



MFA No. 101577 of 2014
C/W MFA No. 100685 of 2014

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 26TH DAY OF AUGUST, 2022

BEFORE

THE HON'BLE MR JUSTICE H.P.SANDESH

MISCELLANEOUS FIRST APPEAL NO.101577/2014 (MV-I)

C/W

MISCELLANEOUS FIRST APPEAL NO.100685/2014

IN MFA No.101577/2014:

BETWEEN:

SRI. DASARA SANNA THIPPANNA,
S/O DASARA BHEEMAIAH,
AGE: 66 YEARS, OCC: COOLIE,
R/O. RAMPURA VILLAGE
TQ: MOLKALMUR, DIST: CHITRADURGA.

...APPLANT

(BY SRI HANUMANTHAREDDY SAHUKAR, ADVOCATE)

AND:

1. SRI N. NAGARAJ,
S/O SANNA NAGAPPA,
AGE: MAJOR, OCC: DRIVER OF THE
TATA ACE BEARING REG. NO. KA 16/B 1802
R/O JAMBULA MALKI, TQ: MOLAKALMURU,
DIST: CHITRADURGA.
2. GURURAJ,
S/O Y. SREENIVASA RAO
AGE: MAJOR, OWNER OF THE
TATA ACE BEARING REG.NO.KA 16/B 1802
C/O M/S SREE GURU AGENCIES,
B.B. ROAD, RAMPUR,

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by J MAMATHA
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MAMATHA





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TQ: MOLAKALMURU,
DIST: CHITRADURGA.

3. THE DIVISIONAL MANAGER
NATIONAL INSURANCE COMPANY LTD.,
PARVATHI NAGAR, BELLARY

...RESPONDENTS

(BY SRI Y. LAKSHMIKANT REDDY, ADVOCATE FOR R1 AND R2;
SRI G.N. RAICHUR, ADVOCATE FOR R3)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT 1988, AGAINST JUDGMENT AND AWARD DATED 22.10.2012, PASSED IN MVC.NO.470/2012 ON THE FILE OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL-IX, BELLARY, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

IN MFA No.100685/2014:

BETWEEN:

1. GURURAJ,
S/O. Y SREENIVASA RAO ,
AGED ABOUT 38 YEARS,
OWNER OF THE TATA ACE BEARING
REG NO. KA 16/B, 1802,
C/O.M/S. SREE GURU AGENCIES,
BB ROAD, RAMPURA – 577501.
MOLAKALMURU TALUK,
DIST: CHITRADURGA.
2. N. NAGARAJ,
S/O. SANNA NAGAPPA,
AGE: YEARS,
DRIVER OF THE TATA ACE
BEARING REG NO. KA 16/B 1802,
R/O. JAMBULA MALKI, MOLAKALMURU TALUK
DIST: CHITRADURGA

...APPELLANTS

(BY SRI Y. LAKSHMIKANT REDDY, ADVOCATE)





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AND:

1. DASARA SANNA THIPPANNA,
S/O. DASARA BHEEMAIAH,
AGE: 67 YEARS,
R/O. RAMPURA VILLAGE,
MOLAKALMUR TALUK,
CHITRADURGA DISTRICT.
2. THE DIVISIONAL MANAGER,
NATIONAL INSURANCE COMPANY LTD,
PARVATHI NAGAR, BELLARY.

...RESPONDENTS

(BY SRI. HANUMANTHAREDDY SAHUKAR, ADVOCATE FOR R1;
SRI. RAJSHEKAR S. ARANI, ADVOCATE FOR R2)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT 1988, AGAINST THE JUDGMENT AND AWARD DATED 22.10.2012 PASSED IN MVC No.470/2012 ON THE FILE OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL-IX, BELLARY AWARDED THE AMOUNT OF Rs.84,500/- WITH INTEREST AT THE RATE OF 6% P.A. FROM THE DATE OF PETITION TILL THE DATE OF REALIZATION.

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

J U D G M E N T

Both the appeals are filed challenging the judgment and award dated 22.10.2012 passed in MVC No.470/2012 on the file of the Motor Accident Claims Tribunal-IX, Bellary.

2. Heard the learned counsel for the appellant in MFA No.101577/2014 filed by the claimant questioning the quantum



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of compensation and the learned counsel for the appellants in MFA 100685/2014 filed by the owner questioning the liability.

3. The factual matrix of the case of the claimant before the Tribunal is that on 27.03.2012 at about 3.15 p.m., while the petitioner was crossing the road, the offending vehicle came in a rash and negligent manner and dashed against him, as a result, he sustained the fracture of femur and immediately he was shifted to the hospital and he was an inpatient for a period of 13 days. The respondents were represented through their counsel and filed the statement of objections and respondent No.1 driver adopted the statement filed by respondent No.2 and the Insurance Company disputed the very claim. The claimant in order to substantiate his claim, examined himself as P.W.1 and got marked the documents at Exs.P.1 to 20. The respondent examined one witness as R.W1 and got marked the document policy at Ex.R.1. The Tribunal after considering both oral and documentary evidence, allowed the claim petition granting compensation of Rs.84,500/- and exonerated the liability of the Insurance Company and hence both the appeals are filed by claimant as well as the insured.



