NC: 2025:KHC-K:1838
MFA No. 201917 of 2022
C/W MFA No. 201918 of 2022

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 22ND DAY OF MARCH, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

MISCL. FIRST APPEAL NO.201917 OF 2022 (MV-I)

C/W

MISCL. FIRST APPEAL NO.201918 OF 2022 (MV-I)

IN MFA NO.201917/2022:

BETWEEN:

SANGAMESH S/O ANAND OKALI,
AGE: 34 YEARS, OCC: BUSINESS,
R/O KASAGERI ONI, VIJAYAPURA-586 101.

…APPELLANT

(BY SRI. SANGANABASAVA B. PATIL, ADVOCATE)

AND:

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

1. UMESH S/O BASAPPA KHED,
   AGE: 45 YEARS, OCC: BUSINESS,
   R/O KHB COLONY, SOLAPUR ROAD,
   VIJAYAPURA-586 101.

2. THE BRANCH MANAGER,
   SHRIRAM GENERAL INSURANCE COMPANY LTD.,
   S-5, 2ND FLOOR, MONARCH CHAMBERS,
   INFANTRY ROAD, BENGALURU-560 001.

…RESPONDENTS

(BY SMT. PREETI PATIL MELKUNDI, ADV. FOR R2;
V/O DTD. 09.02.2024, NOTICE TO R1 IS DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, PRAYING SET ASIDE THE JUDGMENT AND AWARD PASSED BY THE COURT OF THE MOTOR VEHICLE ACCIDENTS CLAIMS TRIBUNAL NO. XIII, VIJAYAPURA, AT VIJAYAPURA IN MVC NO. 48/2017 DATED 16.12.2021 BY ENHANCING BY IMPUGNED ORDER AND BE PLEASED TO ALLOW THE CLAIM PETITION BY GRANTING THE RELIEF AS PRAYED FAR BY THE APPELLANT.

IN MFA NO. 201918/2022:

BETWEEN:

PRAMOD S/O SANGANABASAPPA YADAWAD,
AGE: 28 YEARS, OCC: DRIVER,
R/O SHAPETI, VIJAYAPURA-586 101.

…APPELLANT

(BY SRI. SANGANABASAVA B. PATIL, ADVOCATE)

AND:

1. UMESH S/O BASAPPA KHED,
   AGE: 40 YEARS, OCC: BUSINESS,
   R/O KHB COLONY, SOLAPUR ROAD,
   VIJAYAPURA-586 101.

2. THE BRANCH MANAGER,
   SHRIRAM GENERAL INSURANCE COMPANY LTD.,
   S-5, 2ND FLOOR, MONARCH CHAMBERS,
   INFANTRY ROAD, BENGALURU-560 001.

…RESPONDENTS

(BY SMT. PREETI PATIL MELKUNDI, ADV. FOR R2;
V/O DTD. 09.02.2024, NOTICE TO R1 IS DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO SET ASIDE THE JUDGMENT AND AWARD PASSED BY THE COURT OF THE MOTOR VEHICLE ACCIDENTS CLAIMS TRIBUNAL NO. XIII, VIJAYAPURA, AT VIJAYAPURA IN MVC NO. 44/2017 DATED 16.12.2021 ENHANCING THE IMPUGNED ORDER AND BE PLEASED TO ALLOW THE CLAIM PETITION BY GRANTING THE RELIEF AS PRAYED FAR BY THE APPELLANT.

THESE APPEALS COMING ON FOR FURTHER 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 common judgment in MVC No. 44/ 2017 and MVC No. 48/2017 passed by learned IV Additional District and Sessions Judge and Member, MACT-XIII, Vijaypura, dated 16.12.2013, both the petitioners are before this Court in these appeals.

2. The factual matrix of the cases are that, on 5.7.2016, the petitioner-Promod in MVC No.44/2017 and the owner of the Bolero who was the petitioner in MVC

No.48/2017, were travelling in the said Bolero bearing No.KA 28-C-3353 from Vijaypura towards Solapur, near Agasanal Village, a Lorry bearing number KA.25.B.4423 came from opposite direction in high speed and negligent manner and dashed to the Bolero resulting in injuries to the petitioner- Pramod (MVC No.44/2017) and the Bolero Jeep got damaged extensively. After the accident, petitioner was shifted to Civil Hospital,Vijayapura and then to Dr. Bangi Hospital, Vijayapura, for treatment. The petitioner- Pramod further contended that he was a driver by profession earning Rs.15,000/- per month and due to the accidental injuries, his income has been depleted and he may be granted adequate compensation.

