



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MARCH, 2021

BEFORE

THE HON'BLE MR.JUSTICE N.S.SANJAY GOWDA

M.F.A.No.6863/2014
C/W. M.F.A.No.1541/2015 (MV -I)

In M.F.A.No.6863/2014

BETWEEN:

SRI. RAVI @ RAVINDRA,
S/O YAMAIAH, AGED ABOUT 21 YEARS,
R/O YALLADAHALLI VILLAGE,
MADDUR-TQ,
MANDYA DISTRICT.

... APPELLANT

(BY SRI. RAJA.L, ADV.)

AND:

1. THAMMANNA,
S/O LATE BORAIHAH, MAJOR,
R/O UMMADAHALLI VILLAGE,
MANDYA - 571 401.
2. THE BRANCH MANAGER,
UNITED INDIA INSURANCE CO. LTD.,
No.1119/B, M.C.ROAD,
MANDYA - 571 401.

... RESPONDENTS

(VIDE ORDER DATED:21.01.2015,
NOTICE TO R-1 IS DISPENSED WITH;
SRI. O.MAHESH, ADVOCATE FOR R-2)

THIS APPEAL IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLE ACT, PRAYING TO MODIFY JUDGMENT AND AWARD PASSED BY THE LEARNED SENIOR CIVIL JUDGE & MACT, MADDUR IN MVC No.1282/2012 DATED 16.7.2014, FURTHER BE PLEASED TO ENHANCE THE COMPENSATION AS CLAIMED IN THE CLAIM PETITION BY ALLOWING THIS APPEAL, IN THE INTEREST OF JUSTICE AND EQUITY

In M.F.A.No.1541/2015

BETWEEN:

THE BRANCH MANAGER,
UNITED INDIA INSURANCE
COMPANY LIMITED, No.1119/B,
M.C.ROAD, MANDYA CITY - 571 401.

BY REGIONAL MANAGER,
UNITED INDIA INSURANCE CO. LTD.,
5TH FLOOR, KRISHI BHAVAN,
NRUPATHUNGA ROAD,
HUDSON CIRCLE, BANGALORE - 560 001.

BY ITS MANAGER.

... APPELLANT

(BY SRI. O.MAHESH, ADV.)

AND:

1. SRI. RAVI @ RAVINDRA,
AGED ABOUT 21 YEARS,
S/O SRI. YAMAIAH,
R/AT YALADAHALLI VILLAGE,
MADDUR TALUK, MANDYA DISTRICT - 571 401.

2. THAMMANNA,
S/O LATE BORAIHAH, MAJOR,
R/O UMMADAHALLI VILLAGE,
MANDYA - 571 401.

... RESPONDENTS

(BY SRI. L.RAJA, ADV., FOR R-1;
R-2 IS SERVED AND UNREPRESENTED)

THIS APPEAL IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED:16.7.2014 PASSED IN MVC NO.1282/2012 ON THE FILE OF THE SENIOR CIVIL JUDGE & MACT, MADDUR, AWARDED COMPENSATION OF Rs.2,26,680/- WITH INTEREST @ 6% P.A. ON RS.2,18,680/- FROM THE DATE OF PETITION TILL REALIZATION.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

1. MFA.6863/2014 is by the claimant seeking for enhancement, while MFA.1541/2014 is by the Insurance Company challenging the award of the Tribunal on the ground that there was no motor vehicle accident at all.

2. On 29.08.2012, a claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act', for short) by the claimant – Mr.Ravi @ Ravindra. In the claim petition, he basically stated that while he was returning to his village after finishing his work on 24.05.2012, a motorcycle bearing registration No.KA03-EJ-5126 hit him from behind and as a result, he suffered grievous injuries.

3. In other words, it was his case that he was a pedestrian and while he was walking by the road, he was struck by the

motorcycle. He contended that he had suffered a permanent disability and claimed a total sum of ₹9,75,000/- as compensation.

4. The 1st respondent i.e., the owner of the motorcycle entered appearance and contested the matter by denying all the claim averments. He further stated that his motorcycle was insured with the 2nd respondent and the policy was valid as on the date of the accident. He stated that if any compensation were to be awarded by the Tribunal, the same will have to be satisfied by the Insurance Company.

