HC-KAR

NC: 2026:KHC:59608
MFA No. 103 of 2015
C/W MFA No. 3619 of 2014

CNR: KAHC010130432015

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

MISCELLANEOUS FIRST APPEAL NO.103 OF 2015(MV-I)

C/W

MISCELLANEOUS FIRST APPEAL NO.3619 OF 2014(MV-I)

IN MFA No. 103/2015

BETWEEN:

MR MUNESHWACHARI @
ESHWARACHARI
S/O K.M.RAMACHANDRA CHARI,
AGED ABOUT 35 YEARS,
R/AT DODDAKURUBARAHALLI,
IBASAPURA POST,
CHANNARAYAPATNA HOBLI,
DEVANAHALLI TALUK,
BENGALURU RURAL DISTRICT.

...APPELLANT

(BY SMT. SREEVIDYA G.K., ADVOCATE FOR
SRI T N VISWANATHA, ADVOCATE)

Digitally signed by ANUSHA V
Location: High Court of Karnataka

AND:

1. M/S. THE ORIENTAL INSURANCE COMPANY LTD.,
T.P.CLAIMS HUB, REGIONAL OFFICE
REGIONAL OFFICE,
4TH FLOOR, NO.144-145,
LEO SHOPPING COMPLEX,
RESIDENCY ROAD CROSS,
BENGALURU - 560 025.

2. MR.RANGASWAMY V.,
FATHER'S NAME NOT KNOWN TO APPELLANT,
MAJOR, R/AT NO.238 (117),

2ND CROSS,
KRISHNANDA NAGAR,
NANDINI LAYOUT,
BENGALURU - 560 096.

…RESPONDENTS

(BY SRI. A M VENKATESH, ADVOCATE FOR R1;
V/C/O DATED 04.09.2024 NOTICE TO R2 IS H/S)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 24.10.2013 PASSED IN MVC NO.2859/2011 ON THE FILE OF THE XVI ADDITIONAL JUDGE, MACT, BANGALORE, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

IN MFA NO. 3619/2014

BETWEEN:

M/s. ORIENTAL INSURANCE COMPANY LIMITED,
REGIONAL OFFICE
NO.44/45, 4TH FLOOR,
LEO SHOPPING COMPLEX,
RESIDENCY ROAD,
BANGALORE - 560 025,
REP BY ITS AUTHORISED SIGNATORY.

...APPELLANT

(BY SRI A M VENKATESH, ADVOCATE)

AND:

1. MR. MUNESHWARACHARI @ ESHWARACHARI
S/O K.M.RAMACHANDRA CHARI,
AGED ABOUT 35 YEARS,
R/AT DODDAKURUBARAHALLI,
IBASAPURA POST,

CHANNARAYAPATNA HOBLI,
DEVANAHALLI TALUK,
BANGALORE RURAL DISTRICT.

2. MR.RANGASWAMY.V
R/AT NO.238 (117), 2ND CROSS,
KRISHNANDANAGAR,
NANDINI LAYOUT,
BANGALORE - 560 096.

CORRECTED AS PER COURT ORDER DATED 02.08.2024

...RESPONDENTS

(BY SMT. SREEVIDYA G.K., ADVOCATE FOR
SRI T N VISWANATHA.,ADVOCATE FOR R1;
V/C/O DATED 04.09.2024 NOTICE TO R2 IS H/S)

THIS MFA FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 24.10.2013 PASSED IN MVC NO.2859/2011 ON THE FILE OF THE XVI ADDL. JUDGE, MACT, BANGALORE AWARDING A SUM OF RS.2,18,500/ - WITH INTEREST AT 6% P.A. FROM THE DATE OF PETITION TILL DATE OF PAYMENT.

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

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL JUDGMENT

Challenging judgment and award dated 24.10.2013 passed by XVI Additional Judge, MACT, Bangalore, in MVC no.2859/2011, these appeals are filed. While MFA 3619/2014 is filed by insurer challenging finding of Tribunal on liability, MFA

103/2015 is filed by claimant for enhancement of compensation.

2. Brief facts as per claimants leading to this appeal are that at 12:45 p.m. on 11.01.2011 when claimant was riding motorcycle no.KA-05-EZ-7775 on Dinnur-Ibasapura main road, driver of Auto no.KA-02-B-6385 drove it in rash and negligent manner and it dashed against claimant's motorcycle from opposite direction. In accident claimant sustained grievous injuries and despite treatment at Manasa Nursing Home and later at KIMS hospital, he did not recover fully and sustained permanent physical disability. Claiming compensation for same, he filed claim petition under Section 166 of MV Act against insurer and owner of auto.

3. Despite service of summons, owner did not appear and was placed exparte. Only insurer opposed claim petition on all grounds including alleging violation of terms and conditions of policy.

4. Based on pleadings Tribunal framed issues and recorded evidence. Claimant examined himself and Dr.Vinod Kumar as

PWs.1 and 2 and got marked Exs.P1 to P19. In rebuttal official of insurer was examined as RW1 and Exs.R1 and R2 were got marked.

5. On consideration, Tribunal held accident had occurred due to rash and negligent driving of insured auto driver and claimant who had sustained grievous injuries was entitled for compensation assessed by it at Rs.2,18,500/- with interest at 6% per annum. Insurer was held liable to pay compensation to claimants with liberty to recover it from insured. Dissatisfied with same, appeals were filed.

