



CNR: KAHC010279952018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

MISCELLANEOUS FIRST APPEAL NO.6484 OF 2018(MV-I)

BETWEEN:

SRI LOKESH
S/O SANNA DURGAPPA,
AGED ABOUT 28 YEARS,
SINCE DECEASED BY HIS LRs.

1. SMT. RATHNAMMA
W/O LATE SANNA DURGAPPA,
AGED ABOUT 69 YEARS,
2. SMT.CHANDRAMMA @ GUTTAMMA,
D/O SANNA DURGAPPA,
AGED ABOUT 46 YEARS,
3. GAURAMMA,
D/O SANNA DURGAPPA,
AGED ABOUT 44 YEARS,
4. MAHESHA,
S/O SANNA DURGAPPA,
AGED ABOUT 41 YEARS,
5. SMT. RENUKA,
D/O SANNA DURGAPPA,
AGED ABOUT 36 YEARS,
6. SRI CHANDRAPPA,
S/O SANNA DURGAPPA,
AGED ABOUT 34 YEARS,

Digitally signed
by ANUSHA V
Location: High
Court of
Karnataka



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ALL ARE RESIDENTS OF
SOGANE VILLAGE,
SHIVAMOGGA TALUK,
SHIVAMOGGA DISTRICT.

...APPELLANTS

(BY SRI G LAKSHMEESH RAO, ADVOCATE)

AND:

1. SRI NARASIMHA
S/O YALKAPPA
AGED ABOUT 40 YEARS,
AGRICULTURIST,
R/O OTHIGATTA VILLAGE,
SOGANE POST,
SHIVAMOGGA TALUK,
SHIVAMOGGA DISTRICT PIN - 577 222.
(DRIVER AND OWNER OF THE TRACTOR
EXCORTS FT 45 VMX BEARING REG
NO KA-14-TA-3424).
2. SHRIRAM GENERAL INSURANCE CO. LTD.,
E-8 EPIP, SITAPURA INDUSTRIAL AREA,
JAIPUR, RAJASTHAN - 302022,
BY ITS BRANCH MANAGER,
VIDE POLICY NO 10003/31/15/396594
VALID FROM 7.11.2014 TO 06.11.2015

...RESPONDENTS

(BY SRI B.PRADEEP, ADVOCATE FOR
SRI B C SHIVANNE GOWDA, ADVOCATE FOR R2;
R1 - NOTICE SERVED & UNREPRESENTED)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE
JUDGMENT AND AWARD DATED 23/05/2018, PASSED IN MVC
NO.969/2015, ON THE FILE OF THE II ADDITIONAL SENIOR
CIVIL JUDGE & AMACT-8, SHIVAMOGGA, PARTLY ALLOWING



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THE CLAIM PETITION FOR COMPENSATION AND SEEKING
ENHANCEMENT OF COMPENSATION.

THIS APPEAL, 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 23.05.2018
passed by II Addl. Senior Civil Judge and Addl. MACT-8,
Shivamogga ('**Tribunal**'), in MVC no.969/2015, this appeal is
filed.

2. Sri G. Lakshmeesh Rao, learned counsel for
appellant submitted that appeal was by claimant challenging
finding of tribunal on liability as well as for enhancement of
compensation.

3. Brief facts leading to this appeal as stated are that
at 4:00 p.m. on 13.04.2015 when claimant along with Guru
and Lohit were returning from Areca garden of respondent
no.1, near Otigatta village, driver of Tractor no.KA-14/TA-3424
belonging to respondent no.1 drove it in rash and negligent



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manner and dashed against electric pole. At that time, claimant was trying to escape collision by crossing water channel and had kept his hand on electric pole. Due to collision of tractor with electric pole, his right hand sustained grievous injuries. Despite taking treatment at Mc.Gann. Hospital, Shivamogga and thereafter at KMC Hospital, Manipal, he did not recover fully. Due to amputation of middle finger and fracture of ring finger of right hand, he had lost grip strength and consequent loss of earning capacity. Claiming compensation, he filed claim petition in MVC no.969/2015 under Section 166 of Motor Vehicles Act, 1988 ('**MV Act**') against owner and insurer of tractor.

4. Claim petition was opposed on all grounds by denying age, occupation, income and disability sustained by claimant as well as alleging violation of terms and conditions of policy by insurer.

