

**The Manager, Vs. Muniyappa**

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**SooperKanoon Citation :** [sooperkanoon.com/1235790](http://sooperkanoon.com/1235790)

**Court :** Karnataka

**Decided On :** Nov-04-2024

**Judge :** Hanchate Sanjeevkumar

**Appeal No. :** MFA 5572/2009

**Appellant :** The Manager,

**Respondent :** Muniyappa

**Advocate for Pet/Ap. :** Sri. A.M.Venkatesh

**Judgement :**

- 1 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE4H DAY OF NOVEMBER, 2024 BEFORE THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR MISCELLANEOUS FIRST APPEAL NO.5572 OF2009C/W MISCELLANEOUS FIRST APPEAL NO.5524 OF2014(MV-I) IN MFA No.5572/2009 BETWEEN: THE MANAGER , I.C.I.C.I. LAMBORD GENERAL INSURANCE COMPANY.LTD, No.62/1, RICHMOND CIRCLE, RESIDENCY ROAD, BANGALORE- 25 M/S ICICI LOMBARD GENERAL INSURANCE CO. LTD NO.89, 2ND FLOOR, SVR COMPLEX, HOSUR ROAD, MADIVALA, BANGALORE. REP. BY ITS MANAGER(LEGAL) APPELLANT (BY SRI. A.M.VENKATESH, ADVOCATE) AND:

1. MUNIYAPPA S/O DODDA CHENNAPPA, AGED ABOUT 39 YEARS, OCC: VEGETABLE BUSINESS R/O MUGABALA POST HOSAKOTE TALUK, BANGALORE RURAL DISTRICT.-. 2 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 2. SRI. SRIRAM S/O. MUNIYAPPA R/O NO.112, MUGABALA POST, HOSAKOTE TALUK, BANGALORE RURAL DISTRICT. RESPONDENTS (BY SRI. SURESH M.LATUR ADVOCATE FOR R1; V/O DATED 29.01.2024 SERVICE OF NOTICE TO R2 HELD SUFFICIENT) THIS MFA FILED U/S1731) OF MV ACT AGAINST THE

JUDGMENT

AND AWARD DATED 12.03.2009 PASSED IN MVC No.2682/2007 ON THE FILE OF VII ADDITIONAL JUDGE, COURT OF SMALL CAUSES, MEMBER, MACT-3, BANGALORE, AWARDED A COMPENSATION OF RS.3,25,000/- WITH INTEREST @ 7.5% P.A. FROM THE DATE OF PETITION TILL DEPOSIT. IN MFA NO.5524/2014 BETWEEN: SRI. MUNIYAPPA S/O SRI DODDA CHENNAPPA, AGED ABOUT 30 YEARS OCC: NIL R/O MUGABALA POST, HOSAKOTE TALUK, BANGALORE RURAL DISTRICT ...APPELLANT (BY SRI. SURESH M.LATUR, ADVOCATE) AND:

1. SRI. SRI RAM S/O MUNIYAPPA R/O No.112 MAGADI, HOSAKOTE TALUK BANGALORE DISTRICT.-. 3 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 2. THE MANAGER ICICI LOMBARD GENERAL INSURANCE CO LTD No.62/1, RICHMOND CIRCLE RESIDENCY ROAD BANGALORE-25 ...RESPONDENTS (BY SRI. A.M.VENKATESH, ADVOCATE FOR R2; R1 SERVED AND UNREPRESENTED) THIS MFA FILED U/S1731) OF MV ACT AGAINST THE

JUDGMENT

AND AWARD DATED 12.03.2009 PASSED IN MVC NO.2682/2007 ON THE FILE OF THE VII ADDITIONAL JUDGE, MEMBER, MACT-3, COURT OF SMALL CAUSES, BANGALORE, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THESE APPEALS COMING ON FOR HEARING, THIS DAY,

