



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JULY, 2024

PRESENT

THE HON'BLE MR JUSTICE K.SOMASHEKAR

AND

THE HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

MISCELLANEOUS FIRST APPEAL NO.3459 OF 2021(MV-I)

BETWEEN:

SRI. SADATH ALI KHAN
S/O. DAVUD KHAN GHORI,
AGED ABOUT 41 YEARS,
R/AT NO.40, KALANAGAR
T. K. ROAD, CHANNAPATNA TOWN,
RAMANAGARA DISTRICT-562159.

...APPELLANT

(BY SRI. RAJU S., ADVOCATE)

AND:

1. SRI. NOOR AHMED SAYEED,
S/O. Y. M. AZIZ MOHAMMED,
NO.1339-A, B. M. ROAD,
CHANNAPATNA,
RAMANAGARA DISTRICT-572159.

2. THE UNIVERSAL SAMPOO
GENERAL INSURANCE CO. LTD.,
NO.69, J. P. AND DEVI
JAMBUKESHWARA ARCADE,
MILLERS ROAD, BANGALORE-560052.
REP BY ITS BRANCH MANAGER

...RESPONDENTS

(BY SRI. B. PRADEEP, ADVOCATE FOR R2;
V/O. DATED 31.08.2021, NOTICE TO R1 IS DISPENSED WITH)





THIS MFA FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 24.09.2020 PASSED IN MVC NO.164/2016 ON THE FILE OF THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE AND MEMBER, ADDITIONAL MACT, RAMANAGARA, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE K.SOMASHEKAR
AND
HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE K.SOMASHEKAR)

This appeal is filed by the appellant-claimant challenging the judgment and award dated 24.09.2020 passed in M.V.C.No.164/2016 by the Additional Motor Accidents Claims Tribunal and III Additional District and Sessions Judge, Ramanagara (for short, 'the tribunal').

2. The parties shall be referred to as per their status before the tribunal.

3. Brief factual matrix of this appeal is as under:



On 05.03.2016 at about 4.30 p.m., the claimant being the rider of the motor cycle bearing registration No.KA-42-U-5623 was riding the same on the National Highway which runs between Bengaluru and Mysuru. The claimant was riding towards Mysuru. While he was proceeding in front of Jain Temple and Lotus Factory situated at Vaderahalli Village, Ramanagara Taluk, a motor Car bearing registration No.KA-42-M-255 owned by respondent No.1-Sri.Noor Ahmed Sayeed and insured with respondent No.2 namely, M/s.The Universal Shampoo General Insurance Co. Ltd., driven by its driver in a rash and negligent manner dashed against the motor cyclist from behind. Due to the said impact, the claimant sustained head injury and injuries to his back and waist portion. He was immediately taken to Ramanagara District Hospital and thereafter to NIMHANS Hospital at Bengaluru. Thereafter, he took treatment as an inpatient at M/s.Rangadore Memorial Hospital on two occasions besides undergoing medical surgeries therein. The



claimant had spent a sum of Rs.10 Lakhs towards his medical treatment and other incidental expenses.

4. It is stated that the claimant was having his own concern and working as a Manufacturer of Wooden Toys and earning a sum of Rs.35,000/- per month. Due to the said accident, he had lost his monthly income. These are all the contentious contentions taken and also urged in the claim petition before the tribunal.

5. The learned counsel for respondent No.1 has not filed any written statement. The order dated 02.09.2016 indicates that the written statement of the respondent-owner was taken as 'not filed'.

6. On the basis of pleadings of the claim petition, the tribunal had formulated certain issues and answered the same based upon the evidence and the documents exhibited. Subsequent to closure of the evidence on the part of the claimant, an opportunity was given to the respondents to lead their evidence, if any on their behalf.



No such evidence was adduced by them subsequent to framing of the issues.

7. On the basis of the materials on record, the tribunal had granted the compensation as follows:

Sl. No	Heads of compensation	Amount of compensation (in Rupees)
1	Towards Pain and Agony (Right Frontal Depressed Fracture with D2, 3, 4 marrow fracture)	40,000
2	Towards Medical Expenses of Rs.1,45,825/- + Attendant charges, Food and Nourishment	1,66,000
3	Towards Loss of Income during the course of treatment (for 18 months) (Rs.6,000x18)	1,08,000
4	Towards Conveyance	10,000
5	Towards Loss of Earning Capacity (6000X12X15X22%)	2,37,600
Total		Rs.5,61,600

8. Being aggrieved by the same, the appellant-claimant has preferred this appeal by urging various grounds.



9. Heard the learned counsel Sri.Raju.S for the appellant and also learned counsel Sri.Pradeep.B for respondent No.2.

10. Learned counsel for appellant has taken us through the evidence of PW.1 and the documents exhibited at Ex.P1 to Ex.P19, which includes the medical bills total worth of Rs.1,45,825/- to show that the appellant-claimant sustained injuries and expended towards medical expenses.