5. Based on pleadings, Tribunal framed following:

ISSUES

1. *Whether the petitioner proves that he has sustained injuries in the Motor*



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Vehicle accident that occurred on 13.04.2015 at about 7:00 p.m., on Othighatta Bhadravathi road, Shivamogga Taluk due to rash and negligent driving of the Tractor bearing No.KA-14/TA-3424 by its driver 1st respondent?

2. Whether the petitioner is entitled for compensation as prayed for? If yes, what is the quantum of amount and who is liable to pay?

3. What order or award?

6. Claimant examined himself as PW.1 and got marked Exs.P1 to P30. Dr.Ashwath Acharya was examined as CW.1 and got marked Exs.C1 to C4. On other hand, insurer examined its official as RW.1 and got marked Exs.R1 to R3.

7. On consideration, Tribunal answered issue no.1 in affirmative; issue no.2 partly in affirmative assessing total compensation of Rs.3,42,000/- with interest at rate of 6% per annum and issue no.3 by holding respondent no.1 - owner liable to pay same and dismissed claim petition against insurer. Assailing same, this appeal was filed.



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8. It was submitted that only reason assigned by Tribunal for holding owner liable to pay compensation and discharging liability of insurer was that respondent no.2 - insurer had contented that claimant was travelling on tractor as a coolie and risk of any person other than driver of tractor was not covered would not be justified as claimant had very clearly stated that accident occurred while claimant was pedestrian. It was submitted, no such defence was taken by insurer in its objections to claim petition. There were also contradictory suggestions in cross-examination of PW.1 that accident occurred while claimant was travelling in trailer and another breath that it was while he was trying to cross water channel. Therefore, finding of Tribunal would be contrary to record and as such perverse.

9. On quantum, it was submitted that claimant was 31 years of age, working as agricultural coolie and earning Rs.25,000/-. However without justification, Tribunal considered monthly income at only Rs.6,000/- and awarded inadequate compensation. It was further submitted that claimant had



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sustained amputation of middle finger of right hand and fracture of phalanx of right hand ring finger assessed by CW.1 - Orthopaedic doctor to have resulted in 53% disability to right upper limb. Since grip strength of right hand was assessed to be '0', pinch strength of 70% and restriction of movement of right wrist by 25%, consideration of loss of earning capacity at 18% by Tribunal was not justified and sought enhancement.

10. It was submitted that even award of compensation towards pain and suffering at Rs.40,000/-; medical expenses at Rs.30,453/-; incidental expenses at Rs.20,000/- for inpatient treatment of 13 days; loss of income during laid up period at Rs.18,000/- was on lower side and sought enhancement. It was submitted that Tribunal erred in not awarding any compensation towards loss of amenities and towards future medical expenses. Since CW.1 has stated about need for one more surgery. On said grounds sought for allowing appeal.

11. On other hand, Sri B Pradeep, learned counsel appearing for Sri B.C. Shivanne Gowda, advocate for respondent no.2 - insurer vehemently opposed appeal. It was



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submitted that as per entry about history of injuries in medical records as well as statement of claimant/complainant it was stated that he was working in tractor belonging to insured. Therefore, Tribunal was justified in holding that accident occurred while claimant was travelling on tractor, as unauthorised passenger in breach of terms and conditions of policy. On quantum it was submitted that Tribunal had awarded just compensation which did not call for modification. On said ground sought for dismissal.

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

13. From above and since claimant's appeal is both on finding of liability as well as on quantum, points that arise for consideration are:

- (1) Whether dismissal of claim petition against insurer was justified?
- (2) Whether claimant is entitled for enhancement of compensation as prayed for?



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Point no.1:

14. To establish actionable negligence against respondents, claimant relied on prosecution records i.e. police notice, FIR, statement, spot mahazar etc. Perusal of Ex.P2 - FIR indicates that complaint was registered based on claimant's statement recorded at Mc.Gann. Hospital on date of accident. Ex.P5 - wound certificate indicates that immediately after accident claimant was taken to Mc.Gann. Hospital for treatment. In history of accident it was mentioned as due to overturn of tractor. In claim petition as well as in his deposition, claimant consistently stated that accident occurred while he was returning home by walk i.e. pedestrian. Careful perusal of insurer's written statement does not reveal specific contention that accident occurred while claimant was travelling on tractor in violation of policy conditions. In fact there is only one vague assertion that seating capacity of insured vehicle was only one i.e. for driver.

