HC-KAR

NC: 2026:KHC:61596
MFA No. 9642 of 2017
C/W MFA No. 6943 of 2017

CNR: KAHC010486962017

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.9642 OF 2017(MV-I)

C/W

MISCELLANEOUS FIRST APPEAL NO.6943 OF 2017(MV-I)

IN MFA No. 9642/2017:

BETWEEN:

MANTHAMMA @ MAHANTHAMMA
W/O LAKSHMANAM,
AGED ABOUT 40 YEARS,
R/O CHIPPINAKERE VILLAGE,
CHITRDURGA TALUK - 577 501.

...APPELLANT

[BY SRI N.R. RANGEGOWDA, ADVOCATE (PH)]

AND:

1. G B RAJANNA
S/O G.B.BASAVARAJAPPA,
AGED ABOUT 50 YEARS,
R/O MALENAHALLY VILALGE,
KUDLIGI TALUK - 583 135.

2. THE BRANCH MANAGER
NATIONAL INSURANCE CO.LTD.,
BRANCH OFFICE,
JAGALURU MAHALINGAPPA COMPLEX,
B.D.ROAD, CHITRADURGA - 577 501.

...RESPONDENTS

[BY SRI P. NATARAJU, ADVOCATE FOR R1 (PH);
SRI SRINIVASA K.N., ADVOCATE FOR R2 (PH)]

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 25.04.2017 PASSED IN MVC

Digitally signed by ANUSHA V
Location: High Court of Karnataka

NO.377/2016 ON THE FILE OF THE 2ND ADDITIONAL SENIOR CIVIL JUDGE & ADDITIONAL MACT-5, CHITRADURGA, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

IN MFA NO. 6943/2017:

BETWEEN:

THE BRANCH MANAGER
NATIONAL INSURANCE CO LTD
JAGALURU MAHALINGAPPA COMPLEX
B D ROAD, CHITRADURGA
NOW REPTD BY REGIONAL MANAGER
NATIONAL INSURANCE CO LTD
NO.144, SUBHARAM COMPLEX
M G ROAD, BENGALURU 560001.

...APPELLANT

[BY SRI A.N. KRISHNA SWAMY, ADVOCATE (PH)]

AND:

1. SMT.MANTHAMMA @ MAHANTHAMMA,
W/O LAKSHMANAM
AGED ABOUT 41 YEARS,
AGRICULTURIST,
R/AT CHIPPINAKERE VILLAGE
CHITRADURGA TQ - 577 542.

2. SRI G B RAJANNA
S/O G B BASAVARAJAPPA
AGED ABOUT 51 YEARS,
R/AT MALENAHALLI VILLAGE
KUDLIGI TQ - 583 101.

...RESPONDENTS

[BY SRI N.R. RANGEGOWDA, ADVOCATE FOR R1;
SRI P. NATARAJU, ADVOCATE FOR R2 (PH)]

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 25.04.2017 PASSED IN MVC NO.377/2016 ON THE FILE OF THE 2ND ADDITIONAL SENIOR CIVIL JUDGE & ADDITIONAL MACT-5, CHITRADURGA, AWARDING COMPENSATION OF RS.9,16,100/- WITH INTEREST AT 7.5% P.A. FROM THE DATE OF PETITION TILL THE DATE OF DEPOSIT.

THESE APPEALS, 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 25.04.2017 passed by II Addl. Senior Civil Judge and Addl. MACT, Chitradurga, in MVC no.377/2016, these appeals are filed.

2. MFA no.9642/2017 is filed by claimant for enhancement of compensation, while MFA no.6943/2017 is filed by insurer challenging finding of Tribunal on liability and on quantum.

3. Brief facts leading to these cases as per claimant were that at 1:45 pm on 08.02.2015 when claimant was walking by side of road near Nayakanahatty Math,

Kalyanamantapa, driver of Tractor Trailer no. KA-35/TA-1369-70 drove it in rash and negligent manner and dashed against her. In accident, she sustained grievous injuries and despite treatment at SSIMS Hospital, Davanagere, she did not recover fully and there was amputation of her right leg below knee. Due to same, she sustained loss of earning capacity. Therefore, she filed claim petition in MVC no.377/2016 under Section 166 of Motor Vehicles Act, 1988 ('**MV Act**') owner and insurer of Tractor Trailer.

