



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD
DATED THIS THE 25TH DAY OF MARCH, 2026
BEFORE

THE HON'BLE MR. JUSTICE RAVI V.HOSMANI

MISCELLANEOUS FIRST APPEAL NO.23613 OF 2012 (MV-I)

BETWEEN:

LOKESH S/O LATE GANGAPPA,
AGE: 17 YEARS, SINCE MINOR REP/BY NATURAL
MOTHER AND GUARDIAN
SMT. GANGAMMA W/O LATE GANGAPPA,
AGE: 41 YEARS, OCC: COOLIE,
R/O: MOTALAKUNTA VILLAGE,
TQ: SANDUR, DIST: BELLARY.

...APPELLANT

(BY SMT.RESHMA MADIWALAR, ADVOCATE FOR
SRI T HANUMAREDDY, ADVOCATE)

AND:

1. KUJMARSWAMY S/O S. OBANNA,
AGE: MAJOR,
OCC: DRIVER OF PICKUP BOLERO CAMPER
BEARING NO.KA-35/A-6767,
R/O: MELINAKANIVE VILLAGE,
TQ: MOLAKALMURU, DIST: CHITRADURGA.
2. HUSSAIN BEE W/O HAYATH SAB
AGE: MAJOR,
OCC: OWNER OF PICKUP BOLERO CAMPER
BEARING NO.KA-35/A-6767,
R/O: MOTHALAKUNTA VILLAGE,
TQ: SANDUR, DIST: BELLARY.
3. THE MANAGER,
IFFICO-TOKIO GENERAL
INSURANCE COMPANY LTD., BELLARY.

...RESPONDENTS

(BY SMT.ANUSHA SANGHAMI, ADVOCATE FOR
SRI SK KAYAKAMATH, ADVOCATE FOR R3 (VC);
NOTICE TO R1 & R2- SERVED)



THIS MFA IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT, PRAYING TO CALL FOR RECORD IN MVC NO.291/2011 ON THE FILE OF THE M.A.C.T-XII AT BELLARY DATED 25.08.2011 AND ALLOW THE APPEAL AND AWARD THE COMPENSATION OF RS.2,38,150/- EXCEPT THE COMPENSATION AWARDED BY THE TRIBUNAL AND ETC.

THIS MFA COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:
CORAM: THE HON'BLE MR. JUSTICE RAVI V.HOSMANI

ORAL JUDGMENT

Challenging judgment and award dated 25.08.2011 passed by Motor Accident Claims Tribunal-XII, Bellary (**'Tribunal'** for short) in MVC no.291/2011, this appeal is filed.

2. Smt.Reshma Madivalar, learned counsel appearing for Shri Hanumareddy, advocate for appellant, submitted appeal was by claimant challenging dismissal of claim petition against insurer as well as for enhancement of compensation. It was submitted that on 13.12.2010, Lokesh son of Gangappa, aged 16 years, was travelling in Bolero vehicle bearing no.KA-35/A-6767 on Challakere-Ballari road, when driver drove it in rash and negligent manner and applied brakes suddenly. Due to same, vehicle turned turtle. In accident, claimant Lokesh sustained grievous injuries and despite treatment at VIMS Hospital, Ballari,



he did not recover fully and sustained permanent physical disability and consequent loss of earning capacity. Claiming compensation, he filed application under Section 166 of Motor Vehicles Act, 1988 ('MV Act' for short) against driver, owner and insurer of Bolero vehicle.

3. Despite notice, driver did not appear and was placed *ex-parte*. Owner and insurer opposed claim petition on all counts. Based on pleadings, Tribunal framed issues and recorded evidence. Mother of claimant examined herself and Dr.Shashidhar Reddy, as PWs1 and 2 and got marked Ex.P1 to P14. Insurer examined its official as RW1 and got marked copy of insurance policy as Ex.R1.

4. On consideration, Tribunal held accident occurred due to rash and negligent driving of Bolero vehicle by its driver and claimant was entitled for compensation of Rs.61,850/-. However on ground that driver of Bolero was holding driving licence to drive a Light Motor Vehicle, whereas vehicle in question was a goods vehicle, it absolved liability of insurer. Aggrieved, present appeal was filed.



5. It was submitted, as per decision of Hon'ble Supreme Court in case of ***Mukund Dewangan v. Oriental Insurance Company Limited***¹ ('Mukund Dewangan'), dismissal of claim petition against insurer would not be justified. Insofar as quantum of compensation, it was submitted claimant aged 16 years was claimed to be working as coolie and earning income. He sustained fracture of neck of right femur assessed by PW2 to have resulted in 20% disability to whole body by issuing Ex.P10-disability certificate. Despite same, Tribunal awarded a meagre sum of Rs.30,000/- towards 'pain and suffering', Rs.5,000/- towards 'medical expenses', Rs.5,100/- towards 'attendance and other incidental expenses', Rs.3,750/- towards 'loss of income during laid up period' and Rs.18,000/- towards loss of amenities by considering only 8% as loss of earning capacity which was grossly inadequate. Tribunal erred in not granting any compensation towards 'future loss of income' and sought for enhancement of compensation.

