



CNR: KAHC010388372014

NC: 2026:KHC:48658
MFA No. 7252 of 2014
C/W MFA No. 1357 of 2015

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

MISCELLANEOUS FIRST APPEAL NO.7252 OF 2014(MV-I)

C/W

MISCELLANEOUS FIRST APPEAL NO.1357 OF 2015(MV-I)

IN MFA NO.7252/2014:

BETWEEN:

KUM.REKHA
D/O CHIKKANNA
AGED ABOUT 27 YEARS
OCC: STUDENT
R/A NO.61, HEGGANAHALLI CROSS
GAJANANA NAGAR
BEHIND MOHAN TEHATRE
8TH CROSS, BANGALORE - 560 091.

...APPELLANT

Digitally signed
by ANUSHA V
Location: High
Court of
Karnataka

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

AND:

1. SRI PRASHANTH KUMAR
S/O NINGE GOWDA
R/O NO.23, PILLA REDDY BUILDING
2ND MAIN ROAD, KRISHNA LAYOUT
DEVASANDRA, CHIKKANAHALLI
BANGALORE-79.
2. THE DIVISIONAL MANAGER
NEW INDIA ASSURANCE CO LTD.,
D.O NO.III, NO.9/1
2ND FLOOR, MAHALAKSHMI COMPLEX



CNR: KAHC010388372014

NC: 2026:KHC:48658
MFA No. 7252 of 2014
C/W MFA No. 1357 of 2015

M G ROAD, OPP AJANTHA HOTEL
BANGALORE - 560 001.

...RESPONDENTS

(BY SRI A.R.LAKSHMI NARAYANA, ADVOCATE FOR R2 (PH);
NOTICE TO R1 - SERVED AND UNREPRESENTED)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE
JUDGMENT AND AWARD DATED 28.02.2014 PASSED IN MVC
NO.1546/2007 ON THE FILE OF THE VIII ADDITIONAL SMALL CAUSE
JUDGE & XXXIII ACMM, MEMBER, MACT, BENGALURU, PARTLY
ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING
ENHANCEMENT OF COMPENSATION.

IN MFA NO.1357/2015:

BETWEEN:

THE DIVISIONAL MANAGER,
THE NEW INDIA ASSURANCE COMPANY LTD.,
DIVISIONAL OFFICE, NO.111,
2ND FLOOR, MAHALAKSHMI COMPLEX,
OPP. TO AJANTHA HOTEL,
NO.9/1, M.G.ROAD,
BANGALORE - 560 001.
REP. BY THE MANAGER,
REGIONAL OFFICE (MOTOR TP HUB)
THE NEW INDIA ASSURANCE CO. LTD.,
MAHALAKSHMI CHAMBERS,
NO.9, M.G.ROAD,
BANGALORE - 560 001.

...APPELLANT

[BY SRI A.R.LAKSHMI NARAYANA, ADVOCATE (PH)]

AND:

1. KUM.REKHA
D/O CHIKKANNA
AGED ABOUT 27 YEARS
OCC: STUDENT
R/A NO.61, HEGGANAHALLI CROSS
GAJANANA NAGAR



CNR: KAHC010388372014

NC: 2026:KHC:48658
MFA No. 7252 of 2014
C/W MFA No. 1357 of 2015

BEHIND MOHAN TEHATRE
8TH CROSS, BANGALORE - 560 091.

2. SRI PRASHANTH KUMAR
S/O NINGE GOWDA
R/O NO.23, PILLA REDDY BUILDING
2ND MAIN ROAD, KRISHNA LAYOUT
DEVASANDRA, CHIKKANAHALLI
BANGALORE-79.

...RESPONDENTS

(BY SRI SURESH M LATUR, ADVOCATE FOR R1 (VC);
V/O DTD 06.01.2016 NOTICE TO R2 IS DISPENSED WITH)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 28.02.2014 PASSED IN MVC NO.1546/2007 ON THE FILE OF THE VIII ADDITIONAL SMALL CAUSE JUDGE & XXXIII ACMM, MEMBER, MACT, BENGALURU, AWARDED A COMPENSATION OF RS.6,82,000/- WITH INTEREST @ 8% P.A. FROM THE DATE OF PETITION TILL REALIZATION.

