HC-KAR

NC: 2026:KHC:59543
MFA No. 2398 of 2015

CNR: KAHC010236552015

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.2398 OF 2015(MV-I)

BETWEEN:

MR JOHN SIJO MATHEW
S/O MATHEW MOOLAKATTU,
AGED ABOUT 36 YEARS,
H.NO.MA-33,
KARNATAKA HOUSING
BOARD COLONY,
BAJAL, EKKUR,
MANGALORE TALUK.

...APPELLANT

(BY SRI B.R.GURUPRASAD, ADVOCATE)

AND:

1. FUTURE GENERAL INDIA
INSURANCE CO.LTD
II FLOOR, INLAND AVENUE,
M.G. ROAD, BALLAL BHAGH,
MANGALORE TALUK – 575 001
REPRESENTED BY ITS MANAGER.

2. MR. ABDUL RAZAK
S/O ABDUL KHADER,
AGED ABOUT 45 YEARS,
KULA VILLAGE, KADAKA,
BANTWAL TALUK.

Digitally signed by ANUSHA V
Location: High Court of Karnataka

3. MR. LANCY D"SOUZA
S/O MARTINE D"SOUZA,
ADULT,
DEEPIKA NIVAS,
MANI POST, BANTWAL TALUK

…RESPONDENTS

(BY SRI H S LINGARAJ, ADVOCATE FOR R1;
V/C/O DATED 04.07.2016 NOTICE TO R2 & R3 IS D/W)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 27.10.2014 PASSED IN MVC NO.921/2012 ON THE FILE OF THE II ADDITIONAL SENIOR CIVIL JUDGE, MEMBER, MACT, MANGALORE, D.K., PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL IS 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 27.10.2014 passed by II Addl. Senior Civil Judge and Member-MACT, Mangalore, in MVC no.921/2012, this appeal is filed.

2. Sri BR Guruprasad, learned counsel for appellant submitted that appeal was by claimant for enhancement of compensation. Brief facts leading to this appeal as stated were

that at 10:15 am on 18.02.2012, when claimant and his wife were riding motorcycle no.KA-19/U-8484 near Neerakatte of Bajathur village, driver of Jeep no.KA-19-B-1116 drove it in a rash and negligent manner and dashed against claimant. Due to which they sustained grievous injuries and despite treatment at Father Muller Hospital, Mangalore, did not recover fully and sustained loss of earning capacity. Therefore, claimant herein filed claim petition in MVC no.921/2012 under Section 166 of Motor Vehicles Act, 1988 ('**MV Act**') against RC owner, insured and insurer of offending vehicle. His wife had filed MVC no.476/2012. They were clubbed together.

3. Despite service of summons, respondents no.1 and 2 remained absent and were placed *ex-parte.* Insurer opposed claim petition on all grounds. Based on same, Tribunal framed issues and recorded evidence. Claimant along with Dr.Sudhakara, deposed as PWs.2 and 3 and got marked Exs.P1 to P3, P5, P6, P8 to P11 and P14 to 17. There was no rebuttal evidence by respondents.

4. On consideration, Tribunal held accident had occurred due to negligent driving of insured vehicle, claimant

sustained loss of earning capacity and was entitled for compensation of Rs.4,19,947/- with interest at 6% per annum from insurer. Dissatisfied with quantum, appeal was filed.

5. It was submitted, as on date of accident, claimant was aged 33 years working as Chief Chef and earning Rs.5,000/- per month, sustained fracture of left tibia and fibula, right fibula, right superior pubic rami, fracture of fourth and fifth right ribs etc. PW.3, who had examined claimant assessed permanent physical disability sustained by claimant at 50% to both lower limbs. Despite same, Tribunal erred in taking monthly income at only Rs.4,500/-, disability at 10% and awarding inadequate compensation. Further, even compensation of Rs.85,000/- towards pain and suffering, Rs.38,000/- towards attendance and other incidental charges, Rs.1,87,147/- towards medical expenses, Rs.91,800/- towards future loss of income and Rs.18,000/- towards loss of income during period of treatment were on lower side and sought enhancement. It was submitted, Tribunal erred in not awarding compensation towards loss of amenities. On above grounds, sought for allowing appeal.

6. On other hand, Sri HS Lingaraj, learned counsel for respondent no.1 – insurer opposed appeal. It was submitted, considering material on record, Tribunal had assessed just compensation under each of heads separately, which did not call for enhancement.

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

8. From above and since only claimant is in appeal for enhancement, point that arises for consideration is:

> *Whether claimant is entitled for enhancement of compensation?*

9. At outset, there is no dispute about occurrence of accident due to rash and negligent driving by offending vehicle and claimant being entitled for compensation. Though claimant stated that he was aged 33 years and earning Rs.5,000/- as Chief Chef, he did not produce any document. In absence, Tribunal assessed it notionally at Rs.4,500/-. But notional income for year 2012 being Rs.7,500/- per month, same has to be taken. As per treatment records, claimant sustained fracture of left tibia and fibula, right fibula, right superior pubic rami and

fracture of fourth and fifth right ribs. As per PW.3, claimant sustained permanent physical disability of 50% to lower limbs.

10. Tribunal disbelieved same and assessed functional disability at 10%. But in Ex.P10 - Disability certificate issued by Medical Board, physical disability is assessed at 50%. Therefore, it is found appropriate to assess loss of earning capacity at 20%. Considering age of claimant at 33 years, multiplier of '17' applied instead of '16' by Tribunal would be erroneous. Thus, compensation towards future loss of income would be:

Rs.7,500 + 40% x 20% x 12 x 16 = **Rs.4,03,200/-**

11. Tribunal awarded Rs.85,000/- towards pain and suffering. Taking note of multiple fractures to structural bones, it would be inadequate. It would be appropriate to enhance it to **Rs.1,25,000/-**. Considering in-patient treatment period of 30 days award of **Rs.38,000/-** towards attendant charges, food, nourishment and conveyance would appear just and proper. Tribunal granted **Rs.1,87,147/-** in full reimbursement of medical bills produced leaving no scope for enhancement. Tribunal considered period of 4 months as layoff during healing.

Normally fractures take about 3 months to heal. Therefore, compensation towards loss of income during laid-up period would be **Rs.22,500/-** (Rs.7,500/- x 3). When claimant sustained permanent physical disability, Tribunal erred in not awarding compensation towards loss of amenities. Considering injuries, it would be appropriate to award **Rs.50,000/-**. Thus, total compensation would be **Rs.8,25,847/-.** Point for consideration is answered *partly in affirmative*.

12. Consequently, following:

ORDER

(i) Appeal is ***allowed in part;***

(ii) Claimant is entitled for reassessed compensation of **Rs.8,25,847/-** with interest at 6% p.a. from date of claim petition till deposit.

(iii) Insurer is directed to deposit enhanced compensation with interest within six weeks.

(iv) On deposit entire enhanced compensation with interest shall be released in favour of claimant.

Sd/-
(RAVI V HOSMANI)
JUDGE

YKL, AV
List No.: 1 Sl No.: 27