IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 20TH DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE C.M. JOSHI

MISCL. FIRST APPEAL NO.200011/2019(MV-I)

BETWEEN:

DURGAPPA S/O SHIVAPPA MADAR @ PUJARI,
AGE: 26 YEARS, OCC: MASON (GOUNDI),
R/O KANDAGANUR, TQ. MUDDEBIHAL,
DIST. VIJAYAPURA,
NOW RESIDING AT GANESH NAGAR,
VIJAYAPURA.

...APPELLANT

(BY SRI HARSHAVARDHAN R. MALIPATIL, ADVOCATE)

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Location: HIGH COURT OF KARNATAKA

AND:

1. BASHIR AHMED S/O ABDUL REHAMAN ATTAR,
   AGE: MAJOR, OCC: BUSINESS,
   R/O TALIKOTI, TQ. MUDDEBIHAL,
   DIST. VIJAYAPURA-586 101.

2. THE DIVISIONAL MANAGER,
   UNITED INDIA INSURANCE CO. LTD.,
   SANGAM BUILDING, S.S. FRONT ROAD,
   VIJAYAPURA-586 101.

...RESPONDENTS

(BY SRI SANJAY M. JOSHI, ADV., FOR R2;
R1 - V/O. DTD.14.08.2019 NOTICE DISPENSED WITH)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO ALLOW THIS APPEAL AND ENHANCE THE COMPESNATION TO ₹13,72,000/- (EXCLUDING THE AMOUNT AWARDED BY THE TRIBUNAL) ALONG WITH INTEREST BY MODIFYING THE JUDGMENT AND AWARD OF THE MACT-IV AND III ADDL. DIST. JUDGE, VIJAYAPURA, DATED 27.02.2018 IN MVC NO.25/2017.

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

CORAM: HON'BLE MR. JUSTICE C.M. JOSHI

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE C.M. JOSHI)

1. Heard learned counsel appearing for the appellant-petitioner and learned counsel appearing for the 2nd respondent – Insurance Company.

2. Being aggrieved by the judgment and award dated 27.02.2018 passed in MVC No.25/2017 by the Member, MACT-IV and the III Additional District Judge, Vijayapura, (for short 'the Tribunal'), the petitioner-claimant is before this Court seeking enhancement of compensation.

3. The petitioner while riding his motorcycle on 07.04.2016, a car bearing No.KA-36/M-5766 owned by respondent No.1 and insured by respondent No.2, came from opposite direction and dashed to the petitioner, causing injuries to him. He was admitted to Dr. H.R. Katti Hospital, Bagalkot and had undergone several surgeries and was treated as inpatient for a period of 77 days. Before the Tribunal, the petitioner claimed that he was Mason by profession and was earning ₹15,000/- per month, aged about 45 years and having suffered a permanent disability he may be awarded adequate compensation.

4. On being served with the notice, respondent No.1 admitted that he is the owner of the Car, but denied that there was any negligence on the part on his part and alleged that the compensation claimed is highly exorbitant and imaginary. He also disputed the age, income and occupation of the petitioner.

5. The respondent No.2 took up the similar contentions and it also contended that the driver of the car

was not having valid driving license and there were violations of the terms and conditions of the policy.

6. The Tribunal framed appropriate issues and the petitioner was examined as PW1 and Exs.P1 to 15 were marked in the evidence and the Doctor, who assessed the disability is examined as CW1 through Court Commissioner and Exs.C1 to C3 were marked. No evidence was led on behalf of the respondents.

7. After hearing both sides, the Tribunal awarded compensation under different heads as below:

1	Loss of future earning capacity	₹2,28,480-00
2	Diet, conveyance and attendant's charges	₹77,000-00
3	Loss of income during laid up period & rest for 2 months	₹34,250-00
4	Loss of amenities & unhappiness in life	₹35,000-00
5	Pain and Suffering	₹30,000-00
6	Medical expenses	₹6,07,409-00
7	Future medical expenses	₹16,000-00
	Total	₹10,28,139-00

Being aggrieved by the same, the petitioner is before this Court.

8. The learned counsel appearing for the petitioner would submit that the CW1, who treated the petitioner has stated that there is a disability of 50% to the right lower limb and the Tribunal erred in holding the disability at 17% only. It is contended that the functional disability has not been properly assessed by the Tribunal and therefore, the petitioner is seeking adequate compensation. It is pointed out that there is gross deformity in the right lower limb of the petitioner, which itself depicts a higher functional disability.

