HC-KAR

NC: 2025:KHC:26238
MFA No. 617 of 2021

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**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 16TH DAY OF JULY, 2025**

**BEFORE**

**THE HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA**

**MISCELLANEOUS FIRST APPEAL NO.617 OF 2021 (MV-I)**

**BETWEEN:**

SHIVEGOWDA,
S/O. NANJEGOWDA,
AGED ABOUT 45 YEARS,
R/AT ANNENAHALLI VILLAGE,
DANDIGANAHALLI HOBLI,
CHANNARAYAPATNA,
HASSAN DISTRICT-573 102.

...APPELLANT

(BY SRI. SAMPATH KUMAR, ADVOCATE FOR
SRI. PRATHEEP K. C., ADVOCATE)

**AND:**

1. NANJESHGOWDA,
   S/O. MANJEGOWDA,
   AGED ABOUT 45 YEARS,
   R/AT ANNENAHALLI VILLAGE,
   DANDIGANAHALLI HOBLI,
   CHANNARAYAPATNA,
   HASSAN DISTRICT-573 102.

2. THE MANAGER,
   NATIONAL INSURANCE CO. LIMITED
   HERO HONDA VERGICAL 101-106
   B. M. C. HOSE, NEW DELHI,
   REP BY, MANAGER
   NATIONAL INSURANCE CO. LTD.,
   MANJUNATHA COMPLEX,
   OLD BUS STAND,

HASSAN-573 201.

…RESPONDENTS

(BY SRI. O. MAHESH, ADVOCATE FOR R2;
V/O. DATED 26.03.2021, NOTICE TO R1 IS DISPENSED WITH)

THIS MFA FILED U/S. 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 05.09.2017 PASSED IN MVC NO.755/2015 ON THE FILE OF THE SENIOR CIVIL JUDGE AND J.M.F.C., CHANNARAYAPATNA, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL, COMING ON FOR DICTATING JUDGMENT, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

**ORAL JUDGMENT**

Heard Sri.Sampath Kumar who appears physically before this Court and represents Sri.Pratheep.K.C, learned counsel on record for the appellant. Also heard Sri.O.Mahesh who appears through video conference and represents respondent No.2.

2. Challenge in this appeal is the order that is rendered by the Motor Accident Claims Tribunal, Channarayapatna in MVC No.755/2015 dated 05.09.2017. This is a claimant's appeal.

3. The matrix of the case as projected by the appellant before the Tribunal is that on 04.01.2015 at about 9.30 p.m., while he was proceeding on his TVS XL motorcycle bearing registration No.KA-13-X-2120 along with his relative and when they reached near milk diary of Jodigatte, took u-turn and were proceeding towards Hirehalli Village, the rider of motorcycle bearing registration No.KA-13-V-3715, drove his vehicle in a rash and negligent manner endangering human life and at a high speed, came on the extreme right side of the road and dashed against his motorcycle, due to which he fell down and sustained injuries.

4. Learned counsel for the appellant submits that the appeal is filed on two grounds. Firstly, that there is no contributory negligence whatsoever on the part of the appellant. Secondly, that the compensation granted is too meager.

5. Arguing on first point that is in respect of contributory negligence, learned counsel for the appellant submits that though the appellant produced sufficient material to show that the accident occurred due to sole negligence on the part of the rider of the motor cycle bearing registration No.KA-13-V-3715, the Tribunal basing on whimsy and un-established grounds held that the appellant contributed for the accident to occur and such contribution is 25%. Learned counsel states that a complaint was given against the rider of the motor cycle bearing registration No.KA-13-V-3715. Basing on the said complaint police investigated into the matter, examined relevant witnesses and filed charge sheet holding that the accident occurred solely due to the rash and negligent riding of the rider of the motor cycle bearing registration No.KA-13-V-3715. No evidence whatsoever is produced by the insurance company to show that the appellant contributed for the accident to occur. Therefore, the

Tribunal erred in attributing contributory negligence on the part of the appellant.

6. Per contra, the submission that is made by the learned counsel for respondent No.2/insurance company is that the appellant was riding the motor cycle without possessing valid and effective driving license. The appellant who examined himself as Pw.1 clearly admitted during the course of cross examination that he was not holding driving license to ride motor cycle when the accident occurred. Having observed the said fact the Tribunal rightly held that the appellant contributed for the accident to occur and therefore, the order of the Tribunal in that regard needs no interference.

