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

**DATED THIS THE 17th DAY OF JUNE, 2026**

**PRESENT**

**THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI**

MISCELLANEOUS FIRST APPEAL NO.100217 OF 2020 C/W
MISCELLANEOUS FIRST APPEAL NO.100916 OF 2020

IN MFA NO.100217/2020

BETWEEN:

SHRI UDAY,
S/O ANNAPPA,
AGE: 39 YEARS,
OCC: CLEANER (NOW NIL),
R/O. ABBIGUDDI, MAVINKATTE,
POST: GULVADI VILLAGE,
TQ: KUNDAPUR,
DIST: UDUPI
PIN CODE: 576283.

...APPELLANT

(BY SRI SANJAY S. KATAGERI, ADVOCATE)

AND:

Digitally signed by SAMREEN AYUB DESHNUR
Location: High Court of Karnataka, Dharwad Bench

1. SHRI ABUBAKAR,
S/O BABU BEARY,
SINCE DECEASED BY HIS LRS.

SMT. ZEENATH,
W/O ABUBAKAR BEARY,
AGE: 40 YEARS,
OCC: HOUSEHOLD WORK,
R/O: GANDHI KATTE,
GULAWADI VILLAGE,
TQ: KUNDAPUR, DIST: UDUPI,
PIN CODE: 576283.

2 . SMT. SAMRIN,
D/O ABUBAKAR BEARY,
AGE: 23 YEARS,
OCC: STUDENT,
R/O: GANDHI KATTE,
GULAWADI VILLAGE,
TQ: KUNDAPUR, DIST: UDUPI,
PIN CODE: 576283.

3 . MOHAMMED NISAR,
S/O ABUBAKAR BEARY,
AGE: 17 YEARS,
OCC: STUDENT,
R/O: GANDHI KATTE,
GULAWADI VILLAGE,
TQ: KUNDAPUR, DIST: UDUPI,
PIN CODE: 576283.

(THE RESPONDENT NO.3 HEREIN
IS MINOR AND REPRESENTED BY
NATURAL GUARDIAN MOTHER-R1 HEREIN)

4 . THE MANAGER,
UNIVERSAL SAMPO GENERAL INSURANCE
CO. LTD.,
2A, 2ND FLOOR, 84, RAMSON COMPLEX,
P.B. ROAD, HOSUR, HUBBALLI
PIN CODE 580029.

…RESPONDENTS

(BY SRI SUBHASH J. BADDI, ADVOCATE FOR R4)
(R1 AND R2 – SERVED; R3 MINOR R/BY R1)

THIS MFA IS FILED U/SEC.173(1) OF MOTOR VEHICLES ACT 1988, PRAYING THAT, JUDGMENT AND AWARD DATED: 24-09-2019 PASSED IN MVC NO.2338/2016 BY THE LEARNED IX ADDL. DIST. & SESSIONS JUDGE AND ADDL. MACT, BELAGAVI, IN AWARDING COMPENSATION OF RS.7,20,500/- WITH THE RATE OF INTEREST AT 6% P.A BE KINDLY MODIFIED

BY ENHANCING THE CLAIM COMPENSATION TO RS.15,00,000/- WITH INTEREST @ 12% PER ANNUM FROM THE DATE OF PETITION, TILL THE DATE OF PAYMENT, BY HOLDING RESPONDENTS NO.1 TO 4 HEREIN AS JOINTLY AND SEVERALLY LIABLE TO PAY THE COMPENSATION TO THE APPELLANT HEREIN, BY ALLOWING THIS APPEAL, WITH COSTS, IN THE INTEREST OF JUSTICE & EQUITY.

IN MFA NO.100916/2020

BETWEEN

THE MANAGER,
UNIVERSAL SOMPO GENERAL INSURANCE
CO.LTD.,
2ND FLOOR, 84, RAMSOM COMPLEX,
P.B.ROAD, HOSUR,
HUBLI-580021,
NOW REPRESENTED BY ITS
AUTHORISD SIGNATORY.

...APPELLANT

(BY SRI. SUBHASH J. BADDI, ADVOCATE)

AND:

1 . SRI.UDAY,
S/O ANNAPPA,
AGE: 39, OCC: NIL,
R/O: ABIGUDDI,
MAVINKATTE,
POST: GULVADI,
TAL: KUNDAPUR,
DIST: UDUPI-574324.

