



CNR: KAHC010264172023

NC: 2026:KHC:38002
MFA No. 3555 of 2023
C/W MFA No. 3565 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

MISCELLANEOUS FIRST APPEAL No. 3555 OF 2023 (MV-I)

C/W

MISCELLANEOUS FIRST APPEAL No. 3565 OF 2023

IN MFA No. 3555/2023

BETWEEN:

MUBASHIR. A @ ASIF
S/O APSAR PASHA
NOW AGED ABOUT 23 YEARS
PRESENTLY RESIDING AT
APART No.48
35TH MAIN ROAD
4TH CROSS, RAVI BADAVANE
JAI MARUTHI NAGAR
NANDINI LAYOUT
BANGALORE-560 096.

...APPELLANT

(BY SRI GOPALA KRISHNA N, ADVOCATE
SMT. SUSHMITHA G, ADVOCATE)

AND:

1. NARASIMHA MURTHY. C
S/O CHIKKANARASIAH.R.N.
No.373, 3RD CROSS ROAD
1ST BLOCK, R.T. NAGAR
BANGALORE-560 032.



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2. THE BRANCH MANAGER,
UNITED INDIA INSURANCE CO. LTD.,
No.460/20, 1ST FLOOR
8TH MAIN ROAD,
(NEXT TO JAIN TEMPLE)
4TH BLOCK, JAYANAGAR
BANGALORE-560 076.

...RESPONDENTS

(BY SRI G S MARULIAIAH, ADVOCATE FOR R2
V/O DTD. 10.08.2023, NOTICE TO R1 IS DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT
AGAINST THE JUDGMENT AND AWARD DATED:08.04.2022
PASSED IN MVC No.4579/2018 ON THE FILE OF THE XIV
ADDITIONAL SMALL CAUSES JUDGE AND ACMM AND MEMBER-
MACT, BENGALURU (SCCH-10), PARTLY ALLOWING THE CLAIM
PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF
COMPENSATION.

IN MFA No. 3565/2023

BETWEEN:

NAVEENKUMAR H. U.
S/O UMESH H V
NOW AGED ABOUT 25 YEARS
RESIDING AT "CHIKKANAYAKANAHALLI
HULIYUR HOBLI
HONNAYYANAPALYA
TUMKUR-572 218.

...APPELLANT

(BY SRI GOPALA KRISHNA N, ADVOCATE
SMT. SUSHMITHA G, ADVOCATE)



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AND:

1. NARASIMHA MURTHY. C
S/O CHIKKANARASIAHA R N
No.373, 3RD CROSS ROAD
1ST BLOCK, R T NAGAR
BANGALORE-560 032.
2. THE BRANCH MANAGER UNITED INDIA
INSURANCE CO. LTD.,
No.460/20, 1ST FLOOR
8TH MAIN ROAD
(NEXT TO JAIN TEMPLE)
4TH BLOCK, JAYANAGAR
BANGALORE-560 076.

...RESPONDENTS

(BY SRI G S MARULIAIAH, ADVOCATE FOR R2
V/O DTD. 09.08.2023, NOTICE TO R1 IS DISPENSED WITH)

MFA FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE
JUDGMENT AND AWARD DATED:08.04.2022 PASSED IN MVC
No.4578/2018 ON THE FILE OF THE XIV ADDITIONAL SCJ AND
ACMM, MEMBER, MACT, BENGALURU SCCH-10 PARTLY ALLOWING
THE CLAIM PETITION FOR COMPENSATION SEEKING
ENHANCEMENT OF COMPENSATION.

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

CORAM: HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

ORAL JUDGMENT

MFA No.3555/2023 is filed by the claimant seeking
enhancement of compensation awarded in judgment and
award dated 08.04.2022 passed in MVC No.4579/2018 by the



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XIV Additional Senior Civil Judge and Member, MACT,
Bangalore (SCCH-10).