7. The Tribunal framed an issue which reads as under:

> *"Whether the claimant proves that he has sustained grievous injury in R.T.A. that occurred on 04.01.2015 at about 9.30 pm., while crossing the road near B.M.Road, NH.75, in front of Jadikatte milk dairy met with an accident due to rash and negligent*

*riding of motor cycle bearing Reg.No.KA-13-V-3715 by its rider?"*

8. Discussing said issue, subjecting the entire evidence brought in that regard to scrutiny, ultimately gave a finding holding that the appellant proved the aspect of rash and negligent driving by the driver of the offending vehicle. Such conclusion is found at paragraph No.15 of the impugned order.

9. Learned counsel for respondent No.2 place much reliance on the admission of Pw.1 that he was not holding driving license to ride motor cycle. Now the fact which has to be discussed and decided is whether contributory negligence can be attributed solely on the ground that the person was driving the vehicle without driving license. Stating that such contributory negligence cannot be attributed, learned counsel for the appellant place reliance upon the decision of the Hon'ble Apex Court in the case between *Sri Dinesh Kumar.J @ Dinesh J vs. National Insurance Co.Ltd & Ors. in Civil Appeal*

*No.22966/2017*. Discussing on similar factual matrix, the Hon'ble Apex Court at paragraph Nos.8 and 9 of the judgment held as under:

> *8. We are in agreement with the submission which has been urged on behalf of the appellant that plea of contributory negligence was accepted purely on the basis of conjecture and without any evidence. Once the finding that there was contributory negligence on the part of the appellant is held to be without any basis, the second aspect which weighted both with the tribunal and the High Court, that the appellant had not produced the driving licence, would be of no relevance. This aspect has been considered in a judgment of this Court in* ***Sudhir Kumar*** *(supra) where it was held as follows:*
>
> > *"9. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence....*
> >
> > *10. The matter might have been different if by reason of his rash and negligent driving, the accident had taken place"*
>
> *9. In view of the above position, we are of the view that the deduction of forty percent which*

*was made on the ground of contributory negligence is without any basis.*

10. The version of the appellant is that the accident occurred due to sole negligence on the part of the rider of the motor cycle bearing registration No.KA-13-V-3715. The appellant as discussed earlier has admitted that he was not holding driving license to ride the motor cycle which is involved in the accident. The owner of the vehicle bearing registration No.KA-13-V-3715 who is arrayed as respondent No.1 before the Tribunal failed to contest the matter and therefore, he was set-exparte. The insurance company except producing the policy of insurance did not adduce any other evidence more particularly any evidence with regard to the alleged contributory negligence on the part of the appellant. On the other hand, the appellant apart from examining himself as Pw.1, produced Ex.P1-copy of charge sheet, Ex.P2-copy of FIR and Ex.P3-copy of complaint which all speaks that the rider of the motor cycle bearing registration No. KA-13-V-3715 alone was at

fault. Thus no material whatsoever is on record to show that the appellant contributed for the accident to occur.

11. Only because the appellant was not holding driving license to ride his vehicle which is involved in the accident it cannot be held that he contributed to the accident to occur when all other convincing evidence speaks that the rider of the other vehicle which is involved in the accident was solely at fault. Therefore, this Court holds that the Tribunal erred in attributing contributory negligence on the part of the appellant.

12. Coming to the second ground that is in respect of quantum, learned counsel for the appellant submits that the appellant sustained grievous injuries due to the accident and the injury sustained to the left leg ultimately resulted in amputation. Learned counsel submits that no compensation whatsoever is awarded by the Tribunal under the head loss of future earnings which is highly unjustifiable. The submission that is made by learned

counsel for respondent No.2 on the other hand is that there is no medical record with regard to such amputation and therefore, the Tribunal rightly held that the appellant is not entitled for any compensation under the head loss of future earnings.

13. The evidence of Pw.2 is that he is working as orthopedic surgeon at Mangala Hospital, Hassan. On 04.01.2015 the appellant was admitted at his hospital with history of road traffic accident and on examination it was found that there is swelling and deformity of left leg, swelling and deformity of left knee and swelling of face. X-ray revealed fracture of left tibia and fibula condylar and injury to mandible. The appellant was operated and fixed with interlocking nail. He was discharged on 11.01.2015 and he was advised to follow up treatment in OPD and physiotherapy. The appellant was regular in follow up treatment. The fracture did not unite since there was partial vascular injury and also high grade infection to left leg. He was re-admitted on 25.02.2016 and above knee

amputation was done. The total disability for left lower limb is about 80%.

