



CNR: KAHC020021132023

NC: 2026:KHC-D:15859
MFA No. 100858 of 2023
C/W MFA No. 104499 of 2023

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 23RD DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MRS JUSTICE K.G.SHANTHI

MISCELLANEOUS FIRST APPEAL NO. 100858 OF 2023 (MV-I)

C/W

MISCELLANEOUS FIRST APPEAL NO. 104499 OF 2023 (MV-I)

IN MFA No. 100858/2023

BETWEEN:

THE CHOLAMANDALAM M S GENERAL INSURANCE
COMPANY LTD.,
ISSUING OFFICE NO. 208,
CTS NO. 4818/9B,
NABBUWALE BUILDING,
BEHIND SP OFFICE,
BELAGAVI,
THROUGH ITS DIVISION OFFICE,
THE DIVISIONAL MANAGER, 1ST FLOOR,
KALBURGI SQUARE,
DESHPANDE NAGAR,
HUBBALLI-580029,
NOW REPRESENTED BY ITS AUTHORISED SIGNATORY.



...APPELLANT

(BY SRI. SUBHASH J. BADDI, ADVOCATE)

AND:

1. KUMAR IMTIYAZ
S/O. MUGUTSAB ASUNDI,
AGE: 23 YEARS,
OCC: COOLIE/HAMALI(NOW NIL)
R/O. SAMPGAON,
TQ: BAILHONGAL,
DIST: BELAGAVI-591125.



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2. SHRI. IMRANKHAN
S/O. NADIRKHAN PATHAN
AGE: MAJOR,
OCC: BUSINESS,
R/O. SAMPGAON,
TQ: BAILHONGAL,
DIST: BELAGAVI-591125.

...RESPONDENTS

(BY SRI. HANAMANT R. LATUR, ADVOCATE)

THIS MFA IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLE ACT, 1988, PRAYING TO CALL THE RECORDS, HEAR THE PARTIES, AND ALLOW THE APPEAL AS PRAYED FOR BY SETTING ASIDE THE JUDGMENT AND AWARD DATED 01.10.2022 PASSED BY SENIOR CIVIL JUDGE AND ADDL. MACT, BAILHONGAL IN MVC NO.2160/2019, WITH COST IN THE INTEREST OF JUSTICE AND EQUITY.

IN MFA NO. 104499/2023
BETWEEN:

KUMAR IMTIYAZ S/O. MUGUTSAB ASUNDI
AGE: 24 YEARS,
OCC: COOLIE/HAMALI, NOW NIL,
R/O. SAMPGAON,
TQ: BAILHONGAL,
DIST: BELAGAVI,
PIN-591125.

...APPELLANT

(BY SRI. HANAMANT R. LATUR, ADVOCATE)

AND:

1. SHRI. IMRANKHAN
S/O. NADIRKHAN PATHAN



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AGE: 50 YEARS,
OCC: BUSINESS,
R/O: SAMPAGAON,
TQ: BAILHONGAL,
DIST: BELAGAVI,
PIN: 591125.

2. CHALAMANDALAM
M. S. GENERAL INSURANCE COMPANY LTD.,
ISSUING OFFICE NO.208,
CTS NO.4818/9B,
NABBUWALE BUILDING,
BEHIND SP OFFICE,
BELAGAVI,
THROUGH ITS DIVISION OFFICE,
DIVISIONAL MANAGER,
1ST FLOOR,
KALBURGI SQUARE,
DESHPANDE NAGAR,
HUBLI-580029,
TQ: HUBLI, DIST: DHARWAD.

...RESPONDENTS

(NOTICE TO R1 IS SERVED;
BY SRI. SUBHASH J. BADDI, ADVOCATE FOR R2)

THIS MFA IS FILED UNDER SECTION 173 (1) OF MOTOR VEHICLES ACT, 1988, PRAYING TO, ENHANCE THE COMPENSATION BY MODIFYING THE JUDGMENT AND AWARD PASSED BY THE COURT OF SENIOR CIVIL JUDGE AND ADDL. MACT, BAILHONGAL, IN MVC, BAILHONGAL, MVC NO.2160/2019 DATED 01-10-2022, IN THE INTEREST OF JUSTICE AND EQUITY.