2. MFA No.3565/2023 is filed by the claimant seeking enhancement of compensation awarded in judgment and award dated 08.04.2022 passed in MVC No.4578/2018 by the XIV Additional Senior Civil Judge and Member, MACT, Bangalore (SCCH-10).

3. Even though the appeals are listed today for admission, they are taken up for disposal with the consent of learned counsel for the appellants and learned counsel for respondent No.2/insurer.

4. The claimant in MVC No.4579/2018 is the rider and the claimant in MVC No.4578/2018 is the pillion rider on motor cycle bearing Regn.No.KA-02-JK-9574 were proceeding from Urdigere to Dabaspete Road and when they reached near Kempohalli Gate Urdigere Hobli, at that time, the driver of Maruti Omni car bearing Regn.No.KA-04-ML-9273 drove the



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same in a rash and negligent manner and dashed against the claimants' motor cycle and they fell down and sustained grievous injuries. The rider and the pillion rider made claim petitions claiming award of compensation for injuries sustained by them. The Tribunal after recording the evidence of both parties, appreciating the evidence on record has awarded compensation under various heads in MVC No.4579/2019 as under:

Sl.No.	Heads	Amount (Rs.)
01.	Towards loss of income on account of disability	2,59,200/-
02.	Towards pain and suffering	75,000/-
03.	Towards loss of amenities	40,000/-
04.	Towards nourishment, conveyance and attendant charges	33,000/-
05.	Towards loss of income during laid up period and rest period	24,000/-
06.	Medical bills	7,04,418/-
	Total	11,35,618/-

5. The Tribunal awarded compensation under various heads in MVC No.4578/2019 as under:

Sl.No.	Heads	Amount (Rs.)
01.	Towards loss of income on account of disability	1,38,240/-



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02.	Towards pain and suffering	35,000/-
03.	Towards loss of amenities	25,000/-
04.	Towards nourishment, conveyance and attendant charges	6,000/-
05.	Towards loss of income during laid up period and rest period	16,000/-
06.	Medical bills	80,000/-
07.	Future medical bills	20,000/-
	Total	3,20,240/-

6. The Tribunal holding that rider of the motor cycle i.e. claimant in MVC No.4579/2018 has contributed negligence to the accident has deducted 30% out of the total compensation and awarded 70% i.e. Rs.7,94,933/- with interest @ 6% p.a. from the date of petition till realization. The Tribunal holding that the claimant in MVC No.4578/2019 has not impleaded owner and insurer of motor cycle bearing Reg.No.KA-02-JK-9574 has deducted 30% of compensation and awarded Rs.2,24,168/- which is 70% of the total compensation of Rs.3,20,240/- with interest @ 6% p.a. from the date of petition till realization and directed respondent No.2/insurer to pay the said award amount with interest. The claimants in both the appeals have challenged the said judgment and



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award passed by the Tribunal. The claimant in MVC No.4579/2018 has sought for enhancement of compensation and claimant in MVC No.4578/2018 has sought to set-aside the deduction of 30% and award of only 70% compensation and also sought for enhancement of compensation.

7. Heard learned counsel for claimants and learned counsel for respondent No.2/insurer in both the appeals.

8. Learned counsel for the appellant/claimant in MFA No.3555/2023 (MVC No.4579/2018) submits that he is not challenging the contributory negligence on the part of the rider of the motor cycle assessed by the Tribunal at 30% and the driver of the insured car at 70%. He submits that the appeal is filed only seeking enhancement of compensation. He submits that claimant has sustained three fractures. Considering the same, the compensation awarded for pain and suffering and loss of amenities are on lower side. He submits that PW.4 – Doctor who is the treated Doctor has assessed the disability of lower limb at 86% and whole body



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at 28.67% and the Tribunal erred in taking the disability only at 15%. The claimant has stated that his income is Rs.10,000/- p.m. and as per the chart prepared by the Karnataka State Legal Services Authority, the notional income fixed for the year 2018 is Rs.12,500/-. Considering the same, the income taken at Rs.8,000/- is not proper, atleast income of Rs.10,000/- p.m. is to be taken. Since the disability is more than 20%, loss of future prospects has to be considered. The loss of income during laid up period is on lower side. With this he prayed to allow the appeal.

