



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR

MISCELLANEOUS FIRST APPEAL NO.5505 OF 2017 (MV-I)

BETWEEN:

M/S ICICI LOMBARD COMPANY LTD.,
NO.62/1, 2ND FLOOR,
PRESTIGE CHONICHE, RICHMOND ROAD,
BANGALORE - 25,
NOW REP BY ITS LEGAL MANAGER,
M/S ICICI LOMBARD GIC LTD.,
REGIONAL OFFICE, THE STATE,
9TH FLOOR DICKENSON ROAD,
M.G.ROAD, BANGALORE - 42

...APPELLANT

(BY SRI B.C.SHIVANNE GOWDA, ADVOCATE)

AND:

1. MS. HARSHITHA. B,
D/O BALARAM,
AGED ABOUT 23 YEARS,
R/AT NO.25, 3RD MAIN, 3RD CROSS,
KHADI LAYOUT,
VIVEKANANDA NAGAR,
KATHRIGUPPE,
BSK 2ND STAGE,
BANGALORE - 85.
2. SOHIT SAHANI
S/O. JHAGRU SAHANI,
MAJOR, R/AT NO.800, 2ND FLOOR,
PADMASHREE ENTERPRISES,





TRIVENI ROAD,
YASHWANTHAPURA,
BANGALORE – 22.

...RESPONDENTS

(BY SRI. D.S. SRIDHAR, ADVOCATE FOR R1;
R2 – NOTICE SERVED)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 23.02.2017 PASSED IN MVC NO.1851/2015 ON THE FILE OF THE II ADDITIONAL SMALL CAUSES JUDGE AND XXVIII ACMM, BENGALURU (SCCH-13), AWARDED COMPENSATION OF RS.5,87,100/- WITH INTEREST AT 6% P.A.(EXCEPT THE AMOUNT AWARDED TOWARDS FUTURE MEDICAL EXPENSES) FROM THE DATE OF PETITION TILL THE DATE OF DEPOSIT IN COURT.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

The present appeal is filed by the appellant-Insurance Company challenging the judgment and award dated 23.02.2017 passed in MVC.No.1851/2015 by the Motor Accident Claims Tribunal and II Addl. Small Causes Judge & XXVIII ACMM, Bengaluru, questioning the quantum of compensation as well as by taking the contention that the claimant has contributed her negligence towards the accident.



2. The factum of accident and injuries sustained by the claimant in the accident are not disputed. Whether the claimant has contributed her negligence towards the accident and the claimant is entitled for compensation towards loss of future income due to disability is permissible are the questions to be considered.

3. Heard the arguments from both sides and perused the records.

4. The learned counsel for the appellant-Insurance Company submitted that from Ex.R.1 - MLC extract, it is proved that it is the case of self fall from bike while the claimant was riding the motor cycle. Hence, the Insurance Company is not liable to indemnify the owner and to pay compensation. Further it is also submitted that even if the claimant is held to be pillion rider, but there were three persons riding on the motor cycle and the motor cycle skidded and thus, the claimant knowing fully well that



there were three persons riding on the motor cycle invited the risk for herself amounting to contributory negligence. Therefore, prays for modification of the judgment and award on these two grounds.

5. On the other hand, learned counsel for the claimant submitted that the claimant was a pillion rider and hence, the claim petition is maintainable. Hence, justified the judgment and award passed by the Tribunal. Further submitted that, just because, there were three pillion riders on the motor cycle is not a ground to say that the claimant has also contributed negligence towards the accident. Therefore, prays to dismiss the appeal filed by the Insurance Company.

6. Admittedly, there were three persons riding on the motor cycle. Ex.R.1 to Ex.R.3 are the MLC extract of the hospital, in which, the claimants have been admitted for treatment, wherein it is revealed that all three injured



persons had sustained injury due to self fall from bike while travelling on the bike near Wonderla gate. In Ex.P.1-FIR, it is stated that one Krishnakumar was riding the motor cycle and the claimant was a pillion rider. There is no evidence on behalf of the Insurance Company to show that the claimant was riding on the motor cycle. Ex.R1 to Ex.R3 are the MLC extract. It is proved that the motor cycle was skidded. Thus, all three persons sustained injuries. Therefore, it is written as self fall from the motor cycle. Hence, on all its preponderance of probability, it is proved that the claimant was a pillion rider on the motor cycle. One Somashekara was riding the motor cycle as per FIR, complaint and charge sheet. But he has not sustained injuries. Hence, it is proved that one Somashekara was riding the motor cycle and there are other three persons as pillion riders.

