NC: 2025:KHC-K:1682
MFA No. 201253 of 2018
*C/W MFA No. 201080 of 2018*

**IN THE HIGH COURT OF KARNATAKA,**

**KALABURAGI BENCH**

**DATED THIS THE 18TH DAY OF MARCH, 2025**

**BEFORE**

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

**MISCL. FIRST APPEAL NO.201253 OF 2018 (MV-I)**

**C/W**

**MISCL. FIRST APPEAL NO.201080 OF 2018 (MV-I)**

**IN MFA NO.201253/2018:**

**BETWEEN:**

THE BRANCH MANAGER,
SHRIRAM GENERAL INSURANCE CO. LTD.,
E-8, EPIP, RIICO, INDUSTRIAL AREA,
SITAPUR, JAIPUR RAJASTHAN,
THROUGH IT'S BRANCH MANAGER,
(THROUGH AUTHORISED SIGNATORY).

...APPELLANT

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

(BY SRI. SUBHASH MALLAPUR, ADVOCATE)

**AND:**

1. MOHD. JAKEER
   S/O MOHD. AFSAR MIYA,
   AGE: 35 YEARS, OCC: DRIVER,
   R/O H.NO.12-6-400,
   NEAR WATER TANK,
   LBS NAGAR, RAICHUR-584 101.

2. IMAAM SAB @ IMAAM HUSSAIN
   S/O PEERSAB,
   AGE: 53 YEARS, OCC: DRIVER,
   R/O M.D. COUNCILLOR AREA,

LBS NAGAR, RAICHUR-584 101.

3. RAHEEM PASHA S/O JANGLI SAB,
AGE: 48 YEARS OCC: OWNER OF LORRY
NO. KA-22/A-5596, R/O H.NO.1-11-50/84,
NEAR LION CLUB SCHOOL,
VIVEKANANDA COLONY,
RAICHUR-584 101.

…RESPONDENTS

(BY SRI. BABU H. METAGUDDA, ADV. FOR R1;
R2-SERVED;
V/O DTD. 07.01.2025, NOTICE TO R3 IS DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO ALLOW THE ABOVE APPEAL AND CONSEQUENTLY BE PLEASED TO SET ASIDE THE JUDGMENT AND AWARD DATED 03.04.2018 PASSED THE II ADDL. DIST. AND SESSIONS JUDGE AND ADDL. MACT RAICHUR, IN MVC NO.308/15.

**IN MFA NO.201080/2018:**

**BETWEEN:**

MOHAMMED JAKEER S/O MOHAMMED AFSAR MIYA,
AGE: 35 YEARS, OCC: DRIVER,
R/O HOUSE NO. 12-6-400, NEAR WATER TANK,
LBS NAGAR, RAICHUR-585 401.

…APPELLANT

(BY SRI. BABU H. METAGUDDA, ADVOCATE)

**AND:**

1. IMMAM SAB @ IMAM HUSSAIN
S/O PEER SAB,

AGE: 53 YEARS, OCC: DRIVER,
R/O M.D. COUNCILLER AREA,
LBS NAGAR, RAICHUR-585 401.

2. RAHEEM PASHA S/O JANGLI SAB,
AGE: 48 YEARS, OCC: OWNER OF LORRY
NO. KA-22/A-5596, R/O H.NO.1-11-50/84,
NEAR LION CLUB SCHOOL,
VIVEKANADA COLONY,
RAICHUR-585 401.

3. THE BRANCH MANAGER,
SHRIRAM GENERAL INSURANCE CO. LTD.,
E-8, RIICO INDUSTRIAL AREA, SITAPUR,
JAIPUR, (RAJASTHAN STATE).

…RESPONDENTS

(BY SRI. SUBHASH MALLAPUR, ADV. FOR R3;
V/O DTD. 22.08.2022, NOTICE TO R1 AND R2 ARE DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO ALLOW THIS APPEAL AND MODIFY THE JUDGMENT AND AWARD DATED 03.04.2018 PASSED IN MVC NO.308/2015 BY THE II ADDL. DIST. AND SESSIONS JUDGE AND ADDL. MACT AT RAICHUR AND ENHANCING THE COMPENSATION FROM RS.2,07,100/- WITH 6% INTEREST TO RS.3,00,000/- WITH 12% INTEREST.