9. Learned counsel for appellant/claimant in MFA No.3565/2023 (MVC No.4578/2018) would contend that claimant was a pillion rider and there is no contribution of the pillion rider to the accident. The Tribunal has erred in deducting 30% of the contributory negligence on the part of the rider of motor cycle only on the ground that owner and insurer of the motor cycle have not been impleaded. Learned counsel placing reliance on the decision of the Hon'ble Apex



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Court in the case of **Khenyei vs. New India Assurance Co.Ltd and others (AIR 2015 SC 2261)** would contend that there is composite negligence of driver of the car and rider of the motor cycle. If there is non-impleadment of one of the joint tort feason, then the entire award amount has to be recovered from one of the joint tort feason who is to be impleaded. He further contends that PW.3 who is the treated Doctor of the claimant assessed the disability at 30% of the limb and 10% to the whole body and the Tribunal erred in taking the disability at 8%. The claimant has stated his income is Rs.10,000/- p.m. and the Tribunal has taken his income at Rs.8,000/-. But as per the chart prepared by the Karnataka State Legal Services Authority, the notional income for the year 2018 is 12,500/- and therefore, the income of the claimant is to be taken at Rs.10,000/-. Considering the injuries sustained by the claimant, the compensation awarded for pain and suffering, loss of amenities and loss of income during laid up period are on lower side and requires to be



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enhanced. With this he prayed to allow the appeal and enhance the compensation.

10. Learned counsel for respondent No.2/insurer would contend that PW.4 - Doctor has stated disability at 86% of the lower limb and 28.67% of the whole body and considering the same, the Tribunal has rightly taken the disability at 15% to the whole body. Considering the injuries sustained the compensation for pain and suffering, loss of amenities etc are just and proper and there are no grounds for enhancement. The claimant has stated his income at Rs.10,000/- pm. Considering the same the Tribunal rightly taken the income at Rs.8,000/-. PW.3 - Doctor has stated that claimant in MVC No.4578/2019 has sustained 30% of disability of limb and 10% to the whole body and considering the same, the Tribunal has rightly taken disability at 8%. Considering the injuries sustained the compensation awarded by the Tribunal under all heads is just and proper and there are no grounds for enhancement. He further submits that the Tribunal has



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rightly deducted 30% of the compensation to the pillion rider on the ground that owner and insurer of the motor cycle on which he was moving have not been impleaded as there is contributory negligence on the part of the rider of the motor cycle. With this, he prayed to dismiss the appeals.

11. Having heard the learned counsels, the Court has perused the judgment, award and other materials on record.

12. The Tribunal appreciating the evidence on record has held that the rider of the motor cycle who is the claimant in MVC No.4579/2018 has contributed to the accident and his negligence is assessed at 30% and negligence on the part of the driver of the Car is assessed at 70%. The claimant has not challenged the said contributory negligence assessed by the Tribunal.

13. The claimant has stated that he is earning Rs.10,000/- p.m. and his avocation is Electrician. The Tribunal has taken notional income of the claimant at Rs.8,000/-. As per the chart prepared by the Karnataka State



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Legal Services Authority, the notional income fixed for the year 2018 is Rs.12,500/-. As the claimant himself has stated that his income is Rs.10,000/-, the Tribunal ought to have taken the said income. Therefore, the income of the claimant is taken at Rs.10,000/- p.m. in both the appeals.

