IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 25TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

MISCL. FIRST APPEAL NO. 201226 OF 2022 (MV-I)

C/W

MISCL. FIRST APPEAL NO. 200442 OF 2022

MISCL. FIRST APPEAL NO. 200539 OF 2022

MISCL. FIRST APPEAL NO. 201227 OF 2022

IN M.F.A. NO.201226 OF 2022

BETWEEN:

THROUGH DIVISIONAL MANAGER,
CHOLAMANDALAM GENERAL INSURANCE CO. LTD.,
BLOCK NO.VIII,
NEAR SVP CHOWK,
ASAIN PLAZA COMPLEX, KALABURAGI.
NOW REPRESENTED BY
CHOLA MS GEN, INSURANCE COMPANY LIMITED,
THROUGH MANAGER LEGAL UNIT NO.4,
9TH FLOOR, LEVEL-06, GOLDEN HEIGHTS COMPLEX,
59TH 'C' CROSS, INDUSTRIAL SUBURB,
RAJAJI NAGAR, 4TH MAIN BENGALURU – 560 010.

...APPELLANT

Digitally signed by NIJAMUDDIN JAMKHANDI
Location: HIGH COURT OF KARNATAKA

(BY SRI MANJUNATH MALLAYYA SHETTY, ADVOCATE)

AND:

1. VAIJANATH
S/O VEERANNA,
AGE: 35 YEARS,
OCC: WORKING AT VISHWA JYOTI
PETROL PUMP, NOW: NIL,
R/O: SULEGAON GALLI, CHITTAPUR,
TQ: CHITTAPUR, DIST: KALABURAGI.

2. AYYANNAGOUDA
S/O GURAPPA GOUDA,
AGE: MAJOR,
OCC: OWNER OF VEHICLE
NO.KA-32-C-7472,
R/O: E/122/A, HALAGADLA
TQ: JEWARGI,
DIST: KALABURAGI.

…RESPONDENTS

(BY SRI SANJEEV PATIL, ADVOCATE FOR R1;
SERVICE OF NOTICE TO R2 IS DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT, PRAYING TO SET ASIDE THE JUDGMENT AND AWARD DATED 26TH DAY OF OCTOBER, 2021 PASSED BY THE SENIOR CIVIL JUDGE AND MACT, AT CHITTAPUR IN MVC NO.324/2019 AND MODIFY THE COMPENSATION AWARDED AND TO PASS SUCH OTHER ORDER AS THIS HON'BLE COURT DEEMS FIT UNDER THE FACTS AND CIRCUMSTANCES OF THE CASE, INCLUDING THE COSTS, IN THE INTEREST OF JUSTICE AND EQUITY.

IN M.F.A. NO.200442 OF 2022

BETWEEN:

VAIJANATH
S/O VEERANNA,
AGE: 34 YEARS,
OCC: WORKING AT VISHWA JYOTI
PETROL PUMP, NOW: NIL,
R/O: SULEGAON GALLI, CHITTAPUR,
TQ: CHITTAPUR, DIST: KALABURAGI.

…APPELLANT

(BY SRI SANJEEV PATIL, ADVOCATE)

AND:

1. AYYANNAGOUDA
S/O GURAPPA GOUDA,
AGE: MAJOR,
OCC: OWNER OF VEHICLE
NO.KA.32.C.7472,
R/O: E/122/A, HALAGADLA
TQ: JEWARGI AND
DIST: KALABURAGI – 585 310.

2. THE DIVISIONAL MANAGER,
CHOLAMANDALAM GENERAL INSURANCE CO. LTD.,
BLOCK NO.VIII, NEAR SVP CHOWK,
ASAIN PLAZA COMPLEX KALABURAGI – 585 102.

…RESPONDENTS

(BY SRI MANJUNATH MALLAYYA SHETTY, ADVOCATE FOR R2;
SERVICE OF NOTICE TO R1 IS DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT, PRAYING TO MODIFY THE JUDGMENT AND AWARD PASSED BY THE SENIOR CIVIL JUDGE AND MACT, CHITTAPUR, IN M.V.C.NO.324/2019 DATED 26.10.2021, BY ENHANCING THE COMPENSATION AS PRAYED FOR, IN THE INTEREST OF JUSTICE AND EQUITY.

