HC-KAR

NC: 2026:KHC:64596
MFA No. 6278 of 2017

CNR: KAHC010384802017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

MISCELLANEOUS FIRST APPEAL NO. 6278 OF 2017 (MV-I)

BETWEEN:

SRI MURTHAPPA
S/O KAMBAPPA @ KENCHAPPA
@ KARIBASAPPA
AGED ABOUT 33 YEARS
RESIDING AT CHOWLIHALLY
CHITRADURGA TALUK
AND DIST – 577 501.

...APPELLANT

(BY SRI SHASHI SHEKAR S., ADVOCATE FOR
SRI B.M. SIDDAPPA, ADVOCATE)

AND:

1. SRI. FAYAZUDDIN
S/O M.K. SIRAJUDDIN
AGED MAJOR
OWNER OF SMST BUS
BEARING NO.KA-16/B-5496
B.D. ROD, CHITRADURGA 577 501.

2. THE BRANCH MANAGER
ORIENTAL INSURANCE CO. LTD.
BRANCH OFFICE, SHARADA COMPLEX
CHITRADURGA - 577 501.

...RESPONDENTS

(BY SRI M. VINAYA KEERTHI, ADVOCATE FOR R1;
SRI KRISHNA KASHYAP, ADVOCATE FOR
SMT. B.S. PADMAJA, ADVOCATE FOR R2)

Digitally signed by G SHRILEKSHA
Location: HIGH COURT OF KARNATAKA

CNR: KAHC010384802017

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 13.03.2017 PASSED IN MVC NO.453/2016 ON THE FILE OF THE II ADDITIONAL SENIOR CIVIL JUDGE AND ADDITIONAL MACT-V, CHITRADURGA. 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 MR. JUSTICE RAVI V HOSMANI

ORAL JUDGMENT

Challenging judgment and award dated 13.03.2017 passed by II Additional Senior Civil Judge and Additional MACT-V, Chitradurga in MVC No.453/2016, this appeal is filed.

2. Sri Shashishekar S, learned counsel representing Sri B M Siddappa, learned counsel for appellant submitted that appeal was by claimant for enhancement of compensation.

3. Brief facts leading to this appeal were that at 4:25 p.m. on 21.11.2015, claimant, Murthappa, was proceeding from Holalkere Taluk towards his village as a pillion rider on motorcycle bearing No.KA-16/ED-1934. In

front of Holalkere bus stand on NH-47, driver of bus no.KA-16/B-5496 drove it in rash and negligent manner and it dashed against motorcycle. In accident, rider as well as pillion rider on a motorcycle sustained injuries and despite treatment sustained loss of earning capacity. Therefore, they filed separate claim petitions under Section 166 of Motor Vehicles Act against owner and insurer of bus.

4. Despite service of notice, owner did not appear and was placed ex-parte. Only insurer opposed claim petition on all grounds. Based on pleadings, Tribunal framed issues and recorded evidence.

5. Since both claims arose out of same accident, they were clubbed together. Respective claimants and Dr.Ambrish deposed as PWs.1 to 3 and got marked Exs.P1 to P9. Respondent did not lead oral evidence, but got marked copy of insurance policy with consent as Ex.R1.

6. On consideration, Tribunal held that accident had occurred due to rash and negligent driving of bus by its driver, vehicle was insured and claimant in MVC no.453/2016 was entitled for compensation of Rs.1,08,000/- towards future loss of income and Rs.30,000/- towards pain and suffering. Dissatisfied with quantum of compensation, appeal was filed.

7. It was submitted that as on date of accident claimant was 31 years of age working as an agriculturist and had stated his annual income to be Rs.3,00,000/- per annum. Therefore, Tribunal was not justified in assessing his monthly income at only Rs.7,200/- per month. Further, claimant sustained compound fracture of bi-malleolar of left ankle and fracture of calcaneum, assessed by PW.3 to have caused physical disability of 30% in respect of his left lower limb and Tribunal assessed loss of earning capacity at 10% and applying correct multiplier of '15' awarded Rs.1,08,000/- towards future loss of income. It was

submitted that notional income for year 2015 being Rs.9,000/-, Tribunal erred in taking lower monthly income.

8. It was also submitted that it also erred in not adding future prospects. Apart from above, extempore contentions were urged that Tribunal had not awarded compensation towards incidental expenses, loss of income during laid up period and loss of amenities and sought for enhancement.

9. On other hand, Sri Krishna Kashyap, learned counsel appearing for Smt.B S Padmaja, learned counsel for respondent no.2 - insurer would oppose petition.

10. It was submitted that claimant had not produced any material to substantiate monthly income. Therefore, Tribunal was justified in assessing it notionally. It was further submitted that there was no contention urged about non-award of compensation towards amenities, incidental expenses and loss of income during laid up period. On above grounds sought for dismissal.

11. Heard learned counsel, perused impugned judgment and award.

12. From above and since only claimant is in appeal for enhancement, point that would arise for consideration is:

> "*Whether claimant is entitled for enhancement of compensation?*"

13. Same is answered partly in affirmative for following reason:

14. Though claimant stated that he was 31 years of age working as agriculturist and earning Rs.3,00,000/- per annum, there was no material to substantiate same. In absence, Tribunal would be justified in assessing it notionally. But notional income for year 2015 being Rs.9000/-, same ought to have been considered. As per treatment records as well as deposition of PW.3, claimant sustained functional disability of 10% due to fracture of bi-malleolar of left ankle, fracture of calcaneum. As held by

Hon'ble Supreme Court in case of ***Erudhaya Priya Vs. State Express Transport Corporation Ltd.*** reported in ***2020 SCC OnLine SC 601*** future prospects require to be added even in personal injury claims. Since claimant is below 40 years and self-employed, future prospects at 40% has to be added and correct multiplier is '16'. Thus, compensation towards future 'loss of income' would require to be calculated as follows:

(Rs.9000/+ 40%)X10%X12X16 = **Rs.2,41,920/-**

15. There is no challenge to award of compensation of **Rs.30,000/-** towards pain and suffering. However, Tribunal has not awarded any compensation towards incidental expenses. Taking note of duration of inpatient treatment of claimant as stated in judgment, it is found appropriate to award **Rs.7,000/-** towards food, nourishment and other incidental expenses. Normally, fractures take about three months to heal. Taking same as period of layoff, claimant would be entitled to **Rs.27,000/-** under said head. Considering fact that

claimant at 31 years of age has sustained permanent disability of 30% to left lower limb and suffered restriction of movement, it is found appropriate to award sum of **Rs.30,000/-** towards loss of amenities. Thus, claimant is held entitled for total compensation of **Rs.3,35,920/-.**

16. Consequently, following:-

ORDER

i. Appeal is ***allowed in part***, judgment and award dated 13.03.2017 passed by II Additional Senior Civil Judge and Additional MACT-V, Chitradurga in MVC No.453/2016, is modified. Claimant is held entitled for total reassessed compensation of **Rs.3,35,920/-** as against Rs.1,38,000/- awarded by Tribunal. Same shall carry interest at 7.5% per annum from date of claim petition till deposit.

ii. Respondent - insurer to deposit enhanced compensation with interest within six weeks before Tribunal.

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

Sd/-
(RAVI V HOSMANI)
JUDGE

GSR
List No.: 1 Sl No.: 49