HC-KAR

NC: 2026:KHC:60888
MFA No. 3990 of 2023

CNR: KAHC010289912023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MRS. JUSTICE GEETHA K.B.

MISCELLANEOUS FIRST APPEAL NO.3990 OF 2023(MV-I)

BETWEEN:

SRI. G. T. SOMAIAH,
S/O G.B.THIMMAIAH,
AGED ABOUT 52 YEARS,
R/A NO.5, SHREE KAVERI,
IST MAIN, 2ND CROSS,
KEMPAIAH NAGARA,
HURALICHIKKANAHALLI,
CHIKKABANAVARA,
BENGALURU - 560 090.

...APPELLANT

(BY SRI NAIK KRISHNA VENKATRAMAN, ADVOCATE)

AND:

1. THE MANAGER,
   IFFCO-TOKIO GENERAL INSURANCE
   COMPANY LIMITED,
   NO.3, KSCMF BUILDING,
   3RD FLOOR, CUNNINGHAM ROAD,
   BENGALURU - 560 052.

   POLICY ISSUED BY ITS
   OFFICE IN POLICY NO.1-169HMZ4C P400

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#M9092111,
DATE OF VALIDITY FROM 22.02.2021 TO
21.02.2022.

2. SRI. NAGESH S,
S/O SRINIVASA V,
AGED ABOUT 48 YEARS,
R/A NO.5, 6TH CROSS,
MUNESHWARA LAYOUT,
ATTUR POST, YELAHANKA,
BENGALURU - 560 064.

…RESPONDENTS

(BY SMT.ANAVEKAR ROOPA RAM, ADVOCATE FOR
SMT. SANMATHI E.I., ADVOCATE;
NOTICE TO R2 IS DISPENSED WITH VIDE ORDER DATED
15.07.2026)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 01.02.2023 PASSED IN MVC NO.5256/2021 ON THE FILE OF THE VIII ADDITIONAL SCJ AND ACMM, MEMBER, MACT, BENGALURU SCCH-5, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

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

CORAM: HON'BLE MRS. JUSTICE GEETHA K.B.

ORAL JUDGMENT

1. This is the appeal filed under Section 173(1) of Motor Vehicles Act, 1988 (in short, 'MV Act') by the appellant/claimant challenging the judgment and award dated 01.02.2023 in MVC No.5256/2021 on the file of the

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VIII Additional Small Causes Judge and the Motor Accident Claims Tribunal (SCCH-5), Bengaluru (in short, 'the Tribunal') being not satisfied with the quantum of compensation awarded by the Tribunal and fastening negligence on him.

2. The parties would be referred with their ranks, as they were before the Tribunal for the sake of convenience and clarity.

3. The case of the claimant in nutshell is that on 30.09.2021 at 11:45 p.m., when the claimant was crossing the road at Allalasandra Royal Archid, Yelahanka, he got down from Hoysala 205 and waiting to cross the road to attend his nature call; at that time, the offending motorcycle bearing registration No.KA-50/ED-1966 came with high speed rashly and negligently and dashed against him. Hence, he has suffered grievous injuries. He has taken treatment at Hosmat Hospital, Bengaluru. Hence, claimed compensation from respondents No.1 and 2 who

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are the Insurance Company and owner respectively of the offending motorcycle.

4. After service of notice, respondent No.1/ Insurance Company filed its objection statement denying the averments made in the petition and further contended that the accident happened due to the rash and negligent act of the claimant and not due to the rider of the motorcycle. Further, rider of motorcycle was not having driving license. Hence, prayed for dismissal of the petition.

5. After framing issues, recording evidence, the Tribunal came to the conclusion that there is 20% contributory negligence on the part of claimant in causing the accident. It further directed the insurance Company to pay the compensation initially and recover the same from the owner, as the driver was not holding valid and effective driving license; further held that the claimant is entitled for 80% of total compensation of ₹1,01,423/- under the following heads:

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1	Pain and sufferings	₹15000/-
2	Conveyance, nourishment and attendant charges	₹15000/-
3	Medical expenses	₹15,423/-
4	Loss of amenities in life	₹15,000/-
5	Loss of income during laid up period	₹41,000/-
	Total	₹1,01,423/-

6. Not satisfied with the compensation awarded by the Tribunal, and challenging the contributory negligence attributed against the claimant, he is before this Court.

7. Heard arguments of both sides.

8. The learned counsel for the appellant, Sri Naik Krishna Venkataraman would submit that the compensation awarded by the Tribunal on all heads is on lower side compared to the injuries sustained by the claimant and the period of his hospitalization and the period of his leave. Furthermore, 20% negligence contributed against the claimant by the Tribunal is not proper and hence prayed for allowing the appeal.