5. The 2nd respondent – Insurance Company also entered appearance and filed objections. The Insurance Company initially denied all the claim averments. Subsequently, by way of an amendment, the Insurance Company put forth the plea that in an investigation conducted by it, it had been found that there was no accident and a false story had been concocted for the purpose of the claim. They stated that the claimant had fallen from a tree and his grievous injuries were relatable to the said fall and not to any motorcycle accident. They also stated that the police authorities had also

investigated the matter and submitted a 'B' report and therefore, it was clear that the injuries were not as a result of a motorcycle accident, but due to a fall from a tree.

6. In support of the claim petition, the claimant examined himself as P.W.1 and also one Byresha Y.S., an eye witness to the accident as P.W.2 and one Dr.N.T.Ramesh as P.W.3. He produced, in all, 15 documents.

7. The respondent – Insurance Company examined one of its officials Sri C.A.Chandrashekar as R.W.1 and through him produced 7 documents.

8. The Tribunal, on consideration of the evidence, came to the conclusion that an accident, as stated by the claimant, had occurred and the claimant was entitled to a total sum of ₹2,26,680/-. The Tribunal, as regards the occurrence of the accident, stated as follows:

"25. On perusal of Ex.R.5, the concerned police have submitted 'B' final report stating that no such accident was taken place and the petitioner had not sustained any injuries alleged to have been sustained in RTA. On careful perusal of Ex.P.12 case sheet wherein the history of injuries is mentioned as due to RTA. On perusal of Ex.P.4 wound certificate issued from PHC,

K.M.Doddi, which reveals that the history of injuries is mentioned as road traffic accident on 24.05.2012. It is significant to note that the respondent No.2 Insurance Company has not chosen to examine the concerned I.O. who submitted 'B' final report to disprove the fact that the accident was not due to RTA. Therefore, the respondent No.2 Insurance Company has failed to prove that the injuries sustained by the petitioner are not the accidental injuries and the motorcycle bearing Reg.No.KA-03-EJ-5126 was not involved in the accident by adducing cogent and convincing evidence before the Court. All the medical records produced before the Court clearly go to show that the petitioner had sustained injuries in RTA. It is to be noticed that merely because the concerned police have submitted 'B' final report it cannot be said that the claimant/injured person is not entitled for claiming compensation. Considering the cross-examination of RW.1, materials placed on record and also for the foregoing reason, I am of the view that the respondents No.1 and 2 being the owner and insurer of the offending vehicle are jointly and severally liable to pay the said compensation to the petitioner with interest at 6% per annum from the date of petition till realization. Accordingly, issue No.2 is answered **partly in the affirmative**"

9. Learned counsel for the claimant contended that the factum of the accident cannot be doubted since the entries in the medical records which had been made immediately after the accident consistently recorded that the claimant had stated that he suffered injuries as a result of the road traffic

accident. He submitted that the accident occurred at about 11.00 a.m. and the first entry regarding the injuries and the history of the road accident was made at 11.55 a.m. in the Community Health Centre, K.M.Doddi, as per Ex.P.4. He submitted that the claimant had also produced the entire case sheets of his hospitalization at the Government Hospital, Mandya and these case sheets indicated that he was taken to the Hospital at 11.55 a.m. on the date of the accident itself and even in those records, there was a clear reference to the road traffic accident made by the claimant. He, therefore, submitted that the contention of the Insurance Company that there was no motor vehicle accident, and that it was a case of an injury caused by falling from a tree cannot be accepted.

10. As regards compensation, he submitted that the Tribunal had erred in considering his income as ₹4,000/- when even according to the chart prepared by the Karnataka State Legal Services Authority, the notional income in respect of a motor vehicle accident victim was ₹7,000/- for the year 2012. He submitted that the sums awarded towards pain and sufferings and loss of amenities were also on the lower side.

11. Sri O. Mahesh, learned Senior Counsel appearing for the Insurance Company contended that the police had investigated the complaint of the claimant that a motor vehicle accident had occurred and after a thorough investigation, they had come to the conclusion that the claimant had actually fallen from a tree and had not met with any motor vehicle accident. He submitted that since the police had filed a 'B' report and the same was accepted by the Court, it was not open for the Tribunal to record a finding that the claimant suffered injuries due to a motor vehicle accident. He submitted that the statements recorded by the police clearly indicate that the claimant and the other witnesses had admitted that the injuries had occurred due to a fall from the tree and that a complaint had been lodged only at the instigation of the villagers and the lawyers for the purpose of securing compensation. He submitted that in the light of the clear statement recorded by the police, the Tribunal could not have come to the conclusion that the accident had occurred. Learned counsel has relied upon certain contradictions in the statements in order to substantiate his contention.