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)

Though these matters are slated for Admission, by consent, they are taken up for Final Hearing and heard the learned counsel for appellant in both the appeals.

2. Being aggrieved by the judgment and award in MVC No.308/2015 dated 03-04-2018 passed by the learned II Additional District and Sessions Judge, Raichur, the petitioner is in appeal before this Court in MFA No. 201080/2018 and the respondent No.3/Insurance Company is in appeal before this Court in MFA No.201253/2018.

3. For the sake of convenience, the parties would be referred to as per their rankings before the Tribunal.

4. The factual matrix of the case which are relevant for the purpose of these appeals are as below:

On 17.10.2014 at about 3.40 PM near Autonagar Cross, Goshala Road, Raichur, respondent No.1 drove his Lorry bearing No.KA.22/A.5596 in a rash and negligent manner and was going towards Gunj Circle. He did not even blew the horn

but dashed against the motorcycle bearing No.KA.36/Q.4236 and the petitioner being the rider sustained injuries in the accident. He was shifted to M.K. Bhandari Hospital, Raichur and was treated till 24.10.2014. Contending that the petitioner was working as a driver and earning Rs.10,000/- per month has filed the claim petition. Respondent No.1 is the driver, respondent No.2 is the owner and respondent No.3 is the insurer of the lorry.

5. On issuance of notice, respondent Nos. 1 and 2 did not appear and as such, they were placed exparte. Respondent No.3-Insurance Company appeared and filed the written statement contending that the compensation claimed by the petitioner is highly exorbitant and imaginary. It disputed the fact that there was any negligence on the part of the driver of the lorry. But alleges that it was due to the negligence of the petitioner who failed to take precaution and dashed to the rear wheel of the lorry. It was contended that there is contributory negligence on the part of the petitioner and charge sheet was also filed against both the offenders. It was contended that the petitioner was not having a valid driving licence and therefore, on this ground also, the negligence on the part of the

petitioner is on the higher side and as such, the Insurance Company be absolved from paying any compensation to the petitioner.

6. On the basis of the above contentions, appropriate issues were framed by the Tribunal and the petitioner was examined as PW1, one witness was examined as PW2 and Exhibits P1 to 11 were marked in evidence. The Officer of the Insurance Company and the official of the RTO were examined as RWs.1 and 2 and Exhibits R1 to R6 were marked in evidence.

7. After hearing both sides, the Tribunal held that the petitioner had contributed negligence to the extent of 25% and calculated the compensation under different heads as below;

| | |
|---|---|
| Transportation | Rs. 5,000/- |
| Food, attendant and nourishment charges | Rs. 10,000/- |
| Medical expenses | Rs. 44,781/- |
| Pain and suffering | Rs. 50,000/- |
| Loss of future earnings | Rs.1,61,280/- |
| Loss of amenities | Rs. 5,000/- |
| **Total** | **Rs.2,76,061/-** |

8. Being aggrieved by the same, the petitioner as well as the respondent No.3- Insurance Company are before this Court in these appeals.

9. Learned counsel appearing for the petitioner would submit that PW-2 had stated that the petitioner had sustained fracture of both the bones of the right leg and opines that there is a disability of 40% and therefore, the disability assessed by the Tribunal at 14% is on the lower side. He submits that the income of the petitioner is also taken on the lower side and the compensation needs to be reassessed by this Court. He submits that he is not challenging the contributory negligence of 25% attributed to the petitioner in the said accident.

10. *Per Contra*, the learned counsel appearing for the respondent No.3-Insurance Company would submit that the petitioner was not having a valid driving licence to drive the two wheeler and in fact, he should have taken precaution and since he was in speed, he could not control the two Wheeler and as such, dashed to the rear wheel of the lorry. It is submitted that the lorry was entering the Main Road from the Cross Road and it had almost crossed the lane in which the petitioner was coming and there was a clear negligence on the part of the petitioner. Therefore, the learned counsel for the Insurance Company would submit that the contributory

negligence by the petitioner should have been held atleast at 50%.

