HC-KAR

NC: 2026:KHC:61602
MFA.CROB No. 114 of 2017
C/W MFA No. 1215 of 2017

CNR: KAHC010294562017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

MFA CROSS OBJECTION NO.114 OF 2017 (MV-I)

C/W

MISCELLANEOUS FIRST APPEAL NO.1215 OF 2017(MV-I)

IN MFA.CROB NO. 114/2017

BETWEEN:

MR.J C JAGADEESHA
S/O CHANDRASHEKARA,
AGED ABOUT 37 YEARS,
CIVIL CONTRACTOR,
R/O M.C.HALLI VILLAGE,
TARIKERE TALUK,
SHIVAMOGGA DISTRICT - 577 228.

...CROSS OBJECTOR

(BY SRI PRUTHVI WODEYAR, ADVOCATE)

AND:

Digitally signed by ANUSHA V
Location: High Court of Karnataka

1 . M CHANDRASHEKARA
S/O MALLESHAPPA G.C.
AGED ABOUT 39 YEARS,
R/O BILAKI THANDYA,
DONABAGATTA POST,
BADRAVATHI TALUK,
SHIVAMOGGA DISTRICT - 577 301.

2 . RAJANAIKA H C
S/O CHOKLANAIK,
R/O BILAKI THANDYA,
DONABAGATTA POST,
BADRAVATHI TALUK,
SHIVAMOGGA DISTRICT - 577 301.

3. NATIONAL INSURANCE COMPANY LTD.,
BRANCH OFFICE,

SHIMOGA - 577 201,
REP BY ITS BRNACH MANAGER.

4. K.C.RAMESHA
S/O K.M.CHANDRAPPA,
R/AT NO.80,
KORANAHALLI VILLAGE,
KACHIKATTE POST,
SHIMOGA TALUK & DISTRICT - 577 201.

...RESPONDENTS

[BY SMT.H.R. RENUKA, ADVOCATE FOR R3
V/O/D 13.11.2025 NOTICE TO R1, R2 & R4 IS D/W]

THIS MFA.CROB IN MFA.NO.1215/2017 FILED U/O 41 RULE 22 R/W SECTION 173(1) OF MV ACT, AGAINST THE JUDGMENT AND AWARD DATED 25.05.2016 PASSED IN MVC.NO.41/2014 ON THE FILE OF THE SENIOR CIVIL JUDGE AND PRL.JMFC., TARIKERE, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

IN MFA No. 1215/2017:

BETWEEN:

NATIONAL INSURANCE COMPANY LTD.,
BRANCH OFFICE, SHIMOGA,
REP. BY ITS MANAGER.

…APPELLANT

[BY SRI H.R.RENUKA, ADVOCATE (PH)]

AND:

1 . J.C. JAGADEESHA
S/O CHANDRASHEKARA,
AGED ABOUT 37 YEARS,
CIVIL CONTRACTOR,
R/AT M.C.HALLI VILLAGE,
TARIKERE TALUK - 577 228
CHICKMAGALUR DISTRICT.

2 . M.CHANDRASHEKARA
S/O MALLESHAPPA G.C.,
AGED ABOUT 42 YEARS,
R/AT BILAKI THANDYA,
DONABAGATTA POST,
BHADRAVATHI TALUK - 577 301
SHIMOGA DISTRICT.
(DRIVER OF MARUTHI ZEN
CAR NO.KA-18/M-9976)

3. RAJANAIKA H.C.,
S/O CHOKLANAIK,
ADULT,
R/A BILAKI THANDYA,
DONABAGATTA POST,
BHADRAVATHI TALUK - 577 301
SHIMOGA DISTRICT
(OWNER OF MARUTHI CAR
KA-18/M-9976)

4. K.C.RAMESHA
S/O K.M.CHANDRAPPA,
R/AT NO.81,
KORANAHALLI VILLAGE,
KACHIKATTE POST,
SHIMOGA TALUK & DISTRICT - 577 201.
(PREVIOUS OWNER OF THE CAR)

