IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 25TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

MISCL. FIRST APPEAL NO. 201717 OF 2022 (MV-I)

C/W

MISCL. FIRST APPEAL NO. 200007 OF 2022

MISCL. FIRST APPEAL NO. 200011 OF 2022

MISCL. FIRST APPEAL NO. 200033 OF 2022

MISCL. FIRST APPEAL NO. 201776 OF 2022

MISCL. FIRST APPEAL NO. 201944 OF 2022

IN M.F.A. NO.201717 OF 2022

BETWEEN:

NAGAPPA
S/O GANTEPPA KUMBAR,
AGE: 51 YEARS,
OCC: NOW NIL
R/O: BENAL IN BASAVANA-BAGEWADI
DIST: VIJAYAPURA – 586 107.

...APPELLANT

Digitally signed by NIJAMUDDIN JAMKHANDI
Location: HIGH COURT OF KARNATAKA

(BY SRI SANGANAGOUDA V.BIRADAR, ADVOCATE)

AND:

1. SANGAPPA KALLAPPA DINDAWAR
   AGE: 43 YEARS,
   OCC: BUSINESS,
   R/O: BENAL N.H. IN BASAVANA
   BAGEWADI, DIST: VIJAYAPURA - 586 101.

2. THE MANAGER LEGAL,
   IFFCO - TOKIO GENERAL INSURANCE CO. LTD.,

KALABURAGI SQUARE, DESAI CROSS,
DESHPANDE NAGAR, HUBBALLI – 580 009.
POLICY NO.1-YAS18SB
VALID FROM 03-12-2018 TO 02-12-2019.

…RESPONDENTS

(BY SRI SUDARSHAN M., ADVOCATE FOR R2;
NOTICE TO R1 IS DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, 1988, PRAYING TO ALLOW THE APPEAL BY MODIFYING THE JUDGMENT AND AWARD DATED 03-03-2021 PASSED BY THE MACT-XV, VIJAYAPURA IN MVC NO.1310/2019 AND CONSEQUENTLY BE PLEASED TO ENHANCE THE COMPENSATION FROM RS.13,42,000/- TO RS.14,90,000/- WITH INTEREST AT 12% PER ANNUM FROM THE DATE OF PETITION TILL ACTUAL REALIZATION.

IN M.F.A. NO.200007 OF 2022

BETWEEN:

THE MANAGER LEGAL,
IFFCO – TOKIO GENERAL INSURANCE CO. LTD.,
KALABURAGI SQUARE, DESAI CROSS,
DESHPANDE NAGAR, HUBBALLI– 586 101.

(POLICY NO.1-YAV18SB VALID
FROM 3.12.2018 TO 2.12.2019)

PRESENTLY REPRESENTED BY ITS
AUTHORIZED SIGNATORY
IFFCO – TOKIO GENERAL INSURANCE CO. LTD.,
CUSTOMER SERVICE CENTRE,
"SRI SHANTHI TOWERS"
5TH FLOOR, 3RD MAIN, 141,
EAST OF NGEF LAYOUT, KASTURI NAGAR,
BANGALORE – 560 084.

…APPELLANT

(BY SRI SUDARSHAN M., ADVOCATE)

AND:

1. SMT. YALLAWWA
W/O SHANKREPPA CHIRALDINNI,
AGE: 47 YEARS,
OCC: COOLIE,
R/O: BENAL VILLAGE,
TQ: BASAVANA BAGEWADI,
DIST: VIJAYAPURA – 586 101.

2. SRI. SANGAPPA KALLAPPA DINDAWAR
S/O KALLAPPA DINDAWAR
AGE: 43 YEARS,
OCC: BUSINESS,
R/O: BENAL N.H.
TQ: BASAVANA BAGEWADI,
DIST: VIJAYAPURA - 586 101.