6. Sri AM Venkatesh, learned counsel for appellant submitted that sole ground on which insurer was seeking for modification of award of Tribunal on liability was that Hon'ble Supreme Court in case of **Oriental Insurance Co. Ltd. v. Shri Nanjappan and Ors.** reported in **(2004) 13 SCC 224** had held while issuing a direction that before release of amount to claimant, notice has to be issued to owner of vehicle and on his furnishing security for compensation amount pass orders for release it in favour of claimants. It was submitted that said decision was followed by this Court in MFA

92/2023 [**2026:KHC:27784**] (**Mithun**'s case) and submitted that same would apply to present case also. Insofar as claimant's appeal for enhancement it was submitted that Tribunal had assessed just compensation leaving no scope for enhancement. On said grounds sought for dismissal.

7. On other hand Smt.Sreevidya GK, learned counsel appearing for TN Viswanatha, advocate for appellant in MFA 103/2015 submitted that appeal was by claimant for enhancement of compensation as well as finding of Tribunal on liability. Insofar as liability it was submitted that in view of insurer's contention about violation of terms and conditions of policy, at best direction for pay and recovery could have been passed as already passed and there was no need for further modification. It was submitted that modification of mode of execution of pay and recovery direction would cause further delay to claimant in securing compensation and therefore sought for dismissal of insurer's appeal.

8. On quantum it was submitted that as on date of accident claimant was a 32 year old welder earning Rs.9,000/- per month who sustained crush injuries to his right foot with

fracture of metatarsal, cumical bone as well as calcaneum assessed by PW2-Dr.Vinod Kumar to have caused 14% disability. It was submitted that considering occupation Tribunal ought to have assessed higher disability. It was further submitted that when claimant had assessed crush injury involving several fractures of several metatarsals, award of only 25% towards pain and suffering was grossly inadequate and sought for enhancement. It was submitted that even compensation of Rs.15,000/- towards food, conveyance and other incidental expenses, Rs.49,329/- towards medical expenses and Rs.8,000/- towards future medical expenses were inadequate and sought for enhancement. Failure of Tribunal to award any compensation towards loss of amenities as well as loss of income during laid up period would also call for interference and on said ground sought for allowing appeal.

9. Heard learned counsel, perused impugned judgment and award and certified copy of records made available for perusal by learned counsel for appellant.

10. From above and since both insurer as well as claimant are in appeal, points that would arise for consideration are:

i) Whether direction issued by Tribunal for pay and recovery requires modification?

ii) Whether claimant is entitled for enhancement of compensation as prayed?

Point no.1:

11. While passing impugned award, Tribunal taking note of contention by insurer about insured vehicle plying beyond territorial jurisdiction with an expired permit was guilty of violation of terms and conditions of policy. Therefore it passed order for pay and recovery. Hon'ble Supreme Court in **Nanjappan's** case (supra) while passing an order for pay and recovery had observed as follows:

> "Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in Baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondents-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner as the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be

> issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs".

About manner of execution of pay and recovery direction. Said direction is followed by this Court in **Mithun's** case. There is no factor to distinguish instant case from **Mithun**/**Nanjappan's** cases (supra). Therefore, point no.1 is answered by modifying judgment and award of Tribunal to be in tune with **Nanjappan's** case (supra).

Point no.2:

12. There is no dispute that as on date of accident claimant was 32 years of age, working as welder but claimant failed to substantiate income. In absence Tribunal assessed it notionally. Notional income for year 2011 being Rs.6,500/- same has to be considered. While passing impugned judgment, Tribunal referred to assessment of whole body

disability by PW2 at 14% and considered same as loss of earning capacity. However it failed to add future prospects to monthly income. Assessment of loss of earning capacity by Tribunal in facts and circumstances appears just and proper. Since claimant was self employed and below 40 years, future prospects at 40% has to be added. Thus, compensation towards future loss of income would be (Rs.6,500/- + 40%) Rs.9,100/- x 14% x 12 x 16 = **Rs.2,44,608/-**. Claimant has sustained crush injuries involving fractures of several metatarsal and there was also fusion of skin. Considering same, award of Rs.25,000/- only towards pain and suffering would be grossly inadequate and found appropriate to enhance it to **Rs.60,000/-**. For inpatient treatment period of 8 days Tribunal has awarded **Rs.15,000/-** towards food and other incidental expenses which would appear just and proper, no enhancement. Likewise, award of **Rs.49,329/-** towards medical expenses which is in full reimbursement of bills produced would not call for interference. However, in case of requirement of one more surgery for removal of implants, award of Rs.8,000/- towards future medical expenses is

niggardly and enhanced to **Rs.20,000/-**. When claimant has sustained permanent physical disability, failure to award loss of amenities would not be justified. Considering age and nature of disability, it is found appropriate to award **Rs.40,000/-** towards loss of amenities. Normally fractures take 3 months to heal. Considering said period as layoff at Rs.6,500/- per month claimant would be entitled to **Rs.19,500/-** towards loss of income during laid up period. Thus, total compensation would be **Rs.4,48,437/-**. Point no.2 is answered partly in affirmative accordingly.

13. Consequently, following:

ORDER

(i) MFA 3619/2014 filed by insurer and MFA 103/2015 filed by claimant are **allowed in part**.

(ii) Judgment and award passed by XVI Additional Judge, MACT, Bangalore, is modified.

(iii) Compensation enhanced from Rs.2,18,500/- to Rs.4,48,437/- with interest at 6% per annum.

(iv) Direction to insurer to pay and recover stands modified/clarified that on deposit of compensation by insurer, Tribunal to issue notice to insured/owner of vehicle and on his appearance/furnishing of security for compensation amount, Tribunal to release it in favour of claimant.

(v) Insurer is directed to deposit enhanced compensation within 6 weeks.

(vi) On deposit, Tribunal to release entire compensation with interest in favour of claimant.

Sd/-
(RAVI V HOSMANI)
JUDGE

YKL
List No.: 1 Sl No.: 25