



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

MISCELLANEOUS FIRST APPEAL NO. 7680 OF 2016 (WC)

C/W

MFA CROSS OBJECTION NO. 32 OF 2020 (ECA)

IN MFA No. 7680/2016

BETWEEN:

UNITED INDIA INSURANCE CO. LTD.,
DIVISIONAL OFFICER,
JEWEL PLAZA, MARUTHI VEETHIKA,
UDUPI, BY ITS MANAGER.

...APPELLANT

(BY SRI O MAHESH, ADVOCATE)

AND:

1. PURUSHOTHAMA A. GONDA,
AGED ABOUT 22 YEARS,
S/O ANNAPPA GONDA,
R/O MARGOLLI, BASRUR VILLAGE,
KUNDAPURA TALUK,
UDUPI DISTRICT-576 101.

2. THIMMAPPA MANJU GONDA,
MAJOR, S/O MANJU GONDA,
R/O MAVINAKURVE POST,
BHATKAL TALUK,
NORTH KANARA DISTRICT-581 301.

...RESPONDENTS

(BY SRI NAGARAJA HEGDE, ADVOCATE FOR R-1;
R-2 SERVED & UNREPRESENTED)



NC: 2026:KHC:2759
MFA No. 7680 of 2016
C/W MFA.CROB No. 32 of 2020

THIS MFA IS FILED U/S 30(1) OF W.C. ACT AGAINST THE JUDGMENT AND AWARD DATED 19.08.2016 PASSED IN ECA.NO.36/2014 ON THE FILE OF THE SENIOR CIVIL JUDGE, KUNDAPURA, AWARDED COMPENSATION OF RS. 1,62,990/- WITH INTEREST AT 12% P.A. COMPENSATION AMOUNT FROM EXPIRY OF ONE MONTH FROM THE DTE OF THE ACCIDENT.

IN MFA.CROB NO. 32/2020

BETWEEN:

SRI PURUSHOTHAMA A GONDA,
S/O ANNAPPA GONDA,
R/O MARGOLLI, BARRUR VILLAGE,
KUNDAPURA TALUK,
UDUPI DISTRICT-576 201.

...CROSS OBJECTOR

(BY SRI NAGARAJA HEGDE, ADVOCATE)

AND:

1. SRI THIMMAPPA MANJU GONDA,
S/O MANJU GONDA,
AGED MAJOR,
R/O MAVINAKURVE POST,
BHATKAL TALUK,
NORTH KARNATAKA DISTRICT.
2. UNITED INDIA INSURANCE CO. LTD.,
DIVISIONAL OFFICE: JEWEL PLAZA,
MARUTHI VEETHIKA, UDUPI.
REP BY ITS BRANCH MANAGER.

...RESPONDENTS

(BY SRI O MAHESH, ADVOCATE FOR R-2;
R-1 SERVED & UNREPRESENTED)

THIS MFA CROB. IN MFA 7680/2016 IS FILED U/O.41 RULE 22 OF CPC, R/W 30(1) OF EMPLOYEES COMPENSATION ACT, AGAINST THE JUDGMENT AND AWARD DATED 19.08.2016 PASSED IN ECA NO.36/2014 ON THE FILE OF THE SENIOR CIVIL JUDGE, KUNDAPURA, PARTLY ALLOWING THE



CLAIM PETITION FOR COMPENSATION AND SEEKING
ENHANCEMENT OF COMPENSATION.

THE APPEAL AND CROSS OBJECTION, COMING ON FOR
HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS
UNDER:

CORAM: HON'BLE MR. JUSTICE C M JOSHI

ORAL JUDGMENT

Heard learned counsel appearing for both the sides.

2. Being aggrieved by the judgment and award, in
ECA No. 36/2014 by learned Senior Civil Judge and
Commissioner under the EC Act, Kundapura dated
19.08.2016, the petitioner is before this Court in appeal in
MFA Crob.32/2020 and respondent No. 2 Insurance
Company therein is before this Court in MFA 7680/2016.

3. The factual matrix of the case is that on
13.05.2012 at about 11.30 p.m., the petitioner was
driving the Auto Rickshaw bearing number KA.47.4285
under the employment of respondent No.1 with
passengers. A KSRTC bus bearing No. KA.31.F.902 came
in rash and negligent manner and dashed to the Auto



Rickshaw resulting in injuries to the petitioner. The petitioner was shifted to Government Hospital and thereafter to Chinmayi Hospital, Kundapura, wherein he took treatment from the date of the accident till 25.05.2011. He was diagnosed of fracture of left clavicle with crepitus, swollen right elbow with fracture of the radial head and abrasion over the zygomatic arch. The petitioner contended that he is entitled for compensation from the employer and the insurer of the Auto Rickshaw and he has suffered a disability on account of the injuries sustained by him.

