The Claim Manager vs Eramma

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Court : Karnataka

Decided On : Apr-30-2026

Judge : T.M.Nadaf

Appeal No. : MFA/5741/2017

Appellant : The Claim Manager

Respondent : Eramma

Judgement :

-1- RESERVED ON : 16.02.2026

PRONOUNCED ON : 30.04.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF APRIL, 2026 BEFORE THE HON'BLE MR. JUSTICE T.M.NADAF MISCELLANEOUS FIRST APPEAL NO. 5741 OF 2017 (MV-I) C/W MISCELLANEOUS FIRST APPEAL NO. 8241 OF 2017 (MV-I) IN MFA No. 5741/2017 BETWEEN: THE CLAIM MANAGER, ROYAL SUNDRAM ALLIANCE INSURANCE COMPANY LIMITED, DB PLAZA , 3RD FLOOR, 47 WHITES ROAD, CHENNAI - 600 014, TAMIL NADU. BY Digitally ROYAL SUNDARAM GENERAL signed by INSURANCE COMPANY LTD.,REKHA R SUBRAMANIAM E

Karnataka BY ITS MANAGER. APPELLANT (BY SRI. O. MAHESH, ADVOCATE) AND:

1. ERAMMA, AGED 24 YEARS, W/O. NARASIMHARAJU , C/O. T. RAMANNA, -2- S/O LATE THIMMEGOWDA, SRI. VENKATESHWARA NILAYA, 8TH CROSS, 1ST MAIN, S.S PURAM, TUMAKURU - 572 101.

2. E.LOKESH, MAJOR, R/O 4TH G CROSS, NO.49/12, BBMP, WARD NO.102, MAGADI MAIN ROAD , KAMAKASHIPALYA POST, BANGALORE - 560 079. RESPONDENTS

(BY SRI. K SHANTHARAJ, ADVOCATE FOR R1, VIDE ORDER DATED 23.05.2022 SERVICE OF NOTICE TO R2 IS HELD SUFFICIENT) THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE

JUDGMENT AND AWARD DATED:19.04.2017 PASSED IN MVC

NO.737/2013 ON THE FILE OF THE ADDITIONAL SENIOR CIVIL JUDGE AND MACT XI, TUMAKURU, AWARDING COMPENSATION OF RS.4,79,000/- WITH INTEREST AT THE RATE OF 8% P.A. FROM THE DATE OF PETITION TILL PAYMENT. IN MFA NO. 8241/2017 BETWEEN: ERAMMA, W/O. NARASIMHARAJU, AGED ABOUT 24 YEARS, RESIDING AT C/O T.RAMANNA, S/O LATE. THIMMEGOWDA, SRI VENKATESHWARA NILAYA, 8TH CROSS, 1ST MAIN, S.S.PURAM, TUMKURU - 572 101. ...APPELLANT (BY SRI. SHANTHARAJ. K, ADVOCATE) -3- AND:

1. E. LOKESH, S/O NOT KNOWN, AGED MAJOR, RESIDING AT 4TH G CROSS, MAGADI MAIN ROAD, KAMAKSHIPALYA POST, BENGALURU - 560 098.

2. ROYAL SUNDARAM ALLIANCE GENERAL INSURANCE COMPANY LTD., REP. BY ITS MANAGER, DB PLAZA, 3RD FLOOR, 47 WHITES ROAD, CHENNAI - 600 014. TAMILNADU. ...RESPONDENTS (BY SRI. O.MAHESH, ADVOCATE FOR R2, VIDE ORDER DATED 08.12.2023 NOTICE TO R1 IS

DISPENSED WITH) THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT

AGAINST THE JUDGMENT AND AWARD DATED:19.04.2017 PASSED IN MVC NO.737/2013 ON THE FILE OF THE ADDITIONAL SENIOR CIVIL JUDGE, MACT-XI, TUMAKURU, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION. THESE APPEALS HAVING BEEN HEARD AND RESERVED AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING: CORAM: HON'BLE MR. JUSTICE T.M.NADAF -4-

CAV JUDGMENT

These two appeals being MFA.No.5741/2017 by the Insurer and MFA.No.8241/2017 by the claimant are filed, calling in question the judgment and award dated 19.04.2017 in MVC.No.737/2013, passed by the Additional Senior Civil Judge and Motor Accident Claims Tribunal XI, Tumakuru (Tribunal for short), by the Insurer on the ground of liability and by the claimant for enhancement.