12. In reply, learned counsel for the claimant contended that as a matter of fact, acceptance of 'B' report was challenged by the claimant and the I Additional Civil Judge and JMFC., Maddur, by an order dated 28.09.2017 rejected the 'B' report and directed the registration of a criminal case and ordered summons to the accused. He submitted that in view of this order, reliance placed upon by the Insurance Company regarding 'B' report cannot be accepted.

13. I have considered the submissions of the learned counsel and also perused the Trial Court records.

14. The records produced by the claimant indicate that he complained of injuries as a result of a road traffic accident on 24.05.2012 at 11.00 a.m. The wound certificate which has been produced as Ex.P4 records that injuries had been found on the claimant and the said injuries had been caused on 24.05.2012 at 11.00 a.m. due to a road traffic accident. The said wound certificate also records that the claimant was first seen by the Medical Officer on 24.05.2012 at 11.55 a.m. at the Community Health Centre, K.M.Doddi and on examination, he found several injuries on the claimant. It is

thus clear that at about 11.55 a.m. on 24.05.2012 itself the claimant did inform the Medical Officer that he had suffered a road traffic accident which had caused him grievous injuries.

15. Subsequently, i.e., at about 1 p.m. on the same day, the claimant was examined by the Doctors at the Government Hospital, Mandya and even in this medical record, there is a clear reference that he was referred from Primary Health Centre, K.M.Doddi, with a history of an alleged road traffic accident. Thus, within a period of three hours from the accident, there are multiple entries regarding claimant having suffered a road traffic accident.

16. Learned counsel for the Insurance Company, however, contended that these entries can be of no significance since they did not contain the registration number of the motorcycle which had caused the accident. It was his contention that as the details of the offending vehicle were not forthcoming in the medical records, no cognizance of the statements can be taken by the Tribunal. He submitted that the statements recorded by the police pursuant to the investigation were the only credible evidence which were

relevant for the purpose of ascertaining whether an accident occurred or not.

17. He submitted that the accident had occurred on 24.05.2012 and the FIR was lodged only on 29.05.2012 i.e., after a period of five days. He submitted that the delay in lodging the FIR was by itself proof that a story was being concocted for the purposes of laying a claim under the motor vehicle accident.

18. In order to appreciate the contentions of the learned counsel, it would be necessary to examine the scheme of the Motor Vehicles Act in relation to the manner in which the occurrence of a motor vehicle accident is to be established.

19. Section 134 of the Act casts a duty on the driver, in the event of an accident and injury to a person, firstly, to take all reasonable steps to secure medical attention to the injured and secondly, thereafter, to report the circumstances of the occurrence to the nearest police station as soon as possible, at any rate, within twenty-four hours of the occurrence.

20. The driver is also required to give in writing to the insurer information about the occurrence of the accident and also the particulars of insurance obtained in respect of the vehicle.

21. Thus, in law, a duty is cast only on the driver of the motor vehicle or the person in-charge of the vehicle to inform the police about the occurrence of the accident. There is no obligation imposed on the victim to inform the police. Consequently, the information, if any, provided to the police cannot be attributed as a statement of the victim in all cases.

22. Section 158(4) of the Act mandates the owner of the motor vehicle is to give such information as may be required to a police officer for the purpose of determining whether the vehicle was or was not being driven in contravention of Section 146 of the Act.

23. Section 158(6) of the Act mandates that as soon as any information regarding any accident involving death or bodily injury to any person is recorded or reported to a police officer, the police officer is required to forward a copy of the same within thirty days from the date of recording

information to the Claims Tribunal having jurisdiction and send a copy thereof to the concerned insurer.

24. It is, therefore, clear that the scheme of the Act contemplates that primarily it is the duty of the driver of the motor vehicle to inform the police about the accident and for the police to thereafter inform the Claims Tribunal about the occurrence of the accident.

25. Rule 150 of the Central Motor Vehicles Rules (hereinafter referred to as 'the CMV Rules', for short) imposes an obligation on the police to submit a report in Form 54. The police officer is required to furnish the required information to the person eligible to claim compensation under Section 160 of the Act within seven days from the date of receipt of request and on payment of a fee of rupees ten.

