HC-KAR

NC: 2026:KHC:61599
MFA No. 3311 of 2013

CNR: KAHC010198622013

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

MISCELLANEOUS FIRST APPEAL NO.3311 OF 2013(MV-I)

BETWEEN:

SRI RAMESH RAO
AGED ABOUT 38 YEARS,
S/O NARAYAN RAO,
R/AT 3RD CROSS,
LEELAVATHI EXTENTION,
MADDUR TOWN,
MANDYA - 571429.

...APPELLANT

(BY SRI BASAVARAJ P., ADVOCATE)

AND:

1 . H SIDDALINGA
S/O K.MAHADEVA,
AGED ABOUT 30 YEARS,
R/AT NO. 2199,
GURUMAT RAOD, HOSAHALLY,
MANDYA CITY - 571 401.

2 . IFFCO TOKYO GENERAL INS. CO. LTD
NO.846, NEW KANTHARAJA URS ROAD,
KUVEMPUNAGAR,
MYSORE - 570 023.
REP BY MANAGER.

...RESPONDENTS

(BY SRI A.N.KRISHNASWAMY, ADVOCATE FOR R2;
V/C/O DATED 18.06.2014 NOTICE TO R1 IS D/W)

Digitally signed by ANUSHA V
Location: High Court of Karnataka

CNR: KAHC010198622013

THIS MFA FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 24.2.2012 PASSED IN MVC NO.177/2010 ON THE FILE OF THE SENIOR CIVIL JUDGE & MACT, MADDUR, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 27.10.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE RAVI V HOSMANI

CAV JUDGMENT

Challenging judgment and award dated 24.02.2012 passed by Senior Civil Judge & MACT, Maddur in MVC no.177/2010, this appeal is filed.

2. Sri Basavaraj P, learned counsel for appellant submitted that appeal was by claimant for enhancement of compensation. Brief facts leading to this appeal as stated are that at 1:45 pm on 09.10.2009, when claimant was riding motorcycle no.KA-11/K6410 towards Mandya along with another, rider of another motorcycle no.KA-11-R-1651 rode it in rash and negligent manner and dashed against claimant’s

motorcycle. In accident, claimant sustained grievous injuries and despite treatment at General Hospital, Maddur, NIMHANS, Bengaluru, KIMS and DG Hospital, Bengaluru, he did not recover fully and sustained loss of earning capacity. Claiming compensation, he filed claim petition under Section 166 of Motor Vehicles Act, 1988 (**MV Act**) against owner and insurer of offending motorcycle.

3. On appearance, only insurer opposed claim petition by filing objections urging various grounds. Age, income and loss of earning capacity of claimant were denied as also violation of terms and conditions of policy resulting in absolving liability. Based on pleadings, Tribunal framed following:

ISSUES:

1. *Whether petitioner proves that accident was solely due to rash and negligent driving of the driver of the offending vehicle and he sustained injuries as alleged?*

2. *Whether petitioner is entitled for compensation? If so, what amount and from whom?*

3. *To what order or award?*

4. Claimant deposed as PW.1 and got marked Exs.P1 to P22. Dr.HS Suresh and Dr.JN Sridharmurthy deposed as

CWs.1 and 2 and got marked Exs.C1 to C8. Respondents did not lead evidence.

5. On consideration, Tribunal answered issue no.1 in affirmative, issue no.2 by assessing compensation of Rs.5,58,016/- and holding respondents no.1 and 2 liable to pay same with interest at 6% p.a. Dissatisfied with inadequate compensation, appeal was filed.

6. It was submitted that as on date of accident, claimant was 37 year old Class-I Contractor earning Rs.75,000/- to Rs.1,00,000/- per month. To substantiate same, he had produced Contractor's licence renewed upto 2015 as Ex.P19. To substantiate income, claimant produced Income Tax Returns (ITRs) as Exs.P52, which showed substantial income. He also produced Work Done Certificate marked as Ex.P51 indicating value of total works carried out between years 2008 and 2010 at nearly Rs.30 Lakhs. Under above circumstances, assessment of monthly income at Rs.5,000/- was grossly inadequate.

7. It was further submitted, claimant sustained fracture of left temporal region and also nose which caused leakage of water from brain through nose. Despite repeated surgeries, such leakage could not be stopped totally. Though as per assessment of disability by CW.1, claimant sustained partial physical disability at 15% to whole body, impact of disability on earning capacity was much higher.

8. It was further submitted, even after award and during pendency of this appeal, claimant underwent two more surgeries involving huge medical expenses. It was submitted that I.A.no.1/2020 was filed for production of medical bills for total of Rs.8,20,194/-. Application was allowed on 24.02.2021 and in additional evidence recorded, medical bills for said sum were got marked as Exs.P23 to P41. Similarly, I.As.no.1/2021 and 1/2023 filed for production of ITRs and further medical bills were allowed on 03.04.2025 and Exs.P42 to P54 – medical bills for total of Rs.1,45,907/- were marked. In view of above, learned counsel sought for award of Rs.9,66,101/- towards additional medical bills. It was further submitted, since claimant sustained head injury and underwent prolonged treatment

involving multiple surgeries, award of Rs.30,000/- only towards pain and suffering was not justified and sought enhancement. Learned counsel prayed for enhancement of compensation towards loss of income during laid-up period also.

9. Further, as CW.1 stated about possibility of claimant contracting infection due to leakage of water from brain through nose, claimant was required to undergo periodic check-ups and treatment. For said purposes, sought for award of appropriate amount towards future medical expenses. It was lastly submitted, even award of Rs.10,000/- towards attendance etc. and Rs.20,000/- towards loss of amenities was also contended to be on lower side and sought enhancement.

