



CNR: KAHC010507842016

NC: 2026:KHC:53069
MFA No. 4044 of 2016

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

MISCELLANEOUS FIRST APPEAL NO. 4044 OF 2016 (MV-D)

BETWEEN:

ABIDA WAJIE @ ABIDA THOUFIE
AGED ABOUT 59 YEARS,
W/O ABDUL WAJID THOUFIE,
SANTHEPET, TUMKUR - 572 132.

...APPELLANT

(BY SRI. K SHANTHARAJ, ADVOCATE (ABSENT))

AND:

1. S.HANUMANTHARAJU
AGED ABOUT 50 YEARS
S/O SIDDARAMAIAH,
R/A AKKATHIMMANAHALLI
SAKKERE, GOLLAHALLI POST,
DODDABALLAPUR TALUK
BANGALORE DIST. - 561 203.

2. UNIVERSAL SOMPO GENERAL
INSURANCE CO. LTD.,
UNIT NO. 401, 4TH FLOOR,
SANGAM COMPLEX, 127,
ANDHERI KURLA ROAD,
ANDHERI (EAST), MUMBAI - 400 059
REP. BY ITS MANAGER.

...RESPONDENTS

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

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 01.08.2015 PASSED IN MVC NO.711/12 ON THE FILE OF THE 2ND ADDITIONAL DISTRICT JUDGE AND 4TH MACT, TUMKUR, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL JUDGMENT

Challenging judgment and award dated 01.08.2015 passed by II Addl. District Judge & MACT., Tumkur (***Tribunal***), in M.V.C.no.711/2012, this appeal is filed.

2. Brief facts leading to this appeal are that at 2:35 p.m. on 14.04.2012 when claimant was pillion rider on motorcycle no.KA-06/EH-8864 with her son was riding on NH-206 near Krishna Hotel, driver of Tempo no.KA-43/2523 drove it in rash and negligent manner and it dashed against scooter from behind and caused accident.



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3. In accident, claimant sustained injuries and despite treatment, sustained loss of earning capacity. Therefore, she filed claim petition against owner and insurer of tempo.

4. On contest, wherein claim petition was opposed on all grounds tribunal framed following issues:

- i. Whether the petitioner proves that the accident was due to the rash and negligent driving of the vehicle bearing Reg. no.KA-43-2523 by its driver?
- ii. Whether 2nd respondent proves that the driver of the vehicle bearing Reg. no.KA-43-2523 had no valid and effective driving licence as on the date of the accident?
- iii. Whether petitioner proves that he sustained loss because of the accidental injuries and she is entitled to compensation? If so what amount and from whom?
- iv. What award or order?

5. Claimant along with Dr.T.V.Tyagaraj deposed as PWs.1 and 2 and got marked Exs.P1 to P14. Respondent examined two witnesses as RWs.1 and 2 and got marked Exs.R1 and R2.



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6. On consideration, tribunal held accident had occurred due to rash and negligent driving of insured vehicle by its driver and assessed compensation of Rs.2,09,000/- with interest at 8% p.a., but absolved liability of insurer on ground that driver was having driving licence, but did not have transport documents. Dis-satisfied with same, appeal is filed.

7. None appears for appellant. As per grounds urged in memorandum of appeal, claimant is dis-satisfied with assessment of inadequate compensation and is seeking for enhancement as follows:

Pain sufferings	Rs.1,00,000/-
Medical expenses	Rs.3,00,000/-
Transportation charges	Rs.20,000/-
Special food, nutrition and diet	Rs.20,000/-
Loss of amenities of life, frustration, Disappointment, inconvenience	Rs.2,20,000/-
Future medical expenses	Rs.40,000/-
Loss of future income	Rs.3,00,000/-
Loss of income during treatment	Rs.1,00,000/-
Total	Rs.10,00,000/-



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8. Respondent no.1 - owner is served and unrepresented.

9. Sri BC Shivannegowda, learned counsel for respondent no.2-insurer fairly submitted that this appeal is by claimant for enhancement of compensation as well as on liability and in MFA no.8094/2015 filed by owner, this Court by judgment dated 14.09.2018 by referring to decision of Hon'ble Supreme Court in ***Mukund Dewangan v. Oriental Ins. Co. Ltd.*** reported in ***AIR 2017 SC 3668***, reversed finding of tribunal of liability and held insurer liable, which would apply to this appeal also. However on quantum, it was submitted that there were no good grounds to vary award on quantum.

10. Heard learned counsel and perused impugned judgment and award.

11. Though appeal is challenging finding of tribunal as well as for enhancement of compensation, finding insofar as liability would stand covered by judgment in MFA no.8094/2015 holding insurer liable to pay compensation. Therefore subsisting point for consideration is :



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'Whether claimant is entitled for compensation?'

12. As on date of accident i.e., 14.04.2012, claimant was 55 years of age working as agriculturist and claiming to have lost earning capacity due to injuries sustained. Injuries noted by tribunal are compound fracture of right tibia and fibula requiring inpatient treatment for about 12 days during which fracture was treated with insertion of metal plates and screws.

13. While passing impugned award, tribunal referred to treatment records and deposition of PW.2, who assessed partial permanent disability at 30% in respect of affected limb and 10% to whole body. Tribunal assessed loss of earning capacity at 10% and taking monthly income of claimant at Rs.5,000/- notionally awarded and applying multiplier of '11' awarded Rs.66,000/- towards future loss of income.

14. Even though claimant did not produce specific evidence about monthly income and tribunal would be justified in assessing it notionally, since accident occurred in year 2012, notional income for year 2012 at Rs.7,000/- has to be taken.



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Thus, compensation towards future loss of income would require re-calculation as follows-

$$\text{Rs.7,000/-} \times 10\% \times 12 \times 11 = \text{Rs.92,400/-}$$

15. For fractures of right tibia and fibula, tribunal has awarded Rs.50,000/- towards pain and suffering, which appears just and proper. Tribunal has awarded Rs.68,000/- towards medical expenses in full reimbursement of bills produced leaving no scope for enhancement. Normally fractures take about three months to heal. Taking this period as lay-off, award of Rs.10,000/- towards loss of income during treatment, would require reworking to Rs.21,000/- (Rs.7,000/- x 3 months). Even award of Rs.15,000/- towards future medical expenses in view of deposition of PW.2, would appear justified.

16. Tribunal has not awarded any compensation towards loss of amenities even though claimant sustained permanent physical disability. Taking note of age, nature of accident and disability, it is found appropriate to award Rs.25,000/- towards loss of amenities. Thus, total



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compensation would be Rs.2,71,400/-. Point for consideration is answered accordingly. Consequently, following :

ORDER

- i. Appeal is ***allowed in part***, judgment and award dated 01.08.2015 passed by II Addl. District Judge & MACT., Tumkur, in M.V.C.no.711/2012 is modified.
- ii. Claimant is entitled for compensation of **Rs.2,71,400/-** as against Rs.2,09,000/- awarded by tribunal with interest at 8% per annum from date of claim petition till deposit, excluding period of 180 days being delay in filing appeal.
- iii. Respondent - insurer is held liable to pay it and is directed to deposit it within six weeks.
- iv. On deposit, compensation along with interest is ordered to be released in favour of claimant by electronic means.

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