HC-KAR

CNR: KAHC010354112015

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

MISCELLANEOUS FIRST APPEAL NO.5251 OF 2015(MV-I)

BETWEEN:

SHANMUGAM K.,
S/O KRISHNAN
AGED ABOUT 21 YEARS
NO.4, SHIVASUNDARAM APARTMENT,
GROUND FLOOR, PATALAMMA ROAD,
BASAVANAGUDI, BANGALORE.

ALSO AT: NO.1/169,
KRISHNAPALYAM, BOJIPURAM,
SHOOLAGIRI, HOSUR TALUK
KRISHNAGIRI DISTRICT - 635 117
TAMIL NADU.

ALSO AT: NO.47,
L.N. PURAM,
9TH CROSS ROAD,
BENGALURU- 560 021.

...APPELLANT

(BY SMT.LAKSHMI G., ADVOCATE)

Digitally signed by ANUSHA V
Location: High Court of Karnataka

AND:

1. THE BRANCH MANAGER
   M/S. ICICI LOMBARD GENERAL
   INSURANCE CO. LTD.
   NO.41, 1ST FLOOR,
   CRISTRI COMPLEX,
   LAVELLE ROAD,
   BENGALURU - 560 001.

2. MR. SOMASHEKAR
   PROP. M/s SRST & CO. ,

NO.154, 2ND CROSS,
NEW THARAGPET,
BENGALURU - 560 002.

3. THE BRANCH MANAGER
M/S ROYAL SUNDARAM ALLIANCE
INSURANCE COMPANY,
NO.186, GROUND FLOOR,
RAGHAVENDRA PLAZA,
1ST CROSS, WILSON GARDEN,
HOUSUR MAIN ROAD,
BANGALORE - 560 047.

4. K.GANESH PRABHU
S/O B.JANARDHAN
NO.9/7, 6TH CROSS,
K.N.EXTENSION,
OPP: JAIN TEMPLE ROAD,
YESHWANTHPURA,
BENGALURU.

…RESPONDENTS

(BY SRI A.N.KRISHNA SWAMY, ADVOCATE FOR R1;
SRI K.VISHWANATH, ADVOCATE FOR R2;
SRI O.MAHESH, ADVOCATE FOR R3;
V/C/O/DTD 12.03.2026 APPEAL AGAINST R4 IS DISMISSED)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 22.12.2014 PASSED IN MVC NO.60/2012 ON THE FILE OF THE XIII ADDITIONAL SMALL CAUSE JUDGE & MEMBER, MACT, BANGALORE, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

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

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL JUDGMENT

Challenging judgment and award dated 22.12.2014 passed by XIII Additional Small Cause Judge & Member-MACT, Bengaluru, in MVC no.60/2012, this appeal is by claimant for enhancement of compensation.

2. Brief facts as per memorandum of appeal and impugned award are that at 4:30 a.m. on 27.10.2010, when claimant was proceeding towards Bengaluru in Lorry no.KA-01-C-4630 as cleaner, it met with accident on NH-46, when it dashed against another Lorry. In accident, claimant sustained grievous injuries and despite treatment, he did not recover fully and sustained loss of earning capacity. Claiming compensation, he filed claim petition under Section 166 of Motor Vehicles Act, 1988 (**MV Act**) against owner and insurer of both Lorries.

3. Claim petition was opposed on all grounds. Based on pleadings, Tribunal framed following:

ISSUES:

1. *Whether petitioner proves that he has sustained injuries in the motor vehicle accident that occurred on 27.10.2010 at about 4.30 a.m., on NH-46, Chennai to Krishnagiri, near Concordia School, Bargur, within the jurisdiction of Bargur traffic police station on account of rash and negligent driving of the Swaraj Mazda lorry*

bearing registration No.KA-01 C-4630 by its driver as alleged in the petition?

2. *Whether petitioner is entitled to the compensation? If so, what is the quantum and from whom?*

3. *What order?*

4. Claimant along with Dr.Chethan A., deposed as PWs.1 and 2 and got marked Exhibits P1 to P14 and respondents examined one witness as RW.1 but did not mark any document.

5. On consideration, Tribunal held that accident occurred due to rash and negligent driving of Lorry in which he was travelling as negligent and held claimant was held entitled for Rs.4,20,000/- with interest at 8% p.a. from insurer of said Lorry. Claim petition insofar as owner and insurer of other Lorry was dismissed. Dissatisfied with quantum, this appeal is filed.

