



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**  
**DATED THIS THE 24<sup>TH</sup> DAY OF FEBRUARY, 2026**  
**PRESENT**  
**THE HON'BLE MR. JUSTICE S.G.PANDIT**  
**AND**  
**THE HON'BLE MR. JUSTICE K. V. ARAVIND**  
**M.F.A. NO. 8780/2023 (MV-I)**

**BETWEEN:**

1. SANTHOSH  
S/O PARAMESHWARASWAMY  
AGED ABOUT 35 YEARS,  
DRIVER OF THE CASE BEARING,  
NO. KA 01 MC 2861

2. PARAMESHWARASWAMY  
S/O CHANNABASAVIAH  
AGED ABOUT 73 YEARS,

BOTH ARE R/O SPANDANA  
2<sup>ND</sup> CROSS, PAMPANAGARA  
GOPAL, NEAR MIS CONVENT  
SHIVAMOGGA.  
OWNER OF THE CAR

...APPELLANTS

(BY SRI. B K MANJUNATH, ADV.)

**AND:**

MOHAMMED JUNAID RAHI @ NUNAID  
S/O LATE LIYAKATH ALI  
AGED ABOUT 32 YEARS,  
R/O I STAGE NEAR, QUBA MASJID  
DR. RML NAGARA, SHIVAMOGGA.

...RESPONDENT

(BY SRI. H.S. PRASHANTH, ADV.)





THIS APPEAL IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 15.11.2023 PASSED IN MVC NO.718/2020 ON THE FILE OF THE PRL. DISTRICT AND SESSIONS JUDGE, PRESIDING OFFICER, MACT, SHIVAMOGGA AND ETC.

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

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT  
AND  
HON'BLE MR. JUSTICE K. V. ARAVIND

### **ORAL JUDGMENT**

(PER: HON'BLE MR. JUSTICE K.V. ARAVIND)

This appeal is filed the respondents in MVC No.718/2020 against the judgment dated 15.11.2023 passed by the Principal District & Sessions Judge and Motor Accident Claims Tribunal, Shivamogga (for short, 'the Tribunal').

2. On 26.03.2018, the respondent-claimant, along with his friends, was proceeding near Chellur on Honnalli Road on a Honda Activa motorcycle bearing Reg.No.KA-14/EJ-4170. At that time, the appellant-respondent No.1, while driving a Maruthi Wagon-R car bearing Reg.No.KA-01/MC-2861 in a rash and negligent manner, dashed against the



petitioner's motorcycle, as a result of which he sustained grievous injuries to his head and other parts of the body. The petitioner was initially shifted to Nanjappa Hospital, Shivamogga, and thereafter to Metro Hospital, Shivamogga, for further treatment. It is averred that the claimant was earning Rs.35,000/- per month while working as a lift operator in Saudi Arabia, and that the accident occurred when he was on vacation in his native place.

2.1 Upon service of notice, the appellants appeared and filed their statement of objections denying the averments made in the claim petition. The appellants specifically denied the manner in which the accident is alleged to have occurred and also disputed the negligence attributed to the driver of the offending car. It is specifically contended that the accident occurred due to the sole negligence of the rider of the motorcycle, i.e., the claimant. It is stated that the rider of the motorcycle, while overtaking a KSRTC bus and two to three other vehicles, entered the extreme



right side of the road and dashed against the offending car. It is further submitted that the driver of the offending car had no further road width to move or avoid the accident. Hence, it is contended that the claimant himself contributed 100% negligence for the accident.

2.2 Before the Tribunal, the mother of the claimant was examined as PW1, and two doctors were examined as PW2 and PW3. The claimant also got marked documents at Exs.P1 to P20. On behalf of the respondents, respondent No.1 was examined as RW1 and documents were marked at Exs.R1 to R5.

2.3 The Tribunal, upon considering the evidence on record, held that the rider of the motorcycle, i.e., the claimant, contributed 25% negligence to the accident, while the appellants-respondents contributed 75%. The Tribunal, in the absence of evidence to establish the actual income, assessed the notional income at Rs.12,500/- per



month based on the chart prepared by the Karnataka State Legal Services Authority, Bengaluru.

2.4 The Tribunal, considering the evidence of the doctors and the medical evidence on record, wherein PW2 and PW3 stated that the disability was 60% and 85% respectively, assessed the functional disability at 85%. The Tribunal also awarded compensation under other conventional heads. In total, the Tribunal awarded compensation of Rs.30,50,000/-. Out of the said amount, 75% of the assessed compensation, i.e., Rs.22,87,500/-, was directed to be deposited or paid by the appellants herein.

3. Sri B.K. Manjunath, learned counsel appearing for the appellants, submits that the accident occurred due to the sole negligence of the rider of the motorcycle. The learned counsel relies on the sketch at Ex.P2(a) and photos at Exs. R1 to R3 and submits that the accident occurred when the claimant, while overtaking a KSRTC bus



and two other vehicles, entered the extreme right side of the road, leaving no road space for the driver of the offending car. In such circumstances, the accident is stated to have occurred. It is submitted that, since the rider of the motorcycle had positioned himself on the extreme right side of the road, 100% negligence is attributable to the claimant.

3.1 The learned counsel further submits that though a charge sheet was filed against the driver of the car, he has been acquitted in Criminal Case No. 731/2018 by judgment dated 23.04.2025 passed by the Additional Civil Judge and JMFC, Honnali. Further, the learned counsel submits that the percentage of disability assessed is on the higher side. It is contended that the assessment of disability at 85% is contrary to the evidence on record. The learned counsel further submits that the compensation awarded under other heads is excessive.