…RESPONDENTS

(BY SRI SANGANAGOUDA V. BIRADAR, ADVOCATE FOR R1;
NOTICE TO R2 IS SERVED)

THIS MFA IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO SET ASIDE THE JUDGMENT AND AWARD DATED 03-03-2021 PASSED IN MVC NO.1305/2019 BY THE MEMBER MACT-XV, AT VIJAYAPURA.

IN M.F.A. NO.200011 OF 2022

BETWEEN:

THE MANAGER LEGAL,
IFFCO – TOKIO GENERAL INSURANCE CO. LTD.,
KALABURAGI SQUARE, DESAI CROSS,
DESHPANDE NAGAR, HUBBALLI – 586 101.

(POLICY NO.1-YAV18SB VALID
FROM 3.12.2018 TO 2.12.2019)

PRESENTLY REPRESENTED BY ITS
AUTHORIZED SIGNATORY
IFFCO – TOKIO GENERAL INSURANCE CO. LTD.,
CUSTOMER SERVICE CENTRE,
"SRI SHANTHI TOWERS"
5TH FLOOR, 3RD MAIN, 141,

EAST OF NGEF LAYOUT, KASTURI NAGAR,
BANGALORE – 560 084.

…APPELLANT

(BY SRI SUDARSHAN M., ADVOCATE)

AND:

1. NAGAPPA
S/O GANTEPPA KUMBAR
AGE: 50 YEARS,
OCC: NIL,
R/O: BENAL VILLAGE,
TQ: BASAVANA BAGEWADI,
DIST: VIJAYAPURA – 586 101.

2. SRI. SANGAPPA KALLAPPA DINDAWAR
S/O KALLAPPA DINDAWAR
AGE: 43 YEARS,
OCC: BUSINESS,
R/O: BENAL N.H.
TQ: BASAVANA BAGEWADI,
DIST: VIJAYAPURA - 586 101.

…RESPONDENTS

(BY SRI SANGANAGOUDA V. BIRADAR, ADVOCATE FOR R1;
NOTICE TO R2 IS SERVED)

THIS MFA IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO SET ASIDE THE JUDGMENT AND AWARD DATED 03-03-2021 PASSED IN MVC NO.1310/2019 BY THE MEMBER MACT-XV, AT VIJAYAPURA.

IN M.F.A. NO.200033 OF 2022

BETWEEN:

THE MANAGER LEGAL,
IFFCO – TOKIO GENERAL INSURANCE CO. LTD.,
KALABURAGI SQUARE, DESAI CROSS,
DESHPANDE NAGAR, HUBBALLI – 586 101.

(POLICY NO.1-YAV18SB VALID
FROM 3.12.2018 TO 2.12.2019)

PRESENTLY REPRESENTED BY ITS
AUTHORIZED SIGNATORY
IFFCO – TOKIO GENERAL INSURANCE CO. LTD.,
CUSTOMER SERVICE CENTRE,
"SRI SHANTHI TOWERS"
5TH FLOOR, 3RD MAIN, 141,
EAST OF NGEF LAYOUT, KASTURI NAGAR,
BANGALORE – 560 084.

…APPELLANT

(BY SRI SUDARSHAN M., ADVOCATE)

AND:

1. SMT. RENUKA @ RENAWWA
W/O SHIVAPPA CHALAWADI,
AGE: 41 YEARS,
OCC: COOLIE,
R/O: BENAL VILLAGE,
TQ: BASAVANA BAGEWADI,
DIST: VIJAYAPURA – 586 203.

2. SRI. SANGAPPA KALLAPPA DINDAWAR
S/O KALLAPPA DINDAWAR
AGE: 43 YEARS,
OCC: BUSINESS,
R/O: BENAL N.H.
TQ: BASAVANA BAGEWADI,
DIST: VIJAYAPURA - 586 101.

…RESPONDENTS

(BY SRI SANGANAGOUDA V. BIRADAR, ADVOCATE FOR R1;
NOTICE TO R2 IS SERVED)

THIS MFA IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO SET ASIDE THE JUDGMENT AND AWARD DATED 03-03-2021 PASSED IN MVC NO.1304/2019 BY THE MEMBER MACT-XV, AT VIJAYAPURA.