IN M.F.A. NO.200539 OF 2022

BETWEEN:

SHAMARAYA
S/O HANMANTH,
AGE: 26 YEARS,
OCC: WORKING AT
VISHWA JYOTI PETROL PUMP, NOW: NIL,
R/O : WARD NO.5, EK KAMAN CHITTAPUR,
TQ: CHITTAPUR, DIST : KALABURAGI.

…APPELLANT

(BY SRI SANJEEV PATIL, ADVOCATE)

AND:

1. AYYANNAGOUDA
S/O GURAPPA GOUDA,
AGE: MAJOR,
OCC: OWNER OF VEHICLE
NO.KA.32.C.7472,
R/O: E/122/A, HALAGADLA
TQ: JEWARGI AND
DIST: KALABURAGI – 585 310.

2. THE DIVISIONAL MANAGER,
CHOLAMANDALAM GENERAL INSURANCE CO. LTD.,
BLOCK NO.VIII, NEAR SVP CHOWK,
ASAIN PLAZA COMPLEX, KALABURAGI – 585 102.

…RESPONDENTS

(BY SRI MANJUNATH MALLAYYA SHETTY, ADVOCATE FOR R2;
SERVICE OF NOTICE TO R1 IS DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT, PRAYING TO MODIFY THE JUDGMENT AND AWARD PASSED BY THE SENIOR CIVIL JUDGE AND MACT, CHITTAPUR, IN M.V.C.NO.325/2019 DATED 26.10.2021, BY ENHANCING THE COMPENSATION AS PRAYED FOR, IN THE INTEREST OF JUSTICE AND EQUITY.

IN M.F.A. NO.201227 OF 2022

BETWEEN:

THROUGH DIVISIONAL MANAGER,
CHOLAMANDALAM GENERAL INSURANCE CO. LTD.,
BLOCK NO.VIII, NEAR SVP CHOWK,
ASAIN PLAZA COMPLEX, KALABURAGI.
NOW REPRESENTED BY
CHOLA MS GEN, INSURANCE COMPANY LIMITED,
THROUGH MANAGER LEGAL UNIT NO.4,
9TH FLOOR, LEVEL-06, GOLDEN HEIGHTS COMPLEX,
59TH 'C' CROSS, INDUSTRIAL SUBURB,
RAJAJI NAGAR, 4TH MAIN BENGALURU – 560 010.

…APPELLANT

(BY SRI MANJUNATH MALLAYYA SHETTY, ADVOCATE)

AND:

1. SHAMARAYA
S/O HANMANTH,
AGE: 27 YEARS,
OCC: WORKING AT
VISHWA JYOTI PETROL PUMP,
R/O : WARD NO.5, EK KAMAN CHITTAPUR,
TQ: CHITTAPUR,
DIST : KALABURAGI.

2. AYYANNAGOUDA
S/O GURAPPA GOUDA,
AGE: MAJOR,
OCC: OWNER OF VEHICLE
NO.KA-32-C-7472,
R/O: E/122/A, HALAGADLA
TQ: JEWARGI,
DIST: KALABURAGI.

…RESPONDENTS

(BY SRI SANJEEV PATIL, ADVOCATE FOR R1;
SERVICE OF NOTICE TO R2 IS DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT, PRAYING TO SET ASIDE THE JUDGMENT AND AWARD DATED 26TH DAY OF OCTOBER, 2021 PASSED BY THE SENIOR CIVIL JUDGE AND MACT, AT CHITTAPUR IN MVC NO.325/2019 AND MODIFY THE COMPENSATION AWARDED AND TO PASS SUCH OTHER ORDER OR ORDERS AS THIS HON'BLE COURT DEEMS FIT UNDER THE FACTS AND CIRCUMSTANCES OF THE CASE, INCLUDING THE COSTS, IN THE INTEREST OF JUSTICE AND EQUITY.