4. On service of notice, though respondent Nos. 1 and 2 appeared before the learned Commissioner, respondent No.2 alone filed the written statement. It denied the relationship of employee and employer between the petitioner and respondent No.1 and called upon the petitioner to prove the contentions raised by him. It was alleged that there was no nexus between the alleged vehicle and the injuries sustained by the petitioner



and they were not caused during course of the employment. It was contented that the accident was due to the negligence of the bus driver. *Inter alia*, respondent No. 2 admitted that the policy of insurance was in force, but it was subject to terms and conditions of the policy and there being violation of the terms and conditions of the policy, its liability has to be absolved.

5. The learned Commissioner framed following issues.

1. Whether the petitioner proves that he was an employee under Workmen's Compensation Act?
2. Whether the petitioner proves that petitioner sustained injuries during the course of employment under 1st respondent as a driver in Auto Rickshaw bearing Reg.No.KA-47-4285 in the alleged accident?
3. Whether the petitioner proves that how much salary he is getting per month from respondent No.1 and what is the age of the petitioner on the date of the accident?



4. Whether the petitioner proves that he had suffered future earning capacity due to the accidental injuries?
5. Whether the petitioner is entitled for compensation as prayed?
6. What Order or Award?

6. Petitioner was examined as PW1 and eye witness was examined as PW2 and Exhibit P1 to 12 were marked. Respondents examined two witnesses as RW1 and RW2 and Exhibit R1 and R2 were marked.

7. After hearing the arguments, the learned Commissioner held that the petitioner has sustained the disability of 15% and therefore, calculated the compensation of Rs.1,62,990. But he did not award any compensation in respect of the medical expenses though it was stated to be Rs.6,161/-. The learned Commissioner fastened the liability upon the Insurance Company to pay the compensation.

8. Being aggrieved, the Insurance Company is before this Court in MFA No. 7680/2016 and the petitioner is



before this Court as a cross objector in MFA CROB No. 32/2020.

9. After hearing the contentions of both sides, appeal is admitted to consider the following substantial questions of law:

1. Whether the learned Commissioner is justified in fastening the liability upon the Insurance Company, despite the petitioner was not having a licence to drive a commercial passenger vehicle?

2. Whether, the learned Commissioner erred in assessing the quantum of the compensation amount based on the functional disability?

10. Learned counsel Sri. O Mahesh appearing for the Insurance Company would submit that:

(a) The petitioner was driving the Auto Rickshaw which is a commercial passenger vehicle and therefore, he should have possessed appropriate licence to drive the same. There being no such driving licence to drive a



commercial passenger vehicle, the terms and conditions of the policy are violated.

(b) He submitted that the relationship of employer and employee has not been established by the petitioner by any cogent evidence despite he says that he has documentary evidence regarding the same. Therefore, the impugned judgment, which notices that the respondent No. 2 had not summoned respondent No. 1 to the witness box to prove that there was no such relationship is not sustainable since the burden is basically upon the petitioner.

(c) He submits that there is no such discernible disability which affects the earning capacity of the petitioner and therefore, the learned Commissioner assessing the functional disability at 15% is not sustainable.

11. *Per contra*, learned counsel appearing for the petitioner/Cross objector would submit that the judgment



of the Apex Court in the case of **Mukund Dewangan Vs. Oriental Insurance Company Limited**¹ later reiterated in the case of **Bajaj Alliance General Insurance Company Limited Vs. Rambha Devi and others**², categorically lay down that there is no need for any Driving licence of the character of the commercial passenger vehicle if the unladen weight of the vehicle is less than 7500 kgs. He further submits that the learned Commissioner has relied upon the testimony of PW2 to assess the functional disability and held the functional disability at 15% though the disability stated by PW2 is 18%. He further submits that the Commissioner failed to award any compensation towards the medical expenses even though there were bills to the extent of Rs.6,161/-. Hence, he submits that the contentions of the learned counsel for the Insurance Company are not sustainable and the petitioner should have been awarded with the medical expenses also.

¹ (2017) 14 SCC 663

² (2025) 3 SCC 95



12. A careful perusal of the records would reveal that respondent No. 1, who is alleged to be the employer has not appeared before the learned Commissioner and has not filed any written statement. Though the learned Commissioner refers that it was argued by the counsel for respondent No.1 that there is no such relationship of employer and employee, it does not refer to any of the written statements filed by respondent No. 1. Therefore, when there is no pleadings on behalf of respondent No. 1 to deny the relationship of employee and employer, it was not in the mouth of the learned counsel for the respondent No.1 to say that there is no such relationship. What is to be noted is that respondent No. 1 is totally silent on this aspect.