14. The Tribunal, making an observation at paragraph No.21 of the impugned order that no documents were produced to show that the appellant took follow-up treatment and also holding that there is medical negligence on the part of the treated doctor and there may be chances of negligence on the part of the appellant in not following proper instructions and medical advice which is found at paragraph No.23 of the impugned order, ultimately failed to award any compensation under the head loss of future earnings. The Tribunal only awarded a sum of Rs.50,000/- under the head of loss of amenities in life.

15. By all the evidence that is brought on record the appellant succeeded in establishing that immediately after the accident he got admitted into the hospital, took the treatment required which includes a surgery and left

the hospital on discharge. It is not the case of even the second respondent that the appellant left the hospital against medical advice. No evidence whatsoever is on record to show that the appellant failed to take follow-up treatment or acted against the instructions of either Pw.2 or the hospital authorities. Also no evidence is on record to show that there is negligence on the part of the doctor who treated the appellant or the appellant himself. The appellant admittedly sustained fracture of left tibia and fibula and he was operated and fixed with interlocking nail. One cannot say in certainty that all the surgeries should yield desired result or that the fractures sustained by the human beings should definitely unite. Pw.2 gave evidence in definite terms that the appellant was regular in follow up treatment, but the fracture did not unite since there was partial vascular injury and also high grade of infection and that the left leg went cellulitis. The amputation of left leg above knee is undoubtedly due to the injuries sustained during the course of accident. Though learned

counsel for respondent No.2 submitted that there is no medical record in respect of such amputation, however, the evidence of Pw.2 coupled with Ex.P5-medical certificate clearly discloses that the left leg was amputated above knee. In Ex.P5-medical certificate there is a clear mention that such amputation was absolutely necessary for survival of the appellant. Therefore, this Court is of the view that the Tribunal ought to have awarded the entitled amount under the head loss of future earnings.

16. The version of the appellant is that by doing agricultural work and animal husbandry, he was earning Rs.25,000/- p.m. by the date of accident. However, the appellant failed to produce any substantive proof either with regard to his occupation or earnings by the date of accident. The accident occurred in the year 2015. For the relevant period, for settlement of claims, the Karnataka State Legal Services Authority is taking the notional income as Rs.9,000/- p.m. Therefore, this Court considers desirable to take the notional income of the appellant as

Rs.9,000/- p.m. by the date of accident. The documents produced including medical record reveals that the appellant was aged around 40 years by the date of accident. Therefore, the appropriate multiplier to be applied as per the decision of the Hon'ble Apex Court in *Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another* reported in *AIR 2009 SC 3104* is '15'.

17. Having considered the nature of injury sustained to the left leg which ultimately resulted in its amputation above knee, this Court is of the view that the disability in respect of whole body can be considered as 35%. Thus the compensation which the appellant is entitled under the head loss of future earnings is as under:

| | |
|---|---|
| Notional monthly income | Rs.9,000/- |
| Annual income | Rs.1,08,000/- |
| On applying appropriate multiplier '15' | Rs.16,20,000/- |
| Permanent physical disability in respect of whole body being 35%, loss of future earnings is | Rs.5,67,000/- |

18. Thus the appellant is entitled to a sum of Rs.5,67,000/- under the head loss of future earnings. Therefore, the appeal is disposed of with the following:

ORDER

(i) The appeal is allowed in part.

(ii) The contributory negligence attributed on the part of the appellant is set aside.

(iii) The compensation that is granted by the Motor Accident Claims Tribunal, Channarayapatna through orders in MVC No.755/2015 dated 05.09.2017 is enhanced by Rs.5,67,000/-.

(iii) The enhanced sum shall carry interest at the rate of 6% p.a. from the date of petition till the date of deposit.

(iv) Respondent No.2 is directed to deposit entire sum including enhanced sum within a period of 8(eight) weeks from the date of receipt of certified copy of this order.

(v) On such deposit, the appellant is permitted to withdraw the entire amount.

**Sd/-**
**(DR.CHILLAKUR SUMALATHA)**
**JUDGE**

NS
CT:TSM
List No.: 1 Sl No.: 25