JUDGMENT

WAS DELIVERED THEREIN AS UNDER: CORAM: HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR ORAL

JUDGMENT

MFA.No.5572/2009 is filed by the Insurance Company questioning the judgment and award on the ground that the Insurance Company is not liable to indemnify the owner and to pay compensation, since the claimant was travelling in the goods vehicle as a gratuitous passenger. MFA.No.5524/2014 is filed by the claimant for seeking enhancement of compensation.-. 4 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 2. It is the case of the claimant that on 24.10.2006 at about 4.00 a.m., he was travelling in a Tata Tempo bearing No.KA-53-1946 towards Mugabala after unloading vegetable goods at Bengaluru and when the said Tata Tempo reached Bengaluru-Kolar NH-4 road, Mugabala Village, at that time, the driver of the said vehicle drove the same with high speed and in a rash and negligent manner and dashed the vehicle against the road side tree and caused the accident. Due to which, the claimant who was in a Tata Tempo sustained grievous injuries and immediately he was shifted to Hosmat Hospital, Bangalore, for treatment. Therefore, the claimant has filed the claim petition under Section 166 of MV Act for claiming compensation.

3. The Tribunal has awarded compensation of Rs.3,25,000/- with interest at the rate of 7.5% p.a., from the date of petition till the date of deposit by holding that both the respondents who are owner and insurer are jointly and severally liable to pay compensation.-. 5 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 Accordingly, the Tribunal has fastened liability on the appellant-Insurance Company to pay compensation.

4. The Insurance Company has filed the appeal questioning the liability fastened on it to pay compensation to the claimant. The claimant has filed the appeal for

seeking enhancement of compensation.

5. Heard Sri A.M.Venkatesh, learned counsel for the appellant-Insurance Company and Sri Suresh M.Latur, learned counsel for the claimant LIABILITY OF INSURANCE COMPANY VIS-A-VIS SECTION 147 OF MOTOR VEHICLE ACT:

6. Learned counsel for the appellant- Insurance Company vehemently submitted that the claimant was travelling in the Tata Tempo as a gratuitous passenger as there was no goods in the Tempo. Further in the complaint Ex.P.1-FIR and in Ex.P.3-Mahazar, there is mentioning of vegetables goods in the vehicle and also there is no spreading of vegetables on the road at the time - 6 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 of conducting mahazar. Therefore, it is proved that there was no goods in the Tata Tempo and thus, the claimant was traveling in the Tata Tempo as a gratuitous passenger. Hence, the Insurance Company is not liable to pay compensation. Hence, prays to modify the liability.

7. Further submitted that there is no premium is paid towards covering the risk of passenger in the Insurance Policy. Therefore, the appellant-Insurance Company is not liable to pay compensation. Further submitted that, in the charge sheet, the Investigation Officer in collusion with the claimant has mentioned that, after selling vegetables goods at Bengaluru, while returning towards Mugabala Village, the accident has occurred. Therefore, the Investigation Officer in the charge sheet has observed that, after selling goods, he has just helped the claimant to claim compensation from the Insurance Company. Hence, prays to modify the judgment and award and fix the liability on the owner of the Tata Tempo as the claimant was travelling in the Tata Tempo as - 7 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 a gratuitous passenger. Further submitted that the complainant namely Byregowda was not examined and owner of the Tata Tempo has remained exparte.

8. Learned counsel for the Insurance Company in support of his submission has placed reliance on the decision of this Court in the case of United India Insurance

Company Limited Vs. Smt. Lalithabai and Others<sup>1</sup> (hereinafter referred to as Lalithabais case) 9. On the other hand, learned counsel for the claimant submitted that the claimant after selling vegetable goods at Bengaluru and after unloading the same, while returning to his village from Bengaluru, the accident has occurred. Therefore, it means the claimant has travelled along with the goods and after unloading the vegetable goods, if travelled in the same vehicle, that is amounting to travelling along with the goods and this is correctly appreciated by the Tribunal. Hence, it is held that 1 ILR 2007 KAR1585- 8 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 both the owner and Insurance Company are liable to pay compensation and fixing liability on the Insurance Company is correct. Further submitted that the compensation awarded is on the lower side. Therefore, prays for enhancement of compensation.

10. Upon considering the rival submissions of learned counsel for both the parties, the points that arise for consideration are as under: i. Whether, under the facts and circumstances involved in the case, the claimant proves that his risk is covered as per Section 147 of the Motor Vehicle Act travelled in the goods vehicle along with vegetable goods to Bengaluru and after unloading the vegetable goods at Bengaluru and returning to his village from Bengaluru in the same vehicle?. ii. Whether, the claimant is entitled for enhancement of compensation?.