Compensation in MFA No.3555/2023 (MVC No.4579/2018)

14. PW.4 is the Doctor who treated the claimant has assessed the disability and stated that claimant is having 86% disability of lower limb and 28.67% disability to the whole body. The Tribunal has taken disability at 15%. The claimant has sustained injuries namely right lower limb crush injury with near total amputation right foot with vascular, neural, tendon, bone and soft tissue transaction with femur fracture, tibia fracture and ankle fracture. The claimant has been admitted in the hospital for 31 days. The disability of 15% taken by the Tribunal is not proper since the evidence is given by PW.4 who is a treated Doctor. Therefore, the disability is taken at 28% to the whole body. The Tribunal has rightly applied multiplier '18'. Since the disability taken is more than



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20%, the claimant is entitled to future prospects at 40%. In view of the above, the claimant is entitled to loss of future income as under:

$\text{Rs.}10,000 + 40\% = \text{Rs.}14,000 \times 12 \times 18 \times 28\% = \text{Rs.}8,46,720/-$

15. Considering the injuries and fractures noted supra, the compensation awarded by the Tribunal towards pain and suffering in a sum of Rs.75,000/- requires to be enhanced to Rs.1,00,000/- and loss of amenities awarded in a sum of Rs.40,000/- requires to be enhanced to Rs.50,000/-. The award of compensation towards nourishment, conveyance and attendant charges are just and proper. The Tribunal has awarded loss of income during laid up period for three months by taking the income at Rs.8,000/- p.m. Now the income taken is Rs.10,000/-, the claimant is entitled to loss of income during laid up period in a sum of Rs.30,000/- (Rs.10,000 x 3 months). In view of the above, the claimant is entitled to compensation under various heads as under:



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02.	Towards pain and suffering	1,00,000/-
03.	Towards loss of amenities	50,000/-
04.	Towards nourishment, conveyance and attendant charges	33,000/-
05.	Towards loss of income during laid up period and rest period	30,000/-
06.	Medical bills	7,04,418/-
	Total	17,64,138/-

16. Since the claimant is the rider of the motor cycle who has contributed to the accident which is assessed at 30%, he is entitled to compensation to the extent of 70% of Rs.17,64,138/- which comes to Rs.12,34,897/-. The Tribunal has awarded Rs.7,94,933/- and therefore, the claimant is entitled to enhanced compensation of Rs.4,39,964/- with interest @ 6% p.a. from the date of petition till realization.

Compensation in MFA No.3565/2023 (MVC No.4578/2018)

17. PW.3 is the Doctor who has treated the claimant and assessed the disability and stated that claimant is having 30% disability to limb and 10% to the whole body and the Tribunal



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has taken disability @ 8%. The claimant has sustained the injury namely Ipsilateral Intertrochanteric fracture with fracture shaft of right femur. Considering the said evidence of PW.3- Doctor and the injuries sustained, disability is to be taken to the whole body at 10% as against 8% taken by the Tribunal. The income of the claimant is to be taken at Rs.10,000/- as against Rs.8,000/- taken by the Tribunal. In view of the above, loss of future income is calculated as under:

$$\text{Rs.10,000} \times 18 \times 12 \times 10\% = \text{Rs.2,16,000/-}$$

18. In view of the injuries noted supra, the compensation awarded by the Tribunal for pain and suffering in a sum of Rs.35,000/- requires to be enhanced to Rs.60,000/- and loss of amenities requires to be enhanced to Rs.40,000/- as against Rs.25,000/- awarded by the Tribunal. The claimant has been admitted in the hospital for six days and the compensation awarded for attendant charges, conveyance and nourishment is just and proper. The Tribunal has awarded loss of income during laid up period in a sum of



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Rs.16,000/- taking the income at Rs.8,000/-. Now as the income taken is Rs.10,000/-, the claimant is entitled to loss of income during laid up period in a sum of Rs.20,000/- (Rs.10,000 x 2 months). The Tribunal has rightly awarded medical expenses and future medical expenses. In view of the above, the claimant is entitled to compensation under various heads as under:

Sl.No.	Heads	Amount (Rs.)
01.	Towards loss of income on account of disability	2,16,000/-
02.	Towards pain and suffering	60,000/-
03.	Towards loss of amenities	40,000/-
04.	Towards nourishment, conveyance and attendant charges	6,000/-
05.	Towards loss of income during laid up period and rest period	20,000/-
06.	Medical bills	80,000/-
07.	Future medical bills	20,000/-
	Total	4,42,000/-

