



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 17TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

MISCELLANEOUS FIRST APPEAL NO.20056 OF 2012 (MV)

BETWEEN:

FAKKIRAGOUDA
S/O. BASANAGOUDA SANKANAGOUDAR,
AGE : 38 YRS, OCC : AGRICULTURE,
R/O. KOTUMACHAGI, TQ : GADAG.

...APPELLANT

(BY SRI S.M. KALWAD, ADVOCATE)

AND:

1. SHANKARAPPA S/O. KALLAPPA TALWAR,
AGE : 56 YEARS, OCC : OWNER OF THE VEHICLE,
R/O. KOTUMACHAGI, TQ : GADAG.
2. THE IFFCO-TOKIO GENRAL INSURANCE CO. LTD.,
REPRESENTED BY ITS DIVISIONAL MANAGER,
NO.127A, BHAVANI ARCADE,
3RD FLOOR, NEAR OLD BUS STAND,
OPP: BASAVA VANA,
NEW COTTON MARKET, HUBLI-29.

...RESPONDENTS

(BY SRI S.K. KAYAKAMATH, ADVOCATE FOR R2;
NOTICE TO R1 IS SERVED)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF THE MV ACT, 1988, PLEASED TO SET ASIDE THE JUDGMENT AND AWARD DATED 23-09-2011, PASSED IN MVC NO.89/2008, ON THE FILE OF THE PRESIDING OFFICER, FAST TRACK COURT AND MEMBER, ADDL. M.A.C.T., GADAG AND CONSEQUENTLY ENHANCE THE COMPENSATION SADDLING LIABILITY ON RESPONDENT NO.2 AS PRAYED FOR IN THE CLAIM PETITION, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS MISCELLANEOUS FIRST APPEAL, COMING ON FOR HEARING, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

Digitally signed
by
MALLIKARJUN
RUDRAYYA
KALMATH
Location: HIGH
COURT OF
KARNATAKA



ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR)

This appeal is filed by the claimant challenging the judgment and award dated 23.09.2011 passed in MVC No.89/2008 by the Fast Track Court and Additional MACT, Gadag, seeking enhancement of compensation.

2. Heard the arguments and perused the material placed before the Court.

3. The occurrence of accident, injuries sustained by the claimant, coverage of insurance are not in dispute in this case.

4. In the present case, from the medical evidence on record it is proved that the claimant had suffered the following injuries.

a) Single lacerated wound over the frontal region on left side and deep to scalp layers.

b) Pain and swelling around the left shoulder X-ray of left shoulder shows: Fracture new humers left.



5. The Tribunal has awarded compensation under various heads as under:

Sl. No.	Heads.	Amount in (Rs.)
1.	Towards travelling and other expenses.	2,000/-
2.	Towards nourishment.	1,000/-
3.	Towards loss of income during treatment period.	2,000/-
4.	Towards attendant charges.	2,000/-
5.	Towards medical expenses.	5,000/-
6.	Towards loss of earning capacity.	97,200/-
	Total:	1,09,200/-

6. Considering the nature of injuries sustained, compensation awarded by tribunal is lesser side. Therefore, the same is required to be enhanced by modifying the judgment and award.

7. Considering the injuries sustained, a compensation of Rs.25,000/- towards pain and suffering, Rs.20,000/- is awarded towards loss of amenities are awarded. The compensation awarded towards medical expenses of Rs.5,000/- is as per the actual bills and receipts produced; therefore, the same is kept intact.



Further, Rs.10,000/- towards incidental expenses like food, nourishment, traveling, attendant charges, etc., and Rs.8,000/- towards loss of income during laid up period for a period of 2 months, is awarded. Further, Rs.5,000/- is awarded towards future medical expenses.

8. The doctor has stated that the claimant had suffered 18% of physical disability to the whole body. Therefore, considering the evidence of the doctor, 18% functional disability to the whole body is taken into consideration as the claimant had suffered injuries like single lacerated wound over the frontal region on left side and deep to scalp layers and pain and swelling around the left shoulder.

9. The accident is caused in the year 2007. Therefore, notional income of Rs.4,000/- per month is taken into consideration, which is recognized by the Karnataka State Legal Service Authority. The claimant was aged 35 years at the time of accident. Therefore, appropriate applicable multiplier is 16. Hence, loss of



future income due to disability is hereby reassessed and quantified as **Rs.1,38,240/-** (Rs.4,000/- x 18/100 x 12 x 16).

