IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR

MISCELLANEOUS FIRST APPEAL NO.8227 OF 2015 (MV-I)

BETWEEN:

MR. ASIF KHAN @ ASIF,
S/O. ILLIYAZ KHAN,
AGE: 25 YEARS,
OCC: MACHANIC,
R/O NO.649, FATHIMA MANZIL,
SAREPALYA, THANISANDRA,
BENGALURU - 560 077.

...APPELLANT

(BY SRI. SURESH M. LATUR, ADVOCATE)

AND:

1. SRI. VEERABRAHMA CHARI,
   S/O. SRI. VENKATA SWAMY,
   6TH WARD, BEHIND VENKATSHWARA TALKIES,
   BAGEPALLI,
   CHIKKABALLAPURA DISTRICT – 562 101.

Digitally signed by RAMYA D
Location: HIGH COURT OF KARNATAKA

2. THE REGIONAL MANAGER
   UNITED INDIA INSURANCE CO. LTD.,
   5TH AND 6TH FLOOR,
   KRISHI BHAVAN,
   NRUPATHUNGA ROAD, HUDSON CIRCLE,
   BENGALURU- 560 001.

3. BEGUM JAN
   NO.1064, 1ST CROSS,
   PADARAYANAPURA,
   BENGALURU – 560 070.

4. THE REGIONAL MANAGER,
   UNITED INDIA INSURANCE CO. LTD.,

5TH AND 6TH FLOOR,
KRISHI BHAVAN,
NRUPATHUNGA ROAD, HUDSON CIRCLE,
BENGALURU – 560 001.

…RESPONDENTS

(BY SRI. M.U. POONACHA ADVOCATE FOR R2 & R4;
R1 SERVED;
V/O DATED 05.04.2019 NOTICE TO R3 IS DISPENSED WITH)

THIS MFA FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 30.05.2015 PASSED IN MVC NO. 177/2013 ON THE FILE OF THE XIII ADDITIONAL SMALL CAUSE JUDGE, COURT OF SMALL CAUSES & MEMBER, MACT, BENGALURU, PARTLY ALLOWING 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 HANCHATE SANJEEVKUMAR

ORAL JUDGMENT

Though matter is listed for Admission by the consent of learned Advocates appearing for both parties it is taken up for final disposal.

2. The appeal is filed by the claimant seeking enhancement of compensation awarded by the judgment and award dated 30.05.2015 passed by XIII Addl. Small

Cause Judge & Member, MACT, Bengaluru, in MVC No.177/2013.

3. The rank of parties are referred to as per their ranks before the Tribunal.

4. The claimant was proceeding in canter lorry bearing registration No.KA-18-5731 on 05.11.2010 at 5.30 p.m. when the vehicle reached Chendur cross, NH-07, Gudibanda Taluk, Chikkaballapur, at that time the Tata Sumo bearing registration No.KA-40-M-800 came from opposite direction with high speed in rash and negligent manner and dashed against the canter lorry, resulting in claimant sustaining grievous injuries. Hence, claimant filed a claim petition under Section 166 of Motor Vehicles Act, 1988 (for short 'the Act').

5. The Tribunal by granting compensation of Rs.5,55,000/- has fastened liability on the respondent No.1 – owner of the Tata Sumo vehicle on the reason that

driver of the Tata Sumo was not having driving licence as on the date of accident.

6. From the medical evidence on record it is proved that the claimant has suffered following injuries:

1. *Bilateral Le Fort fracture of Maxilla with fracture of left ramus of the Mandible.*
2. *Fracture with Hemosinus of both Maxillary Sinuses and Ethomoidal sinuses with right sphenoidal Haemosinus.*
3. *Fracture of left Zygomatic bone.*
4. *Fracture of the left tibia.*

7. The Tribunal has granted compensation under various heads as follows:

Sl. No.	Particulars	Amount in Rs.
1	Pain and sufferings	75,000/-
2	Loss of income during laid up period, diet, nourishment and etc.	40,000/-
3	Attendant charges, conveyance, other incidental charges and etc.	40,000/-
4	Medical expenditure	1,50,000/-
5	Loss of future income (7,500 x 12 x 8/100 x 18)	1,29,600/-
6	For ugly scars	20,000/-
7	For loss of marital prospectus	20,000/-

8	Loss of amenities and comfort	40,000/-
9	Permanent physical impairment	40,000/-
	Total **Rounded off to**	**5,54,600/-** **5,55,000/-**

8. Upon considering the quantum of compensation awarded under each head there is a repetition of amount of compensation awarded. Therefore, except under the head 'loss of future income due to disability', the compensation under other heads is found to be just and proper.

9. The Tribunal has not held the correct parameters while assessing the quantum of compensation under the head 'loss of income due to disability'. Therefore, under this head only there is a need to make modification in the judgment and award passed by the Tribunal.

10. The doctor has stated that the claimant has suffered 27.6% disability towards left lower limb and 14% towards whole body, but the Tribunal has taken only 8% as functional disability. Therefore, the Tribunal has

committed an error in taking percentage of functional disability of the claimant. The claimant has suffered multiple fractures and as such, it is just and proper to take 15% as functional disability suffered by the claimant.