19. The Tribunal has deducted 30% of the compensation awarded by it on the ground that claimant who was a pillion rider has not impleaded the owner and the insurer of the motor cycle. Since there is contributory negligence on the



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part of the rider of the motor cycle to the extent of 30% has only awarded 70% of the compensation as it is the negligence on the part of the Maruti Omni Car. Considering the said finding of the Tribunal there is composite negligence of rider of the motor cycle and driver of Maruti Omni Car. The Hon'ble Apex Court in the case of **Khenyei (supra)** has considered the liability of joint tort feasons and observed thus:

18. This Court in Challa Bharathamma & Nanjappan (supra) has dealt with the breach of policy conditions by the owner when the insurer was asked to pay the compensation fixed by the tribunal and the right to recover the same was given to the insurer in the executing court concerned if the dispute between the insurer and the owner was the subject-matter of determination for the tribunal and the issue has been decided in favour of the insured. The same analogy can be applied to the instant cases as the liability of the joint tort feason is joint and several. In the instant case, there is determination of inter se liability of composite negligence to the extent of negligence of 2/3rd and 1/3rd of respective drivers. Thus, the vehicle – trailer-truck which was not insured with the insurer, was negligent to the extent of 2/3rd. It would be open to the insurer being



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insurer of the bus after making payment to claimant to recover from the owner of the trailer-truck the amount to the aforesaid extent in the execution proceedings. Had there been no determination of the inter se liability for want of evidence or other joint tortfeasor had not been impleaded, it was not open to settle such a dispute and to recover the amount in execution proceedings but the remedy would be to file another suit or appropriate proceedings in accordance with law.

What emerges from the aforesaid discussion is as follows:

(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tortfeasors is joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tortfeasors vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

(iii) In case all the joint tortfeasors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover



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the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/ extent of their negligence has been determined by the court/tribunal, in main case one joint tort feisor can recover the amount from the other in the execution proceedings.

(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tort feisors. In such a case, impleaded joint tort feisor should be left, in case he so desires, to sue the other joint tort feisor in independent proceedings after passing of the decree or award.

20. The Hon'ble Apex Court in the said decision has held that in the case of compensation between two tort feisors *vis a vis* the claimant is not permissible. He can recover at his option whole damages from any of them. Considering the said aspect, the claimant who is a pillion rider is entitled to recover the entire compensation amount from the owner of offending vehicle. In view of the said decision of the Hon'ble Apex Court, the respondent No.2/insurer who is the joint tort feisor is having option to sue other joint tort feisor in



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independent proceedings if it so desires. In view of the above, the following:

ORDER

- (i) Both the appeals are allowed in part.
- (ii) The appellant / claimant in MFA No.3555/2023 (MVC No.4579/2018) is entitled to enhanced compensation of Rs.4,39,964/- with interest @ 6% p.a. from the date of petition till realization.
- (iii) Respondent No.2/insurer shall deposit the enhanced amount with interest within a period of six weeks from this day, failing which, it is liable to pay interest @ 9% p.a. from this day till payment of enhanced compensation amount.
- (iv) The claimant is not entitled for interest for the delay period of 281 days in filing the appeal.
- (v) The appellant / claimant in MFA No.3565/2023 (MVC No.4578/2018) is entitled to enhanced compensation of Rs.2,17,832/- with interest @ 6% p.a. from the date of petition till realization.



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- (vi) Respondent No.2/insurer shall deposit the enhanced amount with interest within a period of six weeks from this day, failing which, it is liable to pay interest @ 9% p.a. from this day till payment of enhanced compensation amount.
- (vii) The claimant is not entitled for interest for the delay period of 281 days in filing the appeal.
- (viii) Appellants/claimants in both the appeals are entitled to release of entire enhanced compensation.
- (ix) Respondent No.2/insurer, if so desires, can sue the other tortfeasor in independent proceedings.

Sd/-
(SHIVASHANKAR AMARANNAVAR)
JUDGE

DKB
List No.: 1 Sl No.: 33
Ct.sm