REGARDING LIABILITY:

11. It is the case of the claimant that on 24.10.2006 at about 4.00 am., he was travelling in Tata Tempo to Bengaluru and after unloading the vegetable - 9 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 goods at Bengaluru and while returning in the same vehicle, met with an accident at Mugabala Village. It is the contention of the Insurance Company that the claimant has travelled as a gratuitous passenger in the Tata Tempo goods vehicle.

12. It is an admitted fact that the offending vehicle is the Tata Tempo goods vehicle. The claim of the claimant is that the claimant was returning from Bengaluru to Mugabala village after unloading vegetable goods at Bengaluru and the vehicle met with the accident and the claimant sustained injuries. Ex.P.1 is the

complaint, which is filed by one Byregowda who has stated that he was standing by the side of the road to go to Bengaluru along with vegetable goods and at that time, the Tata Tempo goods vehicle was coming with high speed and in a rash and negligent manner and dashed to the road side tree. Upon seeing the vehicle, he found that the claimant and other persons who are of the same village were travelling - 10 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 after unloading the vegetable goods at Bangalore. The accident has occurred on 24.10.2006 at about 4.00 am. The complaint is lodged on 24.10.2006 in the morning at 8.15 am. There is no delay in lodging the complaint before the police. Accordingly, FIR is registered. In Ex.P.3-spot mahazar, there is no mentioning that vegetable goods have fallen on the road.

13. It is the case of the claimant that after unloading the vegetable goods at Bengaluru while returning to Mugabala Village, the accident has occurred. Therefore, there could not be chances of spreading vegetable goods at the place of accident. It is the case of the claimant that after selling vegetable goods at Bengaluru was returning in the same vehicle and met with an accident. Therefore, under these circumstances, it cannot be expected falling of vegetable goods at the place of accident. Ex.P2 is the charge sheet, in which, it is mentioned by the Police Instigating Officer that the - 11 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 claimant and other persons who are returning in the Tata Tempo after unloading the vegetable goods at Bengaluru met with the accident.

14. Therefore, during the course of investigation, it is revealed that the claimant after unloading the vegetable goods at Bengaluru while returning in the same vehicle, met with accident and sustained injuries. The complaint is not an encyclopedia to state all minute things. The complainant is made as CW.1 in the charge sheet. Mere the complainant is not examined is not a ground to disbelieve the case of the claimant. Though, the driver of Tata Tempo is not examined that cannot make to disprove the case of the claimant. For hiring the Tata Tempo documentary evidence cannot be expected as the claimant is an agriculturist

residing in village. The claimant being an agriculturist after hiring the Tata Tempo for transportation and selling the vegetable goods at Bengaluru and unloading the vegetable goods at Bengaluru and while returning to his village, the accident has occurred. For - 12 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 hiring the Tata Tempo, receipts and documentary evidence cannot be expected. Just because the receipts and documentary evidence are not produced that cannot disprove the case of the claimant.

15. During the course of investigation, the Police Investigation Officer had found that the claimant was returning to his village after unloading the vegetable goods and met with an accident. This is resultant during the course of investigation. Therefore, contrary to the documentary evidence, there is no evidence placed by the Insurance Company. Hence, after considering the evidence on the theory of preponderance of probabilities, it is proved that the claimant has travelled along with the vegetable goods and after unloading the same, he travelled in the same vehicle, which is amounting and deemed that the claimant travelled along with the vegetable goods as per Section 147 of Motor Vehicle Act. Hence, the claimant is not a gratuitous passenger, so as not to fasten liability on the Insurance Company. In this - 13 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 regard, the Tribunal has correctly appreciated the evidence on record and rightly come to the conclusion. This Court in the case of Sri Gopalakrishna G.Nayak Vs., Smt Chandramathi and Others<sup>2</sup> at paragraph Nos.16, 17 and 18, it is held as follows: 16. The expression used under Section 147 (1)(b)(i) of MV Act is owner of goods or authorized representative of goods in the present case does not mean that the deceased had not travelled in the autorickshaw as representative of the goods. After unloading or before loading the goods, when the goods vehicle is hired for the purpose of carrying of goods and travelling along with the goods, it means that the deceased had travelled either as owner or authorized representative of the goods. If after unloading the goods or the vehicle was taken on hire for the purpose of loading the goods at a particular place and while going towards that