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9. The learned counsel for respondent No.1/ insurance Company Smt. Anavekar Roopa Ram for Sri Sanmathi E.I. appeared through V.C. and would submit that the compensation awarded by the Tribunal on all heads is just and reasonable. Furthermore, there is contributory negligence on the part of the claimant in causing the accident, which is established by police papers and the cross-examination of the claimant. Hence, it requires no interference.

10. Having heard arguments of both sides, verifying the appeal papers and trial Court records, the points that arise for consideration are:

i. *"Whether the appellant establishes that there is no contributory negligence on his part in causing the accident?*
ii. *Whether the claimant is entitled for enhancement of compensation?"*

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11. Findings of this Court on the above point No.1 is in ***'Negative'*** and point No.2 is in ***'Affirmative'*** for the following:

REASONS

12. The claimant has sustained injury in the road traffic accident that has taken place on 30.09.2021 at 11:45 p.m. on the road leading to Allalasandra Royal Archid, Yelahanka, Bengaluru is established by the oral and documentary evidence produced before the trial Court.

13. Ex.P.4-sketch, Ex.P.5-panchanama, the complaint and further statement of the complainant as per Ex.P.2 and P.3 reveals that the claimant was working as police constable-cum-driver of the Hoysala vehicle and on the date of accident he got down from the vehicle to attend the nature call and while crossing the road he sustained injuries. It is stated so in the complaint and also in the further statement of the complainant. The accident has taken place on the road i.e., 5 feet from left side.

Furthermore, the accident occurred during night at 11:45 pm. These facts establish that there is contributory negligence on the part of claimant in causing the accident. It is assessed at 20% by the Tribunal, which is proper and required no interference.

14. The doctor has issued the disability Certificate and has given evidence that the claimant has sustained disability of 58% to the right lower limb and 19% to the whole body. However, the claimant has not produced any evidence to show that because of his disability, he left the job or his promotional aspects were reduced and he was posted to some other branch in the police department. In the absence of these things, the Trial Court rightly held that the disability to the claimant cannot be considered as functional disability.

15. Ex.P.15 produced by the claimant establishes that the claimant has taken totally 264 days leave i.e., including commuted leave and earned leave due to the accident.

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16. It is to be noted that even though the claimant was getting salary during that period, the claimant could have encashed these 264 days leave during the intervals of his service or at the time of his retirement. Hence, the claimant has lost his income of 264 days due to the accident. However, the Tribunal has awarded only ₹41,000/- towards 'loss of income during the laid-off period' which is not proper. The claimant has deposed that he was getting salary of ₹41,000/- per month. However, to substantiate it, he has not produced his pay slip. Even though his pay slip is not produced, it is not in dispute that he was working as police constable in police department as on the date of accident. The basic salary to police constable is 27,000/- and relevant DA for said period was 17%. Hence, his income shall be taken at ₹31,590/- and the claimant is entitled for ₹31,590/- ÷ 30 x 264 days = ₹2,77,992/-. Thus, the claimant is entitled for the said amount under the head 'loss of income during the laid-off period'.

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17. As far as 'pain and sufferings' and 'loss of amenities' are concerned, the compensation awarded by the Tribunal is on lower side; hence, the claimant is entitled for ₹1,00,000/- and ₹50,000/- respectively under these heads. As far as compensation awarded by the Tribunal under the head 'Conveyance, nourishment and attendant charges' and 'Medical expenses' is just and reasonable and requires no interference.

18. Thus, the claimant is entitled for compensation under following heads:

1	Pain and sufferings	₹1,00,000/-
2	Conveyance, nourishment and attendant charges	₹15,000/-
3	Medical expenses	₹15,423/-
4	Loss of amenities	₹50,000/-
5	Loss of income during laid-off period	₹2,77,992/-
	Total	₹4,58,415/- minus 20% = ₹3,66,732/-

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19. Hence, this Court passes the following:

ORDER

a. The appeal filed under Section 173(1) of the Motor Vehicles Act, 1988 is **allowed in part**.

b. The Judgment and award dated 01.02.2023 passed in MVC No.5256/2021 on the file of the VIII Additional Small Causes Judge and the Motor Accident Claims Tribunal (SCCH-5), Bengaluru is modified holding that the claimant is entitled for total compensation of ₹3,66,732/- (80% of ₹4,58,415/-) as against 80% of ₹1,01,423/- awarded by the Tribunal.

c. The insurance Company is directed initially to pay the same and recover the same through the owner.

d. The enhanced compensation shall carry interest at 6% per annum from the date of petition till realization.

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e. The respondent No.1-insurance Company shall deposit the compensation amount with accrued interest before the Tribunal within a period of 8 weeks from the date of receipt of certified copy of this judgment.

f. The disbursement and deposit shall be as per the order of the Tribunal.

g. No Order as to costs.

h. Draw modified award accordingly.

i. Registry to transmit the TCR to the Tribunal forthwith.

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(GEETHA K.B.)
JUDGE

LL
List No.: 1 Sl No.: 21