HC-KAR

CNR: KAHC010310352013

NC: 2026:KHC:62354
MFA No. 6292 of 2013
C/W MFA No. 4392 of 2012

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

MISCELLANEOUS FIRST APPEAL NO. 6292 OF 2013 (MV-I)

C/W

MISCELLANEOUS FIRST APPEAL NO. 4392 OF 2012 (MV-I)

IN MFA No. 6292/2013

BETWEEN:

SRI N. BABU
S/O N. NARAYANAPPA
AGED ABOUT 27 YEARS
R/AT VEERANJANEYA NAGAR,
KOLAR - 563 101.

...APPELLANT

(BY SRI VENKATA REDDY C.M, ADVOCATE)

AND:

Digitally signed by ANUSHA V
Location: High Court of Karnataka

1. SRI B. RAJENDRA
S/O BODEPPA
R/AT NO. 38, C/O CODANDA
B BLOCK, B SANDKEERNA
KSRTC QTRS., KORAMANGALA
BANGALORE - 560 034.

2. THE MANAGER
THE ORIENTAL INSURANCE CO. LTD.,
YETHIRAJA MUTT BUILDING,
NO.199, 2ND MAIN ROAD
SAMPIGE ROAD, MALLESHWARAM
BANGALORE - 03.

...RESPONDENTS

(BY SRI B.S. UMESH, ADVOCATE FOR R2;
VIDE ORDER DATED 12.12.2017, NOTICE TO R1 - B.G. RAJENDRA - HELD SUFFICIENT & SERVED)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 21.09.2011 PASSED IN MVC NO. 31/2008 ON THE FILE OF THE PRINCIPAL, CIVIL JUDGE & MACT, KOLAR, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

IN MFA NO. 4392/2012

BETWEEN:

M/S. THE ORIENTAL INSURANCE COMPANY LIMITED,
YEHTIRAJ MUTT BUILDING, # 199,
2ND MAIN ROAD, SAMPINGE ROAD,
MALLEHWARAM, BANGALORE - 560 003
THROUGH ITS REGIONAL OFFICE,
LEO SHOPPING COMPLEX, NO. 44/45,
RESIDENCY ROAD, BANGALORE - 1,
REPRESENTED BY ITS REGIONAL MANAGER.

...APPELLANT

(BY SRI B.S. UMESH, ADVOCATE)

AND:

1. N. BABU
   S/O LATE NARAYANAPPA
   AGED ABOUT 26 YEARS,
   RESIDENT OF VEERANJANEYA NAGAR, KOLAR.

2. R. RAJENDRA
   S/O BODEPPA
   AGED MAJOR,
   R/O NO. 38, C/O CODANDA,
   B BLOCK, B SANKEERNA KSRP QTRS.,
   KORAMANGALA, BANGALORE.

...RESPONDENTS

(BY SRI C.M. VENKATA REDDY, ADVOCATE FOR R1;
VIDE ORDER DATED 25.08.2016, NOTICE TO R2 -
R. RAJENDRA - HELD SUFFICIENT)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 21.09.2011 PASSED IN MVC NO.31/2008 ON THE FILE OF THE PRINCIPAL CIVIL JUDGE, MACT, KOLAR, AWARDING A COMPENSATION OF Rs.80,000/- WITH INTEREST @ 6% P.A. FROM THE DATE OF PETITION TILL REALIZATION.

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

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL JUDGMENT

Challenging judgment and award dated 21.09.2011 passed by Prl. Civil Judge & M.A.C.T., Kolar (***Tribunal***), in MVC no.31/2008, these appeals are filed.

2. While M.F.A.no.4392/2012 is filed by insurer, M.F.A.no.6292/2013 is filed by claimant.

3. Brief facts leading to these appeals as per claimant were that at 10:00 p.m., on 02.11.2007 when claimant was standing with his friends by side of Tekal road, rider of motorcycle no.KA-01/EE-5912 drove it in rash and negligent manner and dashed against claimant. In accident, claimant sustained grievous injuries and despite treatment at hospital,

he sustained disability and loss of earning capacity. Claiming compensation for same, he filed claim petition under Section 166 of Motor Vehicles Act, 1988 (***MV Act***) against owner and rider of motorcycle.

4. On contest, wherein, claim petition was opposed on all grounds. Tribunal framed following issues:

i. Whether the petitioner proves that he sustained injuries in the road traffic accident occurred on 02.11.2007 at about 10.00 p.m. near Bapuji School, Tekal Main Road, Kolar, due to rash and negligent riding of Pulsar motorcycle bearing reg.no.KA-01/EE-5912 by its rider?

ii. Whether petitioner is entitled for compensation? If so, from whom and how much?

iii. What relief?

5. Claimant along with another deposed as PWs.1 and 2 and got marked Exs.P1 to P13. Respondent examined its official as RW.1 and got marked Exs.R1 and R2. On consideration, tribunal held issue no.1 in affirmative, issue no.2 partly in affirmative and issue no.3 by assessing total compensation of Rs.80,000/- and held insurer liable to pay

same. Aggrieved thereby, insurer was challenging award on false implication of insured vehicle for purposes of claim and while claimant was seeking for enhancement of compensation.

6. Sri Venkata Reddy, learned counsel for claimant submitted that as on date of accident, claimant was 22 years of age working as *'mason'* and earning Rs.15,000/- per month. In accident, claimant sustained two grievous injuries including fracture of right occipital area with EDH and SAH; and mild cerebral edema, for which claimant took 26 days treatment as inpatient and produced medical bills for more than Rs.1,74,000/-. However, tribunal awarded Rs.10,000/- towards loss of earnings, Rs.15,000/- each towards injuries and Rs.20,000/- only towards medical expenses, Rs.10,000/- towards loss of amenities and Rs.10,000/- only towards pain and suffering, which was grossly inadequate.