2 . ZEENATH,
W/O ABUBAKAR BEARY,
AGE: 40 YEARS,

3 . SAMRIN,
D/O ABUBAKAR BEARY
AGE: 23 YEARS,

4 . MOHAMMED NISAR,
S/O ABUBAKAR BEARY,
AGE: 17 YEARS,
BEING MINOR REPRESENTED BY
HIS MOTHER
I.E. RESPONDENT NO.2-ZEENATH
W/O ABUBAKAR BEARY
AS NATURAL GUARDIAN.

RESPONDENT NO.2 TO 4 ARE ALL
RESIDING AT GANDHI KATTE,
GULAWADI VILLAGE,
TAL: KUNDAPUR,
DIST: UDUPI-574324

…RESPONDENTS

(SRI SANJAY S. KATAGERI, ADVOCATE R1)
(R2 AND R3 – SERVED; R4 IS MINOR R/BY R2)

THIS MFA IS FILED U/SEC. 173(1) MOTOR VEHICLES ACT, 1988, PRAYING TO ALLOW AND SET ASIDE THE JUDGMENT AND AWARD DATED 24.09.2019 PASSED IN MVC NO.2338/2016 ON THE FILE OF THE IX ADDITIONAL DISTRICT AND SESSIONS JUDGE AND ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL, BELAGAVI, WITH COST IN THE INTEREST OF JUSTICE AND EQUITY.

THESE APPEALS ARE COMING ON PRONOUNCEMENT AND THE SAME HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 18.03.2026, THIS DAY, DELIVERED THE FOLLOWING:

**CAV JUDGMENT**

(PER: THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI)

The claimant in MVC No.2338/2016 on the file of learned IX Additional District and Sessions Judge and Additional MACT, Belagavi has maintained the appeal in MFA No.100217/2020 praying to award the compensation as claimed in the petition by modifying the impugned judgment and award dated 24.09.2019.

2. The Insurer of Truck bearing No.KA-20/C-3429 has maintained the appeal in MFA No.100916/2020 praying to set aside the judgment and award passed in MVC No.2338/2016.

3. Brief facts leading to these appeal are as under:

(i) The claimant namely Sri Uday maintained the petition in MVC No.2338/2016 under Section 166 of Motor Vehicles Act against the owner and the insurer of truck bearing No.KA-20/C-3429 seeking compensation for the injury sustained by him in road traffic accident occurred on 25.08.2016.

(ii) The case of the claimant is that on 25.08.2016 at about 3.00 a.m. while he was traveling as a cleaner in truck bearing No.KA-20/C-3429, near Macche Nisarga Dhaba on Belagavi–Khanapur Road, its driver drove the vehicle in negligent manner and in excessive speed, and dashed the truck against a tree and caused the accident. He stated that as a result, he sustained grievous injuries, which resulted in his permanent disablement. In the above circumstances, he sought the compensation from the owner and insurer of the vehicle.

(iii) The truck in question belonged to one Sri Abubakar. He died during the pendency of the petition i.e, on 26.1.2017. As such, the claimant maintained necessary applications and brought his legal representatives on record as Respondent Nos.1(a) to 1(c). The notice of the claim petition was served on all of them. In spite of the same, they remained absent before the Tribunal. As such they were placed ex-parte.

(iv) The Insurer appeared before the Tribunal through its counsel and filed their objections. They have denied entire case of the claimant. They contended that the claimant was traveling in the truck as an unauthorized gratuitous passenger and that he was not traveling in the capacity of a cleaner. They stated that the truck in question is a goods vehicle and the passengers are not allowed to travel in such vehicle. They submitted that the owner of the truck has violated terms and conditions of the policy. As such they prayed for dismissal of the claim petition against them.

(v) Based on the pleadings, the Tribunal framed relevant issues, recorded evidence of the parties and then disposed of the claim petition on merits of the case vide impugned judgment. The Tribunal held that the claimant was traveling in the truck as a cleaner and awarded a compensation of Rs.7,20,500/- to him together with the interest thereon at the rate of 6% p.a., from the date of the petition till its deposit.

(vi) Being dissatisfied with the quantum of compensation awarded by the Tribunal, the claimant has maintained an appeal seeking enhancement of the compensation. Whereas, the insurer has preferred an appeal challenging correctness of the finding recorded by the Tribunal that the claimant was traveling in the vehicle in the capacity of a cleaner and fastening the liability of satisfying the award on them.

