HC-KAR

NC: 2026:KHC:61598
MFA No. 3318 of 2017

CNR: KAHC010293602017

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.3318 OF 2017(MV-I)

BETWEEN:

UNITED INDIA INSURANCE CO.LTD.,
HUB, BANGALORE
THROUGH ITS REGIONAL OFFICE,
#18, 5TH & 6TH FLOORS,
KRISHIBHAVAN, HUDSON CIRCLE,
BANGALORE - 560 001.
REP. BY ITS MANAGER.

...APPELLANT

[(BY SRI JANARDHAN REDDY, ADVOCATE (PH)]

AND:

1. B.SURESH,
S/O K.RAJANNA BADIGAR,
AGED ABOUT 29 YEARS,
R/A NO.434, WARD NO.7,
NEAR RAMA TEMPLE,
HOOVINAHADAGALI POST & TALUK,
BANGALORE - 583 219.
R1 SUSTAINED HEAD INJURY,
REP BY HIS NATURAL GUARDIAN
RAJANNA BADIGAR.

2. N.SATHISH,
S/O NARAYANAPPA,
MAJOR IN AGE,
NO.81, SANNAPPANAHALLI,
BETTA HALASURU POST,

Digitally signed by ANUSHA V
Location: High Court of Karnataka

BANGALORE - 560 012.
(OWNER OF THE LORRY)

…RESPONDENTS

(BY SRI PRAKASH M.H., ADVOCATE FOR C/R1 (PH);
NOTICE TO R2 - SERVED & UNREPRESENTED)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 13.02.2017 PASSED IN MVC NO.18/2013 ON THE FILE OF THE XXI ACMM AND XXIII A.S.C.J. BENGALURU, AWARDING COMPENSATION OF RS.10,73,300/- WITH INTEREST AT 8% P.A. FROM THE DATE OF PETITION TILL THE DATE OF DEPOSITING THE AMOUNT (EXCEPT FUTURE MEDICAL EXPENSES AMOUNT).

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 17.09.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

CAV JUDGMENT

Challenging judgment and award dated 13.02.2017 passed by XXI ACMM and XXIII A.S.C.J. Bengaluru in MVC no. 18/2013, this appeal is filed.

2. Sri Janardhan Reddy, learned counsel for appellant submitted that appeal was by insurer challenging award on liability. Brief facts leading to this appeal as per claimant were that at 11.00 a.m. on 12.12.2012, when B Suresh (claimant) was travelling in Lorry no.UP-53/AT-0911 as cleaner towards Bettalsur, its driver drove it in rash and negligent manner, lost control over Lorry causing it to topple. In accident, claimant sustained grievous injuries and despite treatment at Baptist Hospital, Bangalore, he did not recover fully and sustained permanent physical disability and loss of earning capacity. And for compensation filed claim petition against insurer and owner of offending Lorry under Section 166 of Motor Vehicles Act, 1988 (**MVA**).

3. Despite service of summons, owner did not appear and was placed *ex-parte*. Only insurer opposed claim petition on all grounds, including that owner of Lorry did not furnish relevant documents of vehicle, there was non-disclosure of information of driver of Lorry holding valid and effective driving licence as on date of accident and denying claimant as cleaner in Lorry.

4. Based on pleadings, Tribunal framed following:

ISSUES

(1) Whether the petitioner proves that, he has sustained injuries on 12.12.2012 at about 11.00 a.m., due to rash and negligent driving of Lorry bearing Reg.No.UP-53-AT-0911, by its driver at Bettahalasuru Bunde road, Vidyanagar cross, Bangalore?

(2) Whether the petitioner is entitled for Compensation? If so, what is the quantum? From whom payable?

(3) What order or award?

5. In trial, claimant's father and Dr.Sharan Srinivasan deposed as PWs.1 and 2 and got marked Exs.P1 to P17. Owner examined IO as RW.1, while insurer examined it's officer as RW.2 and got marked Exs.R1 to R6.

6. On consideration, Tribunal answered issue no.1 in affirmative, issue no.2 partly in affirmative and issue no.3 by holding insurer liable to pay compensation of Rs.10,73,300/- with interest at 8% per annum leading to this appeal.

7. At outset, it was submitted that there were grave contradictions about manner of occurrence of accident. It was submitted that Ex.P11 – Admission record of claimant at Baptist

Hospital mentions injuries were sustained when Lorry dashed against compound wall, contradicting Exs.P1 to P4 – FIR, complaint, charge sheet and spot mahazar which show Lorry toppled after rolling back into ditch. And as apparently, claimant was driving Lorry without driving licence and after consuming alcohol, driver was swapped to suppress material fact about violation of policy conditions. Fact that complaint was filed 6 days after alleged accident and admission of claimant was not as Medico Legal Case substantiated suspicion. On above grounds sought for allowing appeal.