7. It was submitted that claimant was entitled for enhancement of compensation on each of these sets, apart from loss of income during laid-up period, which was not awarded. On said ground, sought for allowing appeal.

8. On other hand, opposing claimant's appeal, Sri B.C.Umesh, learned counsel for insurer submitted that as per claimant, accident occurred at 10:00 p.m. on 02.11.2007 and immediately after accident, he was taken to SNR Hospital, Kolar and after first aid referred for higher treatment at Abhaya Hospital, Bengaluru. It was submitted that patient admission record of SNR Hospital, Kolar produced as Ex.R1 would reveal history of injuries as '*self fall*' and said record was signed by Nagaraj K., examined as PW.2, who instead of explanation about entry in record, merely denied knowledge of contents.

But discrepancy when considered in light of fact that complaint lodged by claimant's mother was after 21 days of accident would lend credence to insurer's contention that insured vehicle was falsely implicated for purposes of claim. It was further submitted that claimant admitted that owner of motorcycle was his friend. Combined effect of above would be that a false claim petition was sought to be foisted against insurer. In support of his submission, learned counsel relied upon following decisions and sought for allowing appeal and for dismissal of claim petition:

i. ***Smt. Arathy & Another v. S.M.Umesha and Another*** in M.F.A. no.7025/2011 (D.D.09.11.2015);

ii. ***Veerappa & Another v. Siddappa & Another***, reported in CDJ 2010 Kar HC 094;

iii. ***New India Assurance Co.Ltd., v. Jegadeesh Reddy & Another*** in M.F.A.no.962/2007 (D.D.12.03.2009); and

iv. ***Manju v. R.R.Ravi & Another*** in M.F.A.no.3651/2010 c/w. M.F.A.no.8416/2010 (D.D.16.09.2020)

9. In reply, learned counsel for claimant sought to oppose insurer's appeal by contending that hospital admission records would show that claimant was unconscious for upto 10 days after accident and besides, PW.2 had stated that he was unaware about contents of Ex.R1. In view of fact that claimant had sustained two grievous injuries to his head, there would be no justification in drawing adverse inference. It was submitted that tribunal had considered matter in proper perspective and passed award, and therefore, sought for dismissal of insurer's appeal.

10. Heard learned counsel and perused impugned judgment and award and material on record.

11. Since both insurer as well as claimants are in appeal, points that would arise for consideration are :

i. Whether tribunal erred in not noticing false case being foisted against insurer?

ii. Whether assessment of compensation by tribunal calls for modification?

Pont no.i:

12. To establish actionable negligence against owner/insurer, claimant relied upon FIR, complaint, spot mahazar, Motor Vehicle's report, certified copy of ordersheet in C.C.no.77/2008 and chargesheet marked as Exs.P1 to P6.

13. Perusal of Exs.P1 and P3 would indicate that FIR was registered on basis of complaint given by mother of claimant. There is statement that due to claimant being under treatment there was delay in filing complaint. But explanation offered does not appear to be trustworthy. I say so for reason that at time of accident even as per claimant he was

accompanied with friends. Ex.R1 would in fact indicate that PW.2 had accompanied claimant to SNR Hospital. First record about accident is entries in SNR Hospital. Ex.R1 would show history of injuries as due to self-fall with entry being endorsed by thumb impression as well as signature of PW.2. Despite same, PW.2 in his cross-examination feigned ignorance of contents of Ex.R1. There is no explanation as to why complaint was not filed by any of claimant's friends. That apart, Ex.P7 - Wound Certificate issued by Abhaya Hospital, Bangalore, on other hand would mention history of injuries as due to RTA. Strangely, admission of claimant is not recorded as a Medico Legal Case (MLC), there is no explanation about same. Even failure to produce any record from NIMHANS Hospital would also attract suspicion. On top of above, it is seen that claimant did not examine any doctor in support of his claim. This would tilt issue in favour of insurer in light of ratio laid down in decisions relied by insurer. Hence, point no.i is answered in favour of insurer.

Pont no.ii:

14. In view of finding on point no.1, no finding would be necessary on point no.2. Further, claimant failed to examine any doctor. Claim for compensation is by relying on medical records. Ex.P7 and other medical records would indicate that claimant sustained linear fracture of right occipital area. In case of any consequential effect on normal functioning of claimant, a CT Scan report or deposition of Neurologist/Psychologist would be required. Even in absence of failure to examine any doctor, Tribunal has granted compensation of Rs.10,000/- towards loss of earning; Rs.15,000/- towards each of injuries (without specifying whether it is towards loss of earning or pain and suffering); Rs.20,000/- towards medical expenses; Rs.10,000/- towards loss of amenities and Rs.10,000/- towards pain and suffering. When effect of injuries on earning capacity is not established, award of Rs.40,000/- towards injuries and loss of earning capacity would not be justified. Likewise in case of loss of amenities. However, claimant would be justified in contending that compensation of Rs.10,000/- awarded towards pain and suffering in view of skull fracture would be

inadequate. But as it is seen, when compensation awarded under various heads is unjustified, same would off-set scope for enhancement. In any case, point no.2 would have to follow finding on point no.1. Consequently, following:

ORDER

i) MFA no.6292/2013 filed by claimant is ***dismissed***.

ii) MFA no.4392/2012 filed by insurer is ***allowed in part***, judgment and award dated 21.09.2011 passed by Tribunal in MVC no.31/2008 is ***set-aside***.

iii) Claim petition filed by claimant is ***dismissed***.

iv) Amount in deposit in Insurer's appeal is ordered to be refunded to insurer.

Sd/-
(RAVI V HOSMANI)
JUDGE

HNM,GRD
List No.: 1 Sl No.: 15