HC-KAR

NC: 2026:KHC:64726
MFA No. 3722 of 2024

CNR: KAHC010318102024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF NOVEMBER, 2026

BEFORE

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

MISCELLANEOUS FIRST APPEAL NO. 3722 / 2024 (MV-I)

BETWEEN:

1. CHOLAMANDALAM MS GIC LTD.,
NO. 16-1-44 (14),
1ST FLOOR, B.R. COMPLEX,
BENDOOR WELL ROAD, KANKANADY, S.O.,
DAKSHINA KANNADA,
BRANCH OFFICE, SHIVAMOGGA,
ALSO AT
UNIT NO. 4, 9TH FLOOR, (LEVEL 6),
GOLDEN HEIGHTS COMPLEX,
59TH C CROSS, INDUSTRIAL SUBURB,
RAJAJINAGAR, 4TH M BLOCK,
BENGALURU-560 010,
REPRESENTED BY ITS DEPUTY MANAGER.

...APPELLANT

(BY SRI. MURALIDHARA N.,ADVOCATE)

AND:

1. CHANNAPPA S ALIAS CHENNA
S/O CHIKKA KARIYAPPA,
AGED ABOUT 41 YEARS,
R/O. SHIVARAMA NAGARA,
BHADRAVATHI,
NOW RESIDING AT 2ND CROSS, HARIGE,
SHIVAMOGGA-577 433.

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2. SRI. OBANNA. B
S/O BOSAIAH. B,
AGED ABOUT 37 YEARS,
R/O. JEDIKATTE HOSURU,
BHADRAVATHI TALUK,
SHIVAMOGGA-577229.

…RESPONDENTS

(BY SRI. M V MAHESWARAPPA.,ADVOCATE FOR R1;

SRI.M.R.HIREMATHAD, ADVOCATE FOR R2)

THIS MFA IS FILED U/S.173(1) OF MV ACT, AGAINST THE JUDGMENT AND AWARD DT.07.12.2023 PASSED IN MVC NO.05/2021 ON THE FILE OF THE PRL. DISTRICT AND SESSIONS JUDGE, MACT, SHIVAMOGGA, AWARDING COMPENSATION OF RS.5,60,000/- WITH INTEREST AT 6 PERCENT P.A. FROM THE DATE OF PETITION TILL ITS PAYMENT.

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

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

ORAL JUDGMENT

This is the appeal filed under Section 173(1) of the Motor Vehicles Act, 1988 (in short, 'M.V. Act') by the appellant/insurance Company challenging the judgment and award dated 07.12.2023 in M.V.C.No.5/2021 on the file of the Principal District & Sessions Judge, Presiding Officer, Motor Accident Claims Tribunal, Shivamogga, (in

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short, 'the Tribunal') on the grounds of liability and quantum.

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 claimants before the Tribunal in nutshell is that on 06.05.2020 at about 12:15 p.m., when the claimant was rider of motorcycle bearing Reg.No.KA-14/EF-2898 with a pillion rider proceeding near ITI College, Kadadakatte, on B.H. Road Bhadravathi; a Canter lorry bearing Reg.No.KA-14/B-9487 (in short 'the offending vehicle') driven by its driver rashly and negligently and dashed to the motor bike and caused the accident. Due to the accident, the claimant has sustained grievous injuries. Initially, he had taken treatment in Government hospital, Bhadravathi and thereafter, in MaAx Hospital, Shivamogga and thus, claimed compensation under different heads.

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4. Respondent No.2 filed its objection statement wherein it denied the averments made in the petition and further contended that its liability is subject to the terms and conditions of the policy.

5. Based on the aforesaid pleadings, the Tribunal has framed the issues, recorded the evidence and after hearing arguments has passed the judgment that the Insurance Company is liable to pay compensation and the claimant is entitled for total compensation of ₹5,60,000/- under the following heads:

1	Pain and sufferings	₹40,000/-
2	Attendant charges, extra nourishment, transportation & Conveyance charges etc.,	₹30,000/-
3	Medical expenditure	₹1,33,500/-
4	Loss of future income	₹3,13,000/-
5	Loss of income during the period taking treatment	₹43,500/-
	Total	**₹5,60,000/-**

6. Aggrieved by the same, the insurance Company is before this Court.

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7. Heard the arguments.

