



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 20TH DAY OF AUGUST, 2025

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S. KINAGI

MISCELLANEOUS FIRST APPEAL NO. 100092 OF 2019 (MV-I)

C/W

MISCELLANEOUS FIRST APPEAL NO. 102873 OF 2019

IN MFA NO. 100092 OF 2019

BETWEEN:

1. T. MABUSUBANI S/O. T. FAKURSAB
AGE: 30 YEARS, OCC: LORRY DRIVER,
R/O. NEAR APMC, BALLARI-583101.

...APPELLANT

(BY SRI. MANJUNATH JADAI, ADV)

AND:

1. PHAKIR SAB T S/O. IMAMSAB
AGE: MAJOR, OCC: OWNER OF LORRY
BEARING VEHICLE NO. KA-35/2096,
R/O. SANDUR, BALLARI-583101.
2. THE BRANCH MANAGER
M/S. RELIANCE GENERAL INSURANCE
CO. LTD., BALLARI - 583101.

...RESPONDENTS

(BY SRI. S.S. GUNDI, ADV FOR R2
NOTICE TO R1 IS DISPENSED WITH)

THIS MFA IS FILED U/SEC.30(1) OF THE EMPLOYEES
COMPENSATION ACT, 1923, AGAINST THE JUDGMENT AND AWARD
DATED:18.08.2018, PASSED IN ECA.NO.39/2017, ON THE FILE OF THE
SENIOR CIVIL JUDGE-CUM-MOTOR ACCIDENT CLAIM TRIBUNAL NO.VI,
KUDLIGI SITTING AT SANDUR, PARTLY ALLOWING THE CLAIM
PETITION FOR EMPLOYEES COMPENSATION ACT FILED U/SEC.10.

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IN MFA NO. 102873 OF 2019

BETWEEN:

1. THE BRANCH MANAGER
RELIANCE GENERAL INSURANCE
COMPANY LTD., BALLARI-583101
NOW REPRESENTED BY IT'S MANAGER
AND AUTHORISED SIGNATORY
RELIANCE GENERAL INSURANCE CO. LTD.,

...APPELLANT

(BY SRI. SURESH S GUNDI, ADV)

AND:

1. T. MABUSUBANI S/O T. FAKRUSAB
AGE. 30 YEARS, EX. DRIVER IN LORRY
BEARING REGN NO.KA35/2096
R/O. NEAR APMC, BALLARI-583102.
2. PHAKIR SANB T. S/O IMAMSAB
AGE. MAJOR, OCC. OWNER OF THE
LORRY BEARING NO.KA35/2096
R/O. SANDUR-583119, DIST. BALLARI.

...RESPONDENTS

(BY SRI. MANJUNATH JADAI, ADV FOR R1,
NOTICE TO R2 IS HELD SUFFICIENT)

THIS MFA IS FILED U/S.30 OF THE EMPLOYEES COMPENSATION ACT, AGAINST THE JUDGMENT AND AWARD DATED:18.08.2018, PASSED IN ECA.NO.39/2017, ON THE FILE OF THE SENIOR CIVIL JUDGE CUM MOTOR ACCIDENT CLAIMS TRIBUNAL NO.VI, KUDLIGI SITTING AT SANDUR, AWARDDING COMPENSATION OF Rs.38,122/- WITH INTEREST AT 12% P.A. FROM THE DATE OF PETITION TILL THE DATE OF REALIZATION.

THESE APPEALS, COMING ON FOR FINAL HEARING, THIS DAY, THE JUDGMENT WAS DELIVERED THEREIN UNDER:

CORAM: THE HON'BLE MR. JUSTICE ASHOK S. KINAGI



ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE ASHOK S. KINAGI)

MFA No.100092/2019 is filed by the claimant and MFA No.102873/2019 is filed by the Insurance Company, challenging the judgment and award dated 18.08.2018 passed in ECA No.39/2017 by the learned Senior Civil Judge-cum-MACT-VI, Kudligi, Sitting at Sandur ('the trial court' for short).