8. Sri M.H. Prakash, learned counsel for claimant opposed appeal. It was submitted since claimant was cleaner in Lorry, consumption of alcohol would not mitigate his claim and in absence of evidence by insurer and failing to examine insured or driver of Lorry, relying only on entries in medical records manner of occurrence of accident cannot be held established. More so, when claimant's version was supported by prosecution records namely Ex.P1 to P5 – FIR, complaint, charge sheet, spot mahazar and motor vehicle inspector's report. It was submitted, fact that owner of vehicle had

promised to bear medical expenses was reason for delay in filing complaint.

9. It was submitted since claimant suffered total loss of earning capacity, even claimant had filed appeal for enhancement. But due to inadvertence it was dismissed for default. Relying on decision of this Court in **New India Assurance Company v. Basappa**, reported in **2020 SCC OnLine Kar 3361,** in view of pathetic condition of claimant, it was submitted that even in absence of appeal by claimant, this Court would be justified in enhancing compensation. It was further submitted that this Court in **Gousa Patel v. Mansur Patel**, reported in **2025 SCC OnLine Kar 10051,** relying on decision of Apex Court in **Mohd. Sabeer v. UPSRTC**, reported in **(2023) 20 SCC 774**, it was submitted that even in personal injury claims future prospects was required to be added. And relying on decision of Hon'ble Supreme Court in **Kajal v. Jagdish Chand**, reported in **(2020) 4 SCC 413**, as claimant was totally disabled, compensation towards attendant charges were required to be awarded. On said grounds, sought for enhancement of compensation.

10. Heard learned counsel, perused impugned award and record.

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

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

ii. Whether claimant is entitled for enhancement of compensation in insurer's appeal?

Point no.(i):

12. At outset though there is no dispute about occurrence of accident involving insured Lorry on 12.12.2012, dispute is confined to manner of occurrence and about driver of Lorry. To establish actionable negligence against owner/insurer of Lorry, claimant relied on FIR, complaint, charge sheet, spot mahazar and motor vehicle inspector's report marked as Exs.P1 to P5. As per said records claimant sustained injuries when Lorry rolled backwards and fell into a ditch. Statement in claim petition as well as in deposition of PW.1 was consistent with prosecution records.

13. But accident occurred at 11:00 am on 12.12.2012 and immediately after same, he went to Baptist Hospital. Since complaint was filed 6 days thereafter, first public record about accident would be of Baptist Hospital. Ex.P.11 - admission record of claimant indicates he was examined at hospital at 12:10 pm. (**GCS**) Glasgow Coma Scale reading of (i) eyes: '-3' i.e. opening eyes only asked; (ii) limbs: '-5' i.e. localized pain and (iii) verbal: '-4' i.e. confused speech. Though, there is record of *nasal bleed and altered sensorium*, his examination at 4:20 pm by ENT doctor records injury to nose but '***no ENT bleed***'. It also notes ***patient under influence of alcohol***. There is no mention about anyone else accompanying claimant. And when claimant was admitted to hospital immediately after accident and hospital records him to be under influence of alcohol four hours after accident, in absence of explanation, preponderance of probabilities would be that he was under influence of alcohol from time of accident.

14. Ex.P7 – discharge summary notes that at time of admission, claimant was conscious and oriented but due to MCA and thrombosis in brain, he sustained hemiparesis, was treated

for same and discharged. PW.1 – father of claimant deposed that on 12.12.2012, his son – Suresh was cleaner in Lorry and when driver Shashidhara drove it in rash and negligent manner and Lorry was rolling back from top of hill near Vidyanagara Cross, his son jumped out to save himself, fell from high altitude to bottom of hill and sustained injuries. He was cross-examined by suggesting that his son caused accident by driving Lorry, that he used to consume alcohol and that hospital records mention same and to overcome disentitlement from compensation, Shashidhar was shown as driver were all denied. Except eliciting admission that PW.1 did not witness accident and no record produced to substantiate claimant being unable to depose, nothing material is elicited.

15. PW.2 is Doctor who treated claimant at Baptist Hospital deposed in detail about injuries sustained and treatment administered. He stated that claimant sustained residual spastic right hemiparesis of 50%, neurobehavioral disability of 20% and cognitive disability of 25% and whole body disability at 67.52%. He specifically assessed avocational disability at 100%. In his cross-examination, it is elicited that

claimant was smelling of alcohol at time of examination. Nothing material is elicited insofar as injury, treatment given and disability sustained. An admission about noting cause of injuries as due to Lorry hitting compound wall is elicited. PW.2 states that MLC intimation was given.

