IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR

MISCELLANEOUS FIRST APPEAL NO.3567 OF 2016 (MV-I)

BETWEEN:

SRI. VINAYAKA BHANDARI
AGED ABOTU 29 YEARS,
S/O. SRI. ASHOK @ ASHOK HARI BHANDARI,
NATIVE OF BAGGAN CROSS,
HERAWATTA, KUMUTA,
UTTARAKANNADA – 581 343.
R/AT NEAR SARAKKI,
BESIDE THE UNIVERSAL SIGNAL,
MOBILE SHOP, J.P. NAGAR,
6TH PHASE, BENGALURU – 560 078.

…APPELLANT

(BY SRI. SUKUMARAN G, ADVOCATE)

AND:

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Location: HIGH COURT OF KARNATAKA

1. THE BAJAJ ALLAINZ GENERAL
INSURANCE COMPANY LTD.,
UNIT NO.4, 9TH FLOOR,
(LEVEL NO. 4), GOLDEN HEIGHT COMPLEX,
59TH CROSS, INDUSTRIAL SUBURB,
4TH BLOCK, RAJAJINAGAR,
BENGALURU – 560 010.
REP BY ITS INCHARGE MANAGER.

(INSURER OF THE VEHICLE BEARING
REG NO. KA-05-AC-9761
POLICY NO. OG-13-1719-1803-00000887
VALID FROM 29-1-2013 TO 28-1-2014)

2. SRI. AFZAL PASHA,
S/O SRI. SYED BASHA,
AGED ABOUT 41 YEARS,
R/AT NO. 3, 2ND MAIN ROAD,
3RD CROSS, URDU SCHOOL FRONT ROAD,
TAVAREKERE MAIN ROAD,
JAYANAGAR MAIN ROAD,
BENGALURU – 560011.

…RESPONDENTS

(BY SRI O.MAHESH, ADVOCATE FOR R1;
SRI B.CHANDRASHEKARAIAH ADVOCATE FOR R2)

THIS MFA FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 21.7.2015 PASSED IN MVC NO. 1591/2013 ON THE FILE OF THE 13TH ADDITIONAL SMALL CAUSE JUDGE, MEMBER, MACT, BENGALURU, DISMISSING THE CLAIM PETITION BARRED BY TIME.

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

CORAM: HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR

ORAL JUDGMENT

The appeal is filed by the appellant/claimant challenging the judgment and award dated 21.07.2015 in MVC.No.1591/2013 passed by XIII Addl. Small Cause Judge & Member, MACT, Bengaluru, questioning the dismissal of the claim petition.

2. Brief facts of the case are that, on 03.02.2013 at about 12:00 in the noon, he was going in the

autorickshaw bearing Reg.No.KA-05-AC-9761, near Petrol Pump, Ring Road, Iliyaz Nagar, Bengaluru city. At that time, the autorickshaw driver drove the same with high speed in a rash and negligent manner, suddenly took U turn, because of which, the autorickshaw turtle down, due to which, he fell down and suffered injuries all over the body. Therefore, the claim petition under Section 166 of Motor Vehicle Act was filed and the said claim petition came to be dismissed by holding that the claimant was the driver of autorickshaw and due to his own rash and negligent driving of autorickshaw, the accident was caused, but not as a passenger in the autorickshaw.

3. Heard the arguments of learned counsel from both sides and perused the records.

4. Learned counsel for the appellant/claimant submitted that the claimant was travelling in autorickshaw as a passenger, but not as a driver, but the Tribunal has not appreciated the evidence on record correctly.

5. In the case sheet-Ex.P.11, initially, it is written as travelling and thereafter, it was striked down by writing it as riding. In this regard, doctor-PW.3 has given clarification that, initially, the claimant has given history to the hospital as he was travelling, but subsequently, the dependents of the claimant have stated that the claimant was riding. Accordingly, it is written as he was riding the autorickshaw. Therefore, it is proved that the claimant was travelling in the autorickshaw, but this is not considered by the Tribunal, thereby dismissed the claim petition erroneously. Hence, prays to allow the appeal.