15. It is settled law that any evidence without pleading would be ineffective. Though RW.1 official of insurer has



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alleged occurrence of accident while claimant was travelling on tractor as unauthorised passenger, RW.1 is not an eye-witness and his deposition about manner of occurrence of accident would have no bearing. Under above circumstances, when material on record weighs in favour of claimant's version, Tribunal was not justified in dismissing claim petition against insurer. Hence, point no.1 is answered in negative. It is held that insurer would be liable to pay compensation.

Point no.2:

16. There is no dispute about claimant being 31 years old agricultural coolie. Though claimant stated that he was earning Rs.25,000/- by working in Areca garden of respondent no.1, there is no specific material to establish monthly income. In absence, Tribunal was justified in assessing it notionally. But notional income for year 2015 is Rs.9,000/-. Same has to be considered. There is also no dispute about claimant sustaining amputation of right hand middle finger and fracture of right hand ring finger. CW.1 - Doctor, who treated claimant examined him on 30.11.2016 had made following observations.



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1. *"The radiograph showed ray amputation of right middle finger with bone loss of proximal phalanx of right ring finger with absence of PIP joint (Implant in situ).*
2. *There is 100% loss of grip strength and 70% loss of pinch strength in right hand.*
3. *There is 25% loss of movement at right wrist and more than 50% in the right hand.*
4. *There is 40% loss of power in the right hand muscles.*
5. *There is pain in the right hand.*

In view of the above, he has significant difficulty in doing activity of daily living using his right upper limb.

He now has a permanent disability of 53% (Fifty Three percent) for his right upper limb function (Based on the Formula as per Central Govt. Gazette notification Regd. No. DL 33004/99 (EO) Part II, see 1, June 13, 2001, Ministry of Social Justice & Empowerment)"

17. Considering avocation of claimant i.e. labour in Areca garden effect of loss of grip and pinch strength of right hand (normally dominant hand) assessment of loss of earning capacity of 18% by Tribunal would not be justified. It is found just and proper to reassess it at 25%. Multiplier applicable to



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age of claimant would be '16'. Thus, compensation towards future loss of income would be $\text{Rs.}9,000/- \times 25\% \times 12 \times 16 =$
Rs.4,32,000/-.

18. Tribunal has awarded Rs.40,000/- towards pain and suffering. Considering amputation of one finger and fracture of other, it is found appropriate to add sum of Rs.10,000/-. Thus, total compensation awarded towards pain and suffering would be **Rs.50,000/-**. Tribunal has awarded **Rs.30,453/-** in full reimbursement of medical bills produced. Therefore, there would be no scope for enhancement. Tribunal has awarded **Rs.20,000/-** towards diet, attendance and other incidental expenses. Taking note of fact that total duration of inpatient treatment, award appears just and proper. Since monthly income is reassessed at Rs.9,000/-, loss of income during laid-up period for 3 months would require enhancement to **Rs.27,000/-.**

19. Tribunal has not awarded any compensation towards loss of amenities. Taking note of age, occupation, income and extent of disability sustained, it is found



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appropriate to award **Rs.50,000/-** towards loss of amenities. Without indicating any particulars, CW.1, in his deposition stated that claimant requires one more surgery for bone grafting and same would entail further amount of Rs.40,000/-. In absence of proper details, it is found appropriate to award **Rs.25,000/-** towards future medical expenses. Thus, total compensation would be **Rs.6,34,453/-**. Point no.2 is answered partly in affirmative as above.

20. Consequently, following:

ORDER

- (i) Appeal is ***allowed in part.***
- (ii) Claimant is held entitled for reassessed compensation of **Rs.6,34,453/-** with interest at 6% per annum from date of claim petition till deposit.
- (iii) Respondent no.2 - Insurer is held liable to pay it and is directed to deposit reassessed compensation within six weeks from today.



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(iv) On deposit, entire compensation with interest is ordered to be released in favour of claimant by electronic transfer.

Sd/-
(RAVI V HOSMANI)
JUDGE

GRD
List No.: 1 Sl No.: 11