place and for the purpose of loading the goods and before that met with an accident, then it amounts to deemed authorized representative of the goods. Interpretation of travelling along with 2 MFA.NO.5699/2011 DD.21.03.2023 - 14 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 the goods as representative of the goods shall not be made in a literal sense, but should be considered in a realistic way that, if the vehicle is used for carrying of goods, yet to be loaded before the accident occurred, or after unloading the goods while returning, quite naturally, the vehicle was empty and then met with an accident, under such facts and circumstances also, it can be construed that the deceased had travelled as an authorized representative of the goods. In this regard, this Court in more or similar circumstances of the case in The Branch Manager, Cholamandalam General Insurance Company Limited Vs. Gowamma and others<sup>3</sup> at Paragraph Nos.15, 16 and 17 held as follows: 15. The words used in Section-147 of MV Act that traveling along with the goods not only means traveling along with goods when it is loaded, but also after unloading / emptying the goods from the vehicle and returning in the same vehicle also amounts to traveling along with goods.

16. The judgment of the HIGH COURT OF JUDICATURE AT MADRAS, MADURAI BENCH, in the case of ORIENTAL INSURANCE CO. LTD. VS. NALLUCHAMY AND ANOTHERS<sup>2</sup>, while interpreting Section-147(1)(b)(i) at para Nos.12, 13, 14, 15, 16 and 17, has held as follows:

3. MFA.No.21/2017 and connected matters DD2511.2022 - 15 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 12.As per Section 147(1)(b)(i), the Insurance Company is liable to pay in respect of death or bodily injury of any person including the owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. 13.In this case, it has to be decided whether the Insurance Company is liable if on facts the owner or the authorized representative who travelled in the vehicle after unloading the vehicle died or suffered injuries, is entitled to be paid compensation from the

Insurance Company. 14.The provisions of Section 147(1)(b)(i) of the Motor Vehicles Act has to be construed liberally. It is not the case of the Insurance Company that the load auto did not carry the goods, ie., 3 bags of tomatoes of the claimant. Their case is that after unloading only he travelled and therefore he is not covered. 15.The judgment relied on by the learned counsel for the appellant is of no use. In that case, though the claimant made a claim that he travelled in the lorry along with the rice bags, this Court came to the conclusion that there was no evidence to claim that he travelled along with the goods.In those circumstances, this Court in *United India Insurance Co. Ltd. v. Annamalai*, reported in 2011 (2) TN MAC737came to the conclusion that the Tribunal has erred in fastening the liability on the - 16 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 Insurance Company when there is absolutely no evidence to the effect that the claimant travelled along with the goods in the lorry. But, in the present case, it is admitted that the tomato bags carried by the load auto belongs to the claimant. The only contention is that the accident took place when he travelled after unloading the goods and hence, he could not claim coverage. 16.In an identical circumstance, the Kerala High Court, in *United India Insurance Co. Ltd. v. Velayudhan*, reported in 2011(1) TN MAC233(Ker.) has held that though the accident took place while the lorry was returning after unloading the rice which was carried in the said vehicle, the Insurance Company is still liable. It is relevant to extract a portion of paragraph-5 of the said judgment, as under: It is true that nothing happened when the goods were taken. But the unfortunate incident took place while the lorry was returning after unloading the rice there. 17.In my view, the judgment of the Kerala High Court (cited supra), covers the issue. Further, I am of the view that provisions of Section 147 of the Motor Vehicles Act has to be interpreted liberally and the main purpose is to grant compensation to the unfortunate accident victims. Unless it is established by the Insurance Company that they are not at all liable, the Insurance Company cannot escape from its liability to pay compensation, particularly when it is admitted that the tomato bags carried - 17 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 by the load auto belongs to the claimant and he being an agriculturist, took these bags to the

market and returned in the auto, which carried the tomato bags and that the said auto got involved in the accident at the time of return. Hence, in my view the Insurance Company is liable to pay compensation.