11. A perusal of the spot sketch, Ex.P4 would show that Lorry was entering the four lane Main Road with divider. The lorry driver had to take a right turn in the said 'T' intersection. Thus, it is evident that the lorry driver who was entering the four lane Main Road with a divider should have waited at the junction and observe both the sides as to whether any other vehicles were moving on the road and then, he should have entered the other lane on the Main Road. It is evident that the two wheeler was coming from the right side of the lorry and obviously, the two wheeler was being driven on the Main Road. Naturally, the vehicles which are plying on the Main Road are bound to be in speed and therefore, any vehicle, which is entering the Main Road from cross Road has to take precaution. Moreover, the Regulations under the Motor Vehicles Act, require that a driver has to give priority to the vehicles which are coming from his right. Without seeing as to whether any vehicle is coming from his right side, no driver is required to enter the junction. So far as the petitioner is concerned, obviously, the lorry was coming from his left side. The

Regulations do not require that the drivers who are entering the junction should observe the vehicles coming from the right side. Therefore, there is absolutely no justification in the argument of the learned counsel for the Insurance Company in seeking greater contributory negligence on the part of the petitioner. In the result, the appeal filed by the Insurance Company deserves to be dismissed. No interference is required in the finding of the Tribunal that petitioner contributed 25% of the negligence.

12. Coming to the quantum of the compensation amount, the PW2 has stated that there was a fracture of both the bones of the right leg and the Wound Certificate at Ex.P6 would show that except the fracture, the other injuries were simple in nature. The testimony of PW2 would indicate that he is the treated Doctor of the petitioner and he opines that there are restrictions of the movement and as such, he opines the disability of the petitioner at 40%.

13. It is worth to note that the testimony of PW2 and the Disability Certificate at Ex. P9 do not mention the disability of the limb, but it only mentions the whole body disability. On

examination of the testimony of PW2 and the Disability Certificate, this Court is of the opinion that the functional disability of the petitioner has to be assessed at 15%.

14. It is worth to note that though the petitioner had stated that he was working as a Driver in the petition, he has not produced the driving licence. But admitted that he was not a driver. Therefore, the functional disability as a driver cannot be considered by this Court. In the result, the functional disability of the petitioner is considered at 15%.

15. The Tribunal, in the absence of any material to show the income of the petitioner has adopted the notional income. The guidelines issued by the Karnataka State Legal Services Authority in respect of the settlement of disputes before the Lok Adalat prescribe that the notional income for the year 2014 is Rs.7,500/- per month. This Court in umpteen number of cases has held that the said guidelines issued by the KSLSA for settlement of disputes in Lok adalat is in conformity with the minimum wages fixed under the Minimum Wages Act. Therefore, the notional income of the deceased has to be considered at Rs.7,500/- per month. Therefore, the loss of

future income due to disability is calculated as: 7,500/- x 12 x16 x 15%= 2,16,000/-. Consequently, the petitioner is also entitled for compensation of Rs.22,500/- towards loss of income during laid up period. The Tribunal has awarded a sum of Rs.5,000/- under the head of loss of amenities in life. The same needs to be enhanced to Rs.30,000/-. The testimony of PW2 would show that implants are inserted and therefore, a sum of Rs.20,000/- is awarded to the petitioner towards future medical expenses. The compensation awarded under the other heads do not require any modification. Therefore, the petitioner is entitled to a total compensation of Rs.3,98,281/- under the following heads:

| | |
|---|---|
| Transportation | Rs. 5,000/- |
| Food, attendant and nourishment charges | Rs. 10,000/- |
| Medical expenses | Rs. 44,781/- |
| Pain and suffering | Rs. 50,000/- |
| Loss of future earnings | Rs.2,16,000/- |
| Loss of amenities | Rs. 30,000/- |
| Towards loss of income during laid up period | Rs. 22,500/- |
| Future medical expenses | Rs. 20,000/- |
| **Total** | **Rs.3,98,281/-** |

16. Out of the above, 75% of Rs.3,98,281/- comes to Rs.2,98,710/-. Thus, the petitioner is entitled to a sum of

Rs.2,98,710/- instead of 75% of Rs.2,76,061/- awarded by the Tribunal. Hence, the following:

ORDER

(i) The appeal filed by the Insurance Company is dismissed.

(ii) The appeal 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 to a total compensation of Rs.2,98,710/- together with interest at 6% p.a. from the date of petition till realization.

(v) Respondent No.3/Insurance Company is directed to deposit the compensation amount within six weeks from the date of receipt of the copy of this order.

(vi) The amount in deposit, if any, to be transmitted to the concerned Tribunal forthwith.

Sd/-
**(C M JOSHI)**
**JUDGE**

tsn*
List No.: 1 Sl No.: 39
CT: AK