

IN THE HIGH COURT OF KARNATAKA,

DHARWAD BENCH

DATED THIS THE 31ST DAY OF AUGUST 2017

BEFORE

THE HON'BLE MR.JUSTICE L. NARAYANA SWAMY

MISCELLANEOUS FIRST APPEAL Nos.22399/2011 c/w M F A

No.24911/2011 (MV)

M F A No.22399/2011:

BETWEEN:

The General Manager,
ICICI Lombard Gen. Ins. Co. Ltd.,
II floor, Bellad & Company,
Hubli,
Now represented by
Manager Legal,
Mayoor Complex,
Opp. Old Bus Stand,
Double Road, Bellary.

...APPELLANT

(BY SRI NAGARAJ C KOLLOORI - ADV.)

AND:

1. Sri Gavisiddayya,
S/o Karabasayya
Hiremath,
Aged 42 years,
Occ: Agriculture & Business,
R/o Hosabandi Harlapur,
Tq. Dist. Koppal.
2. Sri Ashokreddy,
S/o Krishna Reddy,

Aged 26 years,
 Occ: Business,
 R/o Halebandi Harlapur,
 Tq. Dist: Koppal.

3. Sri G Subbareddy,
 S/o G Krishnareddy,
 Aged 50 years,
 Occ: Business,
 R/o Halebandi Harlapur,
 Tq. Dist. Koppal.

...RESPONDENTS

(BY SRI. S S PATIL & H N GULAREDDY - ADV. FOR R1.)

THIS APPEAL IS FILED UNDER SECTION 173(1) OF M V ACT AGAINST THE JUDGMENT AND AWARD DATED 5.3.2011 PASSED IN MVC No.393/2009 ON THE FILE OF MEMBER, ADDITIONAL MACAT AND PRESIDING OFFICER, FAST TRACK COURT-II, KOPPAL, AWARDED COMPENSATION OF RS.1,17,700/- WITH INTEREST AT THE RATE OF 6% P.A. FROM THE DATE OF PETITION TILL ITS DEPOSIT.

MFA No.24911/2011:

BETWEEN:

Sri Gavisiddayya,
 S/o Karabasayya Hiremath,
 Aged 42 years,
 Occ: Agriculture,
 R/o Hosabandi Haralapur,
 Tq. & Dist: Koppal.

APPELLANT

(BY S S PATIL – ADVOCATE)

AND:

1. Ashokreddy,
S/o Krishnareddy,
Aged 26 years,
Occ: Driver of motor cycle
Bearing No.KA-37/L-5958,
R/o Halebandi Haralapur,
Tq. & Dist: ;Koppal.
2. G Subbareddy,
S/o G Krishnareddy,
Aged 50 years,
Occ: Owner of motor cycle,
Bearing No.KA-37/L-5958,
R/o Halebandi Haralapur,
Tq. & Dist: Koppal.
3. The General Manager,
ICICI Lombard General Insurance
Company Limited,
2nd Floor,
Bellad & Company,
Gokul Road,
Hubli, Dist. Dharwad.

RESPONDENTS**(BY SRI NAGARAJ C KOLLOORI – ADV. FOR R3)**

THIS APPEAL IS FILED UNDER SECTION 173(1) OF M V ACT AGAINST THE JUDGMENT AND AWARD DATED 5.3.2011 PASSED IN MVC No.393/2009 ON THE FILE OF MEMBER, ADDITIONAL MACAT AND PRESIDING OFFICER, FAST TRACK COURT-II, KOPPAL, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THESE APPEALS COMING ON FOR **ADMISSION** THIS DAY,
THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

Appeal (MFA No.22399/2011) is filed by the insurer on the ground that there is no motor vehicle accident to the claimant. In this regard, the appellant relied upon Ex.R3, endorsement from government hospital, Munirabad and the doctor who has been examined on behalf of the claimant has deposed that there was no entry made in so far as R.T.A. to Gavisiddayya on 29.6.2008. In the circumstances, it should have been held that there was no motor vehicle accident injury to the claimant. The claim made is a false claim and it should have been dismissed.

2. In this regard, I have gone through the impugned judgment. I find the claimant has examined himself as PW-1 and PW-2 the doctor. Ex.P1 FIR, Ex.P2 complaint and ex.P3 further statement of the complainant, which disclose that the injured has suffered motor vehicle accident. After registering

FIR investigation has taken place and charge sheet is filed as per Ex.P6. The motor vehicle accident report and spot mahazar produced as Ex.P8 and wound certificate produced as Ex.P10 show that the injured has suffered injury in the motor vehicle accident. The contention of the appellant that the endorsement Ex.R3 has not been taken into consideration, cannot be accepted. Not forwarding the M L C itself is not a ground. If it is so, it is a dereliction of duty which should go against the doctor. That cannot be taken as adverse against the claimant.

3. In the circumstances, appeal filed by the appellant - insurer is to be rejected and accordingly it is rejected.

4. The amount in deposit is directed to be transmitted to MACT.

5. So far as Appeal (MFA No.24911/2011) filed by the claimant is concerned, when the accident is proved, the next question would be, whether the compensation awarded is just and reasonable.

6. There is no compensation awarded under the head, pain and suffering. Hence for the injury suffered by the claimant, a compensation of Rs.40,000/- is awarded under the head pain and suffering. Towards loss of amenity, a sum of Rs.15,000/- is awarded and food and nourishment and traveling expenses, another Rs.5,000/- is awarded.

7. The claimant has suffered 15% disability. The income assessed by the tribunal taking into consideration 2008 accident, it has to be assessed at Rs.3,500/- as against Rs.3,000/- assessed by the Tribunal, which comes to Rs.94,500/- ($\text{Rs.}3500 \times 12 \times 15 \times 15\%$). Further the loss of income during laid up period comes to Rs.10,500/- which is not awarded by the Tribunal, is awarded.

8. The enhanced compensation comes to Rs.84,000/- as follows, which shall carry interest as is awarded by the Tribunal.

Pain and suffering	-	Rs. 40,000-00
Loss of amenity	-	Rs. 15,000-00
Food, nourishment and		

Traveling expenses	-	Rs. 5,000-00
Loss of future earning	-	Rs. 13,500-00
Loss of income during laid up Period	-	Rs. 10,500-00

		Rs. 84,000-00

The appeal filed by the claimant is accordingly allowed
in part.

**Sd/-
JUDGE**

akd*