IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 4TH DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

MISCL. FIRST APPEAL NO.200489 OF 2020 (MV-I)

C/W

MISCL. FIRST APPEAL NO.200155 OF 2021 (MV-I)

IN MFA NO.200489/2020:

BETWEEN:

THE BRANCH MANAGER,
NATIONAL INSURANCE COMPANY LIMITED,
BESIDE PARAS GARDEN,
NEAR GOVINDARAO PETROL BUNK, RAICHUR,
NOW THROUGH ITS AUTHORISED SIGNATORY,
THE NATIONAL INSURANCE COMPANY LIMITED,
1ST FLOOR, BILGUNDI COMPLEX,
OPP. MINI VIDHANA SOUDHA,
MAIN ROAD, KALABURAGI.

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...APPELLANT

(BY SRI. SHARANABASAPPA M. PATIL, ADVOCATE)

AND:

1. SRI. MOHAMMED FAYAZ S/O MOHAMMED TAHER PASHA @ MD TAHER PASHA,
   AGE: 29 YEARS, OCC: LATHE MACHINE WORKER & DRIVER (NOW NIL), R/O H.NO.6-4, 32,
   G.D.TOTA, B.R.B. COLLEGE ROAD,
   RAICHUR-584 103.

2. SRI. SHAIK NAZEER S/O SHAIK RAJAB ALI,
   AGE: 48 YEARS,
   OCC: REAL ESTATE BUSINESS & OWNER OF

THE MOTOR CYCLE BEARING NO.KA-36/EK-1254,
R/O H.NO.12-11-18/9, LAL PAHADI,
ARAB MOHALLA, RAICHUR-584 101.

…RESPONDENTS

(BY SRI. VEERANAGOUDA MALIPATIL, ADV. FOR R1;
V/O DTD. 03.02.2023, NOTICE TO R2 IS HELD SUFFICIENT)

THIS MFA IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO MODIFY THE ORDER OF THE TRIBUNAL AND CALL FOR THE LOWER COURT RECORDS AND HEAR THE PARTIES AND SET ASIDE THE JUDGMENT DATED 24.01.2020 AND AWARD DATED 28.01.2020 IN MVC NO.444/2017 IN THE COURT OF THE PRL. DISTRICT JUDGE (MACT) AT RAICHUR.

IN MFA NO.200155/2021:

BETWEEN:

MOHAMMED FAYAZ
S/O MOHAMMED TAHER PASHA @ MD TAHER PASHA,
AGE: 29 YEARS, OCC: LATHE MACHINE WORKER
AND DRIVER (NOW NIL),
R/O H.NO.6-4-32, G.D.TOTA,
B.R.B COLLAGE ROAD, RAICHUR.

…APPELLANT

(BY SRI. VEERANAGOUDA MALIPATIL, ADVOCATE)

AND:

1. SHAIK NAZEER S/O SHAIK RAJAB ALI,
   AGE: 48 YEARS,
   OCC: REAL ESTATE BUSINESS & OWNER OF MOTOR
   CYCLE BEARING REG.NO.KA-36/EK-1254,

R/O H NO.12-11-18/9, LAL PAHADI,
ARAB MOHALLA, RAICHUR-584 103.

2. THE BRANCH MANAGER,
NATIONAL INSURANCE CO. LTD.,
BESIDE PARAS GARDEN,
NEAR GOVINDARAO PETROL BUNK,
RAICHUR-584 102.

…RESPONDENTS

(BY SRI. SHARANABASAPPA M. PATIL, ADV. FOR R2;
V/O DTD. 30.03.2021, NOTICE TO R1 IS DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO ALLOW THE APPEAL AND MODIFY THE JUDGMENT AND AWARD DATED 24.01.2020 PASSED IN MVC NO.444/2017 BY THE PRL. DIST. AND SESSIONS JUDGE, RAICHUR BY ENHANCING THE COMPENSATION AS CLAIMED IN THE CLAIM PETITION.

THESE APPEALS COMING ON FOR FINAL HEARING, 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)

Being aggrieved by the judgment and award dated 24.01.2020 in MVC No.444/2017 passed by the learned Principal District Judge and Member, MACT, Raichur, the petitioner as well as respondent No.2-Insurance Company are before this Court in these appeals.

2. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3. The factual matrix of the case is as below:

On 03.05.2017, the petitioner being a pillion rider of motorcycle bearing No.KA-36/EK-1254 was proceeding from Arabwada towards G.D.Tota. At about 7.30 p.m., the rider of the motorcycle rode the motorcycle in rash and negligent manner and he suddenly applied the brake, resulting in the petitioner falling down from the motorcycle and he sustained fracture of the shaft of femur with right foot drop, swelling and tenderness at the left thigh, fracture of left femur and other minor injuries. He was immediately shifted to Navodaya Hospital, Raichur and underwent surgery. The petitioner claimed that he was aged 26 years and he has suffered partial disability and he being a mechanic and lathe worker, is unable to perform his duties as before and it has resulted in depleted income and as such, he is entitled for compensation.

4. On being served with the notice by the Tribunal, respondent No.1-owner of the vehicle appeared through his counsel and admitted that the petitioner was a pillion rider, but he denied that the accident was due to his negligence. He contended that the petitioner fell down on his own and the compensation claimed is highly exorbitant. He contended that in case compensation is to be awarded, the same has to be fastened upon respondent No.2-Insurance Company, as the insurance policy was in force.

5. Respondent No.2-Insurance Company appeared and filed its written statement contending that there is collusion between the police, the petitioner and respondent No.1; and the self inflicted accident by the petitioner has been depicted as an accident occurred at the negligence of the rider Mohammed Sameer. It was contended that the petitioner was the rider of the motorcycle and he fell down on his own fault and therefore, the present petition is not maintainable.

Interalia, it was also contended that the terms and conditions of the policy were violated and the vehicle was registered in the name of one Khajappa and therefore, respondent No.2 is not liable to pay any compensation. The age, income and occupation of the petitioner was also denied.

6. On the basis of the above pleadings, the Tribunal framed appropriate issues and the petitioner was examined as PW.1 and the Medical Officer, who assessed the disability was examined as PW.2. Exs.P1 to P124 were marked in evidence. Respondent No.1 did not lead any evidence, but the official of respondent No.2 was examined as RW.1 and one witness was examined as RW.2. Exs.R1 to R5 were marked in their evidence.

7. After hearing both the sides, the Tribunal allowed the petition in part and directed respondent No.2-Insurance Company to pay the compensation of Rs.3,20,541/- under different heads as below:

For pain and suffering	Rs.35,000/-
For medical expenses	Rs.25,941/-
For attendant charges	Rs.9,000/-
For food & extra nourishment charges	Rs.10,000/-
For loss of earning during the treatment period for three months at the rate of Rs.9,000/-	Rs.27,000/-
For loss of future earnings due to permanent partial disability caused at the rate of 10% to whole body	Rs.1,83,600/-
For loss of amenities	Rs.10,000/-
For future medical expenses	Rs.20,000/-
Total	**Rs.3,20,541/-**

8. Being aggrieved by the said judgment and award, the Insurance Company is in appeal in MFA No.200489/2020 and the petitioner is in appeal in MFA No.200155/2021.

9. The Trial Court records have been secured and the arguments by both the sides are heard.

10. Learned counsel appearing for respondent No.2-Insurance Company contends that MLC register extract/wound certificate produced at Ex.P2 shows that while riding the bike, due to skid, the petitioner fell down at about 7:30 p.m. at Zaheerabad road, Raichur.

Therefore, the subsequent statement of the petitioner in the form of the complaint is contrary to the information given to the hospital at the time of the admission. Hence, it is contended that the petitioner is trying to make unlawful gain by implicating Mohammed Sameer as a rider of the motorcycle and they are colluding with each other. It is also submitted that on the basis of false information, which was given as per Ex.P1, the Investigating Officer went ahead with the investigation and has filed the charge sheet. Such an investigation by the police is also vitiated by collusion and therefore, fastening of the liability on respondent No.2-Insurance Company is erroneous. Further, it is contented that the disability assessed by PW.2 to the extent of 20% has been considered by the Tribunal, but a functional disability of 10% is taken, which is on the higher side. According to him, the disability should have been taken at 1/3rd of 20% and therefore, the assessment of compensation is not proper.