THESE MFA'S, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL JUDGMENT

Challenging common judgment and award dated 26.10.2021 passed by Senior Civil Judge and MACT, Chittapur ('tribunal' for short) in MVC nos.324/2019 and 325/2019, these appeals are filed by insurer as well as claimants.

2. MFA no.201226/2022 is filed by insurer challenging award in MVC no.324/2019, while claimant has filed MFA no.200442/2022. Likewise, Insurer has filed MFA no.201227/2022 and claimant has filed MFA no.200539/2022 insofar as MVC no.325/2019 is concerned. Common grounds urged by insurer are that tribunal erred in fastening liability on insurer, even though driver of JCB did not possess effective and valid driving licence at time of accident.

3. In claim petition, it was submitted that on 25.12.2018, Shamaraya was riding motorcycle bearing Reg.no. KA-32/EE-1806 towards Chittapur with Vaijanath as pillion rider. At about 11:30 a.m., near Meghana bar, driver of JCB bearing Reg.no. KA-32/C-7472, drove it in rash and negligent manner, its bucket hit claimants and caused accident. Though, they took treatment at Kamareddy hospital etc., they did not

recover fully and suffered permanent physical disability and loss of earning capacity. Therefore, claim petition was filed seeking compensation against owner and insurer of JCB.

4. Despite service of notice, owner of JCB did not appear and was placed *ex-parte*. Insurer opposed claim petition denying age, occupation, income and loss of earning capacity of claimants and alleging that driver of JCB was not holding valid and effective driving license and JCB was not insured with it etc.

5. Based on pleadings, tribunal framed issues, and recorded evidence. Claimants examined themselves as PW-1 and Dr.Ravi E. Shivaraya as PW-2. Exhibits.P-1 to P-14 were marked in both cases. Insurer examined two witnesses, ie., its official and RTO as RWs-1 and 2 and got marked letter addressed to RW-1 and extract of driving license as Ex.R-1 respectively.

6. On consideration, tribunal held that accident occurred due to negligent driving of JCB by its driver and that claimant sustained permanent disability, resulting in loss of

future earning capacity. Therefore, tribunal awarded compensation accordingly:

In MVC no.324/2019		
1.	Loss of earning capacity	Rs.5,04,000/-
2.	Pain and Sufferings	Rs.50,000/-
3.	Loss of earning during laid up period	Rs.31,500/-
4.	Transportation charges	Rs.10,000/-
5.	Diet charges	Rs.10,000/-
6.	Attendant charges	Rs.4,400/-
7.	Medical expenses	Rs.1,05,000/-
	Total	**Rs.7,14,900/-**

In MVC no.325/2019		
1.	Loss of earning capacity	Rs.5,04,000/-
2.	Pain and Sufferings	Rs.50,000/-
3.	Loss of earning during laid up period	Rs.31,500/-
4.	Transportataion charges	Rs.10,000/-
5.	Diet charges	Rs.10,000/-
6.	Attendant charges	Rs.6,800/-
7.	Medical expenses	Rs.1,78,000/-
	Total	* **Rs.8,21,800/-**

7. Sri Manjunath Mallayya Shetty, learned counsel for insurer submitted, in MVC no. 324/2019 claimant - Vaijanath was aged 32 years at time of accident and was working at a petrol pump. Claimant sustained fracture of femur bone and PW.2 - Dr.Ravi E. Shivaraya, assessed permanent physical disability at 33%. However, tribunal erroneously considered functional disability at 25%, which was on higher side. It was

* Deleted Vide chamber order dated 03/07/2025.

further submitted, tribunal awarded Rs.50,000/- towards pain and suffering, though claimant had only sustained one fracture and underwent inpatient treatment for only 11 days. Award towards medical expenses, diet and incidental charges, were also on higher side.