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

CORAM: HON'BLE MRS JUSTICE K.G.SHANTHI



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ORAL JUDGMENT

Aggrieved by the judgment and award dated 01.10.2022 in MVC No.2160/2019 passed by the Senior Civil Judge and Additional MACT, Bailhongal¹, the respondent No.2/Insurance Company before the Tribunal filed an appeal in MFA No.100858/2023 challenging the liability fixed by the Tribunal on the Insurance Company to deposit compensation award, and the petitioner before the Tribunal filed an appeal in MFA No.104499/2023 seeking for enhancement of compensation.

2. Parties are hereinafter referred to as per their ranks before the Tribunal for the sake of convenience.

3. Brief facts of the case are that on 14.12.2018 at about 2.00 p.m. the petitioner along with two others was proceeding towards Sampgaon village from Hirebagewadi in 407 Goods Vehicle bearing registration No.KA-26/6055² loaded with soybeans. The said goods vehicle was driven by respondent No.1 in a very high speed, rash and negligent manner so as to endanger human life. When they reached near Maradinaglapur cross on Bailhongal – Belagavi road, tried to

¹ For short, 'the Tribunal'

² For short, 'goods vehicle'



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avoid collision against the motorcycle coming from opposite direction, and lost his control over the vehicle and fell down by the side of the road. Due to this impact, the petitioner sustained grievous injuries and he was shifted to the hospital for treatment.

4. The petitioner contended that prior to the accident he was hale and healthy and earning Rs.10,000/- per month and Rs.100/- daily batta by working as hamal/coolie in the said goods vehicle and maintaining his family. Due to the accidental injuries, the petitioner suffered permanent physical disability and lost his earning capacity. The petitioner has spent huge amount towards medical expenses. Accordingly, the petitioner filed petition claiming compensation before the Tribunal.

5. After filing of the petition, notice have been issued to the respondents. Respondent No.1 remained absent and placed ex-parte.

6. Respondent No.2 has appeared through his counsel and filed objections to the claim petition contending that, the claim petition filed by the petitioner is against law, evidence



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and procedure. He denied the age, income and occupation of the petitioner and also injuries sustained, treatment taken, medical expenses incurred and the manner of accident. He further contended that, the accident was caused due to the negligence of the rider of the motorcycle coming from the opposite side and there is no fault on the part of the driver of the goods vehicle.

Respondent No.2 specifically contended that the petitioner was traveling as an unauthorized passenger in the said vehicle, as he was not working as a coolie/hamal in the said vehicle and his entry in the said vehicle itself is violations of the terms and conditions of the policy.

It was further contended that two vehicles were involved in the accident. Since the accident involved is of composite negligence on the part of both the goods vehicle and the motorcycle, the insurer and insured of both vehicles are necessary parties to the petition. Therefore, the petition is bad for non – joinder of necessary parties.

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It was further contended that the driver of the goods vehicle was not holding a valid and effective driving license as on the date of the accident. It was also contended that the liability, if any, of respondent No.2/Insurance Company would arise only upon the claimant proving the involvement of the goods vehicle in the accident, the validity and legality of the permit of the said vehicle, the validity of the driving license of its driver, the lawful ownership of the vehicle, and the existence and validity of R.C. Book. It was further contended that the liability of respondent No.2 is subject to the terms, and conditions and limitations of the policy on insurance, if any, issued in favour of the lawful owner of the vehicle, and subject to the provisions of the MV Act and the Rules framed thereunder. Hence, prayed for dismissing the claim petition.

7. Before the Tribunal, the petitioner himself examined as PW1 and one witness examined as PW2 and got marked 15 documents as Exs.P.1 to P.15. On behalf of respondent No.2, one witness has been examined as RW1 and got marked Ex.R1- insurance policy.