3. The petitioner-Sangamesh, (in MVC No.48/ 2017) contended that he is the owner of the Bolero Jeep and the said vehicle got damaged extensively in the said accident and as such, he is entitled for the damages to the said vehicle, as he got it repaired at the cost of Rs.3,04,000/-.

4. On issuance of notice, the owner of the Lorry did not appear, but the insurer appeared as respondent No.2 and resisted the petitions. In the written statement, respondent No.2 contended that the compensation claimed by the petitioners in both the cases is highly exorbitant and imaginary. It also contended that there was a contributory negligence by the driver of the Bolero and it being a head on collision and the charge sheet having been filed against both the drivers, its liability cannot be absolute. *Inter alia*, it also denied the age, occupation and income of the petitioner-Pramod in MVC No.44/2017 and the nature of the damages suffered to the vehicle and also the expenses made by the petitioner –Sangamesh in MVC No.48/2017.

5. On the basis of the above contentions, the Tribunal framed appropriate issues in both the petitions and common evidence was lead. The petitioners were examined as PWs1 and 2 and Medical Officer who assessed the disability of the petitioner- Pramod was examined as

PW 3 and a Private Garage owner was examined as PW4 and Exhibits P1 to P14 were marked on their behalf. Respondent No.2 examined it's official as RW1 and Exhibits R1 to R4 were marked.

6. After hearing the arguments, the Tribunal assessed the compensation to be awarded to the petitioner- Pramod at Rs.1,10,000/- under different heads as below:

Sl.No.	Head of compensation	Amount of compensation
1.	Towards pain and sufferings (as per Ex.P5 the petitioner sustained two grievous and four simple injuries	Rs. 40,000/-
2.	Towards medical expenses	Rs. 10,000/-
3.	Towards Transportation, nourishment and medical attendant charges	Rs. 20,000/-
4.	Towards amenities	Rs. 20,000/-
5.	Loss during laid of period	Rs. 20,000/-
	Total	Rs.1,10,000/-

7. It also concluded that there is a contributory negligence on the part of the driver of the Bolero and therefore, ordered reduction to the extent of 50% in the compensation assessed for the petitioner- Pramod.

8. So far as the damages to the vehicle are concerned, it held that photographs of the damaged vehicle, Surveyor's report etc., are not produced and therefore, the testimony of PW4 and Ex. P7 are not believable and dismissed the petition.

9. Being aggrieved by the said judgment, the petitioners have approached this Court in these appeals.

10. The learned counsel appearing for the appellants/ petitioners in these appeals would submit as below:

(1) So far as the petitioner- Pramod in MVC No. 44/2017 is concerned, he was an inmate of the Bolero and therefore, he could not have been fastened with any contributory negligence. The owner and driver of the Bolero Jeep could be said to have contributed negligence but at any rate, the inmate of the Bolero cannot be a contributor for the negligence.;

(2) He submits that the compensation awarded by the Tribunal sofar as the petitioner- Pramod is concerned, is on the lower side and the Tribunal failed to assess the functional disability that could have affected the earning capacity of the petitioner. The nature of the injuries suffered by the petitioner should have been taken into consideration by the Tribunal in assessing the disability;

(3) Sofar as the claim in respect of the damages to the vehicle of petitioner-Sangamesh is concerned, he submits that the MVI's report at Ex.P8 and coupled with the testimony of the PW4 and the receipt issued by him at Ex.P7 would be sufficient enough for the Tribunal to assess the damages. He submits that the Surveyor's report, estimate, the repairs effected and the photographs are not *sine qua non* for assessing the damages and awarding the compensation. He submits that the petitioner- Sangamesh instead of going to an authorised dealer of the Bolero, went to

a Private garage owner, i.e., PW4-Dawalmalik Kannur, who got certain second hand and used spares and got his vehicle repaired at meager costs of Rs.3,04,000/-. If the vehicle was sent to the Authorised Dealer, it could have costed him not less than Rs.10,00,000/-. Therefore, he submits that the Tribunal erred in holding that the Surveyor's report, photographs and estimate etc., were essential in awarding compensation.

