



**IN THE HIGH COURT OF KARNATAKA, AT DHARWAD**

**DATED THIS THE 17<sup>TH</sup> DAY OF MARCH, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE RAVI V.HOSMANI**

MISCELLANEOUS FIRST APPEAL NO. 102337 OF 2014 (MV-I)

**BETWEEN:**

SRI HOOVAPPA S/O BASAPPA HOSAKUR,  
AGE: 32 YEARS, OCC: NOW NIL,  
R/O: YAKKERI VILLAGE, TQ: SAUNDATTI, DIST:  
BELGAUM.

...APPELLANT

(BY SMT. SHAILA BELLIKATTI, ADVOCATE)

**AND:**

1. SRISHAIL S/O KALLAPPA KATTI,  
AGE: MAJOR, OCC: BUSINESS,  
R/O: SHINDOGI VILLAGE,  
TQ: SAUNDATTI, DIST: BELGAUM.
2. NATIONAL INSURANCE COMPANY LTD.,  
ISSUING BRANCH OFFICE, APMC YARD, TAL: SAUNDATTI,  
DIST: BELGAUM, THROUGH THE DIVISIONAL MANAGER,  
NATIONAL INSURANCE COMPANY LIMITED,  
DIVISIONAL OFFICE, FIRST FLOOR PRABHU BUILDING  
PB NO.175, RAMDEV GALLI, BELGAUM.

...RESPONDENTS

(BY SRI RAVINDRA R. MANE, ADVOCATE FOR R2;  
NOTICE TO R1 IS SERVED)

THIS MFA IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT, PRAYING TO ALLOW THE APPEAL AND MODIFY THE JUDGMENT AND AWARD IN MVC NO.943/2012 DATED 02.12.2013 PASSED BY THE LEARNED SENIOR CIVIL JUDGE AND ADDL. MACT SAUNDATTI AT SAUNDATTI UNDER ALL PERMISSIBLE HEADS.

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

CORAM: THE HON'BLE MR. JUSTICE RAVI V.HOSMANI





### **ORAL JUDGMENT**

Challenging judgment and award dated 27.12.2013 passed by Senior Civil Judge and Additional MACT, Saundatti, (***Tribunal*** for short) in MVC no.943/2012, this appeal is filed.

2. Smt.Shaila Bellikattil learned counsel for appellant submitted that appeal was by claimant. It was stated, on 08.11.2011, claimant was riding a moped bearing no.KA-24/E-659 along with two pillion riders on Munavalli-Hoolikatti road. At about 07.00 p.m., rider of motorcycle no.KA-24/L-2801 rode it in a rash and negligent manner and dashed against moped causing accident. In said accident, claimant and pillion riders suffered injuries and sustained loss of earning capacity. Therefore they filed separate claim petitions under Section 166 of Motor Vehicles Act, 1988 (***MV Act*** for short) against owner and insurer of motorcycle. They were clubbed together.

3. On appearance, only insurer filed objections opposing claim petition on all counts. Based on pleadings, Tribunal framed issues and recorded evidence.



4. Claimants examined themselves and Dr.RB Patagundi as PWs.1 to 4 and got marked Exs.P1 to P59. Respondent examined its official as RW1 and got marked Exs.R1 to R3.

5. On consideration, Tribunal held accident had occurred due to contributory negligence of riders of moped and motorcycle apportioned at 50% each and held claimant in MVC no.943/2012 entitled for 50% of total compensation of Rs.1,42,700/-. Dissatisfied with quantum as well as finding on negligence, appeal is filed. It was submitted, as noted by Tribunal accident had occurred on 18 feet wide road running East-West at 1 feet from southern edge of road. Tribunal noted that accident had occurred due to negligence of rider of insured motorcycle. However, only on ground that claimant rider of moped was not having driving licence had apportioned negligence to extent of 50% which was not justified. On quantum it was submitted, claimant was 30 years of age, doing limestone business and earning Rs.8,000/- to Rs.10,000/- per month. Though he sustained fractures of tibia and fibula assessed by PW4-doctor to have resulted in 50% disability to affected limb, Tribunal considered loss of earning capacity at only 10% and awarded



inadequate compensation. It was submitted, even compensation awarded towards 'pain and suffering', 'medical and incidental expenses', 'loss of income during laid up period' were inadequate. It was submitted, Tribunal had not awarded any compensation towards 'loss of amenities'. On said grounds sought for allowing appeal.