IN M.F.A. NO.201776 OF 2022

BETWEEN:

YALLAWWA
W/O SHANKREPPA CHIRALDINNI,
AGE: 48 YEARS,
OCC: COOLIE,
R/O: BENAL IN BASAVANA-BAGEWADI,
DIST: VIJAYAPURA – 586 101.

…APPELLANT

(BY SRI SANGANAGOUDA V.BIRADAR, ADVOCATE)

AND:

1. SANGAPPA KALLAPPA DINDAWAR
AGE: 43 YEARS,
OCC: BUSINESS,
R/O: BENAL N.H.
IN BASAVANA BAGEWADI,
DIST: VIJAYAPURA - 586 101.

2. THE MANAGER LEGAL,
IFFCO - TOKIO GENERAL INSURANCE CO. LTD.,
KALABURAGI SQUARE, DESAI CROSS,
DESHPANDE NAGAR, HUBBALLI.
POLICY NO.1-YAS18SB
VALID FROM 03-12-2018 TO 02-12-2019.

…RESPONDENTS

(BY SRI SUDARSHAN M., ADVOCATE FOR R2;
NOTICE TO R1 SERVED)

THIS MFA IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, 1988, PRAYING TO ALLOW THE APPEAL BY MODIFYING THE JUDGMENT AND AWARD DATED 03-03-2021 PASSED BY THE MACT-XV, VIJAYAPURA IN MVC NO.1305/2019 AND CONSEQUENTLY BE PLEASED TO ENHANCE THE COMPENSATION FROM RS.1,84,400/- TO RS.11,90,000/- WITH INTEREST AT 12% PER ANNUM FROM THE DATE OF PETITION TILL ACTUAL REALIZATION.

IN M.F.A. NO.201944 OF 2022

BETWEEN:

SMT. RENUKA @ RENAWWA
W/O SHIVAPPA CHALAWADI,
AGE: 41 YEARS,
OCC: COOLIE,
R/O: BENAL IN BASAVANA - BAGEWADI,
DIST: VIJAYAPURA.

…APPELLANT

(BY SRI SANGANAGOUDA V.BIRADAR, ADVOCATE)

AND:

1. SANGAPPA KALLAPPA DINDAWAR
AGE: 43 YEARS,
OCC: BUSINESS,
R/O: BENAL N.H. IN BASAVANA-BAGEWADI,
DIST: VIJAYAPURA.

2. THE MANAGER LEGAL,
IFFCO - TOKIO GENERAL INSURANCE CO. LTD.,
KALABURAGI SQUARE, DESAI CROSS,
DESHPANDE NAGAR, HUBBALLI.
POLICY NO.1-YAS18SB
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…RESPONDENTS

(BY SRI SUDARSHAN M., ADVOCATE FOR R2;
NOTICE TO R1 IS DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, 1988, PRAYING TO ALLOW THE APPEAL BY MODIFYING THE JUDGMENT AND AWARD DATED 03-03-2021 PASSED BY THE MACT-XV, VIJAYAPURA IN MVC NO.1304/2019 AND CONSEQUENTLY BE PLEASED TO ENHANCE THE COMPENSATION FROM RS.1,48,507/- TO RS.12,40,000/- WITH INTEREST AT 12% PER ANNUM FROM THE DATE OF PETITION TILL ACTUAL REALIZATION.

THESE MFA'S, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL JUDGMENT

Challenging judgment and award dated 03.03.2021 passed by Motor Accident Claims Tribunal no.XV, Vijayapura, (for short, 'Tribunal') in MVCs no.1304, 1305 and 1310 of 2019, these appeals are filed by insurer as well as claimants. While MFAs no.200033/2022, 200007/2022 and 200011/2022 are filed by insurer, MFAs no.201944/2022, 201776/2022 and 201717/2022 are filed by claimants.