7. Admittedly, from the police records, it is revealed that there were four persons riding on the motor cycle. The claimant is one of the pillion rider. Hence, the



claimant knowing fully well that there were four persons riding on the motor cycle, hence invited risk for herself while travelling on the motor cycle being pillion rider. Therefore, the claimant has also contributed her negligence towards the accident in the manner discussed above. Therefore, it is amounting to 20% of contributory negligence towards the accident. Therefore, whatever amount of compensation is determined by this Court, the claimant is entitled to only 80% of that determined compensation amount.

8. The Tribunal has awarded compensation under various heads as follows:

1	Pain and sufferings	Rs.	80,000/-
2	Loss of earnings during laid up period	Rs.	40,000/-
3	Medical expenses	Rs.	2,18,229/-
4	Loss of future earnings	Rs.	1,72,800/-
5	Loss of amenities	Rs.	50,000/-
6	Conveyance, nourishment, food and attendant charges	Rs.	6,000/-
7	Future medical expenses	Rs.	20,000/-
	Total	Rs.	5,87,029/-



9. The Tribunal has granted compensation of Rs.1,72,800/- towards loss of future income due to disability. The claimant was working as a Customer Relation Officer at Hinduja Global Solutions Limited and she is continuing in the same job even after the accident. There is no evidence that the claimant was terminated from service due to disability. When this being the fact revealed from the evidence, no compensation can be granted towards loss of future earning due to disability because the claimant continued in the same job with the same salary. Therefore, the claimant is not entitled for compensation towards loss of future earning due to disability, but the claimant is entitled for compensation towards loss of amenities. Accordingly, compensation amount of Rs.50,000/- is awarded under the head loss of amenities. On all other conventional heads, compensation amount granted is found to be just and proper. The claimant has not preferred any appeal, therefore, insofar as quantum of compensation towards loss of future earning due to disability is set aside. Insofar as other



conventional heads is concerned, the amount of compensation granted by the Tribunal is kept in tact.

10. Therefore, the appellant/claimant is entitled for compensation as under:

1	Pain and sufferings	Rs.	80,000/-
2	Loss of earnings during laid up period	Rs.	40,000/-
3	Medical expenses	Rs.	2,18,229/-
4	Loss of amenities	Rs.	50,000/-
5	Conveyance, nourishment, food and attendant charges	Rs.	6,000/-
6	Future medical expenses	Rs.	20,000/-
	Total	Rs.	4,14,229/-

11. The claimant has contributed 20% of negligence towards the accident. Hence, the claimant is entitled to only 80% of above determined compensation. Thus, the claimant is entitled to total compensation of **Rs.3,31,383/-** (80% of Rs.4,14,229/-) as against the compensation amount awarded by the Tribunal along with interest at the rate of 6% p.a., from the date of petition till realization.



12. Accordingly, I proceed to pass the following

ORDER

- i. The appeal is ***allowed in part.***
- ii. The impugned judgment and award dated 23.02.2017 passed in MVC.No.1851/2015 by the Motor Accident Claims Tribunal, Bengaluru and II Addl. Small Causes Judge & XXVIII ACMM, Bengaluru, is modified.
- iii. The claimant is entitled to total compensation of **Rs.3,31,383/-** (80% of Rs.4,14,229/-) as against the compensation amount awarded by the Tribunal along with interest at the rate of 6% p.a., from the date of petition till realization.
- iv. No order as to costs.
- v. Amount in deposit made by the Insurance Company shall be transmitted to the Tribunal.



- vi. Registry is directed to transmit the TCR along with copy of this order to the Tribunal.

**Sd/-
JUDGE**

PB
List No.: 2 SI No.: 61