IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE DR. JUSTICE K.MANMADHA RAO

MISCELLANEOUS FIRST APPEAL NO.297 OF 2024 (MV-I)

BETWEEN:

SANTHOSH KUMAR
S/O. GURUVAPPA SHETTIGAR,
AGED ABOUT 32 YEARS,
RESIDING AT D.NO. 59-2-86,
POSODI, SHIBAJE VILLAGE,
ARASINAMAKKI POST,
BELTHANGADY TALUK, D.K.
PRESENTLY RESIDING AT PILIKULA ROAD,
VAMANJOOR, MANGALURU,
D.K. DISTRICT - 575 013.

...APPELLANT

(BY SMT.POOJA PARVATHY, ADVOCATE FOR
SRI. RAVISHANKAR SHASTRY G., ADVOCATE)

AND:

1. M/S. SANDHU ROAD LINES PVT. LTD.,
D-1, B WING, GHANWAT PLAZA,
CHAKAN THALEGAON ROAD,
CHAKAN, PUNE REPRESENTED BY
ITS DIRECTOR MR. NARINDERKAUR
BHAKTAWARSING SANDHU
PIN– 410 501.

2. BAJAJ ALLIANZ GENERAL INSURANCE CO.LTD.,
OFFICE AT: CTN NO.4511/4512,
S.NO. 240, A-1, 1ST FLOOR,
MUMBAI PUNE ROAD, PUNE,
REPRESENTED BY ITS MANAGER
PIN – 411 019.

...RESPONDENTS

(R1 IS SERVED AND UNREPRESENTED,
BY SRI.H.S.LINGARAJ, ADVOCATE FOR R2)

THIS MFA IS FILED U/S.173(1) OF MV ACT, AGAINST THE JUDGMENT AND AWARD DT.28.11.2023 PASSED IN MVC NO.1211/2019 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND CJM, MACT, MANGALURU, D.K, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 10.07.2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE DR. JUSTICE K.MANMADHA RAO

CAV JUDGMENT

This appeal is by the appellant/claimant seeking for enhancement of compensation arising out of judgment and award dated 28.11.2023 in MVC No.1211/2019, passed by the Principal Senior Civil Judge and CJM and MACT, at Mangaluru, D.K., (for short 'Tribunal').

2. For the sake of convenience, parties are referred to as per their ranking before the Tribunal.

3. The brief facts of the case are that on 30-01-2019 at about 2.30 p.m., the petitioner was traveling as a fare - paying passenger in the KSRTC Bus bearing Reg.No. KA-19-F-2889 from Mangaluru towards Uppinangdi and

when the said Bus reached Opposite Shri Ramchandra Pre-University College at Perne on Mangaluru - Bengaluru N.H.75, at that time, the driver of the Lorry bearing Reg. No.NL-01-D-3590 driven the same in a rash and negligent manner, without following the traffic rules and regulations came opposite direction to the wrong side of the road and dashed against the said Bus in which petitioner was traveling. Due to the impact, he sustained grievous injuries. Immediately, he was shifted to Government Hospital, Puttur and has taken treatment as inpatient for two days i.e., from 30-01-2019 to 31-01-2019. During the period of hospitalization, petitioner had appointed an attendant to look after him by paying Rs.500/- per day. Hence, filed claim petition under Section 166 of M.V. Act, 1989 seeking for compensation of Rs.5,00,000/-.

4. After issuance of notice, the respondent No.2/Insurance Company has appeared through its counsel and filed its objection statement. Respondent No.1/owner of the offending vehicle remained absent and was placed *ex-parte.*

5. In order to substantiate the case of the petitioner, the petitioner got himself examined as PW-1 and got marked documents at Exs.P1 to P10. On the other hand, respondent No.2 – Insurance Company got examined one witness as RW-1 and got marked documents at Exs.R.1 to R.8.

6. On the basis of the pleadings of the parties, the Tribunal framed the issues and held that the respondent No.1/owner of the offending vehicle is liable to pay global compensation of Rs.1,00,000/- to the petitioner with interest at the rate of 6% per annum from the date of petition till realization.

7. Learned counsel for the appellant submits that as per Ex.P.5 - wound certificate, appellant has sustained fracture of right forearm, fracture of right wrist, fracture of scaphoid, which are grievous in nature. As per Ex.P.7 – discharge summary, petitioner was treated as an inpatient for a period of 02 days in Government Hospital, Puttur. The Tribunal has not properly considered the case of the appellant and awarded meager compensation, which

require enhancement. The Tribunal has dismissed the claim petition against the respondent No.2 – Insurance Company and fastened the liability on the respondent No.1. Accordingly, sought to allow the appeal and enhance compensation by modifying the judgment and award passed by the Tribunal.

8. Refuting the submissions of learned counsel appearing for the appellant, learned counsel for the respondent No.2 – Insurance Company submits that the Tribunal after considering entire material placed before it, awarded appropriate compensation. The compensation awarded by the Tribunal is just and proper and does not call for any interference at the hands of this Court. The Tribunal has rightly dismissed the claim petition against the Insurance Company. Accordingly, sought to dismiss the appeal.