2. Heard Sri.O.Mahesh, learned counsel appearing

for the appellant-Insurer and Sri.K.Shantharaj, learned counsel appearing for respondent No.1-claimant in MFA.No.5741/2017. Vide order dated 23.05.2022, service of notice to respondent No.2 is held sufficient. IN MFA.No.5741/2017:

3. This appeal is by the Insurer, calling in question

the liability fastened on it, on the ground especially taken at paragraph Nos.3 and 4 of grounds, contending that the offending vehicle involved was commercial passenger transport cab, but the driver was holding driving license to -5- drive LMV- non-transport. There is no endorsement by the concerned authority to drive transport vehicle. In these circumstances the Insurer is not liable to pay the compensation due to violation of policy conditions as the driver of the cab was not possessing valid and effective driving license.

4. Refuting the submission, Sri.K.Shantharaj

submits that in view of settled position of law by the Hon'ble Supreme Court in MUKUND DEWANGAN VS. ORIENTAL INSURANCE COMPANY LIMITED1, a person who is possessing license to drive non-transport vehicle

can drive a transport cab. The Hon'ble Supreme Court held

that there is no necessity of an endorsement by the concerned authority on the license to drive a transport vehicle. In these circumstances, the appeal is devoid of merits and required to be dismissed.

5. Having considered the submissions, the contention raised by the Insurer is no more res integra, in

(2017) 14 SCC 663 -6- view of the judgment by the Honble Supreme Court in MUKUND DEWANGAN supra. The Honble Apex Court at Paragraph No.30 of the Judgment has held as under:

> 30. The State Government has to maintain a register of motor vehicles under Rule 75 as provided in Form 41 which includes gross vehicle weight, unladen weight, etc. The Central Government has the power to frame rules under Section 27, inter alia, regarding minimum qualification, forms, and contents of the licenses, etc. Thus, we are of the considered opinion that the definition of light motor vehicle under Section 2(21) of the Act includes transport vehicle of the class and weight defined therein. The transport vehicle or omnibus would be light motor vehicle, gross vehicle weight of which, does not exceed 7500 kg, and can be driven by holder of licence to drive light motor vehicle and no separate endorsement is required to drive such transport vehicle.

6. In view of the settled position of law by the Hon'ble Supreme Court, this appeal is liable to be dismissed and is accordingly, dismissed. IN MFA.No.8241/2017:

7. Heard, Sri.K.Shantharaj, learned counsel

appearing for appellant-claimant and Sri.O.Mahesh, learned counsel appearing for the respondent No.2-Insurer -7- in MFA.No.8241/2017. Vide order dated 08.02.2023, notice to respondent No.1 is dispensed with.

8. This appeal is by the appellant-claimant seeking enhancement of the compensation.

9. Sri.K.Shantharaj, with all vehemence submits

that the claimant in an accident occurred on 12.04.2013 suffered grievous injuries. As per Wound Certificate at Ex.P4 the injuries suffered reads as under: i) Posterior dislocation of Right hip joint. ii) Bilateral Public Rami fracture. iii) Compression fracture L3 vertebra with Para paresis. iv) Ulnar claw hand on left side due to ulnar nerve injury. v) Crush injury volar aspect of left forearm. vi) Multiple soft tissue injuries.

10. The injuries in Ex.P4 clearly show that injury Nos.5 and 6 are simple in nature and injury Nos.1 to 4 are grievous in nature. The claimant was an in-patient for about 29 days and underwent surgery. -8-

11. He further states that, the doctor has stated

that on considering clinical, radiological and functional factors that, the claimant has got 15% disability to spine and 22% disability to right hip and 12% disability to left upper limb and has stated that disability is at 27% to the whole body. Nothing worthwhile has been elicited in the cross-examination of the doctor. Though the doctor has stated 27% disability to the whole body, as per the Gazette Notification of 2018, Sri.Shantharaj argues that the disability ought to have been taken at 75%. The Tribunal has taken 23% disability and income at Rs.6,000/- per annum. The claimant was working as a Coolie. The income fixed under the chart prepared by the Karnataka State Legal Services Authority, insofar as an unskilled labor for settlement of cases before the Lok Adalat for the year 2013 is Rs.8,000/-. He further submits that though the claimant has stated income as Rs.5,000/-, the income fixed under the chart may be taken. Further he submits that, since the disability is more than 20%, future prospectus ought to have been added towards existing -9- income, considering the age of the claimant being 20 years as on the date of accident. Further, he submits that compensation awarded by the Tribunal under all heads except medical expenses is meagre and requires reconsideration.