6. On other hand, Sri Ravindra R. Mane, learned counsel for respondent-insurer opposed appeal. It was submitted, Tribunal had considered that claimant, rider of moped was riding it with two pillion riders without possessing driving licence at time of accident. Therefore, apportionment of negligence was justified. It was submitted, compensation awarded under various heads by Tribunal was just and proper and no enhancement is called for. On said grounds sought for dismissal of appeal.

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

8. From above, and since only claimant is in appeal challenging finding of Tribunal on negligence as well as for



enhancement of compensation, points that would arise for consideration are:

- i. Whether apportionment of negligence at 50% on claimant by Tribunal called for modification?
- ii. Whether claimant was entitled for enhancement of compensation as sought?

9. **Point no.1** : As noted by Tribunal, accident occurred on a road running East-West with accident spot at 1 feet from southern edge on 18 feet wide road. Tribunal also observed, rider of motorcycle/insured vehicle had caused accident. However, on ground that rider of moped (claimant) was riding with two pillion riders, without driving licence, it apportioned negligence to extent of 50%. Riding of motorcycle with two pillion riders, though may constitute offence attracting fine cannot without specific material lead to an inference of contributory cause for accident. Likewise, in case of driving licence. When accident occurred at edge of road and rider of insured vehicle was found to have gone on extreme wrong side, apportionment of negligence at 50% each would not be justified. At best, some negligence could be apportioned at 10% against



rider of moped would appear reasonable. Point no.1 is answered accordingly.

10. **Point no.2** : Though claimant stated that he was doing limestone business and earning Rs.8,000/- to Rs.10,000/-, same was not substantiated. Therefore, notional income for year 2011 at Rs.6,000/- ought to have been considered. PW4 had examined claimant and issued Ex.P34-disability certificate assessed 50% disability to affected limb. Same is taken as 10% towards loss of earning capacity. It is seen that there is no discussion about severity of restriction of movement of affected limb. Moreover, taking note of occupation of claimant as limestone 'business', assessment of functional disability at 10% by Tribunal would appear justified. Considering his age as 30 years, multiplier applicable would be 17%. Thus future loss of income would be as follows:

$$\text{Rs.6,000/-} \times 10\% \times 12 \times 17 = \mathbf{1,22,400/-}.$$

11. Claimant sustained fracture of tibia and fibula, which would be fracture to a structural bone. Award of Rs.30,000/- towards 'pain and suffering' would appear inadequate and stands



HC-KAR

enhanced to **Rs.40,000/-**. Claimant produced medical bills for Rs.9,189/-. It is stated that he underwent inpatient treatment for a period of 17 days. Tribunal has awarded Rs.3,600/- each towards 'attendant charges and diet' etc. Considering period of inpatient treatment as well as medical bills produced, it is found appropriate to enhance compensation to **Rs.25,000/-** towards 'Medical expenses', 'attendant and other incidental charges'. Normally fractures take about 3 months to heal. Considering said period as layoff, claimant is awarded **Rs.18,000/-** towards 'loss of income during laid up period'. Tribunal has not awarded compensation towards 'loss of amenities'. Taking note of disability, it is found appropriate to award a sum of **Rs.25,000/-** towards same. Thus, total compensation would be **Rs.2,30,400/-**. Point no.2 is answered partly in affirmative as above. Consequently following:

#### **ORDER**

- i. Appeal is allowed in part.
- ii. Judgment and award dated 27.12.2013 passed by Tribunal in MVC no.943/2012 is modified.



- iii. Apportionment of contributory negligence against claimant is reduced to 10%.
- iv. It is clarified that claimant would be entitled for 90% of total compensation re-assessed at Rs.2,30,400/- with interest at 6% per annum from date of claim petition till deposit excluding period of 161 days as per order dated 22.11.2017 passed in this appeal.
- v. Insurer is directed to deposit 90% of compensation before Tribunal within a period of 6 weeks from date of receipt of certified copy of this order.
- vi. On deposit, same is ordered to be released in favour of claimant.

**Sd/-  
(RAVI V.HOSMANI)  
JUDGE**