THESE APPEALS ARE 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 28.02.2014 passed by VIII Additional Small Causes Judge and XXXIII ACMM, Member, MACT, Bengaluru in MVC no.1546/2007, these appeals are filed.



NC: 2026:KHC:48658
MFA No. 7252 of 2014
C/W MFA No. 1357 of 2015

CNR: KAHC010388372014

2. MFA no.7252/2014 is filed by claimant for enhancement of compensation and for modification of finding on liability, while MFA no.1357/2015 is filed by insurer for reduction of compensation.

3. Brief facts giving rise to appeals are that, at about 11.00 a.m. on 05.08.2006, when claimant Kum.Rekha, aged about 19 years, a student was riding pillion on motorcycle no.KA-02-EM-6468 on NH-209 road, driver of Tata Sumo no.KA-05-C-9879drove it in rash and negligent manner and dashed against motorcycle.

4. In accident, claimant sustained grievous injuries and despite treatment at Green City Hospital, Abhaya Hospital and Wockhardt Hospital, Bengaluru, she did not recover fully and sustained permanent physical disability. Therefore, seeking compensation, she filed claim petition under Section 166 of Motor Vehicles Act, 1989 (**MVA**) for compensation against owner/insurer of Tata Sumo vehicle.

5. Despite service of notice, owner did not appear and was placed *ex parte*. Only insurer entered appearance and filed objections not only denying age, occupation and disability



CNR: KAHC010388372014

NC: 2026:KHC:48658
MFA No. 7252 of 2014
C/W MFA No. 1357 of 2015

sustained by claimant, but also alleging contributory negligence of rider of motorcycle on which she was pillion rider. Based on pleadings, Tribunal framed following issues-

- i) Whether the petitioner proves that, on 05.08.2006 at about 11.00 a.m. on NH-209 road, near Excel Factory, Kanakapura Taluk, Bangalore, she met with an accident and sustained injuries, was due to actionable negligence act on the part of driver of tata sumo bearing registration no.KA-05-C-9879 as alleged?*
- ii) Whether the petitioner is entitled to compensation? If so, how much and from whom?*
- iii) What order?*

6. Thereafter claimant examined herself and four others as PWs.1 to 5 and got marked Exhibits P1 to P18. On other hand, insurer examined its official as RW.1 and got marked Exhibits R1 to R3.

7. On consideration, Tribunal held issues no.(i) and (ii) partly in affirmative and issue no.(iii) by holding claimant entitled for total compensation of Rs.13,64,000/-, but holding respondent-insurer liable to pay 50% of same i.e., Rs.6,82,000/- with interest at 8% p.a., from date of claim petition till deposit. Aggrieved thereby, these appeals are filed.



NC: 2026:KHC:48658
MFA No. 7252 of 2014
C/W MFA No. 1357 of 2015

CNR: KAHC010388372014

8. Sri Suresh M.Latur, learned counsel for appellant submitted that claimant was 19 years old student having brilliant academic prospects sustained 'Type III-C compound comminuted fracture of distal end of right femur' and PW.3 assessed disability at 48% to limb and at 24% to whole body. Since it was noted by PW.3 as well as Court that claimant was confined to crutches, assessment of 100% disability by Tribunal was justified. It was, however, submitted that assessment of compensation of only Rs.50,000/- towards '*pain and suffering*' when compared to injury and disability sustained, would be inadequate and sought enhancement.

9. It was submitted that award of Rs.50,000/- only towards '*loss of marriage prospects*' was inadequate. It was submitted that Hon'ble Supreme Court in case of **V.Mekala v. M. Malathi and Another** reported in **2014 ACJ 1441** had awarded Rs.3,00,000/- towards marriage prospects. Even award of only Rs.1,00,000/- as special damages for loss of education etc., was also inadequate and sought enhancement. It was submitted that Hon'ble Supreme Court in aforesaid decision, had added future prospects to monthly income, while assessing compensation. It was submitted that even in



CNR: KAHC010388372014

NC: 2026:KHC:48658
MFA No. 7252 of 2014
C/W MFA No. 1357 of 2015

personal injury claimant's future prospects were required to be added.

10. Apart from above, it was submitted that though claimant was pillion rider, Tribunal erred in denying 50% of compensation on ground of rider of motorcycle was negligent to extent of 50% and on said ground sought for allowing appeal.

