CNR: KAHC010250132019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF OCTOBER, 2026

BEFORE

HON'BLE MS. JUSTICE TARA VITASTA GANJU

MISCELLANEOUS FIRST APPEAL NO.4971 OF 2019 (MV-I)

BETWEEN:

L. KUBENDRA NAIK @ KUBERA NAIKA
S/O LACHA NAIKA,
AGED ABOUT 39 YEARS,
R/O # 436-B, SRIRAMANAGARA,
LAMBANI HATTI, MELLEKATTE POST,
DAVANGERE TQ & DIST – 577 002.

...APPELLANT

(BY SRI. SREE HARSHA A K, ADVOCATE)

AND:

Digitally signed by SUMATHY KANNAN
Location: HIGH COURT OF KARNATAKA

1. SHASHIDHAR
S/O SHEKHARAPPA,
AGED ABOUT 22 YEARS,
(DRIVER/OPERATOR OF JCB
BEARING REG. NO.KA-17/P-4531),
R/O ALUR VILLAGE,
DAVANGERE TQ & DIST – 577 512.

2. SRI. VIJAYKUMAR S.S.
S/O SHARANAPPA,
AGED ABOUT 28 YEARS,
(OWNER OF JCB BEARING
REG. NO.KA-17/P-4531),

R/O ALUR POST,
DAVANGERE TQ & DIST – 577 512.

3. SRIRAM GENERAL INSU CO. LTD.,
REP. BY ITS MANAGER,
E/8, SEETAPURA, JAIPUR,
RAJASTAN – 303 022,

POLICY SERVICING OFFICE:
NO.302, 1ST FLOOR, DOOR NO.85/2,
AMS COMPLEX, OPPOSITE NANDI PETROL BUNK,
PB ROAD, DAVANGERE – 577 002.

…RESPONDENTS

(BY SRI. VIJAYA KUMAR G BAGOJI, ADVOCATE FOR R2;
SRI. B.PRADEEP, ADVOCATE FOR R3;
VIDE ORDER DATED 18.06.2025, NOTICE TO R1 IS DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT PRAYING TO MODIFY THE JUDGMENT AND AWARD DATED 14.06.2018 PASSED IN MVC NO.348/2017 BY THE II ADDITIONAL SENIOR CIVIL JUDGE & VI M.A.C.T., AT DAVANAGERE BY AWARDING COMPENSATION WHICH IS JUST AND REASONABLE HAVING REGARD TO THE FACTS OF THE CASE AND FIXING THE LIABILITY ON INSURANCE COMPANY JOINTLY & SEVERALLY ALONG WITH THE OWNER OF THE VEHICLE BY ALLOWING THIS APPEAL IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL COMING ON FOR HEARING THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

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CORAM: HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORAL JUDGMENT

1. The present appeal has been filed seeking to challenge an award dated 14.06.2018 passed by the II Addl. Senior Civil Judge & VI MACT, Davanagere in MVC No.348/2017 (hereinafter referred to as the 'Impugned Order'). By the impugned Award, an amount of Rs.95,780/- has been granted along with interest at 8% per annum from the date of the petition till the date of deposit. The present appeal is filed by the appellant/claimant seeking enhancement of the compensation awarded by the learned Tribunal.

2. Notice to respondent No.1/driver of the offending vehicle was dispensed with by an order dated 18.06.2025.

3. Learned counsel for the appellant submits that the amounts awarded under conventional heads are not in accordance with the settled position of law. He submits that the accident took place on 11.11.2016 and thereafter

the appellant/injured was hospitalized for 12 days and he underwent surgery as well. He further submits that given these facts, additional amounts should have been awarded for 'loss of amenities' and 'loss of income during laid-up period' and 'food and nourishment'.

4. Learned counsel for the respondent No.3/Insurance Company on the other hand submits that at the time of the accident, the insurance policy had lapsed. Thus, there is no liability on the Insurance Company at all. The liability has been affixed on respondent No.2/owner of the offending vehicle.

5. The respondent No.2 was served on 19.04.2022. Subsequently, although vakalathnama has been filed by the counsel Sri. Vijayakumar G. Bagoji, there has been no appearance on his behalf. This Court on 06.10.2026 had passed the following order:

> *"1.None appears for the contesting respondent No.2.*
> *2. In the interest of justice, adverse orders are deferred.*
> *3. List this appeal for hearing on 30.10.2026."*

5.1 Even today there is no appearance on behalf of respondent No.2. Accordingly, respondent No.2 is proceeded with exparte.

6. Briefly, the facts are that an accident took place on 11.11.2016. The injured was riding his motorcycle when the driver of a JCB bearing registration No.KA-17/P-4531 came in a high speed in rash and negligent manner and hit the motorcycle. As a result of the accident, the appellant/claimant sustained grievous injuries and was hospitalized for 12 days in Bapuji Hospital, Davanagere. He also underwent a surgery.