8. The learned counsel for the appellant Sri Muralidhara N would submit that the charge-sheet is filed against the driver alleging that he did not possess license to drive the offending vehicle as on the date of accident and the offence under Section 3 r/w Section 181 of MV Act was added in the charge-sheet. Respondent No.1/owner cum driver has not produced his driving license to drive the offending vehicle. Under these circumstances, the Tribunal ought not to have fastened the liability on the insurance Company.

9. As far as quantum is concerned, the learned counsel for the appellant would submit that even though under Ex.C.3, the doctor has assessed poor memory power to the claimant; the claimant has given his oral evidence before the Tribunal without any difficulties and has faced the cross-examination. Thus, the disability assessed by the doctor-CW.1 and considered by the

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Tribunal is exorbitant and hence, prayed for reduction of the quantum.

10. The learned counsel for respondent No.1/claimant Sri M.V.Maheshwarappa would submit that the certificate is issued by Manasa Nursing Home, Shivamogga as per Ex.C.3 and based on it the doctor who treated the complainant at maAx Hospital, Shivamogga from the date of accident has issued the disability certificate as per Ex.P.12 and examined as CW.1 stating that there is 43.05% disability to the whole body. However, the Tribunal has taken disability to the whole body only at 12%. Hence, prayed for dismissal of the appeal.

11. Having heard the arguments of both sides, verifying the appeal papers and the Trial court Records, the points that arises for consideration are:

> *"1. Whether the insurance Company establishes that there was no valid and effective driving license to the driver of the offending vehicle as on the date of accident?*

2. Whether the quantum of compensation awarded by the Tribunal requires modification?"

12. Finding of this Court on the above two points is in ***'Affirmative'*** for the following:

REASONS

13. The evidence of the claimant coupled with police records establishes that the claimant has sustained injuries in the road traffic accident involving the motorcycle and the offending canter lorry. The Charge-sheet is filed against driver of the offending lorry. In that charge-sheet, the alleged offences are punishable under Sections 279, 338 and 304-A of IPC r/w Section 181 of M.V.Act.

14. On careful perusal of the charge-sheet, its allegations and the contention of the insurance Company, the owner-cum-driver/respondent has not produced any document to show that he possessed valid and effective driving license as on the date of accident to the driver of

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the canter lorry. Further, the offence under Section 3 r/w 181 of MV Act is alleged in the charge-sheet.

15. Further, the claimant has produced the driving license of the respondent No.1 that he is having license to drive Motor cycle with Gear and Light Motor Vehicle. However, he does not posses license to drive heavy goods vehicle. Thus, the driver of the offending lorry was not possessing valid and effective driving license to drive the offending vehicle. In the absence of such valid and effective license, the liability shall be fastened on the owner but because the claimant is third party to the vehicle, by placing reliance on the judgment of full Court bench of this Court in ***New India Assurance Company Limited v/s Yallavva[1], Singh Ram v/s Nirmala & Ors.,[2]*** and ***Pappu Yadav and Others v/s vinod kumar lamba and another[3];*** this Court holds that initially, the insurance Company shall be directed to pay the

[1] ILR 2020 KAR 2239
[2] 2018 (3) SCC 800
[3] (2018) 3 SCC 208

compensation and recover the same from the owner. However, in the present case, the Tribunal has fastened the liability on the insurance Company holding that insurance Company is liable to pay the compensation. Said finding of the Tribunal is erroneous and requires interference.

16. As far as quantum of the compensation is concerned, Ex.P.5-wound Certificate reveals that the doctor at Government Hospital, Bhadravathi noticed that there is laceration wound over the scalp and three abrasions both on arms and hand were found and then the doctor after examining the report from the maAx hospital opined that the injury is grievous in nature. The doctor who treated the complainant at maAx Hospital is examined as CW.1. He has produced clinical discharge summary as per Ex.C.1 and another clinical discharge summary as per Ex.C.8. According to these two documents, the claimant was in-patient in the hospital from 06.05.2020 to 12.05.2020 and from 16.05.2020 to 23.05.2020. As per

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CT scan report, the doctor found that there is right temporal EDH (edema) with left Fronto-Temporo-Parietal SDH (Subdural Hemorrhage); treated with appropriate antibiotics, etc. The doctor has not conducted surgery either initially or subsequently. Ex.C.3 is the certificate issued by Manasa Nursing Home, Shivamogga, wherein the doctor has given the following opinion:

> *" Significant pathology in general appearance and behavior, psychomotor activity, speech, mood and also has thought block along with cognitive impairment in terms of attention concentration, memory, abstract ability and judgment was found on Mental Status Examination (MSE).*
>
> - *Profound Social Adaptive functioning as found on Vineland Social Maturity Scale (VSMS)*
> - *Low level of Memory as found on PGI Memory Scale (PGIMS)*
> - *Severe Disability as found on Indian Disability Evaluation and Assessment Scale (IDEAS)."*

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17. Based on this Ex.C.3, the doctor-CW.1 has issued disability certificate as per Ex.P.12 holding that there is 43.05% disability to the claimant. He has also issued Ex.C.4- disability assessment chart.

