NC: 2025:KHC-K:2139
MFA No. 200483 of 2020
C/W MFA No. 200133 of 2021

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 3RD DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR. JUSTICE C.M. JOSHI

MISCL. FIRST APPEAL NO.200483 OF 2020 (MV-I)

C/W.

MISCL. FIRST APPEAL NO.200133 OF 2021 (MV-I)

IN MFA NO.200483/2020:

BETWEEN:

THE UNITED INDIA INSURANCE CO. LTD.,
JAWALI COMPLEX, SUPER MARKET,
KALABURAGI,
PRESENTLY AT 2ND FLOOR,
CENTURY COMPLEX,
OPP: SANGAM TALKIES,
SUPER MARKET,
KALABURAGI,
NOW REPRESENTED BY ITS,
ASSISTANT MANAGER,
KALABURAGI-585 101.

...APPELLANT

(BY SRI MOHD. ABDUL QUAYUM, ADVOCATE)

Digitally signed by SHIVALEELA DATTATRAYA UDAGI
Location: HIGH COURT OF KARNATAKA

AND:

1. SMT. MAMTA @ MAMITA
   W/O JAGANATH REDDY,

AGE: 30 YEARS, OCC: LABOUR & HOUSEHOLD,
R/O UDABAL, TQ. HUMNABAD,
DIST. BIDAR-585 330.

2. KANTAPPA S/O TUKKAPPA,
AGE: MAJOR, OCC: OWNER OF APE AUTO
BEARING NO.KA-39/3259,
R/O H.NO.104-18, TRIPURANTH,
TQ. BASAVAKALYAN,
DIST. BIDAR-585 327.

…RESPONDENTS

(BY SRI S.G. PATIL, OKALY, ADV., FOR R1;
SRI SHIVAPRAKASH R. SARADAGI, ADV., FOR R2)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO SET ASIDE THE JUDGMENT AND AWARD DATED 16.12.2019 PASSED IN MVC NO.1179/2015 BY THE I ADDL. SENIOR CIVIL JUDGE AND MEMBER, MACT, KALABURAGI AND EXONERATE THE APPELLANT OF ITS LIABILITY.

IN MFA NO.200133/2021:

BETWEEN:

SMT. MAMTA @ MAMITA W/O JAGANATH REDDY,
AGE: 30 YEARS, OCC: LABOUR & HOUSEHOLD,
R/O UDABAL, TQ. HUMNABAD,
DIST. BIDAR-584 106.

…APPELLANT

(BY SRI S.G. PATIL OKALY, ADV.)

AND:

1. KANTAPPA S/O TUKKAPPA,
   AGE: MAJOR, OCC: OWNER OF APE AUTO
   BEARING NO.KA-39/3259,
   R/O H.NO.104-18, TRIPURANTH,
   TQ. BASAVAKALYAN,
   DIST. BIDAR-584 312.

2. THE DIVISIONAL MANAGER,
   UNITED INSURANCE CO. LTD.,
   JAWALI COMPLEX, SUPER MARKET,
   KALABURAGI-585 101.

…RESPONDENTS

(BY SRI J. AUGUSTIN, ADV., FOR R2;
R1-V/O. DTD.09.02.2021 NOTICE DISPENSED WITH)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO ALLOW THE APPEAL AND THE JUDGMENT AND AWARD DATED 16.12.2019 PASSED IN MVC NO.1179/2015 BY I ADDL. SENIOR CIVIL JUDGE AND MACT, KALABURAGI, MAY KINDLY BE MODIFIED BY ENHANCING THE COMPENSATION AS CLAIMED IN THE CLAIM PETITION.

THESE APPEALS COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE C.M. JOSHI

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE C.M. JOSHI)

Heard learned counsel appearing for the appellant-petitioner and the learned counsel appearing for the appellant-Insurance Company.

2. The appeals are admitted.

3. These appeals are filed by the petitioner-claimant as well as the respondent No.2 - Insurance Company against the judgment and award in MVC No.1179/2015 decided by I-Additional Senior Civil Judge and MACT, Kalaburagi, (for short 'the Tribunal') on 16th December, 2019.