6. Perusal of grounds urged in memorandum of appeal would reveal that claimant is dissatisfied with inadequate compensation towards pain and suffering, loss of income during laid-up period, incidental expenses, medical expenses and future loss of income.

7. Sri O Mahesh, learned counsel submitted that impugned award was passed only against owner and insurer of Lorry in which claimant was travelling and there was no award passed against owner of insurer of other Lorry.

8. Sri AN Krishnaswamy, learned counsel opposed appeal for enhancement of compensation by contending that while passing impugned award, Tribunal considered entire material on record and assessed compensation under each of heads separately, leaving no scope for enhancement.

9. Heard learned counsel, perused impugned judgment, award and record.

10. Since appeal is by claimant for enhancement of compensation, point that arises for consideration is:

> *Whether claimant is entitled for enhancement of compensation as prayed?*

11. Occurrence of accident, claimant sustaining grievous injuries resulting loss of earning capacity and being entitled for compensation are not in dispute.

12. Though claimant stated that as on date of accident, he was 18 years of age, working as a cleaner and earning Rs.8,000/- per month, he did not substantiate same by producing any material. In absence, Tribunal assessed his notional income at Rs.6,000/- per month and applied multiplier of '18' corresponding to his age. However, notional income for year 2010 being Rs.5,500/- per month, Tribunal would not be justified in taking it at Rs.6,000/-. At same time, Tribunal erred in not adding future prospects to monthly income as per decision of Hon'ble Supreme Court in ***Erudhaya Priya v. State Express Transport Corporation Ltd.*** reported in ***2020 SCC OnLine SC 601.*** As per medical evidence, claimant sustained fracture of right femur as well as fracture of right clavicle. PW.2, who had assessed disability stated about limb disability at 37% and whole body disability at 12%. But Tribunal considered loss of earning capacity at 10%. Considering age and occupation, assessment by Tribunal would not be justified. It is found appropriate to consider disability at 12% itself. Thus, compensation towards future loss of income would be :

(Rs.5,500/- + 40%) X 12 X 18 X 12% = **Rs.1,99,584/-**

13. Claimant sustained fracture of femur as well as clavicle. Normally for fracture to structural bone compensation of Rs.40,000/- is granted with Rs.10,000/- added to each additional fracture. Therefore, award towards pain and suffering is enhanced to **Rs.50,000/-**. Taking monthly income at Rs.6,000/-, Tribunal awarded **Rs.25,000/-** as towards loss of income during laid up period. Considering normal duration for recuperation in case of fracture, assessment of compensation towards loss of income during treatment period would not call for interference. Likewise, for in-patient treatment period of about five days, Tribunal has awarded **Rs.25,000/-** towards conveyance and other incidental expenses. Though it is contented that claimant had produced medical bills for Rs.2,00,000/-, Tribunal awarded only Rs.80,000/- by discounting some bills for want of corroborating prescriptions. From examination of bills, prescriptions and period of treatment, it is seen that Tribunal has on detailed examination, rightly awarded Rs.80,000/- towards medical expenses by excluding duplication of claims on basis of advance paid receipts. Thus, compensation towards medical expenses would

retain at **Rs.80,000/-.** Considering need for removal of implants, Tribunal awarded **Rs.20,000/-** towards future medical expenses and same would be justified. Apart from above, Tribunal has awarded **Rs.50,000/-** towards loss of amenities and another Rs.50,000 towards physical impairment, which would not be justified. But even if there is scope for award of compensation towards loss of marriage prospects etc., Thus, award of **Rs.50,000/-** towards loss of physical impairment is ordered to be adjusted towards marriage prospects. In view of above, point for consideration is answered *partly in affirmative*.

14. Consequently, following:

ORDER

i. Appeal is ***allowed in part***;

ii. Judgment and award dated 22.12.2014 passed by XIII Additional Small Cause Judge & Member-MACT, Bengaluru, in MVC no.60/2012 is *modified*;

iii. Claimant is held entitled for Rs.4,99,584/- rounded off to **Rs.5,00,000/-**, needless to state that

claimant would be entitled for same with interest at 8% p.a. from date of petition till deposit excluding period of 111 days being delay in filing this appeal.

iv. Insurer to deposit balance compensation within six weeks;

v. On deposit, entire compensation with interest is ordered to be released in favour of claimant.

Sd/-
(RAVI V HOSMANI)
JUDGE

AV
List No.: 1 Sl No.: 21