18. According to the evidence of CW.1, Exs.C.3, C.4 and P.12, the claimant was having poor memory and there was low level of memory on PGI memory scale and thus, the doctor assessed disability at 43.05%. This disability is to the head and thus, doctor assessed to the whole body and not assessed to a particular limb.

19. The evidence of this doctor-CW.1 reveals that the claimant was in-patient in the said hospital for the dates stated above; subsequently he was treated as outpatient on 23.05.2020, 13.06.2020, 13.11.2020 and finally on 22.06.2022. In between 13.11.2020 and 22.06.2022, this doctor has not treated the claimant. On 22.06.2022, only to issue the disability certificate, the claimant was examined by the doctor.

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20. After all these reports, the claimant was examined before the Tribunal on 04.03.2023 and 16.03.2023. On 04.03.2023, the affidavit evidence of the claimant was produced and he Exs.P.1 to P.13 - documents were marked through him; on next date of hearing, he was cross-examined in length by the learned counsel for the insurance Company. In this cross-examination, the claimant has not deposed that he does not remember in respect of any suggestion put to him. Thus, the memory loss attributed to the claimant by the doctor as per Ex.C.3 and evidence of CW.1 appears to be not true.

21. Under these circumstances, mere for EDH and SDH, there cannot be any disability unless, it is so grave and affect the day-to-day working capacity of the claimant. However, that is not the situation in the present case. The claimant has produced documents and filed some IAs. on his behalf. He has taken treatment as inpatient in the hospital only for 15 days and he was

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treated conservatively. Hence, the disability of 12% taken by the Tribunal is not proper. Thus, there is no disability to the claimant. Hence, the compensation awarded under the head 'loss of future income' is to be set aside.

22. As far as medical expenses is concerned, the Tribunal has awarded the medical expenses by examining the bills and prescriptions which require no interference. However, the claimant is entitled for compensation under other heads. Even though, the accident has taken place on 06.5.2020, the claimant has taken treatment both as inpatient and outpatient up to 13.11.2020. Thus, the compensation awarded under other heads by the Tribunal shall be enhanced. The claimant is entitled for compensation towards 'pain and sufferings', 'attendant charges, extra nourishment, transportation & conveyance charges' and also towards 'loss of income during laid up period'. The claimant is entitled for compensation of **₹58,000/-** instead of **₹43,500/-** towards 'loss of income

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during laid up period' for a period of 4 months instead of 3 months as awarded by the Tribunal.

23. As far as 'pain and sufferings' he is entitled for **₹60,000/-** instead of **₹40,000/-**. Towards 'attendant charges' the compensation awarded by the Tribunal is held sufficient.

24. Hence, the claimant is entitled for total compensation of **₹ 2,81,500/-** under following heads:

1	Pain and sufferings	₹60,000/-
2	Attendant charges, extra nourishment, transportation & Conveyance charges etc.,	₹30,000/-
3	Medical expenditure	₹1,33,500/-
4	Loss of future income	----------
5	Loss of income during the period taking treatment	₹58,000/-
	Total	**₹2,81,500/-**

25. Hence, this Court passes the following:

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ORDER

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

ii) The judgment and award dated 07.12.2023 passed in MVC No.5/2021 on the file of the Principal District & Sessions Judge, Presiding Officer, Motor Accident Claims Tribunal, Shivamogga, is modified holding that the claimant is entitled for total compensation of **₹2,81,500/-** as against **₹5,60,000/-**awarded by the Tribunal.

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

iv) Initially, the insurance Company is directed to pay the compensation and then recover the same from the owner in accordance with law in the same proceedings.

v) The amount in deposit be transmitted to the Tribunal.

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vi) If there is any excess, then it shall be refunded to the insurance Company on proper identification.

vii) No order as to costs.

viii) Draw modified award accordingly.

ix) Registry to transmit TCR to the Tribunal forthwith.

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(GEETHA K.B.)
JUDGE

SPV
List No.: 1 Sl No.: 35