4. The factual matrix of the case are as under:

a) The petitioner on 24.05.2015 was proceeding towards Hanamantwadi(M) in Ape Auto bearing No.KA-39/3259 owned by respondent No.1 and insured by respondent No.2. Due to the negligent driving by the driver of the auto rickshaw, it turned turtle, resulting in the petitioner sustaining fracture of her right femur. She was taken to Vishvekar Hospital at Umerga and was treated as

inpatient for about 6 days. Claiming that at the time of accident she was aged 25 years and earning Rs.9,000/- per month by doing labour work, she filed a claim petition before the Tribunal seeking adequate compensation.

b) On service of notice, respondent Nos.1 and 2 appeared before the Tribunal and resisted the petition. The respondent No.1 denied the claim terming the same to be baseless, highly excessive and imaginary. The insurance policy of the vehicle being in force, he requested to fasten the liability upon the respondent No.2.

c) The respondent No.2 - Insurance Company apart from taking up similar contentions as done by the respondent No.1, contended that the terms and conditions of the policy were violated and that the driver of the auto rickshaw was not having a valid driving licence and that the vehicle has been implicated falsely.

d) On the basis of the above contentions, appropriate issues came to be framed by the Tribunal; and the petitioner was examined as PW1 and the Doctor, who

assessed the disability was examined as PW2; and Exs.P1 to P11 were marked in evidence. The official of the respondent No.2 was examined as RW1 and Exs.R1 and R2 were marked.

e) After hearing the arguments, the Tribunal awarded compensation of Rs.2,28,800/- under the following heads and held the respondent No.2 – Insurance Company liable to pay the same to the claimant:

a	Injury, pain and suffering	Rs.40,000/-
b	Medical expenses	Rs.52,000/-
c	Food, extra nourishment and medical attendant	Rs.2,100/-
d	Conveyance	Rs.8,000/-
e	Towards loss of income during treatment	Rs.21,000/-
f	Towards permanent disability	Rs.90,720/-
g	Deprivation of future amenities	Rs.15,000/-
	Total	Rs.2,28,820/-
	Rounded off	Rs.2,28,800/-

5. Aggrieved by the said judgment, the petitioner-claimant is before this Court in MFA No.200133/2021 and the respondent No.2 - Insurance Company is in appeal before this Court in MFA No.200483/2020.

6 Learned counsel appearing for respondent No.2 – Insurance Company in MFA No.200483/2020 submits that the accident had allegedly occurred on 24.05.2015 and the complaint was filed on 08.06.2015 and as such, there is inordinate delay in filing the complaint. He submits that in the FIR the ASI of Umerga Police Station states that he had recorded the statement of the complainant on 08.06.2015, but in fact, the complainant/petitioner was discharged from the hospital on the 30.05.2015. Therefore, it is submitted that the accident itself is doubtful and the Tribunal failed to appreciate that the auto rickshaw owned by the respondent No.1, insured by respondent No.2, was not at all involved in the accident. He also submits that the compensation awarded by the Tribunal is adequate and there is no need for any enhancement. He also submits that pursuant to the notice issued to respondent No.1, he has not produced driving license and therefore, this aspect should have been considered by the Tribunal.

7. *Per contra*, learned counsel appearing for the petitioner would submit that the Wound Certificate issued by

Vishvekar Hospital, Umerga produced at Ex.P5 shows that the petitioner was admitted to the hospital on 24.05.2015 with a history of RTA and this document clearly establish that she had suffered the injury in the accident. He submits that the registration of FIR by the concerned police may have various *lacunae*. Evidently, the hospital is situated in Maharashtra and in MLC report issued to the concerned police at Umerga might not have been communicated to the police, where the accident really had occurred. It is submitted that the accident had occurred within Karnataka and nearby hospital being the one situated at Umerga, the injured were shifted to the said hospital. Therefore, the non-communication of the factum of the accident between Umerga Police and Karnataka Police cannot be taken to the disadvantage of the petitioner. He further submits that the accident having been established by the charge-sheet filed by the Police, there cannot be any doubt about the same.

8. Regarding the quantum of the compensation, he submits that the Tribunal erred in assessing the

compensation in proper manner and there is a need for reassessment of the same.

9. Having heard the learned counsels for the parties a careful perusal of the Tribunal Records would reveal that the A.S.I. of Umerga Police Station had recorded the statement of the petitioner on 31.05.2015. After receiving it he came to Basavakalyan Rural Police Station on 08.06.2015 and lodged the same. Thereafter, Basavakalyan Rural Police recorded the further statement and registered the FIR. It is worth to note that the A.S.I. of Umerga Police Station Sri G.V. Giri has not been examined before the Tribunal. Therefore, it is not known whether Umerga Police had received any MLC intimation about the accident on 24.05.2015. Except this discrepancy, there is nothing on record which would show that there is a false implication of the vehicle. Hence the conclusion of the Tribunal that the vehicle was involved in accident cannot be interfered with.