11. *Per contra,* the learned counsel appearing for the respondent No.2-Insurance Company would submit that

(1) The conclusion of the Tribunal that there was contributory negligence on the part of the petitioner-Pramod, obviously is not in accordance with law concerning the composite negligence. She concedes that the fastening of contributory negligence on petitioner-Pramod would not be sustainable.

(2) Regarding the quantum of the compensation awarded to the petitioner – Pramod, she points out that the injuries sustained by the petitioner Pramod are to the facial bones that is a zygomatic arch, orbital floor, etc., and in no way such injuries would come in the way of his profession that is driving. Therefore, she submits that the compensation awarded by the Tribunal is proper and correct and no interference is required in the same.

(3) So far as the damages to the vehicle of petitioner-Sangamesh is concerned, it is submitted that PW4 is a witness who cannot be relied upon. It is submitted that he does not have a GST and does not have a licence to run a Garage and he is unable to produce any document to show that he had procured the spare parts for the purpose of repairs of the Bolero Jeep of Sangamesh. She points out that, except, Ex.P7 and the testimony of PW4, there is nothing on record to show that the damages that had

occurred to the Bolero Jeep were got repaired by the petitioner-Sangamesh. Moreover, the cross-examination of PW4 is shown to be unbelievable by citing that he had procured the spares from Hyderabad from scrap shop at Hyderabad. Therefore, it is submitted that the amount mentioned in Ex. P7 is imaginary and the Tribunal rightly dismissed the petition.

12. On a careful perusal of the records, it may be seen that the petitioner- Pramod was an inmate of Bolero vehicle which had met with the accident. The charge sheet filed by the police show that both the petitioners were travelling in the Bolero driven by one Mahesh Nimbalkar. Obviously, the said Mahesh Nimbalkar died in the accident. The other charge sheet is filed against the driver of the lorry. From the perusal of these documents which are at Exs.P6 and P10, it is evident that the accident occurred due to head on collision between the vehicles. Therefore, the conclusion of the Tribunal that there is 50%

contributory negligence on the part of the driver of the Bolero and the remaining 50% is contributed by the lorry driver cannot be found fault with.

13. Regarding the quantum of the compensation awarded to the petitioner- Pramod is concerned, it is relevant to note that he had suffered about 6 injuries as mentioned in Ex.P5. Among these injuries, there were fracture of zygomatic, maxillary orbit fracture and few other abrasions. It was opined that the nasal bone fracture, right zygomataic orbital floor are the grievous injuries. PW3, in his Disability Certificate at Ex.P12 states that due to the fracture of the facial bones, he opines that there is a disability of 10%.

14. It is pertinent to note that, the physical disability to the facial bones due to the fracture of the zygomatic arch, orbital bones and nasal bone has no nexus to the functional disability of the petitioner. The petitioner is a driver and in no way the above injuries or the disability can have any nexus to the functionality of

the petitioner as a driver. Under these circumstances, the claim for the compensation under the head of 'loss of future earnings' cannot be sustained.

15. Sofar as the compensation under the head of pain and suffering is concerned, it appears that, it is on the lower side and the same has to be enhanced Rs.50,000/-. Sofar as the compensation under the head of 'loss of income during laid up period', is concerned, assessing his income at Rs.8,750/- per month, a sum of Rs.6,000/- has to be awarded in addition to what has been awarded by the Tribunal.

16. The Tribunal has awarded a sum of Rs.20,000/- under the head of 'loss of amenities in life'. It is to be noted that the petitioner is going to suffer the fracture of the zygomatic arch, orbital bone and nasal bone for the rest of his life. Therefore, the compensation of Rs.20,000/- being meager, the same is enhanced to Rs.50,000/-. The compensation under the remaining head do not require any enhancement. Hence, the petitioner is entered for a

total compensation of Rs.1,56,000/- under the following heads:

Sl.No.	Head of compensation	Amount of compensation
1.	Towards pain and sufferings (as per Ex.P5 the petitioner sustained two grievous and four simple injuries	Rs. 50,000/-
2.	Towards medical expenses	Rs. 10,000/-
3.	Towards Transportation, nourishment and medical attendant charges	Rs. 20,000/-
4.	Towards amenities	Rs. 50,000/-
5.	Loss during laid of period	Rs. 26,000/-
	Total Less: Awarded by Tribunal Enhancement	Rs.1,56,000/- Rs.1,10,000/- Rs. 46,000/-

As discussed supra, the petitioner-Pramod had no role to play in the accident and it is a case of composite negligence for him. Hence, he is entitled for the compensation as determined above.