11. On other hand, Sri AR Lakshmi Narayana, learned counsel for respondent no.2-insurer opposed appeal.

12. It was submitted that even insurance company had preferred appeal challenging award of quantum. It was firstly submitted that PW.3-Doctor, who had deposed about disability sustained by claimant had stated that claimant had sustained 48% disability to limb and 24% to whole body. Normally, 1/3rd of same would be loss of earning capacity.

13. It was further submitted that accident was occurred on 05.08.2026. Claimant appeared for Final year B.Com. Course in December, 2006, which would indicate that there was no loss of academic career. Therefore, award of compensation for same would not be justified. On above ground, sought for



CNR: KAHC010388372014

NC: 2026:KHC:48658
MFA No. 7252 of 2014
C/W MFA No. 1357 of 2015

allowing appeal filed by insurer and dismissal of claimant's appeal.

14. Heard learned counsel and perused impugned judgment and award and records.

15. From above, common point arising for consideration is -

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

16. From above, there is no dispute about occurrence of accident and claimant studying B.Com sustaining grievous injury of 'Type III-C compound comminuted fracture of distal end of right femur'. In order to establish disability, claimant examined herself, produced hospital records through PW.2 and for purposes of disability, examined PW.3-Dr.S.Rajanna. In his deposition, PW.3 stated that claimant sustained 48% disability to affected limb and 24% to whole body. While passing impugned award, Tribunal considered notional income of claimant at Rs.4,000/- per month and considering future prospects, took entire income as loss of earning capacity and applied multiplier of 18 and arrived at compensation of



CNR: KAHC010388372014

NC: 2026:KHC:48658
MFA No. 7252 of 2014
C/W MFA No. 1357 of 2015

Rs.8,64,000/- towards future loss of income. It awarded Rs.50,000/- towards pain and suffering, Rs.1,00,000/- towards loss of education, Rs.3,00,000/- towards medical expenses and Rs.50,000/- towards loss of marriage prospects. Though Hon'ble Supreme Court in ***Erudhaya Priya v. State Express Transport Corporation*** reported in **2020 SCC OnLine SC 601** has held, addition of future prospects even in case of personal injury claims would be required and extent of future prospects would be as corresponding to death claims as per ***National Insurance Co. Ltd v. Pranay Sethi*** reported in **2017 (16) SCC 680**. Therefore, consideration of entire income as loss of earning capacity would not be justified. But records revealed that claimant was pursuing B.Com. course. Hon'ble Supreme Court in its recent decision in case of ***Shishu Pal @ Shish Ram & Ors. v. Surjeet & Ors.*** reported in **2026 SCC OnLine SC 1114** has held income of housewife has to be considered at Rs.30,000/- per month. There is also prospects of claimant gaining employment on basis of education. In either case, there would be no justification for consideration of income of claimant at only Rs.4,000/- per month. Considering fact that in case of class 11 student in ***V.Mekala's*** case (supra) was



NC: 2026:KHC:48658
MFA No. 7252 of 2014
C/W MFA No. 1357 of 2015

CNR: KAHC010388372014

taken at Rs.10,000/- per month, on examination of records, it is found appropriate to consider monthly income of claimant at Rs.7,000/-. To said income, future prospects at 40% has to be added. Thus, monthly income would be Rs.9,800/-. While assessing compensation, Tribunal has not determined disability. In instant case, PW.3 has assessed limb disability at 48% and whole body disability at 24%. He has however stated that claimant would not be able to walk or climb stairs on her own and noted her to be using crutches. Considering same, it is found appropriate to assess disability at 60%. Thus, compensation towards future loss of income would be **Rs.12,70,080/-** (Rs.9,800/- X 60% X 12 X 18).

17. Tribunal has awarded Rs.50,000/- towards marriage prospects. PW.3 has stated about ugly scars on her right leg. Confinement of claimant to crutches, inability to walk or climb stairs etc. on her own would indeed affect marriage prospects. Taking cue from compensation awarded in **V.Mekala's** case (supra), it is found appropriate to enhance compensation under said head to **Rs.3,00,000/-**.