2. Brief facts, leading rise to the filing of these appeals are as follows:

2.1 On 19.12.2011, the petitioner, being on duty as the driver of the lorry bearing Reg.No.KA-35-2096, drove the lorry slowly, and cautiously as per the directions of his employer i.e., respondent No.1, before the trial court. At about 09:30 p.m., the petitioner lost control of the lorry, and dashed against the front going motorcycle, as a result of which, he fell into a ditch and sustained grievous injuries all over his body. The accident occurred in the course of employment under the owner. He was admitted to the



Government Hospital, in Hosapete, and also received treatment from the private doctors. He has spent a huge amount towards medical, and other expenses. The petitioner was aged 28 years old, was hale and healthy before the accident, and used to Rs.8,000/- per month before the accident. Now, he is not in a position to drive any vehicle or to do any nature of work. Hence, he has filed a claim petition under Section 10 of the Employee's Compensation Act, 1923 ('the Act' for short), seeking compensation.

3. The Owner of the lorry, despite service of notice, remained unrepresented, and was placed *ex-parte*.

4. The Insurance Company has filed a statement of objections denying the averments made in the claim petition and it is contended that, the policy was not in force as of the date of the accident, as the cheque issued towards the premium amount was dishonoured, and the same was intimated to the owner in accordance with law. It is also contended that, there is no employer-employee relationship



between the petitioner and the owner. Hence, prays to dismiss the claim petition against the Insurance Company.

5. The Trial Court, based on the pleadings of the parties, framed the relevant issues.

6. The petitioner, to substantiate his case, examined himself as PW-1, examined the Doctor as PW-2, and marked eight documents as Exs.P1 to P8. In rebuttal, the Insurance Company has not examined any witnesses on its behalf, however one document was marked as Ex.R1 with consent.

7. The Commissioner allowed the claim petition in part vide judgment dated 18.08.2018 and awarded a compensation of Rs.38,122/- along with simple interest at the rate of 12% p.a. from 19.12.2011 i.e., after the expiry of one month from the date of the incident till realisation of the entire compensation amount and directed the Insurance Company to deposit the same within sixty days from the date of the impugned judgment.



8. The Insurance Company, aggrieved by the impugned judgment and award, preferred an appeal in MFA No.102873/2019; the petitioner has also filed an appeal in MFA No.100092/2019 seeking an enhancement of the compensation amount.

9. Heard the learned counsel for the Insurance Company, and the petitioner.

10. Learned counsel for the Insurance Company submits that, the petitioner himself has dashed to the motorcycle. Hence, the rider of the motorcycle has suffered simple injuries, and the petitioner, being a lorry driver, has not suffered any grievous injuries. He also submits that, the disability assessed by the trial court is on the higher side, and therefore, on there grounds, he prays to allow the appeal filed by the Insurance Company and to dismiss the appeal filed by the petitioner.

11. *Per contra*, the learned counsel for the petitioner submits that, the petitioner after hitting the two-wheeler,



has lost the control over the lorry, due to which, the lorry fell into the ditch, and he sustained a grievous injuries all over the body, and the counsel submits that, as of the date of accident, the petitioner was driver of the lorry bearing Reg.No.KA-35-2096, and the said lorry was owned by Sri. Phakir Sab.T, i.e., respondent No.1 before the trial court. Though, a notice was issued, he remained unrepresented and was placed exparte. The counsel submits that, there is no denial regarding relationship between the employer, and the employee by the owner of the lorry. He also submits that, the accident occurred during the course of employment. He also submits that, the Commissioner has assessed the income of the petitioner as Rs.6,000/-per month, which is on the lower side. The Commissioner should have taken the income at Rs.8,000/- per month. He also submits that, the petitioner has examined the Doctor as PW-2, who has opined that the petitioner has suffered permanent partial disability of 35% to the whole body, whereas the trial court has assessed the disability at 5%,



which is on the lower side. Hence, on these grounds, he prays to allow the appeal filed by the petitioner, and dismiss the appeal filed by the Insurance Company.