12. Sri.K.Shantharaj, further relied on judgment of

the Division Bench of this Court in the case of NEW INDIA ASSURANCE COMPANY LIMITED VS. ABDUL AND OTHERS, in MFA.No.103807/2016 C/w MFA.No.103835/2016 disposed of on 27.05.2022 and stressed on paragraph Nos.27 to 32, to contend on adding of future prospectus to the existing income.

13. In contrast, Sri.O.Mahesh, submits that the

Tribunal taking into consideration the injuries suffered and disability stated by the doctor has considered the disability at 23%. He has further submitted that claimant herself in her evidence has stated her income as Rs.5,000/- from coolie work, despite that the Tribunal has generously taken the income at Rs.6,000/-. When the claimant herself has stated her income as Rs.5,000/- there cannot be any - 10 - higher income considered as argued by the learned counsel appearing for the appellant and submits in support of judgment and award and sought to dismiss the appeal.

14. Having considered the rival submissions of learned counsel for the parties, perused appeal paper and trial Court record.

15. The only question that would arise for my consideration is: Whether the claimant has made out a case for enhancement of compensation?

16. My answer to the above point for consideration is partly in affirmative for the following: REASONS

17. It is an admitted fact that the accident has

occurred in the year 2013 and as per chart prepared by Karnataka State Legal Services Authority stated supra, the income is fixed at Rs.8,000/- even for unskilled labor for the year 2013. This Karnataka State Legal Services - 11 - Authority after much deliberation has fixed the bare minimum income with respect to an unskilled labor, while settling the matter before the Lok-Adalat. To maintain equality, the same amount has been considered for awarding compensation under the head Loss of income during laid up period and loss of income due to disability.

18. The doctor after considering the disability to

particular limb has stated the disability to the whole body as 27%. The Tribunal while deliberating on the disability aspect has considered the same at 23%, without stating any reason for the same. The claimant in the case on hand was aged 20 years as on the date of accident. The Tribunal has failed to consider the fact that the disability has restricted her future earning capacity. The injury resulted in disability with the lower limb, spine as well as upper limb, this definitely considering the avocation of the claimant would reduce her earning capacity. She has to suffer this injury and disability throughout her life, which would cause hardship on her. The life as encapsulated in the Indian Constitution does not merely view human life as - 12 - a conglomeration or an assemblage or the coupling together of the individual constituent parts, but as an integrated core which has a purpose, content and dignity. Any disability, therefore, to any limb of the body which has a role to play in the functional-economic sense undubitably causes its effect on the whole body warranting curial intervention in its reparative and recompensing role 2. In view of the high inflation in the price of the essential commodities, the consideration of future earning and loss of future prospects are required to be considered.

19. The Division Bench of this Court in New India

Assurance Company Limited Supra, has extensively considered adding of future prospectus to the existing income in view of the disability suffered 20% and above. In that case the disability suffered was 20% and the claimant was aged 40 years. The Division Bench of this Court has clearly held regarding the disability as well as Emphasis supplied referred from the Judgment in MFA.No.103807/2016 c/w MFA.No.103835/2016 - 13 - loss of future prospectus at Paragraph Nos.27, 28, 29, 30 and 31 which reads as under:

27. It is thus evident that this component of loss

of future prospects is a forensic tool forged by the Supreme Court to off-set the adverse effect of imponderable vagaries of inflation on the assessment of loss of future earning. To link this component only to disability arising from amputation of limbs defies logic and has no sanction of law. It is undoubtedly true that it is no part of the statutory law governing the field of award of compensation in motor vehicle accident cases. But, Courts are enjoined under law to award just compensation and no compensation can be regarded as just unless law is capable of reinventing itself by making proper adjustments as the needs of the time require. Judges some times make law if the statutes made by the Parliament fall short of meeting the requirements of the time.