8. On other hand, Sri Sanjeev Patil, learned counsel for claimant opposed insurance appeal and submitted there was no scope for reduction and sought for allowing claimant's appeal for enhancement. It was submitted that award under pain and suffering as well as towards attendant and other incidental charges were on lower side. It was submitted that tribunal did not award any compensation towards loss of amenities and future medical expenses, even though there were implants. On said grounds, sought enhancement.

9. In MVC no.325/2019, Sri Manjunath Mallayya Shetty, learned counsel for insurer submitted, PW-2 - doctor had assessed higher disability at 37% and tribunal had taken same at 25%, which was on higher side. He also submitted award under other heads were also on higher side and sought for dismissal of appeal.

10. On other hand, Sri Sanjeev Patil, learned counsel for claimant submitted, claimant had sustained fracture of shaft of femur as well as neck. Apart from above, he had sustained fracture to 6th and 7th ribs. Therefore, award of Rs.50,000/- towards pain and sufferings was on lower side. It was submitted, award towards other incidental expenses for inpatient treatment for a period of 17 days was on lower side. Tribunal had also failed to award compensation towards loss of amenities and future medical expenses. On said grounds, sought enhancement.

11. Heard learned counsel, perused impugned judgment and award and certified copies of deposition and exhibits made available for perusal by learned counsel for claimants.

12. From above, since insurer has challenged award on liability as well as quantum, while claimants are seeking enhancement of compensation, points for consideration would be as under:

> "i) Whether fastening of liability on insurer by tribunal calls for interference?

ii) Whether award passed by tribunal calls for interference on quantum?"

Points No.1 & 2:

13. Though, insurer has sought to challenge finding on liability on ground that driver of JCB did not have effective and valid driving license as on date of accident, Ex.R-1, extract of driving license and deposition of RW.2 (RTO) would indicate that driver was having current driving license to drive LMV Cab with transport endorsement. RW.2 deposed that a person having LMV Cab license with transport endorsement would be eligible to drive any vehicle with gross weight of less than 7500 kgs. That apart fact that at time of accident, JCB was moving on road as a motor vehicle and not performing work, as construction or earth moving equipment would suffice to hold that fastening of liability on insurer by tribunal was justified. Moreover, this Court in MFA no.6789/2010 disposed off on 09.11.2020, referring to MFA no.21800/2010 and connected matters also held likewise.

14. On quantum, in MVC no.324/2019, claimant was 32 years of age, working in petrol pump and earning Rs.15,000/-

per month. However, income was not substantiated, tribunal assessed it notionally at Rs.10,500/-. Notional income adopted by KSLSA for year 2018 is Rs.11,750/-, therefore same has to be taken.

15. Claimant - Vaijanath sustained fracture of shaft of left femur. PW.2 – doctor assessed limb disability at 33% and opined there was restriction of movement. There is no detailed explanation as to how it had affected earning capacity and whether claimant had lost employment. Under such circumstances, assessment of functional disability at 25% as done by tribunal would not be justified. Tribunal has also not assigned any reasons for assessment. Taking note of fact that claimant was 32 years and sustained fracture of left femur, it would be appropriate to consider loss of earning capacity at 15%. Compensation towards future loss of income would be:

Rs.11,750/-X15%x12X16=Rs.3,38,400/-.

16. Despite claimant sustaining only one major fracture, tribunal awarded Rs.50,000/- towards pain and suffering. At same time, for inpatient treatment period of 11 days, it as awarded Rs.24,400/- towards attendant and other

incidental expenses, which appear just and proper. Tribunal has awarded Rs.31,500/- towards loss of income during laid up period taking 3 months as layoff, which appears to be just and proper, no scope for modification.

17. Likewise, tribunal has awarded Rs.1,05,000/- towards medical expenses in complete reimbursement of medical bills produced, therefore no enhancement.

18. Tribunal has not awarded any compensation towards loss of amenities and future medical expenses. When claimant has sustained fracture and permanent physical disability same would not be justified, it would be appropriate to award Rs.30,000/- towards loss of amenities and Rs.25,000/- towards future medical expenses.