9. Heard learned counsel appearing for both the parties and perused the entire material placed on record.

10. Though learned counsel for the appellant submits that the appellant has sustained fracture of right forearm, fracture of right wrist, fracture of scaphoid, which are grievous in nature, the appellant has not examined the treated Doctor in order to prove the same and to show to what extent he has suffered disability he has sustained due to the accident. He has taken treatment as an inpatient for a period of two days i.e., from 30.01.2019 to 31.01.2019.

11. It is a well-settled principle of law under motor accident jurisprudence that while a Wound Certificate (Ex.P5) is a public document proving the immediate receipt of an injury, it cannot be used as a substitute for an expert medical opinion to quantify long-term physical impairment or functional disability. To claim compensation under 'Loss of Future Income due to Disability', 'Loss of Amenities', or 'Future Medical Expenses', the claimant is legally mandated to examine either the treated doctor or a qualified medical specialist from the relevant department.

12. The appellant asserts that the fractures of the forearm, wrist, and scaphoid have left him with persistent pain, limited range of motion and an inability to perform electrical layout works. However, no doctor was examined to compute the percentage of disability towards the specific upper limb or the whole body.

13. Learned counsel for the appellant submits that the appellant has taken rest for a period of four months and utilized an attendant requires a medical prognosis or a discharge summary detailing the mandatory rest phase. Conservative treatment for 2 days at a Government Hospital followed by undocumented private follow-ups does not naturally justify a four month laid up period.

14. On hearing the submissions of learned counsel for both the parties and on perusing the record, this Court has observed that in the complete absence of the evidence of the treated doctor or any expert medical witness, the Tribunal was completely justified in awarding global compensation of Rs.1,00,000/- to the claimant. Hence,

there are no merits to interfere with the impugned judgment and award of the Tribunal. Hence, the appeal lacks merits and the same has to be dismissed.

<u>Regarding pay and recovery:</u>

15. According to the appellant, respondent Nos.1 and 2 being the owner and insurer of offending vehicle Lorry are jointly and severally liable to pay compensation to him. *Inter alia*, the respondent No.1 inspite of service of summons failed to appear before the Court and has placed exparte. Respondent No.2 on other hand, has categorically pleaded that the driver of the Lorry bearing Reg.No.NL-01-D-3590 was not holding a valid and effective driving license at the time of accident. The Tribunal under the head 'Liability' has held as under:-

> *"xxxx*
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> *Upon perusal of Ex.P3 the accident information report register relied upon by petitioner it discloses the name and address of the driver/accused as Kishan Kumar Ray (27), S/o. Prabhu Ray, Near Ryam Factory, Bishanpur, Dharbanga district, Bihar and his DL number and date of expiry is stated as WB-0120110880066, LMV NT, LMVCAB, TRANSPORT*

valid up to 16-09-2020 (TR). In order to substantiate its defence regarding non holding of driving license by the driver of the said Lorry and also to contravene Ex.P3, respondent No.2 has examined its Deputy Manager as RW.1 and has placed reliance of DL extract, RTI application dated 11-06-2023 to licensing authority PVD, Kolkota, with postal order, postal receipt and acknowledgment, reply to RTI dated 30-06-2023, RTI application dated 13-07-2023 to the Licensing Authority PVD, Salt Lake (WB07), with postal order, postal receipt and acknowledgment and reply to RTI dated 27-07-2023 and office copy of notice sent to respondent No.1/insured dated 19-09-2019, returned cover dated 30-09-2019 as refused as per Ex.R3 to 8 respectively which are marked to subject to objection. Upon perusal of Ex.R3 DL No. is WB-0120110880066 which is same as that of DL number mentioned in Ex.P3. But, however the photograph of the driver is shown in Ex.R3 and driver name is shown as ***"Arindam Lahiri, S/o. K. Lahiri and his permanent address is shown as 6D Gopal CH Bose LN Cossipur, Kolkata".*** *The validity of his driving license to drive the vehicle it is stated that non transport from 3-11-2011 to 11-08-2021 and there is no driving license to drive the transport vehicle. Ex.R3 is issued by L.A. Salt Lake RTO West Bengal which totally contradicts the details of the driver of the offending vehicle as mentioned in Ex.P3* *relied upon by petitioner. Said documents have been obtained under RTI as per Ex.R4, 5, 6 and 7. Perusal of Ex. R7 reply sent by A.R.T.O P.V.D Salt Lake Unit, Kolkata to the counsel for respondent No.2 dated 27-07-2023, it is stated that as per the available records in the computer database, the driving license bearing No.WB-0120110880066 provided by the counsel is not in the name of Mr. Kishan Kumar Ray. Ex.R8 is notice issued by respondent No.2 to respondent No.1 seeking to provide the documents with respect to the lorry in question.*

