 28 years of age, working as ceramist and earning 2,700 dirhams per month, same was substantiated by production of salary certificate as per Ex.P8. But it is common knowledge that in case of employment outside country, claimant would require to spend substantial portions of money corresponding to place of work. Even if monthly income of claimant is taken at Rs.40,000/- by



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applying conversion of 14.54 per dirham, in absence of any material to establish net saving every month, if 60% of it is taken as expenditure and 40% savings, net amount saved would be near about amount of Rs.15,000/- taken by Tribunal. PW2 in his deposition has examined claimant and on noticing restriction of flexion of right knee, assessed 16% limb disability. Normally assessment of whole body disability based on limb disability would be to consider one third in case of lower limb and one fourth in case of upper limb, but with variation based on particular avocation. Since claimant was admittedly working as ceramist, it is found appropriate to consider 8% as loss of earning capacity and multiplier applicable would be '17'. Though normally in personal injury claims, loss of earning capacity has to be assessed by referring to gross income, considering fact that claimant had returned to UAE and continued in employment, instead of speculating on whether there was loss of income or reduction in income, it is found appropriate to consider effect of injuries on earning capacity to extent of 8% on net monthly savings. Therefore, future loss of income would be Rs.2,44,800/- (Rs.15,000 x 8%



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x 12 x 17). Tribunal has awarded Rs.35,000/- towards pain and suffering. Normally in case of fracture of structural bone, compensation of Rs.40,000/- is awarded with Rs.10,000/- being added to additional fracture. Claimant in instant case has sustained fracture of tibia and avulsion of right knee. Therefore, it is found fit to award Rs.50,000/- towards pain and suffering. Tribunal has awarded Rs.31,470/- towards medical expenses and other incidental expenses against bills for Rs.23,466/-. Taking note of inpatient treatment period of 18 days, award of about Rs.8,000/- only towards incidental expenses would be inadequate. Same is enhanced to Rs.18,000/-. Thus compensation towards medical and incidental expenses would be Rs.41,466/- (Rs.18,000/- + Rs.23,466/-). As per entry and exit stamping on passport as well as as per treatment records and claimant's assertion, he was laid off for a period of five months. Therefore, he would be entitled to Rs.15,000/- x 5 = Rs.75,000/-. Tribunal has awarded only Rs.15,000/- towards loss of amenities. Considering meager assessment of disability, but taking note of age of claimant, disability would continue throughout life, award would be grossly inadequate and stands



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enhanced to Rs.75,000/-. Thus, total compensation would be Rs.4,86,266/- as against Rs.4,93,670/- awarded by Tribunal. Since there is a small difference between amount awarded and awardable, I do not see any good grounds to modify award. Point for consideration is answered in negative in both cases. Both appeals are ***dismissed***.

Amount in deposit in insurer's appeal is ordered to be transmitted to Tribunal for payment.

Sd/-
(RAVI V HOSMANI)
JUDGE

YKL
List No.: 1 Sl No.: 22