10. On other hand, Sri AN Krishnaswamy, learned counsel for insurer opposed appeal. It was submitted, records produced by claimant himself indicated that disability sustained had not affected his avocation or income. Contractor licence was renewed beyond date of accident and ITR for period after accident showed increase in income. Insofar as compensation awarded under other heads, Tribunal had assessed just compensation leaving no scope for enhancement.

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

12. From above, only point for consideration would be:

"Whether claimant is entitled for enhancement of compensation?"

13. At outset, occurrence of accident due to involvement of insured vehicle and claimant sustaining physical disability/loss of earning capacity are not in dispute. Appeal is only for enhancement of compensation.

14. Insofar as medical expenses, Tribunal granted Rs.3,33,016/- against bills produced covering treatment taken till recording of evidence. For subsequent medical expenses, claimant led additional evidence by further examination of Dr.HS Suresh and another and got marked further medical bills as Exs.P23 to P55 totaling to Rs.9,66,101/-. Nothing contrary is elicited in cross-examination so as to disbelieve said expense. Hence, claimant would be entitled to **Rs.9,66,101/-** towards additional medical expenses.

15. Insofar as future medical expenses, CW.1 stated that claimant was prone to seizures and requires continuous medication. In cross examination, he stated that claimant will not recover during his lifetime. About treatment required, Exs.P24 to P32, P43, P44, P53 – Discharge summaries along with Ex.P33 to P40, P42, P45, P54 and P55 – Medical/Hospital bills reflect claimant availing treatment of claimant being spread over from year 2012 upto 2021. CW.1 further stated that due to injuries sustained in accident, claimant suffered from fits and seizures requiring lifelong medication. But details of expenses involved for same are not furnished. In absence, referring to amount of Rs.12,00,000/- being spent on treatment from year 2012 till 2025 it would be appropriate to award a lumpsum amount of **Rs.1,00,000/-** towards future medical expenses.

16. Insofar as income, though claimant stated it to be Rs.75,000/- to Rs.1,00,000/- per month. ITRs for years 2005-06 to 2009-10 collectively marked as Exs.P52 indicate gross income for year 2005-06 was Rs.1,04,730/-, for year 2006-07 was Rs.2,12,837/-, for year 2007-08 was Rs.2,93,603/-, for

year 2008-09 was Rs.1,48,649/- and for year 2009-10 was Rs.3,83,456/-.

17. But, Hon'ble Supreme Court in **Rashmirekha Tripathy and Anr. v. The Branch Manager (Legal Claims), Sriram General Insurance Co. Ltd., and Ors.** reported in **2026 SCC OnLine SC 1256**, held, when it comes to self-employed / individuals with their own business, average of income specified in ITRs of previous three years is to be taken. Since accident in question occurred in year 2009, ITRs of years 2006-07, 2007-08, 2008-09 and 2009-2010, while gross income for respective years are Rs.2,12,837/-, Rs.2,93,608/-, Rs.1,48,649/- and Rs.3,83,456/-. But ITR covering period of accident was filed on 01.03.2010 i.e. after date of accident. Thus, following ratio in **Rashmirekha**'s case (supra) and excluding ITR of year 2009-2010, average of ITRs of years 2006-07 to 2008-09 would be Rs.2,18,365/-, and monthly income would be Rs.18,197/-. During said years, income in excess of Rs.1,00,000/- was taxable at 10% and which requires to be deducted from net income which would be Rs.16,377/-. Same is to be considered as monthly income of claimant.

18. Medical evidence on record would indicate claimant sustaining permanent physical disability due to accidental injuries at 15% to whole body. But taking note of fact that his occupation is contractor and licence is renewed even after date of accident coupled with fact that he sustained head injury causing leakage of water from brain through nose and claimant suffering fits and seizures (which are not stated to be regular), assessment of functional disability by tribunal at 15% is found adequate, just and proper. Applying multiplier of '15' corresponding to his age at 37 years, compensation towards future loss of income would be:

Rs.16,377/- x 15% x 12 x 15 = **Rs.4,42,179/-**.

19. Insofar as pain and suffering, records do indicate that claimant sustained fracture of temporal bone with brain injury resulting in leakage of water from brain through nose. They also disclose that claimant was diagnosed for same. But, due to large opening, treatment as well as correctional surgeries failed to stop it completely. Thus, claimant had to suffer pain of fluid leaking from nose continuously. Under such circumstance, award of only Rs.30,000/- towards pain and

suffering would be grossly inadequate. It is found appropriate to enhance it to **Rs.2,00,000/-.**

20. For aforesaid reason, award of Rs.20,000/- only towards loss of amenities considering his age at 37 years and loss of sense of smell, it would be grossly inadequate. It is found appropriate to enhance it to **Rs.1,00,000/-**.

21. Tribunal assessed period of lay-off as six months. Consequently, compensation towards loss of income during treatment would be Rs.16,377/- X 6 = **Rs.98,262/-**.

22. Considering in-patient treatment period of 31 days prior to award and 82 days as per additional evidence, award of Rs.10,000/- only would be grossly inadequate. It is found appropriate to consider expenses at around Rs.500/- per day and enhance it to **Rs.60,000/-**. Thus, total compensation would be **Rs.19,66,542/-**. Point for consideration is answered partly in affirmative. Hence, following:

ORDER

i) Appeal is ***allowed in part***, judgment and award dated 24.02.2012 passed by Tribunal in MVC no.177/2010 is ***modified***.

ii) Claimant is held entitled for enhanced compensation of **Rs.19,66,542/-** as against Rs.5,58,016/- awarded by Tribunal.

iii) Same shall carry interest at rate of 6% per annum from date of claim petition till deposit, excluding period of 300 days being delay in filing this appeal.

iv) Insurer is directed to deposit entire enhanced 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

AV,GRD,YKL
List No.: 1 Sl No.: 46