16. But Investigating Officer examined as RW.1 denies receiving MLC intimation. In his cross-examination, he states that complaint was given by claimant's father six days after accident. After stating that he visited accident spot and drew panchanama on 19.12.2012, he states about visiting accident spot on 12.12.2012. Suggestion about accident being caused by claimant himself while driving Lorry and it dashing against compound wall are denied.

17. Official of insurer examined as RW.2 deposed about history of injuries noted by hospital was due to Lorry dashing against compound wall and alleging claimant driving Lorry under intoxication without driving licence and therefore, insurer not liable to pay compensation. Hospital records marked as Exs.R4 and R5 (Emergency Doctors Assessment and Initial

Assessment Form) also mention history of injuries as due to Lorry hitting compound wall. But they also mention about claimant being brought with nasal bleed and altered sensorium. Exs.R2 and R6 – Charge sheet and FIR shows prosecution of driver of Tipper Lorry for offences under Sections 279 and 337 of IPC as well as Sections 187 and 134(B) of MV Act and naming claimant as victim. It also records promise by Lorry owner to bear medical expenses and later resiling as cause for delay in filing complaint.

18. Above material disclose that claimant had consumed alcohol and there is contradiction about manner of occurrence of accident. But, whether they are so grave as to disentitle claimant from compensation would require examination. There is no denial about insurance coverage of Lorry at time of accident. Thus, even if accident occurred due to collision of Lorry against compound wall, insurer would still be liable. Insurer would succeed only if there is any material to indicate accident occurred while claimant himself was driving Lorry without driving licence and after consuming alcohol.

19. While passing impugned award, Tribunal considered insurer's contention and traversed entire material on record. Insofar as entry about history of injuries, it observed that there was nothing on record to show that said entries were based on information given by claimant himself. Based on said reasoning, it held claimant had established actionable negligence against driver/owner of Lorry. Though, insurer succeeds in establishing that claimant had consumed alcohol at time of accident and there is entry about Lorry dashing against compound wall, there is no material to establish that claimant was driving Lorry at time of accident and caused licence or about manipulation or falsification of records to foist false claim against insurer. To hold occurrence of accident as alleged by insurer based only on above two factors would amount to jumping to conclusion. It is settled law that when Court/Tribunal has arrived at conclusion on appreciation of entire material on record, merely on ground that another view was possible, said conclusion cannot be overturned. Hence, ***point no.(i) is answered in negative***.

20. And question whether compensation can be enhanced in favour of claimants in an Insurer's Appeal is dealt

by Hon'ble Supreme Court in **Ranjana Prakash v. Divl. Manager,** reported in **(2011) 14 SCC 639**:

> *"7. This principle also flows from Order 41 Rule 33 of the Code of Civil Procedure which enables an appellate court to pass any order which ought to have been passed by the trial court and to make such further or other order as the case may require, even if the respondent had not filed any appeal or cross-objections. This power is entrusted to the appellate court to enable it to do complete justice between the parties. Order 41 Rule 33 of the Code can however be pressed into service to make the award more effective or maintain the award on other grounds or to make the other parties to litigation to share the benefits or the liability, but cannot be invoked to get a larger or higher relief. For example, where the claimants seeks compensation against the owner and the insurer of the vehicle and the Tribunal makes the award only against the owner, on an appeal by the owner challenging the quantum, the appellate court can make the insurer jointly and severally liable to pay the compensation, along with the owner, even though the claimants had not challenged the non-grant of relief against the insurer. Be that as it may.*
>
> *8. Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by the claimants for enhancement, but allow any appeal by owner/insurer for reduction. The High*

Court cannot obviously increase the compensation in an appeal by owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the claimants seeking enhancement of compensation."

21. Though learned counsel for claimant sought to rely on decision of learned Single Judge of this Court in **Basappa**'s case (supra), ratio laid down by Hon'ble Supreme Court in **Ranjana Prakash**'s case (supra) would prevail. Moreso in instant case, where claimant had preferred appeal in MFA no.3223/2017, same was dismissed for non-prosecution on 13.09.2017 and claimant has failed to have it restored even after lapse of more than 9 years. Thus, ***point no.(ii) is also answered in negative***. Consequently, following:

ORDER

Appeal is ***dismissed.*** Amount in deposit is ordered to be transmitted to tribunal for payment. Balance to be deposited within six weeks.

Sd/-
(RAVI V HOSMANI)
JUDGE

YKL,AV,GRD
List No.: 1 Sl No.: 47