6. Alternatively, further submitted that if at all the claimant is proved to be the driver, then the claimant is entitled for compensation under the Employee's Compensation Act. Therefore, prays to allow the appeal.

7. On the other hand, learned counsel for respondent No.1-Insurance Company submitted that from

all the medical records, it is proved that the claimant was riding the autorickshaw. Therefore, at the very initial point of time, it is proved that the claimant was riding the autorickshaw and that the information/history given before the hospital authorities at the very initial point of time has more credential than the information given at the later stage. Therefore, this is rightly considered by the Tribunal and dismissed the claim petition, which is justifiable and correct one. Hence, prays to dismiss the appeal. Further submitted that, the compensation cannot be granted under the Employee's Compensation Act, since the claimant has already invoked the provision under the Motor Vehicle Act, 1988.

8. In the present case, the accident is caused on 03.02.2013 at about 12:00 in the noon. The claimant has lodged complaint as per Ex.P.1 on 04.02.2013 at about 9 pm in the night. Though, it cannot be said that there is a delay in lodging the complaint, in the complaint, it is

stated that the claimant was travelling in autorickshaw as a traveler. But upon considering the medical documentary evidence i.e., Ex.P.6-wound certificate, Ex.P.7-discharge summary, Ex.P.11-case sheet and Ex.P.17-accident register, it is proved that the claimant was riding the autorickshaw.

9. In the case sheet, the history is mentioned that the claimant was admitted to the hospital due to road traffic accident, but the details as per MLC register, in which, it is stated that the claimant was admitted to the hospital while he was riding the autorickshaw. Therefore, from the medical records, it is proved that while riding the autorickshaw, the autorickshaw met with an accident and sustained injuries. There is no contra evidence placed by the claimant that he was travelling in autorickshaw.

10. The police documents upon comparing with the medical documents, the information/history given before

the hospital authorities at the very initial point of time has more credential than the information given at the later stage. Therefore, at the very initial point of time when the claimant was admitted to the hospital, the history given was that the claimant was riding the autorickshaw and sustained injuries. Therefore, the Tribunal is correct in holding that the claimant was driving the autorickshaw and hence, claim petition filed under Section 166 of MV Act is not maintainable. Hence, it is proved that the claimant was the driver of autorickshaw met with an accident. Therefore, it is proved that the claimant was the employee under respondent No.2. When it is proved that the claimant being driver of autorickshaw met with an accident and respondent No.2 was employer of the claimant, therefore, the case of the claimant can be considered under the provisions of Employee's Compensation Act.

11. The accident is caused on 03.02.2013. Therefore, monthly wage is considered at Rs.8,000/-. The

claimant was aged 26 years, therefore, the relevant factor applicable is 215.28. The doctor has given evidence that the claimant has suffered 19% of permanent physical disability. Therefore, the claimant has suffered fracture of right tibia. Therefore, permanent physical disability at 10% is taken into consideration towards whole body. Therefore, compensation under the head loss of earning capacity due to disability is re-assessed and quantified as follows;

Rs.8,000/- x 60% x 215.28 x 10% =Rs.1,03,334/-

Accordingly, compensation of **Rs.1,03,334/-** is awarded under the head loss of earning capacity due to disability.

12. Hence, I proceed to pass the following

ORDER

i. The appeal is ***allowed***.

ii. The impugned judgment and award dated 21.07.2015 in MVC.No.1591/2013 passed by

the MACT, Court of Small Causes at Bengaluru (SCCH-15), is hereby modified.

iii. The appellant/claimant is entitled to total compensation of **Rs.1,03,334/-** along with interest at the rate of 12% per annum from the date of accident till the date of realization.

iv. The appellant/claimant is not entitled to interest for the delay period of 178 days in filing the appeal.

v. No order as to costs.

vi. Registry is directed to transmit the TCR along with copy of this order to the concerned Court forthwith.

vii. Draw award accordingly.

Sd/-
(HANCHATE SANJEEVKUMAR)
JUDGE

PB
List No.: 2 Sl No.: 4