12. Perused the records, and considered the submissions of learned counsel for the parties. The appeals are admitted to consider the following substantial questions of law:

- i. Whether the Commissioner is justified in coming to a conclusion that the Insurance Company is liable to pay the compensation?*
- ii. Whether the petitioner proves that, the Commissioner committed an error in assessing 5% disability as against 35% disability certificate issued by the Doctor i.e., PW-2?*

Reg. substantial question of law No.1:

13. There is no dispute that, on 19.12.2011, the petitioner drove a lorry bearing Reg.No.KA-35-2096, which dashed to the motorcycle, as a result of which the lorry fell



into the ditch, and the petitioner sustained grievous injuries. A criminal case was registered in Crime No.124/2011 against the petitioner for the offences punishable under Sections 279 and 337 of IPC read with Section 183 of the Motor Vehicles Act, 1988 in connection with the said accident. Although, a notice was issued to the owner of the lorry, he remained unrepresented and was placed *ex-parte*. The owner of the lorry has not denied the relationship as employer, and employee between the petitioner and the owner of the lorry. The trial court, considering the relationship between the petitioner and the owner of the lorry as an employer and employee, has rightly held that, there exists a relationship between the petitioner and the owner of the lorry as an employer and employee and the accident occurred due to the lorry fell into the ditch and as a result, the petitioner sustained grievous injuries all over the body. The trial court was justified in recording its finding that the accident occurred during the course of employment under the owner of the lorry. Learned counsel for the



Insurance Company submits that there is no relationship as employer and employee between the petitioner and the owner of the lorry. The Insurance Company has filed a statement of objections, but has not chosen to enter the witness box to rebut the evidence of PW-1. From perusal of the charge sheet, it discloses that, as of the date of the accident, the petitioner was driving the lorry owned and possessed by Sri. Phakir Sab.T. Thus, the trial court was justified in answering issue No.1 in the affirmative. I do not find any reason to interfere with the findings recorded by the Commissioner on issue No.1. In view of the above discussion, I answer the substantial question of law No.1 in the affirmative.

Reg. substantial question of law No.2:

14. It is the case of the petitioner that the petitioner was aged 28 years old as of the date of the accident, and he used to earn Rs.8,000/- per month before the occurrence of the accident, and he was contributing his income for the maintenance of his family, and to prove that he has suffered



permanent disability, he has examined the Doctor as PW-2, who examined the petitioner physically and radiologically and opined that the petitioner has suffered partial permanent disability of 35% to the whole body, wherein the Commissioner has assessed the disability at 5%, which is on the lower side. The petitioner has also produced the disability certificate marked as Ex.P6. Considering the evidence of PW-2, and disability certificate, this Court re-assesses the disability at 11% i.e., $1/3^{\text{rd}}$ of the disability assessed by PW-2 as admittedly, PW-2 is not a treated Doctor. The petitioner has not produced any proof of income. In the absence of income proof, the Commissioner should have assessed the income at Rs.8,000/-, whereas the Commissioner has assessed the income at Rs.6,000/- per month, which is on the lower side. This Court re-assesses the income as $\text{Rs.8,000/-} \times 60\% = \text{Rs.4,800/-}$. The relevant factor applicable is Rs.211.79' i.e., $\text{Rs.4,800/-} \times 211.79 \times 11\% = \text{Rs.1,11,825/-}$ as against Rs.38,122/-. Thus, the compensation awarded by the Commissioner is on



the lower side. The petitioner has made out sufficient grounds for an enhancement of the compensation. In view of the above discussion, I answer substantial question of law No.2 in the affirmative.

15. Accordingly, I proceed to pass the following order:

ORDER

- i. MFA No.102873/2019 is ***dismissed***;
- ii. MFA No.100092/2019 is ***allowed-in-part***;
- iii. The judgment and award passed in ECA No.39/2017 by the trial court is hereby modified;
- iv. The petitioner is entitled for total compensation of Rs.1,11,825/- along with interest at the rate of 12% after one month from the date of the accident till the realisation of the entire compensation amount;
- v. The Insurance Company is directed to deposit the enhanced compensation amount within sixty days from the date of this judgment, failing which the petitioner is entitled to recover the same as



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arrears of land revenue as per Section 31 of the Act;

- vi. The amount in deposit and records be transmitted to the trial court forthwith.

Sd/-
(ASHOK S. KINAGI)
JUDGE

PA
CT: BSB
List No.: 1 Sl No.: 17