…RESPONDENTS

[BY SRI PRUTHVI WODEYAR, ADVOCATE FOR R1 (PH);
NOTICE TO R2 TO R4 IS SERVED AND UNREPRESENTED]

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 25.05.2016 PASSED IN MVC NO.41/2014 ON THE FILE OF THE SENIOR CIVIL JUDGE, & PRINCIPAL JMFC, MEMBER, ADDITIONAL MACT, TARIKERE, AWARDING COMPENSATION OF Rs.6,40,781/- WITH INTEREST @ 6% P.A. FROM THE DATE OF PETITION TILL DEPOSIT.

THESE CROSS OBJECTION AND APPEAL, COMING ON FOR *DICTATING ORDERS*, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL JUDGMENT

Challenging judgment and award dated 25.05.2016 passed by Senior Civil Judge & Member - Addl.MACT, Tarikere, in MVC no.41/2014, MFA no.1215/2017 is filed by insurer. In same, claimant has filed MFA Crob.no.114/2017 for enhancement.

2. Smt.HR Renuka, learned counsel for appellant submitted that appeal was by insurer challenging award of Tribunal on ground of false implication of insured vehicle for purpose of claim. Brief facts as per claimant were that at 10:30 a.m. on 20.10.2013, when claimant was standing beside his motorcycle no.KA-18/R-9886 on footpath of NH-206 at MC Halli, driver of Car no.KA-18/M-9976 drove it in a rash and negligent manner and it dashed against claimant. In accident, claimant sustained injuries and despite treatment at Govt. Hospital, Bhadravati and Nanjappa Hospital, Shivamogga, he did not recover fully and sustained loss of earning capacity.

Therefore, he filed claim petition under Section 166 of Motor Vehicles Act, 1988 ('**MV Act**') against driver, owners and insurer of Car.

3. On service of notice, respondents no.1 (driver) and 2 (owner) entered appearance and filed objections denying negligence in accident but stating that driver of Car held valid driving licence and as Car was insured with respondent no.3 - insurer, claiming indemnity.

4. Insurer filed separate objections, denying occurrence of accident as alleged, admitting issuance of policy to Car in question but in favour of KC Ramesh – respondent no.4 and not in name of Rajanaika HC - respondent no.2. Even violation of terms and conditions of policy, claim petition being exorbitant and claimant not sustaining any loss of earning capacity were urged.

5. Respondent no.4 filed separate objections stating that he had sold Car insured by insurer, to respondent no.2 and as per Endorsement Certificate dated 17.08.2013, insurance stood

transferred in name of respondent no.2 and sought for dismissal of claim petition against him.

6. Based on pleadings, Tribunal framed following issues:

> *i. Whether the petitioner proves that on 20.10.2013 at about 1030 a.m. he was standing along with his motor cycle bearing Registration no.KA-18-R-9886 by the side of footpath on NA-206 road at M.C.Halli, Tarikere taluk, the driver of Maruthi car bearing registration no.KA-18-M-9976 came at high speed rashly and negligently and dashed the said vehicle against the petitioner, due to which he fell down along with motor cycle and sustained injuries as stated in the petition?*
>
> *ii. Whether the petitioner is entitled for compensation? If so, what amount and from whom?*
>
> *iii. What order or award?*

7. To establish contentions, claimant examined himself as PW.1 and got marked Exhibits P1 to P12. Dr.Narayana Panji examined as CW.1 and got marked Exhibits C1 to C5. Respondents did not lead oral evidence but got marked Exhibits R1 to R3 with consent.

8. On consideration, Tribunal answered issue no.1 in affirmative, issue no.2 partly in affirmative and issue no.3 by

awarding compensation of Rs.6,40,781/- with interest at 6% p.a. from respondents no.1 to 3 and dismissing claim petition against respondent no.4. Aggrieved, insurer was in appeal.

