



CNR: KAHC010250772015

NC: 2026:KHC:53408
MFA No. 2895 of 2015

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

MISCELLANEOUS FIRST APPEAL NO.2895 OF 2015(MV-I)

BETWEEN:

SMT.GANGAMMA
W/O LATE CHIKKEGOWDA
AGED ABOUT 47 YEARS
R/O SANTHEKASALAGERE VILLAGE
KOTHATHI HOBLI
MANDYA TALUK
MANDYA DISTRICT - 571 408.

...APPELLANT

(BY SRI RAMESH KUMAR R.V., ADVOCATE)

AND:

1. SRI RAVI KUMAR S D
S/O DYAVEGOWDA
R/O SANTHEKASALAGERE VILLAGE
KOTHATHI HOBLI
MANDYA TALUK
MANDYA DISTRICT 571 408
(OWNER OF THE MOTORCYCLE
BEARING NO.KA-11-L-6983).
2. THE BRANCH MANAGER
NATIONAL INSURANCE CO LTD.,
NO.1576, V V ROAD
MANDYA CITY - 571 401.

...RESPONDENTS

(BY SRI BHUVAN B.M., ADVOCATE FOR
SRI B C SEETHARAMA RAO, ADVOCATE FOR R2;
V/O DATED 22.03.2019 NOTICE TO R1 & D/W)

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 19.08.2014 PASSED IN MVC NO.268/2010 ON THE FILE OF THE ADDITIONAL SENIOR CIVIL JUDGE, & CJM, MACT, MANDYA, 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 19.08.2014 passed by Additional Senior Civil Judge and CJM and MACT, Mandya ('**Tribunal**') in MVC no.268/2010, this petition is filed.

2. Brief facts leading to this appeal as stated are that at 11:00 a.m. on 17.12.2009 when claimant was walking by side of Chotttanahalli - Hunasanahalli road, rider of motorcycle no.KA-11/L-6983 rode it in rash and negligent manner and it dashed against claimant. In accident, claimant sustained grievous injuries and despite treatment at PHC, Kodiyala and thereafter at JSS Hospital, Mysore, she did not recover fully and sustained loss of earning capacity. Claiming compensation, she



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filed claim petition under Section 166 of Motor Vehicles Act, 1988 ('**MV Act**') against owner and insurer of motorcycle.

3. On contest, wherein claim petition was opposed on all grounds, Tribunal framed issues and record of evidence.

4. Claimant examined herself as PW.1 and got marked as Exs.P1 to P21. Dr.Mruthunjaya was examined as CW.1 and got marked Exs.C1 to C7. Insurer did not lead oral evidence, but got marked copy of insurance policy with consent as Ex.R1.

5. On consideration, Tribunal held accident occurred due to rash and negligent driving of insured vehicle by its rider, claimant has sustained loss of earning capacity and entitled for compensation. Dissatisfied with same, this appeal is filed.

6. On perusal of memorandum of appeal, grounds urged for enhancement are about inadequacy of compensation granted towards pain and suffering, extent of disability as well as inadequacy of compensation awarded towards medical expenses, loss of amenities, loss of earning during period of treatment and etc.



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7. Sri Bhuvan B.M., learned counsel appearing for Sri B.C. Seetharama Rao, advocate for respondent no.2 - insurer would oppose appeal. It was submitted that based on material on record, Tribunal had assessed compensation under each of heads and which was just and proper and did not call for modification. On said ground sought for dismissal.

8. Heard learned counsel for respondent no.2 - insurer, perused impugned judgment, award and record.

9. From above and since claimant is appeal for enhancement of compensation, sole point that would arises for consideration is:

"Whether claimant is entitled for enhancement of compensation as prayed for?"

10. Occurrence of accident involving insured vehicle and liability of insurer to pay compensation are not in dispute. Claimant stated that she was 43 years of age working as cook at PES College Hostel on salary of Rs.4,500/- per month. She sustained closed comminuted fracture of left femur assessed by PW.2 to have resulted in 70% disability. However, Tribunal



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considered loss of earning capacity at 20% and by taking her income as Rs.4,500/- per month assessed compensation. As per Exs.P7 to P9, claimant was working as cook on monthly salary of Rs.4,500/-. In view of same, assessment of monthly income by Tribunal at Rs.4,500/- would be justified.

11. Ex.P10 - discharge summary of JSS Hospital, Mysore would reveal that age of claimant as 43 years. Even claimant has stated that her age as 43 years in claim petition. Medical treatment records, deposition of PWs.1 and 2 would establish that claimant sustained closed comminuted fracture of left femur. PW.2 deposed that claimant was treated on four consecutive occasions for repeat fractures during treatment and based on same assessed limb disability at 70%. Considering age and occupation of claimant as cook, assessment of loss of earning capacity at 20% would not be justified. It would be appropriate to consider it at **30%**.

12. As per decision of Hon'ble Supreme Court in **Erudhaya Priya v. State Express Transport Corporation Ltd.**, reported in **2020 SCC OnLine SC 601**, even in personal



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injury claims, future prospects has to be added. Since claimant was above 40 years, future prospects at 25% has to be added. Thus, compensation towards future loss of income would be $(Rs.4,500/- + 25\%) \times 12 \times 14 \times 30\% = \textbf{Rs.2,83,500/-}$ as against Rs.1,51,200/-. Taking note of fact that claimant has sustained closed comminuted fracture of left femur and repeat fractures during treatment and suffered severe pain, Tribunal has awarded **Rs.1,50,000/-** towards pain and suffering. Considering fact and circumstances, same appears to be just and proper.

13. Tribunal has awarded **Rs.1,20,000/-** towards medical expenses, conveyance and other incident expenses as against bills produced. Same is in full reimbursement of amount for which medical bills were produced and excluding only private car hire bill. Therefore, same does not warrant interference. Considering age and disability sustained by claimant, in light of her occupation, compensation of Rs.10,000/- awarded towards loss of amenities would be grossly inadequate and same is enhanced to **Rs.30,000/-**.



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14. Tribunal has awarded Rs.10,000/- towards loss of income during period of treatment. Normally fractures take about 3 months to heal. In instant case, due to repeat fractures and non-union, treatment prolonged for more than 98 days. Considering duration of inpatient treatment, it would appear appropriate to consider period of 7 months as layoff. Therefore, claimant would be entitled for **Rs.31,500/-** towards loss of income during laid up period. Medical evidence disclose that there are implants, for removal of which, medical expenses would be required and award of Rs.5,000/- only towards said head would not be justified. Therefore, same is enhanced to **Rs.25,000/-**. Thus, claimant is entitled to re-assessed compensation of **Rs.6,40,000/-** as against Rs.4,46,200/-. Point for consideration is answered partly in affirmative as above.

15. Consequently, following:

ORDER

- (a) Appeal is ***allowed in part***; judgment and award dated 19.08.2014 passed by Tribunal in MVC no.268/2010 stands ***modified***.



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- (b) Claimant is held entitled for reassessed compensation of **Rs.6,40,000/-** as against Rs.4,46,200/- awarded by Tribunal.
- (c) Same shall carry interest at 6% per annum from date of claim petition till deposit.
- (d) Respondent no.2 - Insurer is directed to deposit reassessed compensation within Six weeks.
- (e) On deposit, entire reassessed compensation with interest is ordered to be released in favour of claimant by electronic means.

Sd/-
(RAVI V HOSMANI)
JUDGE

GRD
List No.: 1 Sl No.: 40