26. The prescribed Form 54 contains information which is relevant to the occurrence of the accident, such as date, time and place of the accident, details of the injured or deceased, details of the hospital to which the victim was transported, the registration number of the vehicle, driving licence

particulars and the name and address of the owner and the insurer.

27. A reading of Form 54 would indicate that these details are required to be furnished to the victim of the accident so as to entitle him to make a claim for compensation against the concerned persons i.e., owner, driver and the insurer.

28. This would further lead to the conclusion that the claimant, in law, is not obliged to take any steps to investigate the manner in which the accident has occurred and all that he is required to do is to approach the police officer, secure the Form 54 and file a claim petition on that basis.

29. Having regard to the scheme of the Act, the arguments advanced by Sri. O. Mahesh, learned counsel for the Insurer, that the First Information Report, statements recorded by the police, the charge sheet filed by the police would be vital pieces of evidence to prove or disprove the accident, do not really hold water.

30. The First Information Report, the statements recorded by the police during investigation or a charge sheet laid by the Police are all essentially documents which are necessary to be maintained by the police authorities while investigating a crime and for prosecuting the offender under the Code of Criminal Procedure. These documents are required to be proved even before the Criminal Courts. Therefore, the mere production of a First Information Report or the statements recorded by the police or a charge sheet cannot be construed as proof of their contents.

31. To put it differently, if the owner or the insurer were to rest their defence on the basis of materials collected by the prosecution, they would have to prove the said documents in the same manner as is provided under the Indian Evidence Act and the documents of the prosecution cannot *ipso facto* become proof of contents therein in a proceeding under the Motor Vehicles Act.

32. The legal position regarding the evidentiary value of a First Information Report was stated and reiterated by the Apex Court in the case of ***Baldev Singh & Another Vs.***

State of Punjab - AIR 1996 SC 372. In paragraph 10 of the said judgment, it has been observed as under:

“State briefly, FIR is not a substantive piece of evidence, it is only relevant in judging the veracity of prosecution case and the value to be attached to it depends on the facts of each case. Only the essential or broad picture need be stated in the FIR and all minute details need not be mentioned therein. It is not a verbatim summary of the prosecution case. It need not contain details of the occurrence as if it were an “encyclopaedia” of the occurrence. It may not be even necessary to catalogue the overact acts therein. Non mentioning of some facts or vague reference to some others are not fatal.”

33. This has also been further reiterated by the Apex Court in the case of ***C.Magesh Vs. State of Karnataka - (2010) 5 SCC 645.*** In paragraph 26 of the said judgment, it has been observed as under:

“It is settled law on the point that FIR is not a substantive piece of evidence. However the FIR cannot be given a complete go-by since it can be used to corroborate the evidence of the person lodging the same. In the judgment of this Court titled Baldev Singh vs. State of Punjab reported in (1990) 4 SCC 692, it was held that

as far as the evidentiary value of the FIR is concerned it can only be used to for corroboration of its maker, but the FIR can not be used as substantial evidence or Crl.A.Nos.1028-1029 of 2008(contd.) corroborating a statement of third party."

34. In fact, in a recent judgment of the Apex Court in the case of **Anita Sharma and Others Vs. The New India Assurance Company Limited - (Civil Appeal Nos.4010-4011/2020 dated 08.12.2020)**, in paragraph 22, it has been held as follows:

"Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eye-witnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. A somewhat similar

situation arose in ***Dulcina Fernandes v. Joaquim Xavier Cruz*** wherein this Court reiterated that:

"7. It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pick-up van as set up by the claimants was **required to be decided by the learned Tribunal on the touchstone of preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt.**

(Bimla Devi v. Himachal RTC [(2009) 13 SCC 530; (2009) 5 SCC (Civ) 189;(2010) 1 SCC (Cri) 1101]."

35. In this view of the matter, it is clear that the records maintained by the Police during the course of their investigation cannot really be considered as substantive evidence and cannot be taken as proof the facts stated therein. The reliance, therefore, placed upon by insurers on the documents which are essentially records of the prosecution cannot be a determinative factor or actual proof of the occurrence of the accident.

36. In this regard the Karnataka Motor Vehicles Rules (hereinafter referred to as 'the KMV Rules', for short) is also required to be noticed.