11. Perused the impugned judgment and award rendered by the tribunal inclusive of the evidence which has been facilitated on the part of the claimant as well as on the part of the respondents and the documents exhibited at Ex.P1 to Ex.P19 including Ex.C1 to Ex.C11.

12. It is necessary to mention that to arrive at a conclusion in awarding compensation as sought for in the claim petition, the tribunal places reliance on the judgment dated 06.12.2017 passed by this Court in MFA



No.7074/2016 has dismissed some MVC petitions, in which, the claimant was found travelling without wearing helmet and thereby violated the Notification issued by the Transport Authority under the provisions of Motor Vehicles Rules. Therefore, necessary questions were put to the learned counsel, who is on record. These are all the contentious contentions taken, even though it has been specifically mentioned in paragraph No.15 of the impugned judgment and award rendered by the Tribunal.

13. Keeping in view the submission made by the learned counsel for the appellant and also counter arguments advanced by the learned counsel Sri.Pradeep.B for respondent No.2, it is relevant to refer the evidence of PW.1, who has repeated the averments made in the claim petition in his examination in chief filed in the form of an affidavit and he has also adduce his evidence by referring to FIR, chargesheet inclusive of wound certificate as well as IMV report and the spot panchanama said to have been



conducted by the investigating agency and also other documents.

14. The FIR was marked as Ex.P1, which does not reflect the position relating to the allegation made. However, the same has been recorded only based upon the complaint and the criminal law was set into motion. The informant namely, Ziaya Ulla Khan Ghori states that on 05.03.2016 at about 5.00 p.m. he received a telephonic message from a mobile that his nephew met with an accident at 4.30 p.m. on the same day near Vaderahalli as the motor bike driven by his nephew was hit by motor car bearing registration No.KA-42-M-255, which is the offending vehicle and he was constrained to put the law into motion on 05.03.2016 at 5.30 p.m.

15. Even the IMV report at Ex.P5 does not reflect that the head light, front mudguard and crash guard of motor bike bearing registration No.KA-42-U-5923 were found damaged, but it says that the front right side mirror of motor car bearing registration No.KA-42-M-255 was



found damaged. These are all the evidence, which has been considered by the tribunal in rendering the impugned judgment and award.

16. Keeping in view the evidence of PW.2-Doctor, who has treated the injured, the total medical expenses is to be accepted in toto. However, the claimant has claimed the medical expenditure at Rs.10,00,000/- in the claim petition. But, he has not established the same. The wound certificate, which has been issued by PW.2-Doctor and the scan report reveal that the claimant had sustained fracture of skull bone, which enables the tribunal to apply the Doctrine of *Res Ipsa Loquitur* to the case on hand vis-à-vis non-wearing of helmet by the claimant at the relevant time. As per the decision rendered by the Hon'ble Apex Court of India in the case of ***Shyam Sundar and others vs. State of Rajasthan*** reported in **(1974) 1 SCC 690**, an inference deserves to be drawn to the effect that injured was not wearing helmet at the relevant time. Accordingly, the said inference has been drawn in this



judgment and for the reasons therein, this Court is of the view that the claimant has also contributed his part of negligence to the accident. Merely because this observation has been made by the Tribunal, it cannot be said that this Court has to consider the submission made by the learned counsel for the appellant with regard to enhancement of compensation. The tribunal has referred to other judgment i.e., ***Mohammed Siddique and another vs National Insurance Company Ltd, and others*** reported in ***2020 (3) SCC 57***, which is specifically mentioned in paragraph No.32 of the impugned judgment and award.

17. In view of the above, the tribunal has taken the income at Rs.6,000/-. However, according to the Legal Services Authority chart, the notional income for the accident of the year 2016 is Rs.9,500/-. Therefore, Rs.9,500/- per month is taken as income of the claimant.



18. The tribunal awarded Rs.40,000/- towards pain and agony, which is on the lower side. Therefore, this Court deems it appropriate to award **Rs.65,000/-** under this head.

19. The tribunal awarded Rs.1,66,000/- towards medical expenses and Rs.10,000/- towards conveyance, which do not call for interference and the same are retained.

20. The tribunal awarded Rs.1,08,000/- towards loss of income during course of treatment, which is on the higher side. Therefore, it would be appropriate to award **Rs.38,000/-** (Rs.9,500/- x 4) under this head.

21. The tribunal has not awarded any compensation towards loss of amenities. Therefore, it would be appropriate to award **Rs.25,000/-** under this head.

22. The tribunal awarded Rs.2,37,600/- towards loss of earning capacity. Keeping in view of the income being enhanced to Rs.9,500/- per month, towards loss of



earning capacity, the compensation amount would work out to **Rs.3,76,200/-** (Rs.9,500/- x 12 x 15 x 22%). Therefore, the claimant is entitled to a total enhanced compensation of Rs.6,80,200/- along with interest @ 6% from the date of initiation of the proceedings till deposit of the amount as follows:

Sl. No	Heads of compensation	Amount of compensation (in Rupees)
1.	Towards Pain and Agony	65,000
2.	Towards Medical Expenses	1,66,000
3.	Towards Loss of Income during the course of treatment	38,000
4.	Towards Conveyance	10,000
5.	Towards Loss of Earning Capacity (9,500X12X15X22%)	3,76,200
6.	Loss of amenities	25,000
Total		Rs.6,80,200

23. Even though the tribunal has mentioned at paragraph 33 of its impugned judgment with regard to not wearing of helmet by the claimant and the claimant has sustained injuries to the vital parts of his body as



mentioned in the wound certificate, he is entitled for the compensation.