9. *Per contra*, the learned counsel appearing for respondent No.2 defends the impugned judgment and submits that there is no need for enhancement of the compensation.

10. On careful perusal of the impugned judgment as well as the records, it is observed by this Court that the CW1 is a treated Doctor and in his opinion there are several

restrictions of the movements, painful movements and therefore, the disability is 50%. It is pertinent to note that the petitioner had suffered segmental fracture of the right femur, fracture of the tibial condyle with fracture of the fibula, and fracture of base of 5th metatarsal of the right lower limb. If we see the nature of the injuries suffered by the petitioner, it is evident that it is to the right knee. Therefore, when the treated Doctor has deposed before the Court that there is a disability of 50% to the right lower limb, definitely there should not be any reason to discard the same. It is pertinent to note that the petitioner being a Mason having suffered gross deformity in the right lower limb, the functional disability has to be appreciated and in the considered opinion of this Court the same is held at 20%. This is also in conformity with the whole body disability stated by the CW1. This Court has accepted his assessment.

11. The guidelines issued by the Karnataka State Legal Services Authority (KSLSA) for settlement of the disputes before the Lok Adalat prescribe the notional income of ₹8,750/- per month for the year 2016. In umpteen

number of decisions, this Court has held that the guidelines issued by KSLSA are held to be acceptable on the ground that they are in general conformity with the minimum wages fixed under the Minimum Wages Act. Therefore, the notional income of the petitioner is accepted as ₹8,750/- per month.

12. As a result, the loss of future income is calculated as ₹8,750/- x 12 x 14 x 20% = ₹2,94,000/-.

13. Consequently, the compensation under the head loss of income during laid up period is recalculated for six months *i.e.,* ₹8,750/- x 6 = ₹52,500/-.

14. The Tribunal has awarded sum of ₹77,000 towards attendance charges, convenience and diet. The petitioner being in hospital for about 77 days on 2 occasions for repeated treatments and he being from Vijayapura had to travel to Bagalkot, the same is enhanced ₹1,00,000/-.

15. The Tribunal has awarded a sum of ₹35,000/- under the head of loss of amenities in life. On perusal of the photograph produced by the petitioner and also on

appreciation of the fact that there is a shortening of the leg by 2.5 c.m., it would be just and proper to award a sum of ₹75,000/- under the head loss of amenities in life.

16. Similarly, the compensation under the head pain and suffering is enhanced to ₹40,000/-.

17. The compensation awarded by the Tribunal under the remaining heads does not require any interference and remains unaltered. In all, the appellant is entitled for ₹11,84,909/- as against ₹10,28,139/- awarded by the Tribunal, under the following heads:

Sl. No.	Heads	Award by the Tribunal	Award by this Court
1	Loss of future earning capacity	₹2,28,480/-	₹2,94,000/-
2	Diet, conveyance and attendant's charges	₹77,000/-	₹1,00,000/-
3	Loss of income during laid up period & rest for 2 months	₹34,250/-	₹52,500/-
4	Loss of amenities & unhappiness in life	₹35,000/-	₹75,000/-
5	Pain and Suffering	₹30,000/-	₹40,000/-
6	Medical expenses	₹6,07,409/-	₹6,07,409/-
7	Future medical expenses	₹16,000/-	₹16,000/-
	Total	₹10,28,139/-	₹11,84,909/-

	Less: award by the Tribunal	₹10,28,139/-
	Total enhancement	₹1,56,770/-

18. Hence, the following:

ORDER

(i) The appeal is allowed in part.

(ii) The impugned judgment and award passed by the Tribunal is hereby modified.

(iii) The appellant-petitioner is entitled for compensation of ₹1,56,770/- along with interest at the rate of 6% per annum from the date of petition till realization, in addition to what has been awarded by the Tribunal.

(iv) The respondent No.2 – Insurance Company is directed to deposit the enhanced compensation amount with interest within a period of 06 weeks from the date of receipt of a copy of this judgment.

(v) The rest of the terms and conditions regarding deposit and etc., ordered by the Tribunal remain unaltered.

Sd/-
(C.M. JOSHI)
JUDGE

SBS
List No.: 1 Sl No.: 53
CT: AK