4. Sri Sanjay S. Katageri, learned Counsel for the Claimant vehemently submitted that the Tribunal committed an error in not properly considering the permanent physical disability of the claimant as well as his loss of future earning capacity on account of injuries sustained in the accident. He submitted that loss of earning capacity considered by the Tribunal to an extent of 20% to the whole body is on lower side and not in accordance with the medical evidence. He further submitted that as on today the claimant is not in a position to work as a cleaner or labour or coolie and as such the

Tribunal ought to have considered his loss of earning capacity as around 60% to 70%. He also submitted that the Tribunal considered income of the claimant as Rs.8,000/- per month ignoring the contents of the police records which shows that he was working as a cleaner at the time of the accident. He further submitted that the compensation awarded by the Tribunal on other heads is also on lower side. Hence, he prayed to allow the appeal and to award just compensation to the claimant.

5. Per contra, Sri Subash J. Baddi, learned Counsel for the Insurer vigorously submitted that the Tribunal has committed an error in holding that the claimant was a cleaner in the offending vehicle though the claimant was not aware about who was the owner of the vehicle. He submitted that the claimant was not appointed by Sri Abubakar B. Beary as a cleaner in the truck and the claimant has utterly failed to establish his employment under the owner of the offending vehicle. He further submitted that Ex.R2 reveals that the insured has not paid

premium to cover the risk of the cleaner. As such, he prayed for dismissal of the claim petition against them.

6. Having heard the learned Counsel appearing for both sides and perused the records, the following points arise for the consideration of this Court:

(i) Whether the Tribunal was justified in holding that the claimant was a cleaner in the offending vehicle?

(ii) Whether the claimant has made out valid grounds to enhance the compensation awarded by the Tribunal?

(iii) Whether the Tribunal is justified in holding that the Insurer is liable to pay the compensation?

**Point No.(i)**

7. The claimant claims that on 25.08.2016 while he was traveling as a cleaner in truck bearing No.KA-20/ C-3429, he met with an accident near Macche Nisarga Dhaba on Belagavi–Khanapur Road, due to actionable negligence on the part of the truck driver, who dashed the vehicle against a road side tree and caused the accident. Though in its objection, the Insurer disputed the alleged

accident, they did not seriously dispute the accident. On the other hand, they mainly contended that the claimant was not a cleaner in the truck but an unauthorized gratuitous passenger.

8. Learned Counsel for the Insurer has relied on the decisions in the ***New India Assurance Company Limited Vs Sri Lokesh and Another*** [MFA Nos.5555/2009 c/w 567/2010 – DD 19.09.2014] and ***Sri Rangaraju Vs Sri Venkatesh S.L., and Another*** [MFA No.7296/2006 – DD 13.12.2010] in support of their contention denying the employment of the claimant under the owner of the truck. In the first case referred hereinabove, the coordinate bench of this Court based on the admission of the claimant that he was employed by the driver of the offending vehicle and he was being paid wages by the said driver, held that there was no relationship of employee and employer between the claimant and the owner of the offending vehicle. Similarly, in the second case, based on the admission of the claimant that he was unaware about the owner of the offending vehicle, this Court did not

accept his contention that he was the cleaner in the offending vehicle.

9. Undisputedly, whether the claimant herein was a cleaner in the offending vehicle is a question of fact and must be answered based on the materials on record. During his evidence, the claimant reiterated the averments of the claim petition and contended that he was traveling as a cleaner in the truck. Whereas, the insurer contends that the admission of the claimant indicates that the claimant does not know who the owner of the vehicle was, and thereby he has failed to prove that he was a cleaner in the truck. During his cross-examination, the claimant stated that one Sri Aziz of Kundapura is the owner of the truck. Whereas, in the cause title of the claim petition, one Sri Abubakar, son of Sri Babu Beary, resident of Gulvadi, Kundapura Taluk is shown as the owner of the truck in question. In view of the difference in the name stated by the claimant and name of the owner mentioned in the cause title, the Insurer contends that the claimant does not know about the owner of the truck and he was not

employed by the owner of the vehicle even if he was working as a cleaner at the relevant time.

10. In the Cover Note and the Policy Schedule produced as Ex.P26 and Ex.R2 respectively, the owner of the vehicle is shown as Sri Abubakar, son of Sri Babu Beary of Gulvadi. However, it is to be noted that one Sri Abdul Aziz Mohiddin Saheb, lodged a complaint in connection with the accident in question as per Ex.P2, claiming that the truck bearing No.KA-20/C-3429 belongs to them and that the claimant herein was the cleaner in the said truck. The said complaint was lodged on the date of accident itself. Further, the case papers indicate that the claimant, Sri Abubakar and the de-facto complainant namely Sri Abdul Aziz are all residents of Gulvadi. Thus, it seems the name of Sri Aziz referred by the claimant relates to the de-facto complainant. Thus, in the considered view of this Court the materials on record probabilise the contention of the claimant that he was traveling in the truck as the cleaner. Hence, it is held that the conclusion arrived at by the Tribunal that the claimant

was the cleaner in the truck is based on the evidence available on record. Accordingly, Point No.(i) is answered in the affirmative.