24. In this regard it is relevant to refer Section 129 (a) of Motor Vehicles Act, 1988:

The concept of Contributory negligence in motor vehicle accidents occurs when the injured party's own negligence contributes to the accident's occurrence or the severity of their injuries. In such cases, the compensation awarded to the injured party may be reduced in proportion to their degree of fault. Section 129(a) of the Motor Vehicles Act, 1988, mandates the use of protective headgear while riding a motorcycle. While not wearing a helmet is a violation of the law, it does not automatically disqualify someone from receiving compensation. Courts have established that the primary focus in determining compensation remains on assessing the respondent's negligence in causing the accident and the overall circumstances. While wearing a helmet is crucial for safety, it should not be the sole factor in reducing



compensation. The court will evaluate the extent to which the claimant's failure to wear a helmet contributed to their injuries and may reduce compensation proportionally if a contribution is found.

25. In the case on hand, the concept regarding contributory negligence and compensation claims for not wearing protective headgear under Section 129(a) of the Motor Vehicle Act 1988, the court notes several critical points. Section 129(a) mandates that all motorcycle riders must wear protective headgear that meets the standards set by the Bureau of Indian Standards, highlighting the importance of safety gear in preventing head injuries during accidents. Contributory negligence arises when the injured party's negligence contributes to the harm they suffered. In the context of motor vehicle accidents, if a rider does not wear protective headgear as mandated, it could be argued that they contributed to the severity of their injuries.



26. However, not wearing protective headgear does not negate the right to compensation. Courts have consistently held that the compensation awarded should not be diluted solely because the injured party was not wearing protective headgear. The principle of "just compensation" requires that while contributory negligence can be a factor in determining the amount of compensation, it should not result in an unjust reduction. The compensation must be fair and reasonable, reflecting the actual losses and the nature of injuries sustained.

27. Moreover, under Section 129(a), the offense of not wearing protective headgear attracts a fine of Rs.1,000/- or suspension of the driving license for three months. Given this relatively minor penalty, reducing the insurance claim amount by 10% to 15% due to the non-wearing of protective headgear is unjust. The fine and suspension already address the non-compliance, making additional reductions in compensation disproportionate.



28. Therefore, it's fair to conclude that while the failure to wear protective headgear as required by Section 129(a) constitutes contributory negligence, it should not drastically affect the compensation awarded to the claimant. The principle of just compensation necessitates that courts award damages that are fair and equitable, considering all circumstances without unduly penalizing the claimant for not wearing a helmet. The primary focus remains on ensuring that victims receive adequate compensation for their injuries and losses.

29. The Tribunal had taken a view at paragraph No.33 of its impugned judgment that though the claimant himself was riding the motor bike, which involved in the accident and in all preponderance of probability, he was not wearing helmet at the relevant time and thereby violated the provision of Section 129 of Motor Vehicles Act, 1988. Admittedly, the claimant has sustained the fracture to skull as per Ex.P4-wound certificate issued by the Doctor and the scanning report. Therefore, the tribunal



had come to the conclusion that the claimant cannot take shelter under the cited case laws as there is a violation of Section 129 of the Act in not wearing the helmet at the relevant time. However, the contentious contention is taken by the Insurance Company that the claimant was not wearing the helmet. But the Motor Vehicles Act is a beneficial legislation. Keeping in view of the scope of Section 129 of the Act and in a given peculiar facts and circumstances of the case, the entire liability shall be fastened on respondent No.2-insurance company.

30. Accordingly, we proceed to pass the following:

ORDER

- i) The appeal preferred by the appellant-claimant is hereby ***allowed***;
- ii) The judgment and award dated 24.09.2020 passed in M.V.C.No.164/2016 by the Additional Motor Accidents Claims Tribunal and III Additional District and Sessions Judge, Ramanagara, is hereby modified;



- iii) The claimant is entitled to total compensation of **Rs.6,80,200/-** as against Rs.4,77,360/- along with interest @ 6% p.a. from the date of petition till deposit;
- iv) Respondent No.2-Insurance company shall pay the enhanced compensation amount of **Rs.2,02,840/-**, which would fetch the interest at 6% p.a. within a period of six (06) weeks from the date of receipt of a copy of this order;
- v) On depositing the aforesaid enhanced compensation amount, the same shall be disbursed to the claimant with due identification.

Sd/-
(K.SOMASHEKAR)
JUDGE

Sd/-
(DR.CHILLAKUR SUMALATHA)
JUDGE