Even the records in this case speak that the counsel for respondent No.2 has sent notice to the driver and owner of the offending vehicle and notice has been served on them as per postal acknowledgment dated 10-03-2023 to the driver and 14-08-2023 to the owner. But respondent No.1 has failed to appear before the court and has been placed exparte. If at all he had requisite documents including driving license of his driver/accused at the time of accident, nothing prevented him to appear before the court and produce the same by contesting the petition. But, he has failed to appear before the court which leads to an adverse inference against him that he has no objection with respect to the objection statement averments taken by respondent No.2. It leads to an irresistible conclusion that the accused/ driver to the offending lorry by name

Kishan Kumar Ray as per Ex.P3 had possessed fake driving license and had not possessed driving license to drive the lorry in question. The petitioner has not made any endevour to examine either the owner i.e., respondent No.1 or the driver of the offending vehicle. Absolutely, there are no rebutal evidence relied upon by respondent No.1 to disprove Ex.R3 to 8 and so also the oral evidence of RW.1 which ultimately shows that the name of the driver and other details mentioned in Ex.P3 are not the actual details of the driver of the offending vehicle as mentioned in Ex.R3 and that the driver mentioned in Ex.P3 was not holding driving license to drive transport vehicle like the lorry in question at the time of accident. Under these circumstances, absolutely no materials have been relied upon by petitioner to disprove the said evidence of respondent No.2 and as such there is clear violation of terms and conditions of the policy marked at Ex.R2 with respect to offending vehicle in question. Under these circumstances, it will not be just and proper to fasten liability on respondent No.2 in view of breach of terms and conditions of Ex.R2 by respondent No.1. Hence, it is the respondent No.1 the insured alone who is liable to pay compensation to the petitioner. Accordingly, ***I answer this Issue partly in the Affirmative."***

16. The appellant has raised several technical objections regarding how the Insurance Company proved the driving license to be fake (Ex.R3 to Ex.R8), arguing that no official from the concerned Regional Transport Office (RTO) was summoned. While the Tribunal accepted the insurer's records to hold that the driving license was invalid, it committed a legal error by completely absolving the insurer from its liability towards a third party. The statutory liability to satisfy the award in respect of a third party remains with the Insurance Company in the first instance. Therefore, even if the driver did not possess a valid driving license to drive the transport vehicle, the Tribunal ought to have directed the Respondent No.2 - Insurance Company to first satisfy the award amount to the appellant and subsequently, recover the same from Respondent No.1 - owner of the offending vehicle. To this extent, the finding of the Tribunal requires modification. However, as per Sub-Section (2) of Section 149 of Motor Vehicle Act, 1988 (hereinafter referred to as 'the Act', for short) when the Insurance Company has established the

fact that there is breach of policy conditions (such as a fake or invalid driving license) is a matter strictly between the insurer and the insured (owner), then as per Sub-Sections (1), (4), (7) of Section 149 of the Act, the Insurance Company shall satisfy the claim in respect of third parties and then recover the same from the owner of the offending vehicle. Accordingly, the order of pay and recovery is made as per the principle of law laid down by the Hon'ble Supreme Court in the cases of ***PAPPU AND OTHERS Vs. VINOD KUMAR LAMBA AND ANOTHER*** reported in ***(2018) 3 SCC 208***; ***NATIONAL INSURANCE COMPANY LIMITED VS. SWARAN SINGH AND OTHERS*** reported in ***(2004) 3 SCC 297*** and also as per the full bench decision of this Court in the case of ***NEW INDIA ASSURANCE COMPANY LIMITED VS. YELLAVVA AND ANOTHER*** reported in ***2020 ACJ 2560***. Accordingly, an order of pay and recovery is made. To this extent, the judgment and award passed by the Tribunal is modified.

17. Respondent No.2 – Insurance Company is directed to deposit the compensation amount within eight weeks from the date of filing of the petition till realization and shall recover the same from the owner of the offending vehicle.

18. Accordingly, for the foregoing reasons, I proceed to pass the following:

ORDER

i) The appeal is ***allowed-in-part;***

ii) The judgment and award passed by the Tribunal in MVC.No.1211/2019, dated 28.11.2023, passed by the Principal Senior Civil Judge & CJM and MACT, at Mangaluru, D.K. is modified;

iii) The appellant – claimant is entitled for global compensation of **Rs.1,00,000/-** along with interest at the rate of 6% per annum as awarded by the Tribunal from the date of filing of the petition till realization;

iv) The compensation amount along with accrued interest if any, shall be deposited by the respondent No.2 – Insurance Company, within eight weeks from the date of filing of the petition till realization and recover the same from the owner of the offending vehicle;

v) Registry is directed to return the Trial Court Records to the Tribunal, along with certified copy of the judgment and award passed by this Court forthwith without any delay.

vi) No order as to costs.

Sd/-
(DR.K.MANMADHA RAO)
JUDGE

MH/-