17. Therefore, the issue involved in the present case is whether the insurance company is liable if the owner or the authorized representative of the goods after unloading or emptying the goods in the market and while returning in the same goods vehicle died, which means actually traveling in the goods vehicle but also after unloading the said goods while returning in the vehicle means in the accident died is also amounting to traveling along with goods for the purpose of Section-147(1)(b)(i) of MV Act.

17. This Court also in the case of The Branch Manager, M/s. Shriram General Insurance Company Limited Vs. Shakunthala and others<sup>4</sup> has held that the coolie had travelled along with cement goods in the lorry and after unloading the said cement load and while returning in the same lorry met with an accident and under such circumstances, it was held that the deceased had travelled along with the goods as it is amounting to deemed authorized representative of the goods even after unloading the same. Thus, the Insurance Company is held liable covering the risk as per Section 147 of MV Act. 4 MFA No.8715/2017 and connected matter, dated 03.01.2023, - 18 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 18. In the present case also, the deceased hired the autorickshaw going from Ribbonpet to Nagavalli and from Nagavalli to Ribbonpet is admitted. Even the factual matrix involved in the present case as discussed above, even though, the autorickshaw was empty going from Ribbonpet to Nagavalli for the purpose of loading the household articles from Nagavalli and met with an accident, under such circumstances also, it is amounting that the deceased had travelled as an authorized representative of the goods to be loaded/transported from Nagavalli. Therefore, under these principles and as interpreted under Section 147 of MV Act, the Insurance Company cannot avoid its liability to pay the compensation. In order to cover the risk under Section 147 of MV Act it is not only that the person actually shall travel physically along with the goods, but when the deceased had hired the

autorickshaw for the purpose of loading the goods and while taking the said goods vehicle for the purpose of loading the goods, even though, at that particular point of time of the accident, the accident was caused, it is amounting to travelling as an authorized representative of the goods, even though, the goods were yet to be loaded or transported. The autorickshaw was taken on hire for specific purpose by the deceased for transporting the household articles from Nagavalli to Ribbonpet. Therefore, it cannot be said that the deceased had travelled as gratuitous passenger.

16. The case relied on by the learned counsel for the Insurance Company in Lalithabais case, the facts are - 19 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 that in a lorry two bags of pulses were carrying. Under these facts and circumstances of the said case, two bags of pulses cannot make goods in the lorry as defined under Section 2(13) of Motor Vehicle Act. Therefore, it would reveal in the evidence that the claimant has travelled as a gratuitous passenger and held that Insurance Company shall not be liable to pay compensation. But here the facts and circumstances are different from the above cited case. Hence, the above case is not helpful to the Insurance Company.

17. Just because, the claimant has not stated as to what is the quantity of vegetable goods unloaded at Bengaluru and owner as well as driver are not examined, that is not ground to disbelieve the case of the claimant. Here the evidence in these claim petitions are appreciated on the theory of preponderance of probabilities, but not by following the theory of beyond reasonable doubt. During the course of investigation, it is revealed that the claimant - 20 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 after unloading vegetable goods at Bengaluru and while returning in the same vehicle, the accident has occurred.

18. Just because, the quantity of vegetable goods are not stated that cannot disbelieve the case of the claimant. Therefore, in the above cited case, the facts are clear that only two bags of pulses were carried in the lorry. Hence, it was held

that two bags of pulses cannot have meaning under Section 2(13) of Motor Vehicle Act. Hence, it makes difference in the above stated case and in the present case in the factual matrix. Therefore, the above stated case is not helpful to the appellant-Insurance Company.

19. Further in the case of Lalithabai, the principle of law laid down is that for injury or death caused to the gratuitous passenger, Insurance Company is not liable. With regard to legal position in Lalithabais case, there is no dispute about it. But in the present case, it is proved that the claimant has not travelled in the Tata Tempo as a - 21 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 gratuitous passenger, but it is proved that the claimant was returning from Bengaluru after unloading vegetable goods and met with the accident. Therefore, it is proved that the claimant travelled along with vegetable goods and after unloading the vegetable goods and while returning in the same vehicle, the accident has occurred. Therefore, it is amounting to covering of risk as per Section 147 of Motor Vehicle Act, as the claimant has travelled in the goods Tempo along with vegetable goods and after unloading and returning to his village is also amounting to travelling along with the goods as per Section 147 of Motor Vehicle Act. Therefore, in this regard, the Tribunal is correct in holding that the Insurance Company is liable to indemnify the owner and to pay compensation. Accordingly, point No.1 is answered in affirmative. Re: Compensation:

20. From the medical evidence on record, it is proved that the claimant has suffered the following injuries: - 22 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 1. Head injury with left clavicle fracture.

