HC-KAR

NC: 2026:KHC:62321
MFA No. 242 of 2014

CNR: KAHC010043802014

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

MISCELLANEOUS FIRST APPEAL NO. 242 OF 2014 (MV-I)

BETWEEN:

M D CHANDRASHEKARAIAH
S/O M.S.DEVARAJU,
AGED ABOUT 60 YEARS,
AND R/A NO.8/15, 9TH CROSS,
SWIMMING POOL EXTENSION,
MALLESHWARAM,
BANGALORE - 560 003.

...APPELLANT

(BY SRI ABHINAY Y.T., ADVOCATE)

AND:

1. ABDUL KALEEM
SALEEM TOURS AND TRAVELS,
#333/5, TSP ROAD,
KALASIPALYAM,
BANGALORE - 560 002.

2. ICICI LOMBARD GENERAL INSURANCE CO. LTD.,
ZENITH HOUSE,
KESHAVARAO KHADE MARG,
MAHALAKSHMI,
MUMBAI - 400 034.

...RESPONDENTS

(BY SRI C NARASIMHACHAR, ADVOCATE FOR R1;
SRI B.PRADEEP, ADVOCATE FOR R2)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 21.08.2013 PASSED IN MVC

Digitally signed by ANUSHA V
Location: High Court of Karnataka

NO.3788/2012 ON THE FILE OF THE XXII ADDITIONAL SMALL CAUSES JUDGE, MEMBER, MACT, COURT OF SMALL CAUSES, BANGALORE, DISMISSING THE CLAIM PETITION FOR COMPENSATION.

THIS APPEAL, 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 21.08.2013 passed by XXII Additional Small Causes Judge and Member MACT, Bangalore ('**Tribunal**'), in MVC no.3788/2012, this appeal is filed.

2. Sri Abhinay Y.T., learned counsel for appellant submitted that appeal was by claimant challenging dismissal of claim petition by Tribunal. Brief facts leading to this appeal were that at 3:45 am on 01.12.2011, when claimant was travelling in Bus no.KA-01-AF-15 on Kurnool - Ananthpur road, its driver drove it in rash and negligent manner and it dashed against road divider and fell into a ditch. As a result, claimant sustained grievous injuries and despite treatment at

Government Hospital, Ananthpur and Hosmat Hospital, Bangalore, he did not recover fully. Therefore, he filed claim petition in MVC no.3788/2012 under Section 166 of Motor Vehicles Act, 1988('**MV Act**') against owner and insurer of Bus.

3. On appearance, both owner and insurer filed objections denying occurrence of accident while claimant was travelling in Bus. Additionally insurer alleged violation of terms and conditions of policy and claim being excessive.

4. Based on pleadings, Tribunal framed following issues:

1) Whether the claimant proves that he sustained grievous injuries in RTA that occurred on 30.11.11 at about 3:45 a.m. while proceeding as an inmate in Bus bearing Reg.No.KA-01-AF-15 near Kalachatla Bridge, Peapully Mandal NH and Kurnool - Ananthpur Road due to rash and negligent driving of the said Bus by its driver?

2) Whether the claimant is entitled for compensation as claimed? If so, to what amount and from whom?

3) What order or award?

5. In trial, claimant deposed as PW.1 and got marked Exs.P1 to P18. Respondents did not lead evidence.

6. On consideration, Tribunal answered issue no.1 partly in affirmative, issue no.2 as not arising for consideration and issue no.3 by dismissing claim petition leading to this appeal.

7. It was submitted, only reason assigned by Tribunal for dismissal of claim petition was that Ex.P6 - Ticket produced by claimant did not mention Bus number, ticket was issued in respect of AP Tours and Travels issued by Sree Balaji Travels, whereas respondent no.1 in claim petition was Saleem Tours and Travels. It was submitted, standard of proof in claim petition was preponderance of probabilities, which would favor claimant as he had not only produced original bus ticket but also stated about accident in detail and contents of wound certificate - Ex.P3 corroborated claimant's version. And there was no cross-examination on these aspects. Further, treatment records were consistent in indicating that it was for injuries sustained in accident caused by insured Bus. Merely on account

of minor discrepancies, dismissal of claim petition was not justified. On above grounds sought for setting aside dismissal and to pass appropriate award.

8. On other hand, Sri B Pradeep, learned counsel for insurer opposed appeal. It was submitted, dismissal of claim petition by Tribunal was by assigning reasons. Therefore, award did not call for interference.

9. Heard learned counsel, perused impugned judgment, award and record.

10. This appeal is by claimant challenging dismissal of claim petition. At outset, occurrence of accident involving insured Bus is not in dispute. Since Tribunal dismissed claim petition on ground that claimant failed to establish that he was travelling in insured Bus at time of accident and about sustaining injuries in said accident, points that arise for consideration are:

1) *Whether dismissal of claim petition is justified?*

2) If not, compensation claimant would be entitled to?