9. It was submitted that as per claimant immediately after alleged accident, he was taken to Govt. Hospital, Bhadravati for first aid and later to Nanjappa Hospital, Shivamogga, where he was in-patient for three days. But claimant failed to produce wound certificate issued by Govt. Hospital. It was submitted that Ex.C1-treatment record of Nanjappa Hospital showed three injuries sustained by claimant, two simple in nature and only injury no.3 (fracture of Metacarpals) as grievous. Though, CW.1 deposed about fracture of backbone of claimant, same was not mentioned in discharge summary dated 23.10.2013. He admitted that during initial examination, he did not note any grievous injuries sustained by claimant. In view of above, disability certificate dated 18.07.2015 obtained after lapse of 2 years from date of accident would raise suspicion. It was further submitted, discharge summary advised claimant for review after five days. Hence, disability certificate issued after two years was likely to

be unrelated to accidental injuries. In view of above, claimant could claim compensation only for fracture of metacarpal bone. Thus, Tribunal erred in assessing whole body disability at 13% and awarding excessive compensation. On said ground, sought for sought for allowing appeal.

10. On other hand, Sri Pruthvi Wodeyar, learned counsel for claimant opposed appeal. It was submitted, claimant had filed cross-objection for enhancement of compensation.

11. It was submitted, as on date of accident claimant was 35 years old Civil Contractor earning more than Rs.50,000/- per month. Exs.P9 and P10 showed contracts worth Rs.8,31,214/- and Rs.4,75,195/- during years 2012 and 2013, completed by claimant. Hence, assessment of monthly income at Rs.20,000/- was on lower side.

12. It was submitted, Ex.P6-discharge summary showed claimant diagnosed with head injury and fractures of 4thand 5th metacarpal bones of right hand. Even X-ray was taken on 21.10.2013. Ex.C3 - disability certificate issued by CW.1 mentions psychoneurological disability of 25%, spinal disability

of 20% and scalp disability of 2.5% i.e. total disability of 47.5%. Thus, Tribunal erred in taking functional disability at only 13% and awarding inadequate compensation of Rs.4,99,200/- towards loss of future earning capacity. It was submitted, even grant of Rs.55,874/- towards medical expenses, Rs.10,000/- towards food and attendant charges, Rs.20,000/- towards conveyance, Rs.20,000/- granted towards pain and suffering, Rs.20,000/- towards loss of income during laid up period, Rs.10,000/- towards loss of amenities and enjoyment and Rs.5,707/- for damages to motorcycle was inadequate and sought enhancement.

13. It was submitted, there was no dispute about offending Car being insured and as driver of Car had valid driving licence as on date of accident. Hence, Tribunal was justified in passing award against insurer. On above grounds, prayed for allowing cross-objection and dismissing appeal.

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

15. From above, points that arise for consideration are:

i. Whether Tribunal was justified in holding insurer liable to pay compensation?

ii. Whether compensation awarded by Tribunal calls for modification?

Reg.Point no.(i)

16. At outset, there is no dispute about occurrence of accident on 20.10.2013 and about claimant aged 35 years working as Civil Contractor sustained injuries therein.

17. Insurer is in appeal alleging false implication of insured vehicle. To substantiate actionable negligence against owner/insurer, claimant relied on police notice, FIR, Complaint, Spot Mahazar and Motor Vehicle Inspector's Report marked as Exs.P1 to P5. Ex.P2 - FIR is registered on basis of complaint by Mahamad Jikriya against driver of Car no.KA-18-M-9976. Complaint is filed at 12:30 pm on 20.10.2013 i.e. within two hours of accident. Merely on ground that description of vehicle is as 'Maruti Zen' Car instead of 'Maruti Zen Estilo' would not substantiate suspicion about false implication of insured vehicle for purpose of claim.

18. Though insurer claimed to have issued insurance policy to offending Car in name of respondent no.4 and not to respondent no.2, Ex.R1-insurance certificate would substantiate endorsement by insurer about transfer of insurance in name of respondent no.2. Hence, point no.(i) is answered in *affirmative*.