37. Rule 232-C (3) of the KMV Rules states that every application for compensation is to be accompanied by a Medical Certificate in Form KMV 64 or the Post-mortem Report or Death Certificate and First Information Report in respect of the accident.

38. The requirement of producing a Medical Certificate or the Post-mortem Report or a Death Certificate is obviously to establish the injuries or the death. The production of First Information Report is only for the purpose of notifying the Claims Tribunal about the occurrence of the accident and to evidence that it is recorded in the police station.

39. There is no provision either under the Motor Vehicles Act or under the Karnataka Motor Vehicles Rules which indicate that the police records are to be considered as formal proof of occurrence of the accident.

40. It is to be noticed here that in the year 2013, the Karnataka Motor Vehicles Rules was amended. Though these Rules may not apply in the instant case as the accident occurred on 24.05.2012, nevertheless, the amended Rules do shed light on the statutory scheme in relation to a proceeding

relating to claim of compensation for a victim of a motor vehicle accident.

41. Rules 232, 232-A, 232-B, 232-C, 232-D, 232-E and 232-F of KMV Rules read as under:

"232. Duties of Insurance Company.- It shall be the duty of the Divisional Manager or the Branch Manager of the Insurance Company, as expeditiously as possible, to.-

- (a) move an application in Form 63 before the Investigating Police Officer with prescribed fees, if any and gather full information about the accident, at the earliest, after receiving information about it, or on receipt of notice from the Claims Tribunals under Rule 235;
- (b) ascertain and verify facts about insurance of motor vehicle(s) involved in the accident and confirm the same to the Claims Tribunal within thirty days of receiving notice of the claim case;
- (c) move application before the concerned registering authority in Form 63-A and gather information about the motor Vehicle(s) involved, and the driving licence(s) held by the driver(s) thereof as per details mentioned in Form 63-B;
- (d) deposit with the written statement in the Claims tribunal, the amount equivalent to the compensation, awardable on the principle of no fault liability under Section 140 of the Act in such cases where the information received in Form 63 confirms death or permanent disability to have been caused as a result of the use of the motor vehicle covered by the insurance certificate/policy issued by it.

232-A. Presumption about reports.- The Contents of reports submitted to the Claims Tribunal in Form 54 appended to the Central Motor Vehicles Rules, 1989, Form 63-B and confirmation under clause (b) of Rule 232 by the Insurance company shall be presumed to be correct, and shall be read in evidence without formal proof, till proved to the contrary.

232-B. Supply of information.- (1) Any person having an interest in any claims petition initiated/to be initiated before any Claims Tribunal may make applications in Form 63 or Form 63-A before the Investigating Police Officer or the Registering Authority as the case may be for supply of information.

(2) On receipt of applications under sub-rule (1), the Investigating Police Officer or the Registering Authority, as the case may be, shall provide to the applicant, within 10 days of receipt of the application, the information in Form 54 appended to central Motor Vehicles Rules, 1989 or in Form 63-B, as the case may be.

232-C. Applications.- (1) Every application for compensation arising out of accident of the nature specified in sub-section(1) of Section 165, shall be made in Form 63-C by a person specified in sub-section(1) of Section 166, to the Claims Tribunal having jurisdiction over the area in which the accident occurred.

(2) Every such application shall be presented in duplicate to the Claims Tribunal either in person or through an authorized agent or an Advocate and shall be signed by the applicant.

(3) There shall be appended to every such application the following documents.-

- (a) proof of identity and proof of address of the applicant(s) unless exempted from doing so for reasons to be recorded in writing by Tribunal;
- (b) passport size photograph(s) of the applicant(s) duly attested by the Advocate on record;
- (c) Medical Certificate in Form KMV 64 or Post-mortem Report or Death Certificate as the case may be;

- (d) Copy of the First Information Report in respect of the accident.
- (e) An affidavit of the applicant to the effect that the statement of facts contained in the application is true to the best of his/her knowledge/belief, as the case may be, and further if the applicant(s) has/have earlier preferred any claim petition with regard to the same cause of action, and if so, what was the result thereof;
- (f) All the documents and affidavits for the proof thereof, and affidavits in support of all facts on which the applicant relies in context of his claim, entered in a properly prepared list of documents and affidavits.