2. Fracture shaft left femur upper 1/3rd with undisplaced intercondylar fracture left femur with patellar fractures and quadriceps tear, costochondral fracture lateral condyle right, 3. Left zygomatic complex and arch fracture.

21. From the perusal of evidence as above discussed, the injuries sustained by the claimant are grievous in nature. The claimant sustained four fractured injuries as above discussed. Further from the evidence of doctor-P.W.2, though, he is not a treated doctor, he is the qualified medial practitioner, the claimant has suffered 34% of permanent physical disability, which is not found to be exaggerated one. Therefore, compensation granted by the Tribunal is on the lower side. Hence, the claimant is entitled for enhancement of compensation, which are discussed in the successive paragraphs:

22. Considering the injuries sustained as above discussed, the compensation of Rs.75,000/- is awarded - 23 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 under the head injury, pain and suffering as against Rs.50,000/- awarded by the Tribunal.

23. The claimant is an agriculturist and he is aged about 28 years and has suffered fractured injuries. From the evidence of doctor-P.W.2, the claimant is limping and walking with the help of walker. Therefore, the claimant has suffered loss of amenities in life and discomfort. Accordingly, compensation of Rs.60,000/- is awarded under the head loss of amenities in life and discomfort as against Rs.15,000/- awarded by the Tribunal.

24. The accident is caused in the year 2006 and the claimant being vendor of vegetables and in the absence of proof of income, notional income is to be taken into consideration. Accordingly, income of Rs.4,500/- per month is taken into consideration. P.W.2 who is an Orthopaedic Surgeon in Bowring and Lady Curzon Hospital, Bangalore, had observed that there are fractured injuries as above discussed.-. 24 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 25. It is the evidence of doctor-P.W.2 that surgery was conducted, interlock nailing was done and wound debridement was done and after examination of the claimant by doctor, it is noticed that the claimant was walking with the help of walker and limps on two sides and movement of the claimant is affected and there is limping of (right) knee movements by 40%, limitation of (right) hip movements by 40%,

muscle power around (right) knee is Grade III against Grade V. Therefore, movement of knees are restricted besides movement of left shoulder and knee movement is restricted. It is noticed that the claimant is limping. Therefore, the doctor - P.W.2 after examining the claimant has opined that the claimant has suffered permanent disability at 34% towards whole body.

26. It is submitted that the doctor - P.W.2 is not a treated doctor and therefore, assessment of 34% of disability is on the higher side. But upon considering the nature of injuries sustained by the claimant as discussed above, though the doctor -P.W.2 is not a treated doctor, - 25 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 the assessment made the doctor is found to be correct. Therefore, permanent physical disability towards whole body is taken at 34%. Since the claimant has suffered fractured injuries, his future prospects hampers. Hence, following the principles of law laid down by this Court and the Honble Supreme Court in the cases of New India Assurance Company Vs. Abdul S/o Mehaboob Tahasildar<sup>5</sup> and Sidram Vs. Divisional Manager, United India Insurance Company Limited and Another<sup>6</sup>, certain income is to be added towards loss of future prospects in life. What would be the income is to be added is guided by the Honble Supreme Court in the case of National Insurance Co., Ltd., Vs. Pranay Sethi<sup>7</sup> according to the age limit of the claimant/deceased. The claimant is aged 28 years, hence, 40% of income is to be added towards loss of future prospects in life. As the claimant is aged 28 years, hence, the appropriate 5 MFA.NO.103807/2016 C/W MFA.NOS.103835/2016 & 103807/2018 DD.27.05.2022 6 (2023) 3 SCC4397 (2017) 16 SCC680- 26 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 multiplier applicable is 17. Hence, compensation under the head loss of future income due to disability including loss of future prospects in life is hereby re-assessed and quantified as follows: Rs.4,500/- + Rs.1,800/- (Rs.4,500/- x 40%)=Rs.6,300/-  
Rs.6,300/- x 34% x 17 x 12=Rs.4,36,968/- rounded off to Rs.4,36,970/-  
Accordingly, compensation of Rs.4,36,970/- is awarded under the head loss of future income including loss of future prospects in life as against Rs.96,000/- awarded by the Tribunal.