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4. The main contention of the claimant before this Court is that the Tribunal committed an error in awarding meager compensation in all the heads. In all, the Tribunal granted an amount of Rs.84,500/- and not considered the disability since he has suffered the fracture of right femur and hence it requires interference of this Court.

5. The insured in his appeal contended that the Tribunal has committed an error in fastening the liability on the insured and failed to take note of the material on record and the vehicle involved in the accident is TATA ACE light motor vehicle and the unladen weight 805 kgs. which is less than 7500 kgs. and hence it requires interference of this Court.

6. The learned counsel for the respondent Insurance Company contended that in the absence of medical evidence, the Tribunal rightly assessed the compensation and the question of calculating future loss of income does not arise, unless the disability is proved.

7. Having heard the respective learned counsel and also on perusal of the material available on record, admittedly,



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the claimant was aged about 65 years as on the date of the accident. The material placed before the Court discloses that he had suffered the fracture of femur and wound certificate at Ex.P.3 clearly discloses that he has suffered the fracture of femur and he was an inpatient for a period of 13 days. Apart from that, x-ray films are also produced at Exs.P.16 to 19, which shows fracture of femur and case sheet is also got marked with consent as Ex.P.20 and the same substantiates that he has suffered the fracture of femur and he was an inpatient for a period of 13 days. No doubt, the claimant has not examined the doctor before the Court. However, the Court has to take note of the material on record, particularly the wound certificate and discharge summary as well as case sheet, which corroborates that he has suffered the fracture of femur. The case sheet and x-ray pertain to VIMS hospital where the claimant took the treatment and x-rays at Exs.P.16 to 19 discloses he has suffered the fracture of femur. Under the circumstances, when the right femur was fractured, the Tribunal ought to have considered the disability and hence it is appropriate to take the disability of 10% to the whole body.



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8. This is an accident of the year 2012 and the notional income would be Rs.6,500/- per month in the absence of any documentary evidence. Having considered the nature of injuries and he was an inpatient for a period of 13 days, the Tribunal has rightly awarded an amount of Rs.35,000/- under the head pain and suffering, since he has suffered one fracture. The medical expenses of Rs.4,500/- is awarded based on the documents, which have been produced and hence I do not find any ground to interfere with the same.

9. An amount of Rs.6,000/- was awarded towards attendant charges and nourishment, since he was an inpatient for a period of 13 days. The accident is of the year 2012 and hence it is appropriate to award an amount of Rs.10,000/- under attendant charges, food and nourishment and other incidental expenses as against Rs.6,000/-.

10. Towards loss of earning during treatment period, the Tribunal has awarded an amount of Rs.9,000/-. Having taken the income of the claimant at Rs.6,500/- per month and also considering the nature of fracture, it requires minimum



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three months for uniting of fracture and for rest and having considered the same, it comes to Rs.19,500/- (Rs.6,500/- x 3).

11. The compensation of Rs.30,000/- awarded towards loss of future earnings and amenities is just and reasonable since the claimant is aged about 65 years as on the date of the accident.

12. Now coming to the aspect of future loss of income is concerned, taking the income of Rs.6,500/- per month, it comes to Rs.54,600/- (Rs.6,500/- x 12 x 7 x 10%).

In all, the claimant is entitled for an amount of Rs.1,53,600/- as against Rs.84,500/-.

13. In respect of appeal filed by the insured is concerned, admittedly the vehicle involved in the accident is a transport vehicle and the same is a LMV and in view of the judgment of the Apex Court in the case of **MUKUND DEWANGAN v. ORIENTAL INSURANCE CO.LTD.**, reported in **(2017) 14 SCC 663**, the same is applicable to the case on hand. Hence, the liability has to be shifted on the insurer.



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14. In view of the discussions made above, I pass the following:

ORDER

- (i) MFA No.101577/2014 is allowed in part.
- (ii) The impugned judgment and award of the Tribunal dated 22.10.2012, passed in M.V.C.No.470/2012, is modified granting compensation of Rs.1,53,600/- as against Rs.84,500/- with interest at 6% per annum from the date of petition till deposit. In view of the order dated 03.01.2018 in this appeal, the appellant shall not be entitled for interest for the period of 508 days i.e. delay in filing the appeal.
- (iii) MFA No.100685/2014 is allowed filed by the owner and modifying the judgment and award fastening the liability on the insurer instead of insured.



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- (iv) The Insurance Company is directed to pay the compensation amount with interest within six weeks from today.
- (v) The amount in deposit made by the insured is ordered to be refunded to the insured, on proper identification.
- (vi) The Registry is directed to transmit the records to the concerned Tribunal, forthwith.

(Sd/-)
JUDGE

MD