6. On other hand, Smt.Anusha Sanghami learned counsel appearing for Sri S.K.Kayakamath, advocate for

¹ AIR 2017 SC 3668



respondent-insurer opposed appeal. It was submitted, though question of violation of policy condition insofar as valid and effective driving licence would stand covered by decision of Hon'ble Supreme Court in case of **Mukund Dewangan**, it was submitted, admittedly claimant was travelling as passenger in a goods vehicle which would be violation of terms and conditions of policy and therefore merely on basis of decision in **Mukund Dewangan** insurer could not be held liable. Therefore award passed by Tribunal dismissing claim petition against insurer was justified.

7. On quantum it was submitted that claimant was awarded compensation under various heads as entitled and there was no scope for enhancement.

8. Heard learned counsel, perused impugned judgment, award and record.

9. From above, following points would arise for consideration.

- i. Whether Tribunal was justified in dismissing claim petition against insurer? and



- ii. Whether claimant is entitled for enhancement of compensation?

10. **Point no.1** : Tribunal dismissed claim petition against insurer primarily on ground that driver of insured vehicle was holding driving license to drive a Light Motor Vehicle, whereas vehicle in question was a goods carrying commercial vehicle requiring transport endorsement. However, in view of decision of Hon'ble Supreme Court in case of ***Mukund Dewangan***, reason for dismissal of claim petition would not sustain.

11. Apart from above, Tribunal has also taken note of contention of insurer that policy did not cover risk of employees or passengers. It also observed that no goods were found on vehicle and therefore contention that claimant was travelling as coolie for unloading was without material. Insofar as said contention, though same may sustain insofar as insured, claimant being a third party, in view of decision of Full Bench of this Court in case of ***New India Assurance Co. Limited v. Yellawwa and Anr.***², even in case of violation of terms and

² 2020 (2) KCCR 1405



conditions of policy, insurer cannot escape from liability insofar as third parties and would be under obligation to pay compensation to them and thereafter recover it from insured. In view of above, point no.1 is answered in negative.

12. **Point no.2** : Though claimant stated that he was working as a coolie and earning Rs.10,000/- per month, same is not substantiated. There is no dispute that claimant was aged 16 years as on date of accident. In absence of any proof of occupation and earning capacity, compensation has to be assessed by recourse to structured compensation method in case of minors/non-earning members, evolved by Hon'ble Supreme Court in case of ***Master Mallikarjun v. Divisional Manager, National Insurance Company Limited and Anr***³. Ex.P10- disability certificate issued by PW2-doctor would assess disability sustained on account of fracture of right femur at 20% to whole body. Though learned counsel for insurer would be justified in pointing out admission by PW2 that assessment to whole body would reduce, considering nature of fracture, namely neck of right femur, it would be safe to conclude that disability in any

³ AIR 2014 SC 736



case would not be below 10%. In such case, claimant would be entitled for compensation under Second Slab, i.e., sum of **Rs.3,00,000/-**. Apart from above, taking notional income of mother of claimant for year of accident that is 2010 at Rs.5,500/- and duration of treatment and recuperation at 3 months, claimant is awarded **Rs.16,500/-** towards loss of income during laid up period. There is no material to establish expenditure during period of treatment of 17 days. Taking notional amount of Rs.500/- as expenses per day and noting medical bills were for only Rs.3025/- were produced, it is found appropriate to award **Rs.10,000/-** towards 'medical and incidental' expenses.

13. Thus claimant is held entitled for a total compensation of **Rs.3,26,500/-**. Point no.2 is answered partly in affirmative as above. Consequently following:

ORDER

- i. Appeal is allowed in part.
- ii. Dismissal of claim petition against insurer is set aside.



- iii. Claimant is held entitled for reassessed compensation of Rs.3,26,500/- as against Rs.61,850/- awarded by Tribunal and same shall carry interest at 6% per annum from date of petition till deposit excluding 208 days being delay in filing appeal as per order dated 08.07.2014.
- iv. Insurer is held liable to pay same to claimant in first instance and thereafter would be at liberty to recover it from insured.
- v. Insurer is directed to deposit compensation within a period of six (6) weeks from date of receipt of certified copy of this judgment.
- vi. On deposit, Tribunal is directed to release amount in favour of claimant.

Sd/-
(RAVI V.HOSMANI)
JUDGE