Provided that the Claims Tribunal may not allow the applicant to rely in support of his claim, on any document or affidavit not filed with the application, unless it is satisfied that for good or sufficient cause, he was prevented from filing such document or affidavit earlier;

- (g) reports obtained in Form 54 appended to the Central Motor Vehicles Rules, 1989 and in Form 63-B and if no such report(s) have been obtained reasons therefore;
- (h) medical certificate of injuries, or the effect thereof, other than those included in Form 54 appended to the central Motor Vehicles Rules, 1989.

(4) The Claims Tribunal may also require the applicant to furnish the following information to satisfy itself that spurious or a collusive claim has not been preferred.-

- (a) full particulars of all earlier accidents in which the applicant or the person deceased, as the case may be, has been involved;
- (b) the amount of compensation paid in such earlier accidents, name and particulars of the victim, and of the person who paid the damages; and

- (c) relation of persons mentioned in clause (b), if any with the applicant.

(5) Any application which is found defective on scrutiny may be returned by the Claims Tribunal for being re-submitted after removing the defects within a specified period not exceeding two weeks.

(6) Notwithstanding anything contained in sub-rules (2) and (3) every application for a claim under Section 140, shall be filed before the Claims Tribunal in triplicate and shall be signed by the applicant and the following documents be appended to every such application, namely.-

- (a) Panchanama of the accident;
- (b) First Information Report;
- (c) Injury Certificate or in case of death, post-mortem report; and
- (d) Certificate regarding ownership and insurance particulars of vehicle involved in the accident from the Regional Transport Officer or the police authorities.

232-D. Police Reports under sub-section(6) of Section 158 of the Act and action thereon.- (1) On receipt of report mentioned in Form 54 appended to the Central Motor Vehicles Rules, 1989, the Claims Tribunal shall go through the same and may call for such further information or material as considered necessary for proper and effective action in accordance with sub-section(4) of Section 166 of the Act.

(2) The Claims Tribunal after examination of the report and further information/material if any, shall register the claim case thereon. Notice for appearance shall then be issued in Form 63-D to all parties concerned which shall include the names of victim(s) of the accident, or his/her/their legal representative(s), as the case may be, driver, owner and insurer of the vehicle(s) involved.

(3) On receipt of notice, the parties mentioned in the forgoing provision shall appear and declare through affidavit, if any claim case had either been preferred or was being preferred in respect of the same cause of action, and if so, the police report treated as

claim case would be tagged to such claim case preferred independently by the parties.

(4) If the person(s) injured, or legal representative(s) of the person(s) deceased do not appear in response to the notice aforementioned in the manner indicated above, the Claims Tribunal may presume that the said parties are not interested in pursuing the claim for any compensation in such proceedings, and on such presumption it shall close the case.

(5) Unless the police report treated as claim case stands tagged to independent claim case preferred by the parties themselves, the Claims Tribunal shall call upon the person(s) injured or legal representative(s) of the person(s) deceased, as the case may be and who may have appeared in response to the notice, to submit statement of facts regarding compensation, if any claimed by them, which statement of facts shall be along the lines required to be furnished in application inf Form 63-C.

(6) If statement of facts about compensation claimed and basis thereof are furnished by the parties in the manner indicated in sub-rule(5), the case shall be further proceeded with in the same manner as required to deal with applications moved by the parties for compensation directly before the Claims Tribunal.

(7) If after statement of facts about compensation claimed has been furnished by the party, which subsequently commits default in appearance, the provisions of Order 9 of the Code of Civil Procedure, 1908 (5 of 1908) would apply:

Provided that in case accident in question involves more than one vehicle and persons connected to all such vehicles stake claim for compensation, the police report treated as claim case shall be presumed to be a claim case preferred by each of them and absence by any one or more of such parties shall not prejudice or affect the claim of the party which continues to appear.

232-E. Inspection of the vehicle.- The Claims Tribunal may, if it thinks fit, require the motor vehicle involved in the accident to be produced by the owner for inspection at a particular time and place to be mentioned by it, in consultation with the owner.

232-F. Power to direct medical examination.-

The Claims Tribunal may if it considers necessary, direct, in Form 63-E any Medical Officer or any Board of Medical Officers in a Government or municipal hospital to examine the injured and issue certificate indicating the degree and extent of the disability, if any, suffered as a result of the accident, and it shall be the duty of such Medical Officer or Board to submit the report within fifteen days of receipt of direction."

42. As could be seen from Rule 232, it is essentially the duty of the Insurance Company to gather and secure full information about the accident from the Investigating Police Officer and also gather full information about the accident on receipt of information or notice from the Claims Tribunal.