2. Sri Sudarshan M., learned counsel submitted, as per claimants, at 2:30 p.m., on 08.12.2018, all claimants were traveling in auto-rickshaw bearing registration no.KA-28/9238 on NH-50, when it was near Benal cross, its driver drove it in rash and negligent manner, lost control and vehicle turtled causing accident. In said accident, passengers sustained grievous injuries and lost earning capacity despite taking treatment. Therefore, they filed claim petitions in MVCs no.1304, 1305 and 1310 of 2019 respectively under Section 166 of Motor Vehicles Act against owner and insurer of auto-rickshaw.

3. On contest, wherein, owner remained exparte and insurer denied claimants' averments in toto and alleged violation of policy conditions and specifically, contended that vehicle was covered for geographical limits within Basavana Bagewadi town, but accident had occurred beyond said limit. Thereby, leading to violation of terms and conditions of policy. Under such circumstances, tribunal was not justified in holding insurer liable to pay compensation. Tribunal framed issues and recorded evidence. Claimants examined themselves as PWs.1 to 3 and Exs.P1 to P20 were marked. Court Commissioner examined Dr.Ramanagouda Basanagouda Biradar as CW.1 and Exs.C1 to C6 were got marked. Respondent – insurer examined its official as RW.1 and got marked Exs.R1 and R2.

4. On other hand, Sri Sanganagouda V.Biradar, learned counsel for claimants opposed insurer's appeals and pressed claimants' appeals for enhancement. It was submitted in view of decision of Division Bench of this Court in case of ***Abdul Rouf v. Megharaj Mehdole and others*** in MFA no.201648/2015 and connected matters disposed of on 26.11.2020, holding insurer liable even if it established

violation of permit conditions due to vehicle plying beyond geographical limits of coverage, as such violation would at best invite penalty, appeals were devoid of merit.

5. On quantum, it was submitted, in MVC no.1304/2019, claimant- Renuka who was 38 years old and working as coolie, sustained fracture of superior and inferior remiss of pelvis, assessed by CW.1-Dr.R.B.Biradar to have resulted in 12% permanent physical disability. But, tribunal considered functional disability at 4% which was on lower side. It was submitted, despite claimant sustaining major fracture, award of Rs.20,000/- towards pain and suffering was inadequate. Tribunal also erred in awarding meager amount of compensation of Rs.6,500/- towards attendant charges, food, nourishment and other incidental expenses, Rs.5,000/- towards loss of amenities and Rs.10,000/- towards loss of income during laid-up period and sought enhancement.

6. In MVC no.1305/2019, it was submitted, claimant was 45 years old, agricultural coolie, who sustained fracture of lower end of right radius. However, tribunal awarded only Rs.20,000/- towards pain and suffering and same requires

enhancement. It was submitted CW.1 had assessed limb disability at 20%, tribunal erred in taking functional disability at 7% and same requires enhancement. Tribunal also erred in awarding only Rs.6,000/- towards attendant charges, food, nourishment and other incidental expenses, Rs.5,000/- towards loss of amenities and Rs.10,000/- towards loss of income during laid-up period which were inadequate and sought enhancement

7. In MVC no.1310/2019, it was submitted, claimant was 48 years old, pottery worker, who had sustained grievous injuries leading to amputation of left leg below knee assessed by CW.1 to have resulted in 70% disability affecting limb. Tribunal erred in taking functional disability at 55%. It was submitted, as per decision of Hon'ble Supreme Court in ***Mohd.Sabeer @ Shabir Hussain v. Regional Manager, UPSRTC***[1]***,*** tribunal ought to have added future prospects to monthly income even in personal injury claims, as same was not added, impugned award calls for interference. It was further submitted, award of Rs.25,000/- towards attendant

[1] (2023)20 SCC 774

charges, food, nourishment and other incidental expenses, when claimant was inpatient for 30 days was inadequate. Likewise, award of Rs.20,000/- towards loss of amenities and Rs.35,250/- towards loss of income during laid-up period for only three months was not justified and sought enhancement.