10. Thus, the claimant is entitled for total compensation under various heads as under:

Sl. No.	Heads.	Amount in (Rs.)
1.	Towards injuries, pain and suffering.	25,000/-
2.	Towards medical expenses.	5,000/-
3.	Towards loss of future earning capacity.	1,38,240/-
4.	Towards loss of income during laid up period and medical treatment period.	8,000/-
5.	Towards loss of amenities.	20,000/-
6.	Towards future medical expenses.	5,000/-
7.	Towards incidental charges like attendant charges, food, nourishment, conveyance, etc.,.	10,000/-
	Total:	2,11,240/-

11. Therefore, the claimant is entitled for total compensation of Rs.2,11,240/- along with interest at the rate of 6% p.a. from the date of filing of the petition till realization, as against the compensation awarded by the



Tribunal. Respondent No.1/owner of the offending vehicle is directed to deposit the compensation within eight weeks from the date of receipt of a certified copy of this judgment.

12. In the result, I proceed to pass the following:

ORDER

- i. The appeal is allowed in part.
- ii. The judgment and award dated 23.09.2011 passed in MVC No.89/2008 by the Fast Tract Court and Additional MACT, Gadag, stands modified.
- iii. The claimant is entitled for total compensation of Rs.2,11,240/- along with interest at the rate of 6% p.a. from the date of petition till its realization, as against the compensation awarded by the Tribunal.
- iv. Respondent No.1/owner of the offending vehicle shall deposit the amount within a period of eight



weeks from the date of receipt of a copy of this
judgment.

- v. No order as to costs.
- vi. Draw award accordingly.

**Sd/-
(HANCHATE SANJEEVKUMAR)
JUDGE**

SRA
List No.: 2 SI No.: 0



IN THE HIGH COURT OF KARNATAKA AT DHARWAD

[FAKKIRAGOUDA S/O. BASANAGOUDA SANKANAGOUDAR VS.
SHANKARAPPA S/O. KALLAPPA TALWAR AND ANOTHER]

23.01.2025

(VIDEO CONFERENCING / PHYSICAL HEARING)

CORAM: HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR

ORAL ORDER ON 'BEING SPOKEN TO'

In the present case, the Tribunal while awarding compensation has fastened liability on respondent No.1-owner of the offending vehicle, by exonerating respondent No.2, on the reason that the vehicle is a Maxicab and was used for hire purpose and respondent No.1 has not produced permit to show that passengers are permitted to be carried in the vehicle. Therefore, on this reason, fastened liability on the respondent No.1-owner of the vehicle, to pay compensation.

2. Admittedly, the offending vehicle is a Maxicab as it is revealed from the MVI inspection report-Ex.P5. The appellant has filed I.A.No.2/2012 under Order 41 Rule 27 r/w Section 151 of CPC with affidavit of respondent No.1 and filed additional documentary evidence in which, endorsement of



renewal of permit issued is in Form-KMB 42 conditions of Contracts Carriages/Maxicab.

3. It is the argument made by the learned counsel for the appellant that respondent No.1 has not produced these documents before Tribunal. Hence, prays to consider the same in the appeal as additional evidence. There is no objection by the counsel for respondents to consider these documents. Therefore, the application on I.A.No.2/2012 is allowed and permitted to adduce additional evidence in the appeal and the same are considered while considering the appeal to appreciate the evidence regarding the nature of vehicle.

4. As per this evidence, it is proved that the offending vehicle is a Maxicab and it is a Light Motor Vehicle (transport vehicle). These documentary evidence prove that the vehicle had permit from the competent authority and is renewed from 03.01.2006 to 02.01.2011. The seating capacity of the passengers is 12+1 totally 13 in all. There is contract for carrying passengers. Therefore, it is proved that the vehicle is a Light Motor Vehicle (transport vehicle) having permit to carry passengers. Therefore, there is no violation of conditions in



policy is proved. Hence, when there is no infraction regarding conditions of policy, then, the insurance company is liable to indemnify the owner. Therefore, both respondents No.1 and 2 are jointly and severally liable to pay compensation and it is directed respondent No.2-insurance company to indemnify respondent No.1-owner and shall pay compensation to the claimants.

5. This order shall be read in conjunction with the order dated 17.01.2025.

**Sd/-
(HANCHATE SANJEEVKUMAR)
JUDGE**

RKM
List No.: 1 Sl No.: 2