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8. On hearing the argument, the Tribunal allowed the claim petition in part by awarding compensation to the petitioner under the following heads:

Sl. No.	Heads	Amount in Rs.
1	Pain and suffering	40,000/-
2	Medical expenses	1,23,620/-
3	Diet food nourishment, attendant and conveyance charges	16,000/-
4	Loss of future earning capacity due to permanent disability	8,88,300/-
5	Loss of income during laid up period	23,500/-
6	Towards loss of amenities and enjoyment in life	23,500/-
TOTAL		11,14,920/-

9. The Tribunal held that respondents No.1 and 2 are jointly and severally liable to pay compensation to the petitioner and further directed the respondent No.2 to deposit the compensation amount within 30 days.

10. Aggrieved by the same, the Insurance Company as well as the petitioner preferred these appeals.

11. Sri. H. R. Latur, learned counsel appearing for the petitioner argued that the doctor assessed the disability to the extent of 70% to the whole body, but the Tribunal has assessed



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the disability to the extent of 35%. It is argued that the petitioner has sustained head injury with displaced fracture of occipital clavarium with acute epidural hematoma along with left occipital with pneumocephalus with right frontal scalp hematoma with fracture of lateral wall of right maxillary sinus with hemosinus with deviated nasal septum with grade-I diffuse axonal injury with subarachnoid haemorrhage with acute subdural haemorrhage, but the Tribunal assessed the disability on lower side which should be considered to the extent of 70%.

12. It is further argued that the Tribunal has awarded meager compensation under the heads of "pain and sufferings", "food, nourishment, attendant and conveyance charges", "loss of amenities" and "loss of income during laid up period". Further argued that the Tribunal has not added 40% of the income of the injured towards future prospects. Accordingly, prays for enhancement of the compensation.

13. Sri. Subhash J. Baddi, learned counsel appearing for the Insurance Company argued that the petitioner was travelling with others in a goods vehicle from Hirebagewadi to Sampgaon which met with an accident and the petitioner



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sustained fracture of skull bones and also fracture of facial bones as per Ex.P4 and Ex.P5. It is argued that PW2 - the doctor, who is not a treated doctor, has assessed the disability without following the guidelines issued by the Authority from time to time and wrongly assessed the disability to the extent of 70% which is exorbitant.

14. Further it is argued that the Tribunal assessed the functional disability to the extent of 35% and awarded compensation which is exorbitant, and also awarded higher compensation under different heads which should be modified and reduced.

15. It is argued that the Tribunal has not appreciated Ex.R1-insurance policy, wherein it reflects that the insured has not paid any premium to cover the risk of the cleaner/hamali so, the Insurance Company is not liable to indemnify the petitioner on account of the injuries sustained by him. Further it is argued that Tribunal has erred in fastening the liability against the Insurance Company.

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16. It is argued that the petitioner has produced the medical bills to the tune of Rs.1,03,890/-, but the Tribunal has awarded compensation of Rs.1,23,620/- under the head of "medical expenses" without any basis.

17. Learned counsel for the Insurance Company relied upon the judgment passed by the Hon'ble Apex Court in case of ***National Insurance Company Limited v. Prembai Patel and Others***³.

18. Further, he also relied upon the judgments passed by the Co-Ordinate Bench of this Court in case of ***Hanumanthappa v. Shivakumar and Others***⁴, ***Sriram General Insurance Company Limited v. Muthuraj and Others***⁵ and ***Ashok A. R. and Others v. Ganesh K.R. and Others***⁶.

19. Heard the arguments. Perused the materials available on record. The points that would arise for consideration by this Court are as follows:

³ MANU/SC/0295/2005

⁴ MANU/KA/1144/2015

⁵ MANU/KA/0804/2022

⁶ MANU/KA/0981/2011



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- (i) Whether the petitioner proves that the compensation awarded by the Tribunal is inadequate and it deserves to be modified?
- (ii) Whether the Tribunal is justified in fixing the liability on respondent No.2/Insurance Company to pay the compensation?
- (iii) What order?

20. Points framed by this Court for consideration are answered as follows:

Point No.(i) : Partly in the affirmative.

Point No.(ii) : In the affirmative.