43. The Insurance Company is required to ascertain and verify facts about the insurance of the motor vehicles involved in the accident and confirm the same to the Claims Tribunal within the thirty days of receiving notice of the claim case Tribunal.

44. The Insurance Company is also required to move an application before the concerned registering authority and gather information about the motor vehicles involved and the driving licence held by the drivers.

45. The Insurance Company is also required to deposit along with written statement the amount equivalent to compensation awardable under the principle of no fault liability under Section 140 of the Act in such cases where the information received by it confirms death or permanent disabilities, which have resulted due to the accident.

46. It is thus clear that from the year 2013 at least, the onus of establishing the accident is completely on the Insurance Company. The Insurance Company is required to gather full information of the accident, ascertain and verify the fact of insurance of the vehicle involved in the accident and confirm the same to the Tribunal.

47. This salutary and solemn duty cast on the Insurance Company cannot be wished by the Companies and it cannot shirk this responsibility cast on them statutorily by simply collecting the documents of the prosecution, such as the FIR, Statements and the Charge sheet and contend that they had proved or disproved the occurrence of the accident.

48. In fact, Rule 232-A of the KMV Rules categorically states that contents of the Accident Information Report (Form

54 of CMV Rules) and Information collected from the registering authority about the motor vehicle involved in the accident and the driving licence held by the driver (Form 63-B of KMV Rules) shall be presumed to be correct and shall be read in evidence without formal proof till the contrary is proved.

49. Therefore, if an Accident Information Report or a report of the Registering Authority, is produced before the Claims Tribunal, the Tribunal can presume their contents to be correct, unless the contrary is proved. This, therefore, indicates that there is no burden cast upon the claimant at all to prove the occurrence of the accident and the entire onus on disproving the accident is on the Insurer.

50. The way in which the Rules are framed indicates that that the intent of the legislature was to basically ensure that a victim of a motor vehicle accident should be put to the least amount of difficulty in securing compensation and the entire duty to ascertain the facts relating to the accident would lie on the Insurance Company.

51. In my view, if the Insurance Companies do not discharge the duties imposed upon them under Rule 232 of the KMV Rules, it will have to be held that the Insurance Companies have accepted the occurrence of the accident and would be liable to pay compensation if they have issued a Certificate of Insurance.

52. It is also to be noticed here that after the amendment of KMV Rules in 2013, as per Rule 232-D, the Accident Information Report i.e., Form 54 is required to be examined by the Tribunal and the Tribunal may also call for such other information as it finds necessary and on receipt of the report, the Tribunal is required to register a Claim Petition.

53. Thus, after the year 2013, the Accident Information Report is itself to be treated as an initiation of a proceeding to claim compensation and an obligation is cast upon the Claims Tribunal to secure information and register a claim petition and notify all the persons concerned.

54. In fact, Rule 232-D of the KMV Rules states that if the Tribunal is informed of any claim case as already been preferred, the case registered by the Tribunal on the basis of

Accident Information Report should be tagged along with the claim case preferred by the claimant. This Rule thereby indicates that virtually no burden is cast on the claimant to even seek for compensation let alone prove or establish the occurrence of the accident.

55. Unfortunately, in all most all cases, the claimants are called upon to prove and establish beyond all reasonable doubt that the accident had occurred. The Insurance Companies, instead of following the procedure prescribed under the KMV Rules are merely in the habit of producing police records and contending that the accident did not occur in the manner stated in the claim petition or that there were severe discrepancies in the pleadings and evidence.

56. It is, therefore, necessary that all the Insurers and the Claims Tribunals take note of the amendments made to the KMV Rules in 2013 and ensure that their respective obligations in ensuring the victims of motor vehicle accidents secure their compensation.

57. Keeping this scheme of the Act and Rules in mind, if the facts of this case are to be analysed, it is clear that the

claimant informed the Medical Officer within an hour of the occurrence of the accident that he had suffered a road traffic accident. This information was reiterated by the claimant when he was shifted to the Government Hospital. These two factors by themselves establish that a road traffic accident had occurred resulting in injuries to the claimant.

58. The assertion that the police had investigated the complaint and lodged a 'B' report and therefore, the version of the claimant is to be disregarded cannot be accepted.