6.1. Thereafter, a claim petition was filed by the appellant/claimant under Section 166 of the Motor Vehicles Act, 1988, seeking compensation. The claim petition was contested by the owner as well as the driver of the offending vehicle as well as the Insurance Company. The appellant/claimant examined himself as PW-1 and got 12 documents marked as Exhibits P1 to P12 which

included the FIR (Exhibit P1), complaint (Exhibit P2), charge-sheet (Exhibit P3), wound certificate (Exhibit P4) including X-rays (Exhibit P11) and IMV report (Exhibit P12). The Legal Officer of the Insurance Company got himself examined as RW-1. The owner of the offending vehicle was examined as RW-2 and Exhibits R1 to R4 were marked.

7. The learned Tribunal examined the claim petition filed and found that so far as concerns the aspect of negligence, it was stood proved. Secondly, the learned Tribunal found that the Insurance Policy issued to the offending vehicle had expired on the midnight of 10.01.2016. However, the vehicle met with an accident on the very next day, i.e. on 11.01.2016. But the policy was issued at 05.45 p.m. on 11.01.2016. Thus, the learned Tribunal held that there was no valid policy in force and found that the respondent Nos. 1 and 2 i.e. the driver and the owner of the offending vehicle are jointly and severally

liable to pay the compensation. The relevant extract of the Impugned Order in this regard is set out below:

> *"The above evidence made crystal clear that the insurance policy issued to the* ***JCB vehicle was expired on 10.11.2016 midnight 12-00 p.m. It further goes to show that on the next day i.e., 11/11/2016 the vehicle met with an accident and policy issued at 05-45 p.m.*** *In view of the above decision, the policy came into force at the time of purchase and not from the midnight of previous day.* ***Therefore, the contention of the 2nd respondent is not acceptable one that as on the date of the accident the vehicle had insurance.*** *Hence, I am of the considered opinion that the insurer of the offending vehicle is not liable to pay the compensation awarded to the petitioner. The respondent No.1 and 2 being the driver and owner of the vehicle are jointly and severally held liable to pay the compensation.* ***The insurer is not liable to pay the compensation."***
>
> [Emphasis Supplied]

8. The learned Tribunal, taking into consideration the nature of injuries, pain and suffering and medical expenses incurred by the injured, awarded compensation under various heads including conventional heads, in the following amounts:

Sl.No.	Heads of Compensation	Amount
1	Loss of amenities	Rs. 5,000/-
2	Food, nourishment and attendant & conveyance	Rs. 5,000/-
3	Medical expenses	Rs. 29,778/-
4	Loss of income during	Rs. 16,000/-

	laid up period for two months	
5	Pain and suffering	Rs. 40,000/-
	TOTAL	**Rs. 95,778/-**

8.1 Thus, a sum of Rs.95,780/- along with interest at the rate of 8% per annum was awarded by the learned Tribunal. The liability was fastened on the respondent Nos.1 and 2/driver and owner of the offending vehicle since the insurance policy had lapsed.

9. Learned counsel for the appellant/claimant submit that there is no challenge to this award filed by either the Insurance Company or the driver or owner of the offending vehicle. He further submits that his only challenge is on the low award of compensation under conventional heads.

10. This Court has examined the record. It is not disputed that the injured was hospitalized for 12 days. Given the hospitalization, the amounts awarded under conventional heads towards 'loss of amenities', 'food and nourishment' and 'loss of income for laid up period' is

found to be less. No amounts have also been awarded for 'future medical expenses'. Accordingly, the compensation awarded by the learned Tribunal is enhanced as follows:

Sl.No.	Heads of Compensation	Amount
1	Loss of amenities	Rs. 20,000/-
2	Food, nourishment and attendant & conveyance	Rs. 10,000/-
3	Medical expenses	Rs. 29,778/-
4	Loss of income during laid up period for three months (9500 x 3)	Rs. 28,500/-
5	Pain and suffering	Rs. 40,000/-
6	Future medical expenses	Rs. 15,000/-
	TOTAL	**Rs.1,43,278/-**

11. The appellant/claimant is entitled to total compensation of **Rs. 1,43,278/-** with interest at the rate of 8% p.a. from the date of claim petition till its realization.

12. Accordingly, the Court proceeds to pass the following directions:

(i) The appeal is ***allowed in part;***

(ii) The Judgment and Award dated 14.06.2018, passed in MVC No.348/2017 by the II Additional

Senior Civil Judge & VI MACT, Davanagere, is modified, awarding total compensation of **Rs.1,43,278/-** along with interest at the rate of 8% per annum from the date of petition till realization;

(iii) The remaining portion of the Impugned Award of the Tribunal remains undisturbed;

(iv) The respondent No.2/owner of the offending vehicle is directed to deposit the enhanced compensation with interest as awarded by the learned Tribunal within eight weeks from today;

(v) On such deposit of compensation, the same shall be released in favour of the appellant/claimant on filing of an appropriate application for withdrawal of the enhanced amount;

(vi) The Registry is directed to transmit the copy of the judgment along with records to the learned

Tribunal and the last known addresses of respondent No.1 and R2 forthwith.

(vii) The Registry is directed to draw the modified Award accordingly;

(viii) No order as to costs.

Digitally signed by TARA VITASTA GANJU
Location: HIGH COURT OF KARNATAKA

(TARA VITASTA GANJU)
JUDGE

KS
List No.: 1 Sl No.: 56