



HC-KAR

NC: 2026:KHC-D:4507
MFA No. 101106 of 2015

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 24TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V.HOSMANI

MISCELLANEOUS FIRST APPEAL NO.101106 OF 2015 (MV)

BETWEEN:

THE DIVISIONAL MANAGER,
NEW INDIA ASSURANCE CO. LTD.,
CLUB ROAD, BELAGAVI.
NOW R/BY ITS DULY CONSTITUTED ATTORNEY
REGIONAL OFFICE, HUBLI.

...APPELLANT

(BY SRI RAJASHEKHAR S. ARANI, ADVOCATE)

AND:

1. SHRI DUNDAPPA CHANBASAPPA SHAPURKAR,
AGE: 51 YEARS, OCC: TRACTOR
SALES MAN AND AGRICULTURE (NOW NIL),
R/O: SUTAGATTI, TQ: BAILHONGAL, DIST: BELAGAVI.
2. SHRI NAGARAJ FAKIRAPPA ANGADI,
AGE: MAJOR, OCC: AGRICULTURE,
R/O: LINGADALLI POST,
BELAWADI, TQ: BAILHONGAL, DIST: BELAGAVI.

...RESPONDENTS

(BY SRI RC PATIL, ADVOCATE AND
SRI AA MULWADIMATH, ADVOCATE FOR R1-ABSENT;
NOTICE TO R2 IS SERVED)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT,
PRAYING TO ALLOW THIS APPEAL AS PRAYED FOR BY SETTING ASIDE
THE IMPUGNED JUDGMENT AND AWARD DATED 03.03.2015 PASSED
BY THE FAST TRACK COURT-II AND ADDITIONAL MACT BELAGAVI IN
MVC NO.318/2014 WITH COST IN THE INTEREST OF JUSTICE AND
EQUITY.

THIS MFA COMING ON FOR DICTATION, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE RAVI V.HOSMANI



ORAL JUDGMENT

Challenging judgment and award dated 03.03.2015 passed by Fast Track Court-II and Additional MACT, Belagavi¹ in MVC no.318/2014, this appeal is filed.

2. Sri Rajashekhar S. Arani, learned counsel for appellant submitted, appeal was by insurer challenging award on its finding on liability as well as on quantum. It was submitted that as per claimant at 07.30 a.m., on 20.06.2013, while he was a pillion rider on motorcycle no.KA-24/Q-7008 belonging to respondent no.1, rider rode it in rash and negligent manner and caused accident. In accident, he sustained grievous injuries and despite treatment, he sustained loss of earning capacity. Claiming compensation, he filed petition under Section 166 of Motor Vehicles Act, 1988, against owner and insurer of motorcycle.

3. Despite service of notice, owner did not appear and was placed ex-parte. Insurer filed objections accepting issuance of insurance policy and its coverage as on date of accident, but

¹ For short, 'Tribunal'



denying manner of accident as well as liability to pay compensation.

4. Based on pleadings, Tribunal framed issues and recorded evidence. Claimant examined himself and Dr.AB Patil as PW1 and PW2 and got marked documents at Exs.P1 to P9. Respondents did not lead evidence.

5. On consideration, Tribunal held accident occurred due to rash and negligent riding of motorcycle by its rider, vehicle was insured with insurer and claimant was entitled for total compensation of Rs.5,15,000/- from 14.02.2014 till realization excluding period from 26.05.2014 to 26.02.2015 and Rs.15,000/- without interest. Aggrieved, present appeal was filed.

6. It was submitted that to substantiate actionable negligence against owner/insurer, claimant relied upon FIR, complaint, spot panchanama and Motor Vehicle Inspection Report marked at Exs.P1 to P4. In his pleadings claimant stated that on 20.06.2013 at 07.30 a.m., claimant was pillion rider on motorcycle and rider rode it in rash and negligent manner and



caused accident. However, Ex.P5-MLC Register Extract, in history of injuries column noted claimant had stated that injuries were sustained due to fall of motorbike on his right leg while starting at 07.30 a.m. on 20.06.2013 near his field. It was submitted that complaint was registered based on statement of claimant recorded at hospital the next day at 12.15 p.m., on 21.06.2013. Even in said complaint, reason for accident was stated to be rash and negligent riding of motorcycle by its rider. It was pointed out that complaint marked as Ex.P2 stated that rider did not sustain any external injuries would cause doubt about occurrence of accident and involvement of vehicle. It was submitted Ex.P4-Motor Vehicle Inspector's Report also only showed scratches to motorcycle. It was submitted Ex.P5 which was first document to record manner of occurrence of accident, there was no case of occurrence of accident due to negligence of anyone. Since, motorcycle is stated to have fallen on claimant's leg while starting it and sought for allowing of appeal. Therefore, Tribunal was not justified in fastening liability upon insurer.

