IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 21ST DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

MISC. FIRST APPEAL NO.200862 OF 2019 (MV-I)

BETWEEN:

SANJUKUMAR S/O KALLAPPA KUMBAR,
AGE: 24 YEARS, OCC: KIRANA AND GENERAL
STORES, NOW NIL,
R/O: DHANNURA-H VILLAGE,
TQ. BHALKI, DIST. BIDAR-584101.

...APPELLANT

(BY SRI. BABU H. METAGUDDA, ADVOCATE)

AND:

1. ASHOK S/O KALLAPPA DAMAWALE,
   AGE: 44 YEARS, OCC: AGRICULTURE,
   R/O: DHANNURA-H VILLAGE,
   TQ. BHALKI, DIST. BIDAR-584 101.

2. THE MANAGER,
   ORIENTAL INSURANCE CO. LTD.,
   BRANCH OFFICE, H.NO.19,
   NEAR BAL BHAVAN,
   OLD HOUSING BOARD COLONY, BIDAR,
   THROUGH ITS DIVISIONAL MANAGER,
   DIVISION OFFICE, SUPER MARKET,
   MINI VIDHAN SOUDHA, KALABURAGI.

...RESPONDENTS

(BY SRI. S.S. ASPALLI, ADV. FOR R2;
V/O DTD. 20.10.2022, NOTICE TO R1 IS DISPENSED WITH)

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LUCYGRACE Date: 2025.01.22 09:06:58 -0800

THIS MFA IS FILED UNDER SECTION 173 (1) OF THE MOTOR VEHICLES ACT, PRAYING TO CALL FOR THE RECORDS IN MVC.NO.266/2015 ON THE FILE OF ADDL. MACT AND ADDL. DISTRICT AND SESSIONS JUDGE, AT BIDAR (SITTING AT BHALKI) AND ALLOW THIS APPEAL AND MODIFY THE JUDGMENT AND AWARD DATED 11.01.2019 PASSED IN MVC.NO.266/2015 BY THE ADDL. MACT AND ADDL. DISTRICT AND SESSIONS JUDGE AT BIDAR (SITTING AT BHALKI) AND ENHANCING THE COMPENSATION FROM Rs.2,50,000/- WITH 6% INTEREST TO Rs.10,40,000/- WITH 12% INTEREST AND ETC.,

THIS APPEAL, COMING ON FOR ADMISSION, 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)

This appeal is filed by the claimant in MVC.No.266/2015 assailing the judgment and award dated 11.01.2019 passed by the learned Additional MACT and Additional District and Sessions Judge, Bidar (Sitting at Bhalki).

02. Heard the learned counsel for the appellant, learned counsel for the respondent No.4.

03. The parties will be referred as per their ranks before the Tribunal.

04. The brief facts of the case are that on 28.12.2014 the petitioner was riding as a pillion rider on motorcycle bearing Reg.No.KA-39-J-2760; at about 2:30 p.m., the rider rode the same in a rash and negligent manner and by applying the brakes, skid on the road and fell down whereby the petitioner sustained fracture of head of radius and dislocation. He was shifted to government Hospital at Bhalki. Thereafter, he took treatment in other Hospital for more than 10 days.

05. The petitioner was doing business of Kirana and General Stores and earning Rs.20,000/- per month. The petitioner contended that he was a businessman running a business and he has suffered permanent disability and therefore he is entitled for adequate compensation.

06. The petition was opposed by the respondent No.2 – insurance company on the ground that the accident was due to the negligence of rider of the motorcycle. The age, occupation and income of the petitioner is denied. The compensation claimed is highly exorbitant and imaginary.

07. The Tribunal framed the appropriate issues and the petitioner was examined as PW.1 and doctor was examined as PW.2. Exs.P.1 to 12 were marked in the evidence. The respondents did not lead any evidence, but Ex.R.1 to Ex.R.3 were marked in the evidence.

08. After hearing both the parties, the Tribunal has awarded compensation under different heads as below:-

Sl. No.	Heads	Compensation Awarded
1.	Loss of future earnings	Rs.1,40,400/-
2.	Medical Expenses	Rs.26,500/-
3.	Pain and Suffering	Rs.40,000/-
4.	Conveyance and Attendant	Rs.15,000/-
5.	Food and Nourishment	Rs.15,000/-
6.	Loss of income during laid up period	Rs.13,000/-
	Total	Rs.2,49,900/-
	Rounded off Total	Rs.2,50,000/-

09. The learned counsel appearing for the petitioner would submit that the Tribunal has assessed the disability on the lower side and no compensation has been awarded under the head of loss of amenities in life. Hence, he seeks for enhancement of the compensation.

10. Per contra, the learned counsel appearing for the respondent No.2 submits that the compensation awarded by the Tribunal is just and proper. There is no need for enhancement of compensation.

11. The perusal of the records would show that the petitioner claims to be doing a Kirana business and earning Rs.20,000/- per month. It is worth to note that when a person in Kirana business had suffered the fracture of the elbow, there cannot be any doubt that such injury would result in permanent disability. The medical officer has stated that the disability to the limb is 23%. The Tribunal assessed the functional disability at 10%. In the considered opinion of this Court the said disability cannot be interfered with which is slightly more than 1/3rd of the disability of the limb. However the Tribunal has a considered the notional income at Rs.6,000/- per month.

12. The guidelines issued by the KSLSA for settlement of disputes before Lok-Adalath prescribed a notional income of Rs.7,500/- per month for the year 2014. In umpteen number of judgments, this Court has held that the guidelines issued by the KSLSA are in general conformity with the wages fixed under the Minimum Wages Act. Therefore, they are acceptable. Hence, the notional income of the petitioner is considered at Rs.7,500/-. Therefore the loss of future income is calculated as Rs.7,500/- x 12 x 18 x 10% = Rs.1,62,000/- by taking a multiplier of 18 for the age of 22 years.

13. Consequently, the compensation under the head of ***loss of income during laid up period*** has to be enhanced to Rs.22,500/-, treating such laid up period as 03 months.

14. The Tribunal has not awarded any compensation under the head of ***loss of amenities*** and the same is assessed by this Court at Rs.25,000/-.

15. The Tribunal has awarded reasonable compensation amount towards ***medical expenses, pain and suffering, conveyance and attendant, food and nourishment.*** The same need not be disturbed.

16. Therefore, the claimant is entitled for total enhanced compensation of Rs.56,000/- under the following heads :-

Sl. No.	Heads	Compensation Awarded by this Court
1.	Loss of future income	Rs.1,62,000/-
2.	Loss of income during treatment period	Rs.22,500/-
3.	Loss of amenities	Rs.25,000/-
4.	Medical expenses	Rs.26,500/-
5.	Pain and suffering	Rs.40,000/-
6.	Conveyance and attendant	Rs.15,000/-
7.	Food and Nourishment	Rs.15,000/-
	Total Less: Awarded by the Tribunal	Rs.3,06,000/- Rs.2,50,000/-
	Total enhancement	Rs.56,000/-

17. Hence, appeal deserves to be allowed in part. Therefore, the following;

O R D E R

I. The appeal is allowed in part.

II. The appellant is entitled for a sum of Rs.56,000/- in addition to what has been awarded by the Tribunal along with interest at the rate of 6% p.a. from date of petition till the date of deposit.

III. Rest of the order passed by the Tribunal regarding deposit etc., remain unaltered.

Sd/-
(C M JOSHI)
JUDGE

KJJ
List No.: 1 Sl No.: 58
CT: AK