4. On contest, wherein claim petition was opposed on all grounds, Tribunal framed issues and recorded evidence.

5. Claimant along with Dr.Ambrish deposed as PWs.1 and 2 and got marked Exs.P1 to P20. On other hand, two witnesses were examined by respondents as RWs.1 and 2 and got marked Exs.R1 to R4.

6. On consideration, Tribunal held accident had occurred due to rash and negligent driving of Tractor Trailer by its driver causing permanent physical disability, loss of earning

capacity and claimant was entitled for compensation from insurer. Dissatisfied with findings, these appeals are filed.

7. Sri N.R. Rangegowda, learned counsel for appellant - claimant submitted that as on date of accident, claimant was 40 years of age doing agriculture and earning Rs.2,00,000/- per annum. However without justification, Tribunal assessed her monthly income at only Rs.6,000/-. Further, medical records as well as deposition of PW.2 would indicate that claimant had sustained amputation of right leg below knee assessed by PW.2 to have caused 70% disability. However, Tribunal assessed functional disability at only 60% which was on lower side.

8. Relying on decision of Hon'ble Supreme Court in case of **S. Ettiappan v. D. Kumar and Anr.**, reported in **2025 SCC OnLine SC 3690**, it was submitted that in case of amputation of leg functional disability at 100% was considered and sought for adoption of same.

9. It was further submitted that Tribunal erred in not adding future prospects to monthly income. Even compensation

of only Rs.1,00,000/- towards pain and suffering; Rs.20,000/- towards diet and other incidental expenses; Rs.48,100/- towards medical expenses; Rs.50,000/- towards loss amenities and for artificial limb and Rs.50,000/- towards future attendant charges were on lower side and sought enhancement.

10. In MFA no.6943/2017, Sri A.N. Krishna Swamy, learned counsel for appellant - insurer submitted that appeal was filed mainly challenging finding of Tribunal on liability. Alleging that merely on ground that driver held driving licence to drive Tractor only and would not justify fastening of liability on insurer as accident in question was caused by a Tractor attached with Trailer i.e. Tractor Trailer unit, which would be a goods vehicle. It was further submitted that age of claimant in prosecution records was 48 years. Therefore, Tribunal was not justified in assessing her age at 40 years and applying higher multiplier. It was further submitted that award of interest at 7.5% was also excessive and seeks reduction.

11. In reply, learned counsel for claimant would submits that there was no substance in insurer's appeal but fairly conceded for reduction of rate of interest to 6%.

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

13. From above since both insurer as well as claimant are in appeals, points that would arise for consideration are:

1. *Whether Tribunal was justified in holding insurer liable to pay compensation?*

2. *Whether assessment of compensation by Tribunal calls for modification?*

Point no.1:

14. To establish actionable negligence against insurer, claimant relied on prosecution records, namely complaint, FIR, spot mahazar, wound certificate, motor vehicle inspector's report and charge sheet marked as Exs.P1 to P6. Respondents have led evidence and got marked driving licence extract as Ex.R1 and insurance policy as Ex.R2. While passing impugned award, Tribunal referred to same and observed that Ex.R1 would indicate that driver had driving licence to drive Tractor. Though accident had occurred while Tractor was attached with Trailer, as per prosecution records, claimant sustained injuries due to collision by Tractor engine and not with Trailer. Under

above circumstances, challenge of liability on ground of driving licence would not be substantiated. That apart, Hon'ble Supreme Court in **Nagashetty v. United India Insurance Company Limited and Ors.**, reported in **(2001) 8 SCC 56**, held merely on ground that a Trailer is attached to Tractor, when driver of Tractor holds driving license to drive Tractor, insurer cannot avoid liability. Same would also apply to instant case. Point no.1 is therefore answered in ***affirmative***.