**Point No.(ii)**

11. The Tribunal awarded a total compensation of Rs.7,20,500/- to the claimant under the following heads:

| Sl. No. | Heads | Amount (in Rs.) |
|---|---|---|
| 1. | Loss of future earning capacity | 2,88,000.00 |
| 2. | Pain and sufferings | 75,000.00 |
| 3. | Food, transport and attendant charges including loss of income during the period of treatment | 50,000.00 |
| 4. | Loss of amenities | 75,000.00 |
| 5. | Medical and hospital expenses | 2,32,500.00 |
| | **Total** | **7,20,500.00** |

12. The claimant has sought for enhancement of the compensation mainly on the ground that the Tribunal has erred in not properly considering the permanent physical disability and loss of his future earning capacity. He contends that though PW2, who is an Orthopedic Surgeon, assessed permanent physical disability to an extent of 40% to the right lower limb and 30% to the left

lower limb, the Tribunal took loss of future earning capacity as 20% to the whole body.

13. The materials on record go to show that the claimant suffered fracture of left femur shaft and compound fracture of right tibia and fibula, due to injuries sustained in the accident. He underwent treatment for those injuries at Vijaya Hospital, Belagavi as an inpatient for about 85 days and he was treated with implants. PW2, Dr.Satish, was not a treating doctor. He examined the claimant on 02.01.2019 for assessment of permanent physical disability. During his evidence, PW2 stated that the claimant has got GAIT ankalgic, muscle wasting of both thigh and calf muscles as well as shortening of right lower limb to an extent of ¾ inches. Added to it, PW-2 stated that the claimant has difficulty in standing for long time, walking the long distance, squatting or sitting with crossed legs, kneeling or walking on uneven surface, climbing, lifting weight and doing laborious work. He opined that the claimant has got permanent physical

difficulty amounting to 40% to his right lower limb and 30% to his left lower limb. However, PW-2 did not express any opinion regarding percentage of permanent physical disability to the whole body or loss of future earning capacity on account of the injuries sustained in the accident. In the above circumstances, the Tribunal considered disability to the whole body as 60% and loss of earning capacity as 20%.

14. Normally, 1/3$^{rd}$ of the disability to the weight bearing limbs is taken as disability to whole body as well as percentage of loss of future earning capacity. In this case, the total percentage of disability to the lower limbs is said to be 70% i.e. 40% *plus* 30%. If normal practice is applied, the percentage of disability to the whole body to be taken as 23%. Further, if we take into consideration the avocation of the claimant and the injuries sustained on his both lower limbs, this Court opines that the percentage of disability to the whole body and the percentage of loss of future earning capacity is to be taken as 30%.

15. The claimant contends that prior to the accident he was earning a sum of Rs.25,000/- per month. However, he did not adduce any evidence before the Tribunal to substantiate the said contention. In the above circumstances, the Tribunal considered income of the claimant notionally as Rs.8,000/- per month. The claimant has proved that he was working as a cleaner in the truck at the relevant period. The accident in question occurred on 25.08.2016. The KSLSA Chart for settlement of cases before Lok Adalat suggests notional income of Rs.8,750/- per month for the year 2016. As such, in the facts and circumstances of the case, the income of the claimant is to be taken as Rs.8,750/- per month.

16. The Tribunal based on the document marked at Ex.P22 took the age of the claimant as 40 years and correctly adopted multiplier of 15, as per the judgment in ***Sarla Verma Vs. Delhi Transport Corporation*** reported in **2009 ACJ 1298**. In view of revision of notional income of the claimant and percentage of loss of future earning

capacity, the loss of future income works out to Rs.4,72,500/- (i.e. Rs.8,750/- x 12 x 15 x 30%).

17. The Tribunal awarded a sum of Rs.2,32,500/- towards medical and hospital expenses, Rs.75,000/- towards pain and suffering and Rs.75,000/- towards loss of amenities in life. In the considered view of this Court, the compensation awarded by the Tribunal under these heads is just and reasonable.