CNR: KAHC010388372014

NC: 2026:KHC:48658
MFA No. 7252 of 2014
C/W MFA No. 1357 of 2015

18. Hon'ble Supreme Court in case of ***Rajkumar v. Ajay Kumar*** reported in **(2011) 1 SCC 343** has held, award of compensation towards amenities has to be in ratio to compensation awarded towards future loss of income. Since compensation towards disability is assessed substantially, compensation awarded towards loss of amenities has to be on notional terms. Therefore, it is found appropriate to grant a sum of **Rs.50,000/-** towards loss of amenities. Tribunal has awarded a sum of Rs.50,000/- towards pain and suffering. PW.3 in his deposition has stated history of treatment taken by claimant.

"She gives history having sustained injuries due to road traffic accident on 04-08-2006. As per discharge summary from Abhaya Hospital she has sustained following injuries:

1. Typer III-C compound comminuted fracture distal and if right femur with loss of bone fragments.

She was admitted to some hospital on 05-08-2006 she was opera 06-08-2006, wound debridement and aligning the remaining fragments with K-wire and stabilization with external fixator done. She was discharged on 16-08-2006 with following advice.

Active and passive hip and Ankle movements.

To walk with walker without bearing the weight on (right) lower limb.

Re-admission for further surgery as advised.



CNR: KAHC010388372014

NC: 2026:KHC:48658
MFA No. 7252 of 2014
C/W MFA No. 1357 of 2015

She was re-admitted on 23-08-2006 to the same Hospital and operated on 07-09-2006 Wound debridement and split skin grafting done.

She was discharged on 11-09-2006

She was admitted for 3rd time to Wockhardt Hospital on 18-09-2006 for Physiotherapy and discharged on 23-09-2006 with an advice to follow up treatment after 10 days.

She was admitted for IV time to the Wockhardt Hospital on 24-01-2007 operated on the same day that is removal of external fixator done and discharged on 25-01-2007 after applying Tube slab to the right lower limb and advised follow up after 45 days.

She was admitted for 5th time to the Wockhardt Hospital on 03-05-2007 for compound supracondylar fracture (right) femur with intercondylar extension and bone loss with stiff knee joint. She was discharged on 04-05-2007 with andvice to come for total knee replacement at a later date.

She was admitted for the VI time to Wockhardt Hospital on 09-06-2007 for fracture non union with bone loss of right Femur.

She was operated on 11-06-2007 total knee replacement done with custom mode femoral component of 120 mm of of lower end of femur and normal Tibial components are used."

This would indicate that apart from undergoing pain from fracture, considerable duration of treatment as well as number of times claimant was subjected to medical procedures indicate that she sustained substantial pain and suffering. Therefore, it is found appropriate to enhance compensation under said head



CNR: KAHC010388372014

NC: 2026:KHC:48658
MFA No. 7252 of 2014
C/W MFA No. 1357 of 2015

to **Rs.1,00,000/-**. Tribunal has awarded sum of **Rs.1,00,000/-** towards special damages for loss of education. Since incident occurred during pursuit of education and nature and duration of treatment may have kept her away from attending classes etc. Award of compensation under said head is found to be appropriate and adequate. Tribunal has awarded **Rs.3,00,000/-** towards medical expenses against bills produced in complete reimbursement and there would be no scope for revision of same. It is also seen that while Tribunal has, on ground that rider of motorcycle on which claimant was pillion rider, was negligent to extent of 50% and denied compensation to said extent, which would not be justified. Claimant would be third party and would be entitled for recovery of entire compensation from any one of joint tortfeasors as held in ***Pawan Kumar & Anr. v. Harkishan Dass Mohan Lal & Ors.*** reported in **2014 ACJ 704** and ***Nabeesa & Ors. v. Ravi Kumar & Ors.*** reported in **2016 ACJ 845**. In view of above, following:

ORDER

- (i) MFA no.1357/2015 filed by insurer is ***disposed of.***



CNR: KAHC010388372014

NC: 2026:KHC:48658
MFA No. 7252 of 2014
C/W MFA No. 1357 of 2015

(ii) Amount in deposit is ordered to be transmitted to Tribunal for disbursal.

(iii) MFA no.7252/2014 filed by claimant is ***allowed in part.***

(iv) Compensation is enhanced from Rs.6,82,000/- to Rs.21,20,080/- with interest at 8% p.a. from date of petition till deposit.

(v) Insurer is directed to deposit same before Tribunal within 8 weeks.

(vi) On deposit, 50% of enhanced compensation is ordered to be released in favour of claimant excluding interest for period of 122 days delay in filing appeal and remaining 50% to be kept in fixed deposit for a period of 5 years.

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