8. Heard learned counsel and perused impugned judgment and award.

9. From above and since insurer is questioning award on ground of liability while claimants are seeking for enhancement of compensation, points that would arise for consideration are:

> "1. Whether finding of tribunal on liability of insurer calls for interference?
>
> 2. Whether claimants are entitled for enhancement of compensation as prayed for?"

Point no.1:

10. Only ground on which liability is challenged by insurer is that accident occurred when insured vehicle was plying beyond geographical area for which insurance coverage was issued. Under similar facts, this Court in ***Abdul Rouf's***

case (supra) held insurer could not avoid liability as infraction would at best invite fine by insured. Following said ratio, point no.1 is answered in negative.

Point no.2:

11. Insofar as quantum, in MVC no.1304/2019, claimant-Renuka, though in claim petition stated, she was 38 years old, working as agricultural coolie and earning Rs.10,000/- per month, she did not substantiate same with specific material. In absence of proof of income, notional income has to be considered. Since accident occurred in year 2018, notional income for 2018 is Rs.11,750/- per month, same is assessed as monthly income. Claimant sustained fracture of superior and inferior remiss of pelvis which would be major fracture. Under such circumstances, award of Rs.20,000/- towards pain and suffering would be on lower side, it would be appropriate to enhance it to Rs.40,000/-. Tribunal has awarded Rs.35,007/- towards medical expenses against bills produced. Since there is complete reimbursement, there is no scope for enhancement.

12. As per claimant, she has taken treatment as inpatient for a period of four days. Award of Rs.6,500/- towards attendant charges, food, nourishment and other incidental charges would appear just and proper. CW.1-Orthopedic Surgeon opined injury sustained to have resulted in permanent physical disability to extent of 12%. Tribunal however, considered functional disability at 4% applying 1/3rd formula which would not be appropriate. Considering fact that claimant is a woman and fracture of pelvic bone affect women more, as they would be required to work while squatting, it would be appropriate to enhance it to 6%. Thus, computation of future loss of income would be as follows:

Rs.11,750 x 12 x 15 x 6% = Rs.1,26,900/-

13. Considering fracture and disability sustained, award of Rs.5,000/- towards loss of amenities would be grossly inadequate, it would be appropriate to enhance it to Rs.30,000/-. Normally, fractures take about three months to heal. Therefore, claimant would be entitled to Rs.35,250/- towards loss income during laid-up period. Thus, claimant held

entitled for total compensation of Rs.2,73,657/-. Point no.2 for consideration is answered partly in affirmative as above.

14. In MVC no.1305/2019, claimant-Yallawwa, though in claim petition stated, she was 45 years old, working as agricultural coolie and was earning Rs.10,000/- per month, she did not substantiate same with specific material. In absence of specific proof, notional income has to be considered. Since accident occurred in year 2018, notional income for 2018 i.e., Rs.11,750/- is taken as monthly income. Claimant sustained fracture of lower end of radius. Award of Rs.20,000/- towards pain and suffering would be adequate. Tribunal has awarded Rs.25,817/- towards medical expenses against bills produced leaving no scope for enhancement. It has awarded Rs.6,000/- towards attendant charges, food, nourishment and other incidental expenses. Taking note of fact that claimant was inpatient for two days, same would not call for enhancement.

15. CW.1 assessed whole body disability to extent of 20%. Tribunal assessed functional disability at 7%. There is no proper explanation about effect of fracture and mal-union on earning capacity. Under such circumstances, assessment of

disability at 7% would appear justified. Thus, compensation under head loss of future earning capacity would be:

Rs.11,750 x 12 x 14 x 7% = Rs.1,38,180/-

16. Considering fracture and disability sustained, award of Rs.5,000/- towards loss of amenities would be grossly inadequate. It would be appropriate to enhance it to Rs.30,000/-. Normally, fractures take three months to heal. Therefore, claimant would be entitled to Rs.35,250/- towards loss of income during laid-up period. Thus, claimant held entitled for total compensation of Rs.2,55,247/-. Point no.2 for consideration is answered partly in affirmative as above.