Point No.(iii): As per the final order, for the following:

21. **Regarding Point No.(i):** It is not in dispute that on 14.12.2018 at about 02.00 p.m. the petitioner was travelling in a goods vehicle which was loaded with soyabeans. The respondent No.1 was the driver of the said goods vehicle which met with an accident. The police have investigated the matter and filed a charge sheet against the driver of the goods vehicle. In this regard, the petitioner has produced the documents before the Tribunal which were marked as Exs.P1 to



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Ex.P7. Further, the wound certificate marked at Ex.P4 reflects that the petitioner who was travelling in a goods vehicle sustained injuries.

22. According to the Insurance Company, the petitioner was not an employee under the respondent No.1 and also not paid any additional premium covering the risk of the employees.

23. It is also not in dispute that the petitioner has sustained injuries in the accident. PW2 the doctor in his evidence deposed that he assessed the disability of the petitioner. Ex.P12 discharge summary reflects that the petitioner has taken treatment as an inpatient from 14.12.2018 to 29.12.2018 for the injuries sustained in the accident. As per the discharge summary, the petitioner was diagnosed for the head injury with displaced fracture occipital calvarium with acute epidural hematoma along the left occipital with pneumocephalux with right frontal scalp hematoma with fracture of lateral wall of right maxillary sinus with hemosinus with deviated nasal septum with grade I diffuse axonal injury



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with subarachnoid haemorrhage with acute subdural haemorrhage.

24. Ex.P4 the wound certificate issued by BIMS Hospital, Belagavi reflects that the petitioner was treated as an inpatient from 14.12.2018 and discharged on the same day and taken treatment at Vijaya Hospital Belagavi. PW2 the doctor assessed the disability of the petitioner for the said injuries.

25. It is an undisputed fact that the petitioner was treated conservatively. Further, PW2 assessed the disability of the petitioner on 17.01.2022 i.e., after four years from the date of the accident. The disability certificate is marked as Ex.P13. In the said disability certificate, the doctor has explained the treatment undergone by the petitioner at different hospitals. The doctor has further stated that, at the time of assessment of disability, the petitioner complained of headache and reduced hearing in left ear. It is also stated by the doctor that there is a risk of seizures, which can be life threatening and assessed the disability to the extent of 70% to the whole body.



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26. The petitioner had produced the documents i.e., hospital bills, MRI report, MRI scan, discharge summary etc., but there is no material evidence to show that he has continued the treatment for long time till he met PW2 doctor who assessed the disability.

27. By looking into the injuries sustained by the petitioner, the Tribunal has rightly assessed the disability to the extent of **35%** to the whole body.

28. The accident occurred in the year 2018. Since there is no proof of income of the petitioner, the Tribunal has rightly assessed the notional income at **Rs.11,750/-** per month as per the guidelines issued by the Karnataka State Legal Services Authority.

29. At the time of accident, the petitioner was aged about 20 years. So, the Tribunal has rightly applied multiplier of "18" in view of the law laid down by the Hon'ble Apex Court in case ***Sarla Verma and others V. Delhi Transport Corporation and another***⁷.

⁷ 2009 ACJ 1298



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30. By considering all these factors, the Tribunal has rightly awarded compensation of **Rs.8,88,300/-**, under the head of "future loss of income" which does not call for any interference by this Court.

31. By looking into the hospitalization and injuries sustained by the petitioner, this Court is of the opinion that it is reasonable to enhance the compensation under the head of "pain and sufferings" from Rs.40,000/- to **Rs.60,000/-**.

32. By looking into the medical documents produced by the petitioner, the Tribunal has rightly awarded compensation of **Rs.1,23,620/-** under the head of "medical expenses", which does not call for any interference.

33. The Tribunal has awarded compensation of Rs.16,000/- under the head of "diet, food, nourishment, attendant and conveyance charges" and Rs.23,500/- towards "loss of amenities and enjoyment in life". This Court is of the opinion that it is reasonable to enhance the same to **Rs.25,000/-** and **Rs.40,000/-** respectively.