11. Per contra, learned counsel appearing for the petitioner contended that the compensation awarded by the Tribunal is on the lower side. He submits that though the petitioner had stated that he was earning Rs.18,000/- per month, the Tribunal erred in assessing the notional income at Rs.9,000/- per month. It is submitted that the petitioner was a skilled mechanic working in lathe and such skill has not been properly appreciated by the Tribunal. Hence, he seeks indulgence of this Court in reassessing the compensation.

12. The first aspect to be considered by this Court is, whether the petitioner was the rider of the motorcycle and he colluded with respondent No.1 to make unlawful gain. A perusal of Ex.P1, which is the complaint in the form of a statement made by the petitioner before the police discloses that, he and the rider Mohammed Sameer had left their mechanic shop after their work in the evening of 03.05.2017. The complaint states that the maternal uncle of the petitioner by name Mohammed

Sameer was the rider and they left towards their home. It is also stated that the motorcycle was ridden by Mohammed Sameer and he abruptly applied the brake and therefore, the petitioner fell down. The said complaint was received by the Assistant Sub-Inspector of Traffic Police Station, Raichur at about 12:10 a.m. It also states that the police had received RTA MLC intimation from Navodaya OP Check Post and therefore, the ASI went to the Hospital at about 12:30 in the midnight and recorded the statement of the petitioner and came back to the Police Station and registered the case. This endorsement on the complaint shows that soon after the petitioner was taken to the hospital and he was given first aid, the hospital authorities had intimated the police and the police visited the hospital and recorded his statement.

13. A perusal of Ex.P2, the medico legal certificate issued by the Navodaya Medical College Hospital show that the petitioner was brought to the Hospital at 8:10 p.m. on 03.05.2017. He was accompanied by the none else than

said Mohammed Sameer, the father-in-law of the petitioner. In Ex.P2, it is written as "alleged H/O while riding the bike due to skid fell down at about 7:30 p.m. at Zaheerabad road, Raichur." This would show that, it is not known whether he was riding pillion or as the main rider. A room to interpret Ex.P2 to mean that the petitioner was a pillion rider is kept open. Whereas, Ex.P1-the FIR, which came into existence out of spontaneity, clearly establish the manner in which the accident happened. It is also relevant to note that note that during the investigation, nothing which is suspicious was found by the Investigating Officer. Obviously, there were none else to express any suspicion and therefore, the Investigating Officer ultimately investigated the matter and filed the charge sheet.

14. A perusal of the cross-examination of PW.1 would show that though there is extensive cross-examination by the learned counsel for respondent No.2-Insurance company, there is nothing which would amount

to an admission of the PW.1. The suggestion that he was the rider has been denied by him. Therefore, the cross-examination of the PW.1 would not help the respondent No.2-Insurance Company in any way. In the above conspectus of the things, it is evident that the FIR cannot be doubted, as it is without much delay. Ex.P2 gives room for an interpretation that the petitioner may also be riding as a pillion. Moreover, the Medical Officer, who recorded Ex.P2 was not bound to record the manner in which the accident happened. What was relevant for the Medical Officer was, as to in what manner the petitioner had sustained the injury. In that view of the matter, Ex.P1 being of greater value and it was meant for identifying the manner in which the accident occurred, will have a greater importance. Under these circumstances, the contention of the Insurance Company that the involvement of the petitioner as a pillion rider is doubtful, cannot be accepted.

15. The next aspect to be considered is about the quantum of compensation. Both the parties are disputing

the compensation awarded by the Tribunal. The petitioner claims that he was a lathe machine mechanic, aged 25 years and earning Rs.18,000/- per month. A lathe machine mechanic, aged 25 years cannot be said to be a skilled person. Moreover, admittedly, he was working under his father-in-law, Mohammed Sameer. Therefore, the contention of the petitioner that he was earning Rs.18,000/- per month cannot be accepted.

16. The guidelines issued by the Karnataka State Legal Services Authority in respect of the settlement of the claims arising out of the motor vehicle accidents before the Lok Adalath prescribes the notional income at Rs.10,250/- per month for the year 2017. In umpteen number of cases, this Court has held that the said guidelines issued by the KSLSA are in general conformity with the wages fixed under the Minimum Wages Act. Therefore, the notional income of the petitioner is held to be Rs.10,250/- per month.