59. As noticed above, the Insurance Company has an obligation to prove the accident or disprove the accident in a manner acceptable in law. The mere production of a 'B' report cannot lead to an inference that no accident occurred. The Insurance Company ought to have produced independent evidence to establish that the claimant had a fall from the tree and mere reliance on 'B' report which stated that the claimant had admitted as he had fallen from a tree cannot be accepted.

60. In the instant case, as pointed out by learned counsel for the claimant, filing of a 'B' report has also been challenged

by him in First Information Report No.625/2012 and the learned I Additional Civil Judge and JMFC., Maddur, by an order dated 28.09.2017 rejected the 'B' report and directed for registration of a criminal case and ordered summons to the accused.

61. From the above narrated facts, it is clear that there was positive evidence in the form of entries in the medical records that an accident had occurred and had resulted in injuries to the claimant.

62. In the light of this evidence, the Tribunal was absolutely justified in coming to the conclusion that a motor vehicle accident did occur and the claimant did suffer injuries. The appeal of the Insurer is thus without merit and is dismissed.

63. As far as the appeal by the claimant for enhancement is concerned, the Tribunal has recorded a finding that the claimant had sustained comminuted fracture shaft of left femur and he was operated on 30.05.2012 and ORIF with IMIL nailing was done. The Tribunal has taken note of the evidence of the Doctor which was to the effect that the claimant had surgical scar over the left thigh; tenderness

over the left gluteal regions; ROM, left hip flexion up to 90 degree; abduction and adduction decreased by 20 degree each; rotations decreased by 20 degree each; ROM left knee flexion up to 90 degree; left thigh muscle power decreased by 20%.

64. The Tribunal, having taken note of the Doctor's assessment of permanent disability at 40% to the left lower limb, has assessed the whole body disability at 12%. In my view, this assessment of disability cannot be said to be, in any way, improper and hence, the same is affirmed.

65. The Tribunal has further taken the notional income of the claimant at **₹4,000/-** per month, since there was no credible evidence to establish the actual income of the claimant. In my view, in such a situation, it would be appropriate to adopt the notional income determined by the Karnataka State Legal Services Authority, which would be a sum of **₹7,000/-** as the accident was of the year 2012.

66. Since the disability is maintained at **12%** and the multiplier of **18** is adopted as the claimant was aged 19 years, the claimant would be entitled to a sum of

₹1,81,440/- (7,000 X 12 X 12% X 18) towards loss of future earnings.

67. The Tribunal has awarded a sum of **₹45,000/-** towards pain and sufferings and **₹30,000/-** towards loss of amenities of life. The said award is just and proper and does not call for any enhancement.

68. The Tribunal has also awarded a sum of **₹28,000/-** towards medical expenses and this assessment is based on documentary evidence and hence, the said sum is also maintained.

69. The Tribunal has awarded a sum of **₹12,000/-** towards loss of income during the period of treatment for three months by considering the income of the claimant at **₹4,000/-**. Since in this appeal, the notional income is taken at **₹7,000/-**, the claimant would be entitled to **₹21,000/-** under the said head.

70. The Tribunal has also awarded a sum of **₹8,000/-** towards future medical expenses, which, in my view, is just and proper.

71. Accordingly, the appeal filed by the claimant is allowed in part. Claimant is held entitled for the compensation as under:

| | | |
|---|--|-------------|
| 1 | Loss of future earnings | ₹1,81,440/- |
| 2 | Pain and Sufferings | ₹45,000/- |
| 3 | Loss of amenities in life | ₹30,000/- |
| 4 | Medical expenses | ₹28,000/- |
| 5 | Loss of earnings during laid up period | ₹21,000/- |
| 6 | Future medical expenses | ₹8,000/- |
| | TOTAL | ₹3,13,440/- |

Thus, the claimant is entitled for enhanced compensation of ₹3,13,440/-, with interest at 6% p.a. on ₹3,05,440/- (₹3,13,440/- less ₹8,000/- awarded towards future medical expenses) from the date of petition till realisation.

The Insurance Company is directed to deposit the amount of compensation within a period of two weeks from the date of receipt of a certified copy of this judgment.

The amount, if any, deposited before this Court shall be transmitted to the Tribunal for disbursement in terms of the award of the Tribunal.

Registry is directed to circulate the copy of this judgment to all the Motor Accident Claims Tribunals in the State for information and necessary action.

**Sd/-
JUDGE**

PKS