18. The Tribunal awarded a sum of Rs.50,000/- to the claimant under head of food, transport and attendant charges including loss of income during his stay in the hospital. The compensation awarded by the Tribunal under this head is definitely on lower side. It is because the materials on record establish that the claimant has undergone treatment as an inpatient for 85 days. If we consider his period of treatment as an inpatient and the nature of injuries sustained by him, in all probability he needed about six months' period for healing up and recovery. In that event, the loss of income during the laid up period itself comes to Rs.52,500/- (i.e. Rs.8,750/- x 6).

In addition to it, during 85 days of treatment as inpatient, the claimant required assistance of an attendant. In view of the same, this Court opines that it would be proper to award a sum of Rs.30,000/- to the claimant under the head of food, transport and attendant charges apart from Rs.52,500/- towards loss of income during laid up period.

19. For the foregoing reasons, Point No.(ii) is answered in the affirmative and held that the claimant is entitled to compensation of Rs.9,37,500/- under the following heads:

| Sl. No. | Heads | Amount (in Rs.) |
|---|---|---|
| 1. | Loss of future earning capacity | 4,72,500.00 |
| 2. | Pain and sufferings | 75,000.00 |
| 3. | Food, transport and attendant charges | 30,000.00 |
| 4. | Loss of income during laid up period | 52,500.00 |
| 5. | Loss of amenities | 75,000.00 |
| 6. | Medical and hospital expenses | 2,32,500.00 |
| | **Total** | **9,37,500.00** |

**Point No.(iii)**

20. Learned Counsel appearing for the Insurer vigorously contended that the policy details found at Ex.R2 reveals that the insured had not paid any premium

covering the risk of the cleaner and as such, they are not liable to indemnify the insured in paying compensation to the claimant. In support of this contention, learned Counsel for the Insurer has relied on the decisions in ***Sri Ashok A.R., Son of Sri Rajavelu and Others Vs Ganesh K.R., Son of Ramaiah K.C., and Others*** [2011 Law Suit (Kar) 1076] and ***Sri Hanumanthappa Vs Sri B.V. Shivakumar and Others*** [MFA No.8704/2009 (MV) C/w MFA Crob No.106/2012 (MV) – DD 09.03.2015]. In these cases, this Court has held that the liability of the Insurer, if any, is subject to the terms and conditions of the policy and payment of extra premium.

21. In the present case, the Tribunal while deciding the question of liability of the Insurer, observed that during his cross-examination RW-1 admitted that the policy issued in respect of the offending vehicle is a package policy and hence, the risk of the driver and cleaner are also covered under the policy and accordingly proceeded to hold that the Insurer is liable to satisfy the award. The claimant has

produced a Cover Note issued by the Insurer at Ex.P26. Similarly, the Insurer has produced the Policy Schedule-cum-Tax Invoice at Ex.R2. Ex.R2 contains a specific mention that the policy in question was a "goods carrying package policy". Further, the cover note produced at Ex.P.26 indicates the Insurer having collected a sum of Rs.1,000/- towards "Additional/Compulsory Excess". As per Ex.P26 and Ex.R2, the Insurer has collected a total sum of Rs.30,274/- towards premium, other taxes and cess. In the above circumstances, this Court holds that the Tribunal is justified in holding that the policy issued by the Insurer covers even the risk of the cleaner. Hence, Point No.(iii) is answered in the affirmative.

22. In the result, this Court proceeds to pass the following:

**ORDER**

(i) The appeal filed by the claimant (i.e., MFA No.100217/2020) is partly allowed.

(ii) The appeal filed by the Insurer (i.e., MFA No.100916/2020) is dismissed.

(iii) The judgment and award dated 24.09.2019 passed by the learned IX Additional District and Sessions Judge and Additional Motor Accident Claims Tribunal, Belagavi is modified.

(iv) Consequently, the claimant is entitled to compensation of Rs.**9,37,500**/- in place of Rs.7,20,500/- awarded by the Tribunal together with interest at the rate of 6% per annum from the date of petition till its realization.

(v) The Insurer is directed to deposit entire compensation amount with accrued interest (*minus* the amount already deposited) before the Tribunal within a period of sixty (60) days from this day.

(vi) Draw a modified award accordingly.

(vii) The Registry is directed to transmit the amount in deposit, if any, and the trial court record to the concerned Tribunal at the earliest.

**Sd/-**
**(B. MURALIDHARA PAI)**
**JUDGE**

KMS/ASN/RH
CT: CMU