19. In MVC no.325/2019 claimant –Shamaraya, was aged 24 years, working in petrol pump and earning Rs.15,000/- per month. However, income was not substantiated, tribunal assessed it notionally at Rs.10,500/-. Income adopted by KSLSA for year 2018 is Rs.11,750/-.

20. Insofar as future loss of income, PW2 – doctor has stated limb disability of 37%. Without any detailed reasoning, tribunal has taken functional disability at 25%. PW2 has not explained how restriction of movements noted would affect loss of earning capacity, assessment by tribunal appears to be on higher side and not commensurate material on record and requires moderation. Taking note of fact that claimant was 32 years and sustained fracture of left femur, it would be appropriate to consider loss of earning capacity at 15%. Thus, compensation towards future loss of income would be:

Rs.11,750/-X15%x12X16= Rs.3,38,400/-.

21. It is seen claimant had sustained fracture of shaft of femur and neck of femur as well as fracture of $5^{th,}$ 6^{th} and 7^{th} ribs, award of Rs.50,000/- towards pain and suffering would appear to be just and proper. There is no scope for modification. For inpatient treatment of 17 days, tribunal awarded Rs.26,800/- towards attendance, diet and conveyance etc., which under circumstances appears just and proper leaving no scope of modification.

22. Tribunal awarded Rs.31,500/- towards loss of income during laid up period taking 3 months as layoff which appears just and proper, leaving no scope for modification. Likewise, there is complete reimbursement of medical bills produced, wherein tribunal rounded off award towards medical expenses to Rs.1,78,000/-. Therefore, no enhancement.

23. Tribunal has not awarded any compensation towards loss of amenities and future medical expenses. When claimant has sustained fracture and permanent physical disability, same would not be justified. It would be appropriate to award Rs.30,000/- towards loss of amenities and Rs.25,000/- towards future medical expenses respectively.

24. Re-assessed compensation in MVC no.324/2019 is as under:

1	Pain and suffering	Rs.50,000/-
2	Attendant and diet etc.	Rs.24,400/-
3	Loss of income during laidup period.	Rs.31,500/-
4	Medical expenses	Rs.1,05,000/-
5	Loss of amenities	Rs.30,000/-
6	Future medical expenses	Rs.25,000/-
7	Future loss of income	Rs.3,38,400/-
	TOTAL	**Rs.6,04,300/-**

25. Re-assessed compensation in MVC no.325/2019 is as under:

1	Pain and Suffering	Rs.50,000/-
2	Attendant, diet etc.,	Rs.26,800/-
3	Loss of income during laid up period	Rs.31,500/-
4	Medical expenses	Rs.1,78,000/-
5	Loss of amenities	Rs.30,000/-
6	Future medical expenses	Rs.25,000/-
7	Future loss of income	Rs.3,38,400/-
	TOTAL	**Rs.6,79,700/-**

26. Consequently, point no.1 insofar as liability is answered in negative and point no.2 partly in affirmative in both appeals. Hence, following:

:ORDER:

i. All appeals are allowed in part.

ii. Judgment and award dated 26.10.2021 passed by Senior Civil Judge and MACT, Chittapur, in MVC nos.324/2019 and 325/2019 stands modified.

iii. Claimant in MFA.no.201226/2022 (MVC no.324/2019) is held entitled for total

compensation of Rs.6,04,300/- as against Rs.7,14,900/- awarded by tribunal.

iv. Claimant in MFA.no.201227/2022 (MVC no.325/2019) is held entitled for total compensation of *Rs.6,79,700/- as against *Rs.8,21,800/- awarded by tribunal.

v. Insurer is liable to pay same with interest at 6% per annum from date of petition till deposit.

vi. Insurer to deposit balance amount, if any, within six weeks.

vii. Amount in deposit is ordered to be transmitted to tribunal for dispersal.

viii. On deposit, conditions imposed by Tribunal about deposit and release would apply to enhanced compensation proportionately.

Sd/-
(RAVI V HOSMANI)
JUDGE

NJ,Psg*
List No.: 1 Sl No.: 13

* Corrected vide Chamber order dt. 03/07/2025.