Reg.Point no.(ii)

19. On quantum, monthly income of claimant is disputed. Though claimant stated that he was 34 year old Civil Contractor earning Rs.50,000/- per month and sought to establish same by producing Exs.P9 and 10 – contract certificates, they would show that as Class-4 Contractor, claimant executed works worth Rs.5,14,499/- during years 2009-10 to 2011-12 and Rs.8,31,214/- during years 2012-13 to 2013-14, i.e. total of Rs.13,45,713/- during five years, at average of Rs.2,69,142/- per year. Only admission elicited in cross-examination is non-production of corresponding income tax returns. Suggestions about Exs.P9 and P10 being created for purpose of claim are denied. There is no contrary evidence by insurer. Even in absence of same, entire contract amount cannot be claimed as income. Expenses towards material and labour have to be

deducted. In view of above, assessment of monthly income at Rs.20,000/- would appear grossly excessive. In light of fact that records show claimant having worked as Contractor for five years, it is found appropriate to assess his monthly income at Rs.14,000/-.

20. Insofar as physical disability and loss of earning capacity, insurer has disputed fracture of backbone on ground that it was not mentioned in Ex.P6 - discharge summary. Ex.P6 reveals claimant was admitted for treatment on 20.10.2013 and discharged on 23.10.2013. Though there is mention about head injury, treatment was only for fractures of 4th and 5th metacarpal bones. CW.1 states that during subsequent visit, when claimant complained of neck pain, he was subjected to MRI Scan, which revealed fracture of backbone. He stated that same was treated with Belt and painkiller medicine as out-patient. Referring to above, CW.1 mentioned about claimant sustaining psycho-neurological disability of 25%, spinal disability of 20% and scalp disability of 2.5%. But in Ex.C3 - disability certificate issued after two years, there is no mention about fracture of backbone nor mention about any tests by

psychologist to determine psycho-neurological disability. And normally fractures of metacarpals would not cause disability. Under above circumstances, assessment of loss of earning capacity at 13% by Tribunal would be excessive. If same is reduced to 5%, same would appear just and proper. Considering age of claimant at 33 years multiplier applicable would be '16'. Thus, compensation towards future loss of income would be :

Rs.14,000/- x 5% x 12 x 16 = **Rs.1,34,400/-**.

21. Insofar as compensation under other heads, it is seen that award of **Rs.55,874/-** towards medical expenses corresponds to bills produced. Since there is complete reimbursement, there would be no scope for enhancement.

22. Insofar as compensation of **Rs.10,000/-** towards food and attendant charges, **Rs.20,000/-** towards conveyance and **Rs.20,000/-** towards pain and suffering and **Rs.20,000/-** towards loss of income during laid-up period, claimant is seeking enhancement. Medical records reveal claimant took in-patient treatment for only 4 days, for treatment of fractures

of two Metacarpals. Under above circumstances, award towards incidental expenses would appear excessive, towards pain and suffering just and proper and towards loss of income during laid-up period inadequate as monthly income is re-assessed at Rs.14,000/-. On overall consideration, total of above award would appear to balance itself. Hence, no interference.

23. In view of conclusion arrived at above that there is failure to establish fracture of backbone was due to injuries sustained in accident as well as failure to establish psycho-neurological disability, award of **Rs.10,000/-** towards loss of amenities and enjoyment and **Rs.5,707/-** towards damages to motorcycle would be just and proper. Point no.(ii) is answered *partly in affirmative.* Consequently, following:

ORDER

(i) MFA Crob.no.114/2017 filed by claimant is ***dismissed***, while MFA no.1215/2017 filed by insurer is ***allowed in part***.

(ii) Judgment and award dated 25.05.2016 passed by Tribunal in MVC no.41/2014 is

modified reducing total compensation payable to claimant at **Rs.2,75,981/-** with interest at 6% per annum from date of claim till deposit.

(iii) Amount in deposit is ordered to be transmitted to Tribunal.

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

(v) On deposit, entire compensation is ordered to be released to claimant.

Sd/-
(RAVI V HOSMANI)
JUDGE

YKL,AV,GRD
List No.: 1 Sl No.: 45