17. Sofar as the compensation in respect of the damages to the vehicle of petitioner-Sangamesh is concerned, Motor Vehicle inspector's report at Ex.P8 lists the following damages:

1. Chassis twisted and damaged.
2. Front body shell twisted and damaged.
3. Rear closed body is twisted and damaged.

4. Entire chassis frame shell twisted and damaged.
5. Front both side shock absorber assemblies bent and damaged.
6. Front right side door is twisted and damaged.
7. Bonnet is twisted and damaged.
8. Dash board assembly is broken and damaged.
9. Upper and lower cross member are twisted.
10. Radiator assembly is damaged.
11. Front both side assembly bent and damaged.
12. Front wind screen glass broken and damaged.
13. Front drive side window glass is broken.
14. Both side rear view mirror assemblies are broken and damaged.
15. Differential axle is broken due to impact.
16. Front axle is broken due to impact.
17. Mirror accessories of engine part are damaged due to impact.
18. Front right side wheel assembly is damaged due to impact.
19. Front both side fenders are twisted.
20. Front bumper assembly is twisted.
21. Engine casing damaged.

18. It is worth to note that there were 21 damages as above to the Bolero vehicle. Admittedly, the petitioner-Sangamesh, took the said vehicle to PW4- Dawal Malik at his Dawal Garage and got it repaired at the cost of Rs.3,04,100/-. PW4 states that he carried out the repairs and had received the said amount. In the cross-examination, it is elicited that Ex.P7 is issued by him. He admits that he does not have any licence to run the

Garage or he is having any GST Account Number. It is elicited that he procured the spares from Hyderabad from a scrap shop and repair the vehicle.

19. The cross examination of PW2 Sangamesh would show that his insurer IFFCO TOKIO Insurance Company had stated that since there is complete damage to the vehicle, they would pay the value of a new vehicle. Since they did not pay, the petitioner- Sangamesh had to get the vehicle repaired. There is no material on record to show that IFFCO TOKIO had paid any amount to the petitioner-Sangamesh. Therefore, in the absence of any such evidence to show that the petitioner had received the money from IFFCO TOKIO, it cannot be said that even he did not get the vehicle repaired from PW4. Moreover, the entire vehicle had been damaged as elicited in the cross-examination of PW2. The report of the Motor Vehicle Inspector as per Ex.P8 also corroborates such elicitation in the cross-examination of PW2. Even thereafter when IFFCO TOKIO did not pay any amount the petitioner

Sangamesh is saying that he got it repaired from PW4 cannot be brushed aside. It may be true that PW4 does not have a licence to run a Garage or has GST Account number. Admittedly, he has brought some spares from a scrap shop at Hyderabad and got the vehicle repaired. This aspect could not have been brushed aside by the Tribunal. Respondent No.2-Insurance Company had not made any effort to contact IFFCO TOKIO to ascertain whether any amount is paid to the petitioner- Sangamesh or not. In the absence of any such evidence, the Tribunal could not have rejected the claim. In the considered view of this Court, even if certain margin is given to say that the assessment made in Ex.P7 is on the higher side, considering the nature of the damages occurred to the vehicle as stated supra and the elicits made by respondent No.2 in the cross- examination of PW2, it would be just and proper to hold that there were damages to the extent of Rs.3,00,000/-. Out of it, 50% being attributed to the contributory negligence of the driver of Bolero, petitioner-Sangamesh, is entitled for the remaining 50%.

20. In the result, the appeals are liable to be allowed in part. Hence, the following:

ORDER

(i) The appeal in MFA No.201918/2022 arising out of MVC No.44/2017 is allowed in part.

(ii) The petitioner-Pramod is entitled for an additional sum of Rs.46,000/- along with interest at the rate of 6% per annum from the date of petition till its realization from the Insurer.

(iii) The entire compensation amount to be paid by respondent No.2-Insurance Company within a period of 06 weeks from the date of receipt of the copy of this judgment.

(iv) MFA No.201917/2022 arising out of MVC No.48/2017 is also allowed in part.

(v) The petitioner-Sangamesh is entitled for a sum of Rs.1,50,000/- which is 50% of the

compensation amount after deducting his contributory negligence, along with interest at 6% per annum from the date of petition from respondent No.2 - Insurance Company.

Sd/-
(C M JOSHI)
JUDGE

tsn*
List No.: 1 Sl No.: 58
CT: AK