Point no.2:

15. Though claimant stated that she was 40 years old, agriculturist earning Rs.2,00,000/- per annum, same was not substantiated with any material. In absence, Tribunal assessed her income notionally at Rs.6,000 per month. But notional income for year 2015 being Rs.9,000, Tribunal was not justified in considering it at Rs.6,000/-.

16. Further, there is dispute about age of claimant. As per claim petition and medical records, her age was 40 years. But prosecution records would note it as 48 years. Tribunal considered her age as 40 years. Though insurer is contending perversity of finding, there is no specific document about age of

claimant. In absence, age could be determined by referring to material on record. Though there is conflict between prosecution records and medical records, age mentioned in medical records would fare better than prosecution records and Tribunal justified in considering same.

17. Further, Hon'ble Supreme Court in **Erudhaya Priya v. State Express Transport Corporation Ltd.**, reported in **2020 SCC OnLine SC 601**, has held that future prospects has to be added to monthly income even in personal injury claim. Since claimant is 40 years of age and self-employed, future prospects at 40% has to be added. Insofar as loss of earning capacity, there is no dispute about claimant having sustained amputation of right leg below knee. Ex.P10 - photographs would indicate that claimant was using artificial limb same would mitigate loss of earning to some certain extent. There is no material to establish that claimant was totally disabled from doing agriculture or any other alternate avocation to earn income as would supplement her regular income. Though Ex.P14 - disability certificate issued by PW.2 would assess physical disability at 70%, Tribunal assessed functional

disability at 60%. Assessment of functional disability or loss of earning capacity cannot be directly proportionate to physical disability. It would require moderation based on avocation and how disability sustained affects earning capacity. Under above circumstances, assessment of functional disability at 60% by Tribunal is held as justified. Consequently, compensation towards future loss of income would be (Rs.9,000/- + 40%) = Rs.12,600/- X 60% X 12 X 15 = **Rs.13,60,800/-**.

18. Considering fact that claimant has sustained amputation of right leg below knee, award of Rs.1,00,000/- towards pain and suffering would not be justified. Referring to decision of Hon'ble Supreme Court in case of **Raj Kumar v. Ajay Kumar and Ors.**, reported in **(2011) 1 SCC 343** it is found appropriate to enhance it to **Rs.1,50,000/-**. Considering inpatient treatment period of 40 days, award of **Rs.20,000/-** towards diet and other incidental expenses would appear just and proper, no enhancement. There is complete reimbursement of amount for which medical bills were produced. Hence, compensation of **Rs.48,100/-** towards medical expenses is sustained. Tribunal has awarded Rs.50,000/- towards loss of

amenities and artificial limb apart from an additional amount of Rs.50,000/- towards future attendant charges. There would be no basis for award of future attendant charges as this is not a case of total disablement. However, taking judicial notice of fact that artificial limb would require periodic maintenance and replacement and considering age of claimant at 40 years and requirement of replacement of artificial limb several times during her lifetime, it is found fit to modify award towards loss of amenities, artificial limb and future attendant charges to **Rs.2,00,000/-**. It is also seen that Tribunal has not awarded any compensation towards laid-up period. Taking 3 months as layoff, claimant would be entitled to **Rs.27,000/-** towards same. Thus, total re-assessed compensation would be **Rs.18,05,900/-**. Therefore, point no.2 is answered ***partly in affirmative***.

19. Consequently, following:

ORDER

(a) MFA no.6943/2017 filed by insurer is ***allowed in part*** only insofar as interest, which is reduced from 7.5% to **6%**.

(b) MFA no.9642/2017 filed by claimant is ***allowed in part***, judgment and award dated 25.04.2017 passed by Tribunal, in MVC no.377/2016 is ***modified***, enhancing total compensation to **Rs.18,05,900/-** as against Rs.9,16,100/- assessed by Tribunal.

(c) Same shall carry interest of 6% per annum from date of claim petition till its realization.

(d) Insurer is directed to deposit re-assessed compensation with interest before Tribunal within six weeks.

(e) On deposit, 25% of re-assessed compensation is ordered to released in favour of claimant, with liberty to claimant to seek release of remaining compensation by showing just cause.

Sd/-
(RAVI V HOSMANI)
JUDGE

GRD
List No.: 1 Sl No.: 10