4. *Per contra*, Sri H.S. Prashanth, learned counsel appearing for the respondent, submits that the Tribunal, based on the evidence on record, has rightly held that 75% negligence is attributable to the driver of the car and 25% to the rider of the motorcycle. It is submitted that the charge sheet was filed against the driver of the car and that his subsequent acquittal was due to the witnesses turning hostile and not on merits.

4.1 It is further submitted that PW2 and PW3 are a Neurosurgeon and a Psychiatrist respectively. According to the learned counsel, the assessment of 85% functional disability is based on the opinion and assessment made by the said doctors. It is also submitted that the compensation awarded under various heads is just and reasonable. Accordingly, he submits that the appeal be dismissed.



5. We have considered the submissions of the learned counsel appearing for the parties and perused the entire appeal papers, including the records of the Tribunal.

6. The occurrence of the accident on 26.03.2018 involving the motorcycle bearing Reg.No.KA-14-EJ-4170 and the Maruthi Wagon-R car bearing Reg.No.KA-01-MC-2861 is not in dispute. The injuries sustained by the claimant in the said accident are also not in dispute.

7. The primary contention urged by the appellants relates to the quantum of negligence attributed to the driver of the car. It is specifically contended that the rider of the motorcycle entered the extreme right side of the road without leaving sufficient space for the driver of the car to pass, as a result of which the accident occurred. It is submitted that, but for the claimant entering the extreme right side of the road, the accident would not have occurred. Hence, it is contended that 100%



negligence is to be attributed to the rider of the motorcycle.

7.1 We have examined the spot sketch produced at Ex.P2(a). Ex.P2(a) indicates that the width of the road is 22 feet and that the accident occurred in the middle of the road. Apart from this, after the tar road, a mud road to the extent of about 3 feet is available. The photographs are also produced on record as per Exs.R1 to R3.

7.2 A combined examination of Ex.P2(a) and Exs. R1 to R3 indicates that the accident occurred on the extreme left side of the road. However, we notice that after the tar road, there was sufficient space for the vehicle to move onto the mud road to avoid the accident. It is not a case where, if the vehicle had moved onto the mud road, the same would have endangered the driver of the car. From Exs.R1 to R3, it appears that the car could have moved onto the mud portion of the road without endangering the driver of the car and thereby avoided the accident.



7.3 Having regard to the above evidence, the finding of the Tribunal attributing 75% negligence to the driver of the car and 25% to the rider of the motorcycle cannot be found fault with.

7.4 Learned counsel for the appellants relied on the judgment of the High Court of Allahabad in ***Santosh Sharma and Others vs. General Manager (1987 ACJ 40)*** to contend that when the claimant is moving on the wrong side of the road resulting in an accident, the percentage of negligence is to be attributed to the deceased/claimant.

7.5 In the judgment *supra*, based on the evidence on record and the position of the road, a factual finding was recorded that the accident had occurred due to the negligence of the rider of the motorcycle. The percentage of negligence has to be assessed based on the evidence on record. There cannot be a straightjacket formula for such determination in all cases. It varies from case to case



depending upon various factors, including the geographical position of the road where the accident occurred.

7.6 The assessment of negligence by the Tribunal based on the evidence on record cannot be faulted. As observed hereinabove, we find no reason to disagree with the finding recorded by the Tribunal.

8. Insofar as the percentage of disability disputed by the appellants is concerned, the claimant, in support of his case, examined a Neurosurgeon as PW2 and a Psychiatrist as PW3. The evidence of PW2 clearly indicates that the claimant has suffered injuries affecting the central nervous system and, in view of the injuries sustained, the disability is assessed at 60%. Further, the Psychiatrist was examined as PW3, who deposed that the claimant has suffered psychological disability at 85%.

8.1 The Tribunal has assessed the total disability at 85%. In view of the psychological as well as neurological disabilities suffered by the claimant, it cannot be said that



the claimant can resume the work which he was performing prior to the accident. When the claimant has suffered injuries resulting in disability that deprives him of continuing his earlier work, the assessment of disability at 85% by the Tribunal is justified and is based on the evidence on record. We find no infirmity or error in the findings recorded by the Tribunal.

9. Insofar as the last contention that the income assessed by the Tribunal at Rs.12,500/- per month is without any basis is concerned, it is contended that unless the earning capacity of the claimant is proved, the notional income cannot be assessed. We are not in agreement with the submissions made by the learned counsel for the appellants.

9.1 Notional income is applied only when the claimant fails to prove the established income. In the absence of proof of income, the Tribunal has rightly applied the notional income for the purpose of assessment of



compensation. It is a settled position of law that notional income is considered when proof of the actual income of the claimant is not forthcoming. In that regard, the application of notional income by the Tribunal is justified.

10. For the above reasons, we do not find any infirmity in the order passed by the Tribunal. The order of the Tribunal, in all aspects, is based on the evidence on record and in accordance with the established principles of law. Accordingly, the appeal stands ***dismissed***.

The remaining amount shall be deposited within a period of six weeks from today.

**Sd/-**  
**(S.G.PANDIT)**  
**JUDGE**

**Sd/-**  
**(K. V. ARAVIND)**  
**JUDGE**