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34. The petitioner has taken long treatment for the injuries sustained by him in the accident. At least four months time is required for him to recover and start the routine work. Hence, this Court is of the opinion that it is just and reasonable to award compensation of **Rs.47,000/-** (Rs.11,750 X 4) under the head of "loss of income during laid up period". In all compensation is awarded under the following heads:

Sl. No.	Heads	Amount in Rs.
1	Loss of future income	8,88,300/-
2	Towards pain and sufferings.	60,000/-
3	Loss of income during laid up period	47,000/-
4	Towards medical expenses	1,23,620/-
5	Towards loss of amenities	40,000/-
6	Diet, food, nourishment, attendant and conveyance charges	25,000/-
TOTAL		11,83,920/-

35. Accordingly, the point No.(i) is answered partly in the affirmative and the petitioner is entitled to receive compensation of **Rs.11,83,920/-** as against Rs.11,14,920/- as awarded by the Tribunal.

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36. **Regarding point No.(ii)**: The next question that arises for consideration is with regard to the liability of the Insurance Company to pay the compensation awarded to the petitioner.

37. Ex.R1 is the Insurance Policy. The relevant portion of Ex.R1 is extracted as under:

"Driver Clause: Any person including insured provided that a person driving holds an effective driving license at the time of the accident and is not disqualified from holding or obtaining such a license. Provided also that the person holding an effective learner's license may also drive the vehicle and that such a person satisfies the requirements of Rule 3 of the Central Motor Vehicles Rules 1989.

Limits of liability: Under Section II-1(i) of the Policy – Death or bodily injury such amount as is necessary to meet the requirements of the Motor Vehicles Act, 1988. Under Section II-1(ii) of the Policy – Damage to Third Party Property – Rs.7,50,000.00 P.A. Cover for Owner Cum Driver Under Section IV (CSI) – Rs.2,00,000.00.

Deduction Under Section 1: Rs.500

Additional compulsory deductibles under Section 1 Rs.0

Additional Imposed deductibles under Section 1 Rs.0

Subject to I.M.T. Endt. Nos. and
Memorandum:21,40

Coverage Under this policy is subject to realization of premium cheque(s). In case of dishonour of cheque (s), no separate intimation will be given and the policy stands cancelled from inception."

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38. RW1, who is an officer of the Insurance Company, has admitted in his cross examination that, as per the policy, ten persons were permitted to travel in the vehicle. When the Insurance Company has collected the premium, it cannot now deny its liability to pay compensation to the petitioner, particularly when the petitioner was one among the persons permitted to travel in the said vehicle. Therefore, there are no valid grounds for the Insurance Company to deny its liability to pay compensation to the petitioner.

39. With the above discussion, this Court is of the opinion that the contention raised by the learned counsel for the Insurance Company that the Insurance Company is not liable to pay the compensation or the Insurance Company is having only limited liability to pay the compensation, is not sustainable.

40. The Tribunal is justified in fixing liability on respondent No.2. Accordingly, point No.(ii) is answered in the affirmative.

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41. Accordingly, point No.(ii) is answered in the affirmative.

42. **Regarding point No.(iii):** In view of the findings on points No.(i) and (ii), this Court proceeds to pass the following:

ORDER

- (i) The appeal filed by the Insurance Company in MFA No.100858/2023 is hereby ***dismissed.***
- (ii) The appeal filed by the petitioner in MFA No.104499/2023 is hereby ***allowed in part.***
- (iii) The impugned judgment and award passed by the Tribunal is modified. The petitioner entitled to receive compensation of ***Rs.11,83,920/-*** as against Rs.11,14,920/- awarded by the Tribunal.
- (iv) The enhanced compensation amount shall carry interest at the rate of 6% per annum from the date of petition till the date of payment. excluding the period of delay of 233 days in filing the appeal, as per the order dated 23.09.2026.



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- (v) Respondents No.1 and 2 are jointly and severally liable to pay the compensation to the petitioner.
- (vi) Respondent No.2 being the Insurer is directed to deposit the enhanced compensation amount with accrued interest before the Tribunal within a period of six weeks from the date of receipt of certified copy of this judgment.
- (vii) Draw modified award accordingly.
- (viii) Registry to transmit the Trial Court Records forthwith.
- (ix) In view of disposal of this appeal, pending applications, if any, do not survive for consideration and the same are accordingly disposed of.

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(K.G.SHANTHI)
JUDGE

SMM

List No.: 1 Sl No.: 26