10. So far as the Driving Licence of the driver is concerned, the charge-sheet which is at Ex.P2 do not mention that the driver was prosecuted for any of the

offence under Section 3 read with 101 of the Motor Vehicles Act. Simply because the Insurance Company had issued notice as per Ex.R2 to the owner of the vehicle and the owner had not produced it before the Insurance Company, it cannot be concluded that what is recorded in Ex.P2 is erroneous. Obviously Ex.P2 is the charge-sheet filed by the Police against the driver of the auto rickshaw. In that view of the matter, the contentions of the learned counsel for the Insurance Company are not sustainable in law.

11. Coming to the quantum of the compensation, it is evident that the petitioner had sustained fracture of the right femur and that was treated by nailing and the Disability Certificate at Ex.P6 would show that the implants are in situ. It is also to be noted that except the fracture of the femur, no other injuries were sustained by petitioner.

12. The PW2 in his testimony says that there is disability of 19% as depicted in the Disability Certificate Ex.P6. It was observed that there is mild degree of restriction of the hip and knee movement and there is partial difficulty to squat. Under these circumstances, considering

the age of the petitioner, the effect of the functional disability of petitioner is taken at 7%.

13. There being no material to show that the petitioner was earning Rs.9,000/- per month, notional income was adopted by the Tribunal. The guidelines issued by the Karnataka State Legal Services Authority (KSLSA) for settlement of the disputes before the Lok Adalat prescribes the notional income of Rs.8,000/- for the year 2015. In umpteen number of decisions, this Court has held that the guidelines issued by KSLSA are held to be acceptable on the ground that they are in general conformity with the minimum wages fixed under the Minimum Wages Act. Therefore, the notional income of the appellant-petitioner is accepted as Rs.8,000/- per month. Accordingly, the loss of future income on account of permanent disability is assessed at Rs.8,000/- x 12 x 18 x 7% = Rs.1,20,960/-

14. Consequently, the compensation under the head of loss of income during laid up period is calculated for three months, that comes Rs.24,000/-.

15. The compensation awarded by the Tribunal under the head of loss of amenities in life being on the lower side, the same is enhanced Rs.30,000/-.

16. The compensation awarded under remaining heads do not require any enhancement. Hence, in all, the petitioner is entitled for compensation as under:

Sl. No.	Heads	Award by the Tribunal	Award by this Court
1	Injury, pain and suffering	Rs.40,000/-	Rs.40,000/-
2	Medical expenses	Rs.52,000/-	Rs.52,000/-
3	Food, extra nourishment and medical attendant	Rs.2,100/-	Rs.2,100/-
4	Conveyance	Rs.8,000/-	Rs.8,000/-
5	Towards loss of income during treatment	Rs.21,000/-	Rs.24,000/-
6	Towards permanent disability	Rs.90,720/-	Rs.1,20,960/-
7	Deprivation of future amenities	Rs.15,000/-	Rs.30,000/-
	Total Rounded to	2,28,820/- 2,28,800/-	Rs.2,77,060/-
	Less: Award by the Tribunal		2,28,800/-
	Total enhancement		Rs.48,260/-

17. In the result, the appeal filed by Insurance Company deserves to be dismissed and the appeal filed by the petitioner deserves to be allowed in part. Hence, the following:

ORDER

(i) The appeal in MFA No.200483/2020 by the Insurance-Company is dismissed. The appeal in MFA No.200133/2021 is allowed in part.

(ii) The impugned judgment and award passed by the Tribunal is hereby modified.

(iii) The petitioner is entitled for a sum of Rs.48,260/- with interest at the rate of 6% per annum from the date of petition till realization, in addition to what has been awarded by the Tribunal.

(iv) The Insurance Company is directed to deposit the enhanced compensation

along with interest within a period of 06 weeks from the date of receipt of a copy of this judgment.

(v) The amount in deposit is ordered to be remitted to the Tribunal.

Sd/-
(C.M. JOSHI)
JUDGE

SBS
List No.: 1 Sl No.: 37
CT: AK