Point no.1:

11. To establish actionable negligence against owner/insurer, claimant relied on police investigation records namely FIR, Requisition Letter, Wound Certificate, Motor Vehicles Inspector Report, Inquest Report and Ticket respectively marked as Exs.P1 to P6. Ex.P1 - FIR is based on complaint by one of passengers of Bus against its driver. It mentions about death of driver and several passengers sustaining injuries. Ex.P2 is for treating criminal proceedings as abated due to death of accused - Bus driver. Ex.P3 is wound certificate issued by Hosmat Hospital, Bangalore, mentions about admission of claimant on 03.12.2011 with history of injuries sustained in RTA on 01.12.2011 and about treatment administered till 07.12.2011 for fracture of left parasymphysis and right subcondylar. Ex.P4 is Motor Vehicles Inspector Report contains details of damage sustained by insured Bus. Ex.P5 is inquest panchanama of driver of Bus. Ex.P6 is Bus Ticket counterfoil issued by Sree Balaji Travels, Hyderabad in name of

Girish, mentioning date of journey as 30.11.2011 from Hyderabad to Bangalore in respect of seats numbers 15 to 22 in Bus belonging to AP Tours. It is significant to note that Ex.P6 is original counterfoil.

12. While passing impugned judgment, Tribunal noted discrepancies insofar as non-mentioning of Bus number, claimant stating to have traveled in Bus belonging to AP Tours and Travels, ticket issued by Sree Balaji Travels and filing claim petition against Saleem Tours and Travels and ticket issued in name of Girish. But, there is no cross examination of claimant on these aspects by insurer. Only admissions elicited by owner of Bus are about failure to recollect Bus number, Ticket issued by Sree Balaji Travels in name of Girish and failure to produce ticket issued by Saleem Tours and Travels. However there are upteen suggestions about claimant having taken treatment in Railway Hospital and entitled for reimbursement of medical expenses as well as not suffering loss of earning due to continuation in employment till retirement. Said suggestions would dilute thrust of respondent no.1's case disputing claimant

having traveled in Bus belonging to respondent no.1 having met with accident.

13. It is settled law that standard of proof in motor accident claims is preponderance of probabilities and not proof beyond reasonable doubt as appearing to have been applied by Tribunal. Therefore, point no.1 is answered in ***negative***.

Point no.2:

14. Insofar as quantum of compensation, treatment records including Ex.P3 - Wound Certificate, Ex.P7 - Discharge Summary, Exs.P9 to P18 - X-rays, Medical Bills, Prescriptions etc. would indicate that claimant sustained fractures of left parasymphysis and right subcondylar and treated for same at Hosmat Hospital, Bengaluru and later at Comprehensive Dental Care Clinic, Bengaluru. Ex.P10 is abstract of expenses incurred at Hosmat Hospital totaling to Rs.1,54,428/- and Exs.P12 and P15 of Rs.10,000/- and Rs.9,500/- at Comprehensive Dental Care. Though there is cross-examination about claimant being entitled for re-imbursement from Railways, production of original bills along with receipts would rule out same.

Therefore, claimant would be entitled for Rs.1,54,428/- + Rs.19,500/- = **Rs.1,73,928/-** towards medical expenses.

15. Further admittedly, claimant continued in Railway Service even after accident. And as claimant failed to examine any doctor, he has to be held as failed to establish disability and loss of earning capacity and being disentitled for compensation towards future loss of income, loss of amenities, loss of income during laid up period etc. Only other head of compensation he would be entitled to would be towards pain and suffering. Considering fact that claimant suffered fracture of lower jaw, it is found appropriate to grant compensation of **Rs.25,000/-**. Thus, total compensation would be Rs.1,98,928/- rounded off to **Rs.2,00,000/-**. Point no.2 is thus answered ***partly in affirmative***. Consequently, following:

ORDER

i) Appeal is ***allowed in part***.

ii) Judgment and award dated 21.08.2013 passed by Tribunal in MVC no.3788/2012 is ***set-aside***.

iii) Claim petition is ***allowed in part***, claimant is held entitled for total compensation of ***Rs.2,00,000/-*** with interest at 6% per annum from date of claim petition till deposit.

iv) Insurer is directed to deposit entire compensation with interest before Tribunal within six weeks.

v) On deposit, entire compensation with interest is ordered to be released in favour of claimant.

Sd/-
(RAVI V HOSMANI)
JUDGE

YKL/GRD
List No.: 1 Sl No.: 18