17. The PW.2 – Dr. Vijay Mahantha Prasad in his testimony states that, he examined the petitioner and he found that there is pain and tenderness over the left leg. the petitioner is not able to squat, unable to lift heavy weight and he is not able to bend forwards. There is minimal quadriceps lag seen and there is flexion deformity of around 20 degrees. He also opines that there is limp seen with antalgic gait. Therefore, he opines that there is a disability of 20% to the whole body. Obviously, PW.2 could not have stated about the disability to the whole body, but he can only opine about the physical disability to the particular limb. The assessment of the functional disability, which obviously is impairing the functional capability of the petitioner, is the job of the Tribunal. This is because the Medical Officer, like PW.2 cannot have any information or the knowledge about the avocation of the petitioner. Assessing the avocation, functional requirements and correlating the same to the physical disability is the job of the Tribunal. As held by the Apex Court in the case of ***Raj Kumar vs. Ajay Kumar and***

Another[1], the Medical Officer can only opine about the physical disability. Therefore, considering the nature of the disability stated by PW.2 and assessed by him at 20%, the functional disability assessed by the Tribunal at 10% appears to be proper. The contention of the learned counsel for the Insurance Company that it should have been taken at 1/3rd do not have any logical background. If there is any difficulty in Co-relating the physical disability to the functional disability, then the normal practice of taking 1/3rd of the physical disability as a functional disability would have been adopted. In the case on hand, the petitioner being a lathe machine worker, fracture of the femur and restriction of the movement of the knee joint definitely affect his functionality and therefore, the disability of 10% assessed by the Tribunal need not be interfered with.

[1] (2011) 1 SCC 343

18. Hence, the compensation under the head of loss of future earning is calculated as Rs.10,250 x 12 x 10% x 17 = Rs.2,09,100/-.

19. Consequently, the compensation under the head of loss of income during laid up period is calculated as: Rs.10,250 x 3 = Rs.30,750/-.

20. The compensation awarded by the Tribunal under the head of pain and suffering to the tune of Rs.35,000/- appears to be on the lower side and the same is enhanced to Rs.40,000/-.

21. The petitioner was an inpatient for a little more than a month. Therefore, the compensation awarded by the Tribunal under the head of attendant charges to the tune of Rs.9,000/- is enhanced to Rs.15,000/-.

22. The second discharge summary at Ex.P7 shows that the petitioner is suffering from foot drop. This is a complication that may be arising out of an injury to the tendon, but there is no medical reports in respect of the

same. Therefore, the compensation awarded by the Tribunal under the head of loss of amenities to the tune of Rs.10,000/- is enhanced to Rs.50,000/-.

23. The compensation awarded by the Tribunal under the remaining heads i.e., medical expenses, food and extra nourishment charges and future medical expenses does not call for any interference by this Court.

24. Hence, the appellant is entitled for the modified compensation under different heads as below:

Pain and suffering	Rs.40,000/-
Medical expenses	Rs.25,941/-
Attendant charges	Rs.15,000/-
Food & extra nourishment charges	Rs.10,000/-
Loss of income during laid up period	Rs.30,750/-
Loss of future earnings	Rs.2,09,100/-
Loss of amenities	Rs.50,000/-
Future medical expenses	Rs.20,000/-
Total Less: awarded by Tribunal Enhancement	Rs.4,00,791/- Rs.3,20,541/- **Rs.80,250**/-

Thus, the appellant is entitled for enhanced compensation of Rs.80,250/- with interest.

25. For the aforesaid reasons, the appeal filed by the Insurance Company deserves to be dismissed and the appeal filed by the petitioner deserves to be allowed in part. Hence, the following:

ORDER

(i) MFA No.200489/2020 filed by the Insurance Company is dismissed.

(ii) MFA No.200155/2021 filed by the petitioner is allowed in part.

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

(iv) The petitioner is entitled for a sum of **Rs.80,250**/- in addition to what has been awarded by the Tribunal together with interest at 6% p.a. from the date of petition till its realization.

(v) Respondent No.2 - Insurance Company is directed to deposit the entire compensation

amount within a period of six weeks from the date of this order.

(vi) The amount in deposit before this Court is ordered to be transmitted to the Tribunal.

(vii) Rest of the order passed by the Tribunal remains unaltered.

Sd/-
(C M JOSHI)
JUDGE

LG
List No.: 1 Sl No.: 73