17. In MVC no.1310/2019, claimant-Nagappa, though in claim petition stated, he was 48 years old pottery worker and earning Rs.15,000/- per month, he did not substantiate same with specific material. In absence, notional income has to be considered. Since accident occurred in year 2018, tribunal was justified in assessing his monthly income at Rs.11,750/-. Claimant sustained several fractural injuries leading to amputation of his left leg below knee. CW.1 assessed limb disability at 70%. Tribunal assessed functional disability at

55%. But tribunal failed to add future prospects to monthly income, as per ratio laid down in ***Mohd.Sabeer @ Shabir Hussain's*** case (supra), even in case of personal injury claims, future prospects require to be added to monthly income. Following said ratio and taking note of fact that claimant was 48 years of age and self-employed, 25% has to be added to monthly income. Thus, compensation under head of future loss of income would require calculation as follows:

(Rs.11,750 + 25%) x 12 x 13 x 55% = Rs.12,60,144/-

18. Since claimant sustained amputation of left limb, award of Rs.50,000/- towards pain and suffering is not justified. It would be appropriate to enhance it to Rs.1,50,000/-. Tribunal has awarded Rs.2,03,445/- towards medical expenses. Since there is complete reimbursement, same would not call for enhancement. Claimant had stated that he had taken treatment as inpatient for period of 30 days. Under such circumstances, award of Rs.25,000/- towards attendant charges, food, nourishment and other incidental charges would not be adequate. It would be appropriate to enhance it to Rs.40,000/-. Taking note of ratio of Hon'ble

Supreme Court in case of ***Raj Kumar v. Ajay Kumar & Anr.***[2], wherein in case of amputation, it had awarded Rs.1,50,000/- towards loss of amenities, award of Rs.20,000/- towards loss of amenities by tribunal would be grossly inadequate, instead Rs.1,50,000/- is awarded under said head. Normally, in case of amputation of lower limb, it would be appropriate to hold six months as period of lay off and to award Rs.70,500/- towards loss of income during laid-up period. Tribunal has also not awarded any compensation towards artificial limb, its periodical repair and replacement. Considering same, it would be appropriate to award a sum of Rs.1,00,000/- under said head. Thus, claimant is held entitled for total compensation of Rs.19,74,089/-. Point no.2 for consideration is answered partly in affirmative as above. Consequently following:

ORDER

i. Insurer's appeals in MFAs no.200033/2022, 200007/2022 and 200011/2022 are dismissed.

ii. Amount in deposit, if any, be transmitted to tribunal, for disbursement.

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[2] (2011) 1 SCC 343

iii. Claimants' appeals in MFAs no.201944/2022, 201776/2022 and 201717/2022 are allowed in part. Judgment and award dated 03.03.2021 passed by Motor Accident Claims Tribunal no.XV, Vijayapura, in MVCs no.1304, 1305 and 1310 of 2019, are modified. Claimant in MVC no.1304/2019 is held entitled for total compensation of Rs.2,73,657/- as against Rs.1,48,507/-, claimant in MVC no.1305/2019 is held entitled for total compensation of Rs.2,55,247/- as against Rs.1,84,400/- and claimant in MVC no.1310/2019 is held entitled for total compensation of Rs.19,74,089/- as against Rs.13,42,000/- awarded by tribunal. Same shall carry interest at 6% per annum from date of claim petition till deposit.

iv. Insurer to deposit balance compensation amount within a period of six weeks.

Sd/-
(RAVI V HOSMANI)
JUDGE

NB/SN
List No.: 1 Sl No.: 41/Ct:Vk