IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 20TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

MISCL. FIRST APPEAL NO.202080 OF 2023 (MV-I)

BETWEEN:

BHIMAPPA S/O GANGAPPA TANGADAGI,
AGE: 64 YEARS, OCC: RETIRED AND BUSINESS,
R/O: SECTOR NO.2, NAVANAGAR, BAGALKOT.

...APPELLANT

(BY SRI SANGANABASAVA B.PATIL, ADVOCATE)

AND:

1. PARASHURAM
S/O YALLAPPA BAJANTARI,
AGE: 43 YEARS, OCC: BUSINESS,
R/O: HOUSE NO.70/C, NAVANAGAR,
SECTOR NO.38, BAGALKOT – 587 102.

2. THE MANAGER LEGAL/CLAIMS,
SHRIRAM GENERAL INSURANCE CO. LTD.,
SHOP NOS.2 AND 3, BASAVESHWAR COMPLEX,
MUKUND NAGAR, STATION ROAD,
VIJAYAPURA – 586 101.

...RESPONDENTS

(BY SRI SUBHASH MALLAPUR, ADVOCATE FOR R2;
R1 IS SERVED)

Digitally signed by RAMESH MATHAPATI
Location: HIGH COURT OF KARNATAKA

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO CALL FOR THE RECORDS AND MODIFY THE JUDGMENT AND AWARD PASSED BY THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE AND M.A.C.T.-V, VIJAYAPURA AT VIJAYAPURA IN M.V.C. NO.757/2019 DATED 15.07.2022 AND BE PLEASED TO ALLOW THE CLAIM PETITION BY GRANTING THE RELIEF AS PRAYED FAR BY THE APPELLANT IN THE INTEREST OF JUSTICE AND EQUITY.

THIS MISCELLANEOUS FIRST APPEAL, 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 15.07.2022. passed by Principal Senior Civil Judge and M.A.C.T.-V, Vijayapura in MVC no.757/2019, this appeal is filed.

2. Sri Sanganbasava B Patil, learned counsel submitted, appeal was by claimant challenging finding of tribunal on liability as well as for enhancement of compensation. It was submitted, on 25.04.2019, at about 8:40 a.m., when claimant was riding motorcycle bearing registration no.KA-29/ED-0336 near Anush Petrol Pump Cross, Navanagar, Bagalkot, driver of Tata Ace goods vehicle bearing registration no.KA-29/A-6359 drove it in rash and negligent manner and dashed against motorcycle, causing accident. In said accident, claimant sustained fracture to right forearm and head injury. Despite taking treatment, he did not recover fully and lost earning capacity. Therefore, he filed claim petition under Section 166 of MV Act.

3. Contesting claim petition, insurer of offending vehicle opposed petition on all grounds. Based on same, tribunal framed issues and recorded evidence. Claimant examined himself as PW-1, Dr.Shakil Ahmed and Dr.SV Havinal as PWs-2 and 3 and got marked Exs.P-1 to P16. Insurer did not lead any evidence, but, got marked insurance policy as Ex.R-1 with consent.

4. On consideration, tribunal held that accident occurred due to rash and negligent driving of insured vehicle by its driver and claimant had sustained loss of earning capacity and awarded compensation as under:

Sl.No.	Different Heads	Compensation Amount
1	Pain and sufferings	Rs.25,000/-
2	Medical bills incurred and future medical expenses, attendant, conveyance, Nourishing food, and other incidental expenses.	Rs.5,66,600/-
3	Loss of income during laid-up period	-
4	Loss of future income on account of permanent disability.	-
5	Loss of Amenities, Life comforts and expectancy of life.	Rs.10,000/-
	Total	**Rs.6,01,600/-**

5. It absolved insurer of its liability on ground that fitness certificate and permit in respect of goods vehicle had expired as on date of accident and directed respondent no.1-owner to pay compensation.

6. Learned counsel for appellant submitted, tribunal had awarded inadequate compensation towards loss of amenities and sought enhancement. He also contended that Tribunal erred in absolving liability on part of insurer. In support of submission, he relied on Division Bench decision of this Court in MFA no.202022/2016.

7. On other hand, Sri Subash Mallapur, learned counsel for insurer opposed appeal. It was contended that owner had renewed permit and fitness certificate after date of accident and therefore, tribunal had rightly dismissed claim petition against insurer. It was also submitted just compensation was awarded and as there was no scope for enhancement.

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

9. From above and since claimant is challenging finding on liability as well as seeking for enhancement, points that arise for consideration are :

i) Whether Tribunal was justified in dismissing claim petition against insurer?

ii) Whether, claimant is entitled for enhancement of compensation?

10. It is not in dispute that offending vehicle was duly insured. Insurer sought to avoid liability on ground of expiry of permit and fitness certificate. It is not in dispute that same were renewed after accident. Division Bench of this Court in MFA no.202022/2016 has held that mere expiry of permit and fitness certificate would not be a ground for insurer to avoid liability. Following said ratio, point no.1 is answered in negative.

11. On quantum, it is seen that claimant was a government employee. Considering same, Tribunal had disallowed award towards loss of income during laid up period and loss of future earnings. However, it awarded only Rs.10,000/- towards loss of amenities. As, PW-2 and PW-3

assessed disability caused, which would affect claimant in his daily activities, even otherwise than service. Therefore, he would be entitled for higher compensation. Taking note of ratio laid down by Hon'ble Apex Court in case of ***Raj Kumar v. Ajay Kumar and Another*** reported in ***(2011) 1 SCC 343,*** it is found appropriate to award a sum of Rs.50,000/- towards loss of amenities. Point no.2 is answered partly in affirmative. Consequently, following:

ORDER

a. Appeal is ***allowed in part***.

b. Judgment and award dated 15.07.2022 passed by Principal Senior Civil Judge and M.A.C.T.-V, Vijayapura in MVC no.757/2019 is modified. Dismissal of petition against respondent no.2 is set aside.

c. Claimant is entitled for re-assessed compensation of Rs.6,41,600/- as against Rs.6,01,600/- awarded by tribunal with 6% interest from date of petition, till deposit.

d. Respondent no.2-insurer is held liable to pay said compensation and is directed to deposit it before tribunal within a period of six weeks. On

deposit, all conditions about deposit and release as per tribunal award would apply.

Sd/-
(RAVI V HOSMANI)
JUDGE

NJ
List No.: 1 Sl No.: 41