27. Further the claimant was inpatient for a period of 70 days in the hospital. Therefore, the claimant could not attend to his work atleast for a period of six months in the vegetable business. Hence, loss of income for six months is to be compensated. Hence, compensation of Rs.27,000/- (Rs.4,500/- x 6 months) is awarded under the head loss of income during laid up period as against Rs.15,000/- awarded by the Tribunal.-. 27 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 28. The compensation under the head medical expenses is as per the medical records produced. Hence, compensation of Rs.1,34,900/- awarded by the Tribunal is found to be correct. Hence, it is kept in tact.

29. The compensation of Rs.15,000/- awarded under the head disfigurement by the Tribunal is found to be just and proper. Hence, it is kept in tact.

30. For removing of implants and nailing, some compensation has to be awarded to the claimant. Hence, compensation of Rs.25,000/- is awarded under the head future medical expenses as against Rs.10,000/- awarded by the Tribunal.

31. Further the claimant was inpatient for a period of 70 days in the hospital and therefore, compensation of Rs.50,000/- is awarded under the head incidental expenses such as physiotherapy, transportation, food, - 28 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 attendant charges etc., as against Rs.5,000/- awarded by the Tribunal.

32. Thus, in all, the appellant/claimant is entitled to the compensation under various heads as follows:

1. Injury, pain and Rs. 75,000/- sufferings 2 Loss of amenities in life Rs. 60,000/- and discomfort 3 Loss of future income due to disability Rs. 4,36,970/- including loss of future prospects in life 4 Loss of income during Rs. 27,000/- laid up period 5 Medical expenses Rs. 1,34,900/- Kept in tact 6 Disfigurement Rs. 15,000/- Kept in tact 7 Future medical Rs. 25,000/- expenses 8 Incidental expenses such as physiotherapy, 50,000/- transportation, food, attendant charges etc., Total Rs. 8,23,870/- The interest at the rate of 7.5% p.a., awarded by the Tribunal is

reduced to 6% pa. Therefore, the appeal of the - 29 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 Insurance Company is allowed-in-part, insofar as awarding rate of interest.

33. The Tribunal has awarded compensation of Rs.3,25,000/-, but the appellant/claimant is entitled to total compensation of Rs.8,23,870/-. Hence, the appellant/claimant is entitled to enhanced compensation of Rs.4,98,870/- (Rs.8,23,970/- - Rs.3,25,000/-). Therefore, the appellant/claimant is entitled to enhanced compensation of Rs.4,98,870/- along with interest at the rate of 6% per annum from the date of petition till the date of realization, in addition to what has been awarded by the Tribunal.

34. Accordingly, I proceed to pass the following

#### ORDER

i. MFA.No.5572/2009 filed by the Insurance Company is allowed-in-part.-. 30 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 ii. MFA.No.5524/2014 filed by the claimant is allowed-in-part. iii. The impugned judgment and award dated 12.03.2009 in MVC.No.2682/2007 passed by VII Addl. Judge, Member, MACT-3, Bangalore, is hereby modified. iv. The appellant/claimant is entitled to enhanced compensation of Rs.4,98,870/- along with interest at the rate of 6% per annum from the date of petition till the date of realization, in addition to what has been awarded by the Tribunal. v. No order as to costs. vi. Draw award accordingly. vii. The appellant/claimant is not entitled for interest for the delay period of 1806 days in filing the appeal. viii. The amount in deposit made by the Insurance Company shall be transmitted to the Tribunal forthwith.-. 31 - NC:

2024. KHC:44262 MFA No.5572 of 2009 C/W MFA No.5524 of 2014 ix. Registry is directed to transmit the TCR along with copy of this order to the Tribunal forthwith. SD/- (HANCHATE SANJEEVKUMAR) JUDGE PB List No.:

1. SI No.:

2.

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