7. On quantum it was submitted, medical treatment records would indicate claimant sustained fracture of shaft of



right tibia and proximal of right fibula. PW2 who had not treated claimant issued Ex.P7-disability certificate assessing permanent physical disability at 35% to limb. However, Tribunal considered excessive functional disability at 30% and awarded excessive compensation which called for reduction.

8. It was submitted as per claimant, he was working as Tractor Salesman. In absence of establishing that he had sustained reduction of income on account of disability, Tribunal was not justified in granting compensation towards future loss of income. It was further submitted even award of interest at 9% was excessive and sought for reduction.

9. There is no representation for respondents. Even on previous date there was no representation.

10. Heard learned counsel for appellant, perused impugned judgment, award and record.

11. From above and since insurer is in appeal, 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 was excessive and calls for reduction?

Point no.1:

12. At outset it is seen, there is no dispute about appellant being insurer of vehicle in question and its coverage as on date of accident. In order to establish actionable negligence, claimant relied upon police investigation records. Claimant's version about manner of occurrence of accident in Exs.P1 to P3 i.e, FIR, complaint and spot panchanama is, on date of accident, claimant was pillion rider and rider rode it in rash and negligent manner due to which he fell down and sustained injuries. But, Ex.P5-MLC Register Extract issued by KLE Hospital, Belagavi, would reveal claimant was conscious and accompanied by a relative at time of admission. In column regarding history of injuries, it is recorded that injuries were sustained due to fall of motorcycle on right leg of claimant while starting it near agricultural field. This would not indicate that it was not due to negligence. Therefore, though claimant may have succeeded in establishing injuries on account of use of motor vehicle, whether



same was due to actionable negligence would leave a gaping hole. Claimant has relied on Ex.P5, without any effort either to offer explanation for inconsistency between Exs.P1 to P3 and P5.

13. In absence, since Ex.P5-MLC Register Extract would be first record of manner of occurrence of accident, as complaint was registered later, Ex.P5 would prevail. Consequently, it has to be held that claimant failed to establish actionable negligence against owner/insurer. Point no.1 is therefore, answered in negative.

14. In view of finding on point no.1, finding on point no.2 would not be necessary. However, even if quantum is examined it is seen, claimant sustained fracture of shaft of right tibia and proximal of right fibula. Though fractures are stated to be mal-united, X-ray at Ex.P8 would not disclose mal-union. Moreover, disability assessed by PW2 is for particular limb. Ex.P7-disability certificate does not disclose how it affected earning capacity especially when claimant was stated to be a Tractor Salesman. There is no assertion whether claimant lost employment on account of accidental injuries.



15. In view of above, even on quantum, compensation awarded towards future loss of income would be excessive and unsustainable. Further, award of Rs.50,000/- towards pain and suffering and Rs.1,00,000/- towards loss of amenities would gives an impression that Tribunal favoured claimant with excessive and unjustified compensation.

16. At best, Tribunal could have awarded **Rs.30,000/-** towards pain and suffering and nominal amount of **Rs.20,000/-** towards loss of amenities in addition to **Rs.10,800/-** towards medical expenses, **Rs.24,000/-** towards incidental expenses as well as **Rs.26,000/-** towards loss of income during laid-up period. Even interest at 9% per annum would be excessive and without any specific reason. Therefore, maximum assessment would be **Rs.1,10,800/-**. Hence, point no.2 is answered in affirmative.

17. In view of above, following:

ORDER

(i) Appeal is **allowed**. Judgment and award dated 03.03.2015 passed by Fast



Track Court-II and Additional MACT, Belagavi
in MVC no.318/2014, is modified.

(ii) Consequently, claim petition against
insurer is hereby ***dismissed***.

(iii) Compensation is reduced from
Rs.5,30,000/- to ***Rs.1,10,800/-*** and liberty
is reserved to claimant to recover it from
owner.

(iv) Amount in deposit, if any, is ordered
to be refunded to appellant-Insurer.

Sd/-
(RAVI V.HOSMANI)
JUDGE