28. The eminent judge Lord Reid in his lecture The

Judge As Law Maker said as under: There was a time when it was thought almost indecent to suggest that judges make law- they only declare it. Those with a taste for fairy tales seem to have thought that in some Aladdins cave there is hidden the Common Law in all its splendour and that on a judges appointment there descends on him knowledge of the magic words Open Sesame. Bad decisions are given when the judge has muddled the pass word and the wrong door opens. But we do not believe in fairy tales anymore.

29. Eminent American jurist Richard Allen Posner

was more forthright when he said: (j)udges make rather than find law, and they use as inputs both the rules laid down by legislation and previous courts. and their own ethical and policy preferences.

30. Lord Justice Harman put it pithily thus: Equity is not past the age of Child bearing

31. Resultantly we are constrained to reject the contention of Sri. G. N. Raichur, learned counsel for the

Insurance Company. Loss of future prospects also has to be factored in notwithstanding the fact that this is not a case of death but a case of injury without amputation resulting in whole body disability to the extent of 20% which ultimately has a bearing on the reduced earning capacity. It is essentially on account of the fact that money value does not remain constant over a long spell of years and thus claimant being aged only 40 years, he has long years ahead of him to look forward to, the sliding value of the money will have adverse impact on his future prospects. Accordingly, having due regard to the fact that he was aged about 40 years at the time of the accident, 25% of his established income will have to be factored in towards compensation for loss of future prospects. Therefore, loss of earning capacity is recomputed as follows: Rs.6,000/- + 25% (Rs.1,500/-) = Rs.7,500/- Rs.7,500 x 12 x 15 x 20% =Rs.2,70,000/-.

20. Having considered the disability at 27% in view

of the Judgment in NEW INDIA ASSURANCE COMPANY LIMITED stated supra considering the age of the claimant being 20 years, 40% is required to be added towards future prospectus to the existing income. Having considered the injuries and the treatment and period as inpatient, the claimant is entitled for higher compensation under all the heads except medical expenses. The claimant has made out a case for enhanced compensation which is as under: Sl. Heads Compensation By this Court No. awarded by the In Rs. Tribunal - 15 - In Rs.

1. Pain and suffering 25,000-00 1,00,000-00

2. Loss of income 12,000-00 32,000-00 during laid up period (Rs.8,000 x 4)

3. Medical expenses 1,78,159-00 1,78,159-00

4. Attendant, 15,000-00 30,000-00 Conveyance and food and nourishment charges

5. Loss of income due 1,98,720-00 6,53,184-00 to permanent (Rs.8,000+40% x 12 x 18 disability x 27%)

6. Unhappiness and 50,000-00 1,00,000-00 loss of amenities TOTAL 4,78,879-00 10,93,343-00

21. On re-assessment the claimant is entitled for re-determined compensation of Rs.10,93,343/- rounded off at Rs.10,93,500/- as against Rs.4,78,879/- awarded by the Tribunal.

22. For the forgoing reasons, this Court proceeds to pass following:

ORDER

(i) MFA.No.5741/2017 filed by the appellant- Insurer is dismissed.

(ii) The amount in deposit shall be transferred to the concerned Tribunal for disbursement.

(iii) MFA.No.8241/2017 filed by claimant is allowed in part. - 16 -

(iv) The Judgment and Decree dated 19.04.2017 in MVC.No.737/2013, passed by the Additional Senior Civil Judge and Motor Accident Claims Tribunal XI, Tumakuru, is modified.

(v) The compensation awarded by the Tribunal

is re-determined at Rs.10,93,500/- as against Rs.4,78,879/- passed by the Tribunal which shall carry interest @ 6% per annum from the date of petition till its realization.

(vi) The respondent No.2 - insurer shall deposit

the entire re-determined compensation along with interest before the concerned Tribunal within six weeks from the date of receipt of copy of this order after deducting the amount in deposit before this Court in MFA.No.5741/2017.

(vii) Upon deposit, the Tribunal shall release 50%

along with accrued interest in favor of the - 17 - claimant on proper identification. The balance 50% with accrued interest shall be deposited in an interest bearing FDR with any Nationalized Bank for a period of five years. The Bank shall not permit any loan on the FDR in the absence of any order to that effect by the Tribunal/Court. Sd/- (T.M.NADAF) JUDGE RR