13. When respondent No.1 is silent and the petitioner asserts that he was the driver of the Auto Rickshaw, it is not available to respondent No. 2- Insurance Company, which is strictly governed with the contractual liability with respondent No.1, to say that



there was no such relationship of the employee and employer. The claim or the contentions of respondent No. 2 flow from the contentions of respondent No. 1. When the respondent No.1 has not denied the relationship of the employee and employer, it is not known how such a contention could be taken up by respondent No.2- Insurance Company. Therefore, this Court is of the view that the observation of the learned Commissioner that respondent No.2 has not taken recourse to summoning respondent No.1 before it cannot be faulted. Under the provisions of the EC Act, there are no such provisions which are akin to Section 170 of the Motor Vehicles Act. Under these circumstances, the contention of the learned counsel appearing for the Insurance Company that it could take all the contentions which are available for respondent No.1 cannot be accepted. Therefore, the contention that there is no such relationship of employee and employer cannot be accepted. It is pertinent to note that though PW1 states that he has certain documents to show such



relationship, he has not produced it. However, respondent No.1 has not cross examined PW1 on that aspect also. Under these circumstances, the view taken by the learned Commissioner that the relationship of the employee and employer has been established needs to be affirmed.

14. In so far as the quantum of the compensation is concerned, PW2 who is an Orthopaedic surgeon and he was a treated Doctor has stated that there is about 18% disability. Out of that, the disability that may be attributed to the right upper limb is 8% and disability attributable to the left upper limb is 10%. The learned Commissioner, noting that the petitioner was an Auto Rickshaw driver has assessed the disability at 15%. It is pertinent to note that for an Auto Rickshaw driver, the use of the lower limbs for driving is less, but that of the upper limb is more. Therefore, this Court do not find any reason to interfere with the view taken by the learned Commissioner that there is a disability of 15%. It is worth to note that in the year 2012, even to start the engine of the Auto Rickshaw,



the use of the left hand was essential. In that view of the matter, the functional disability of 15% cannot be interfered with.

15. The last aspect to be considered is whether the learned Commissioner erred in not awarding the medical expenses even though the bills worth Rs.6,161/- was produced before it. Obviously, the documents produced by the petitioner at Exhibit P6 to Exhibit P8 show that he has spent a sum of Rs.6,161/-. Therefore, the learned Commissioner should have awarded the said amount also.

16. The next aspect to be considered is whether there is violation of the terms and conditions of the policy. The judgment of the Apex Court in the case of **Mukund Dewangan v. Oriental Insurance Co. Ltd** referred supra lays down that there is no need for any special kind of licence to be obtained for driving a commercial passenger vehicle/transport vehicle if the unladen weight of the vehicle is less than 7500 kgs. This view of the Apex



Court was considered by the Apex Court in the case of **Bajaj Alliance General Insurance Co. Ltd v. Rambha Devi and Others** referred supra.. Learned counsel Sri. O. Mahesh, would submit that in the case of **Rambha Devi** (supra), the Apex Court has observed that an appropriate amendment is necessary for the Motor Vehicles Act, if the view that the commercial vehicle of the unladen weight of which is less than 7500 kgs also require a special licence other than LMV. Therefore, he submits that the judgment of the Apex Court in the case of **Mukund Dewangan** (supra) is over ruled. I am afraid this argument is of any credence to be placed upon. When it has been categorically held by the Apex Court in the case of **Mukund Dewangan** (supra) and if the other view is available, then it requires an amendment to the Act, it does not mean to say that the principle laid down in **Mukund Dewangan** (supra) is unsustainable. The Apex Court has not held that the view taken by the Court in **Mukund Dewangan's** case is erroneous. Therefore, it



has to be held that the view taken by **Mukund Dewangan** has been reiterated by the Apex Court in the case of **Bajaj Alliance General Insurance Co. Ltd v. Rambha Devi and Others**. In that view of the matter, fastening the liability upon the Insurance Company cannot be faulted with.

17. Thus, the appeal filed by the appellant-Insurance Company deserves to be rejected and the cross-objection filed by the petitioner deserves to be allowed only in respect of a sum of Rs.6,161/- pertaining to medical expenses. The substantial questions of law raised are answered accordingly. Hence, the following:

ORDER

(i) MFA No. 7680/2016 filed by the Insurance Company is dismissed.

(ii) MFA Crob. 32/2020 filed by the petitioner is allowed and the petitioner is entitled to a sum of



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Rs.6,161/- in addition to the sum of Rs.1,62,990/-
along with the interest at 12% as ordered by the
learned Commissioner, (excluding the delay of 67
days in filing the appeal).

(iii) The amount in deposit is ordered to be
transmitted to the learned Commissioner.

Sd/-
(C M JOSHI)
JUDGE

tsn*

List No.: 1 Sl No.: 19