11. The claimant was working as mechanic in a garage and stated that he was earning monthly income of Rs.10,000/-. PW.6-employer has stated that he was paying salary of Rs.10,500/- p.m. Ex.P.9 is the salary certificate issued by PW.6 stating that he was paying salary of Rs.10,500/- p.m. The Tribunal has taken only Rs.7,500/- pm. The claimant is a mechanic by profession. Therefore, monthly income of Rs.10,500/- is to be taken into consideration by considering the evidence of PW.6 and Ex.P.9-salary certificate issued by the employer. As the claimant was aged 22 years, the appropriate multiplier applicable is "18". Therefore, compensation under the head loss of income due to disability is re-assessed and quantified as follows:

Rs.10,500/- x 15% x 18 x 12=Rs.3,40,200/-

Accordingly, compensation of **Rs.3,40,200/-** is awarded under the head loss of income due to disability.

12. The compensation granted on other heads is found to be just and proper, which needs no interference by this Court.

13. Thus, in all, the appellant/claimant is entitled to total compensation as under:

Pain and Sufferings	Rs. 75,000/-	Kept in tact
Loss of income during laid up period, Diet, Nourishment and etc.	Rs. 40,000/-	Kept in tact
Attendant Charges, Conveyance, other Incidental Charges and etc.	Rs. 40,000/-	Kept in tact
Medical Expenditure	Rs. 1,50,000/-	Kept in tact
Loss of Future Income due to disability	Rs. 3,40,200/-	
For Ugly Scars	Rs. 20,000/-	Kept in tact
For loss of Martial Prospectus	Rs. 20,000/-	Kept in tact
Loss of Amenities and Comfort	Rs. 40,000/-	Kept in tact
Permanent Physical Impairment	Rs. 40,000/-	Kept in tact
Total	**Rs. 7,65,200/-**	

14. The Tribunal has granted interest at the rate of 8% p.a., and the same is reduced to 6% p.a. The Tribunal has awarded compensation of Rs.5,55,000/-, but the appellant/claimant is entitled to total compensation of Rs.7,65,200/-. Hence, the appellant/claimant is entitled to enhanced compensation of **Rs.2,10,200/-** (Rs.7,65,200/- - Rs.5,55,000/-). Therefore, the appellant/claimant is entitled to enhanced compensation of **Rs.2,10,200/-** along with interest at the rate of 6% per annum from the date of petition till the date of deposit, in addition to what has been awarded by the Tribunal.

REGARDING LIABILITY:

15. Ex.P.2 is the charge sheet, which proves that the driver of Tata Sumo was not holding driving licence. The petitioner is third party to the Tata Sumo. Therefore, it is proved that the driver of Tata Sumo was not holding driving licence. Hence, respondent No.2-Insurance Company who has issued insurance to the Tata Sumo is liable to be exonerated from paying compensation.

However, the claimant is third party to the Tata Sumo, hence, an order of pay and recovery is to be made. Hence, as per Sub-section (2) of Section 149 of Motor Vehicle Act, when the Insurance Company established the fact that the driver was not holding driving licence, then as per Sub-sections (1), (4), (7) of Section 149 of Motor Vehicle Act, the Insurance Company as if the judgment debtor shall satisfy the claim in respect of third party and then recover the same from the owner of Tata Sumo. Accordingly, an order of pay and recovery is made as per the principle of law laid down by the Hon'ble Supreme Court in the cases of ***PAPPU AND OTHERS Vs. VINOD KUMAR LAMBA AND ANOTHER***[1]***; NATIONAL INSURANCE COMPANY LIMITED VS. SWARAN SINGH AND OTHERS***[2] and also as per the full bench decision of this Court in the case of ***NEW INDIA ASSURANCE***

[1] (2018) 3 SCC 208
[2] (2004) 3 SCC 297

COMPANY LIMITED VS. YELLAVVA AND ANOTHER[3]. Accordingly, an order of pay and recovery is made.

16. Liberty is reserved to the Insurance Company to file execution petition against the owner of Tata Sumo and may seek for attachment of movable and immovable property of the owner of Tata Sumo for recovery of amount. To this extent, the judgment and award passed by the Tribunal is modified. Accordingly, I proceed to pass the following

ORDER

i. The appeal is ***allowed-in-part***.

ii. The impugned judgment and award dated 30.05.2015 in MVC.No.177/2013 passed by XIII Addl. Small Cause Judge & Member, MACT, Bengaluru, is hereby modified.

iii. The appellant/claimant is entitled to enhanced compensation of **Rs.2,10,200/-**

[3] 2020 ACJ 2560

along with interest at the rate of 6% p.a., from the date of petition till its realization, in addition to what has been awarded by the Tribunal.

iv. No order as to costs.

v. Draw award accordingly.

vi. The Insurance Company as if the judgment debtor shall satisfy the claim in respect of third party and then recover the same from the owner of Tata Sumo.

vii. Liberty is reserved to the Insurance Company to file execution petition against the owner of Tata Sumo and may seek for attachment of movable and immovable property of the owner of Tata Sumo for recovery of amount.

viii. The appellant/claimant is not entitled for interest for the delay period of 53 days in filing the appeal.

ix. Registry is directed to transmit the TCR along with copy of this order to the Tribunal forthwith.

Sd/-
(HANCHATE SANJEEVKUMAR)
JUDGE

DR: Para 1 to 10
PB: Para 11 to 15
List No.: 1 Sl No.: 17