IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 8TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

MISCL. FIRST APPEAL NO.200885 OF 2020 (MV-I)

BETWEEN:

PRADEEPKUMAR S/O NAGESH VALIKAR,
AGE: 21 YEARS, OCC: AGRI. & BUSINESS
(NOW-NIL), R/O INDIRA NAGAR,
BESIDE SBH BANK, CHITTAPUR,
TQ. CHITTAPUR, DIST. KALABURAGI,
NOW R/O CIB COLONY, KALABURAGI-585 102.

…APPELLANT

(BY SMT. SRIDEVI J. TUPPAD, ADVOCATE)

AND:

1. MOHAMMED HANEEF S/O MASHAK SAB,
   AGE: 37 YEARS, OCC: OWNER OF VEHICLE,
   R/O NADISINNUR,
   TQ. & DIST. KALABURAGI-585 103.

2. IFFCO TOKIO GENERAL INSURANCE CO. LTD.,
   THROUGH ITS MANAGER,
   ASIAN ARCADE, NEAR ANAND HOTEL,
   S.B. TEMPLE ROAD, KALABURAGI-585 102.

…RESPONDENTS

(BY SRI. SUBHASH MALLAPUR, ADV. FOR R2;
V/O DTD. 28.01.2021, NOTICE TO R1 IS DISPENSED WITH)

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Location: HIGH COURT OF KARNATAKA

THIS MFA IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO ALLOW THE APPEAL AND AWARD COMPENSATION OF RS.9,92,900/- ALONG WITH INTEREST 12% P.A. BY MODIFYING THE JUDGMENT AND AWARD OF THE I ADDL. SENIOR CIVIL JUDGE AND MACT AT KALABURAGI, DATED 11.06.2020 IN MVC NO.1291/2018.

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)

By the consent of learned counsel appearing for both the parties, the matter is taken up for final disposal, though it is slated for Admission.

This appeal is directed against the judgment and award in MVC No.1291/2018 passed by learned I Additional Senior Civil Judge and MACT, Kalaburagi (hereinafter referred to as 'the Tribunal' for short), dated 11.06.2020.

2. By the impugned judgment and award, the Tribunal has allowed the claim petition in part and

awarded a sum of Rs.7,07,100/- as compensation and directed the Insurance Company to deposit the same. Aggrieved by the said judgment and award, the petitioner is before this Court, seeking enhancement contending that the quantum of compensation awarded by the Tribunal is erroneous.

3. The fact that there was an accident involving the vehicle owned by respondent No.1 and insured by respondent No.2 and such accident was due to the negligence on the part of the Bolero Pick Up is not in dispute.

4. The factual matrix of the case is that, on 10.07.2018 when the petitioner was going to a temple on the motorcycle, a Bolero Pick Up van bearing No.KA.32/D.0735 came in high speed and negligent manner and dashed against the motorcycle, causing injuries to the petitioner, due to which he sustained fractures of distal end of the radius, shaft of right femur, medial condyle and medial malleolus of the right tibia and

he was admitted to the hospital, where he had to undergo surgeries. It is contented that the petitioner was a mason, aged about 19 years at the time of the accident and due to the accidental injuries he has suffered permanent disability.

5. On being issued with notice, respondent No.2 - Insurance Company appeared and filed written statement denying the negligence and also took up a contention that the negligence was not on the part of the driver of the vehicle and that there was violation of the terms and conditions of the policy.

6. The Tribunal framed appropriate issues and after appreciating the evidence which is in the form of a deposition of PW.1 and PW.2 and Exs.P1 to P16, preceded to grant a compensation of Rs.7,07,100/-.

7. Heard the learned counsel appearing for the appellant and learned counsel appearing for respondent No.2.

8. Learned counsel appearing for the appellant would submit that the appellant was a mason by profession and the fractures suffered by him have resulted in permanent disability and therefore, the disability assessed by the Tribunal is erroneous. It is submitted that even though the PW.2 had stated that there is a disability of 55%, the Tribunal has assessed the disability at 18%, which is on the lower side. Therefore, learned counsel for the appellant seek enhancement of the compensation.

9. Per contra, learned counsel appearing for respondent No.2-Insurance Company would submit that the Tribunal has assessed the disability at 18% and the same is proper and correct. He would defend the award passed by the Tribunal.

10. A careful perusal of the record would reveal that the appellant was aged about 19 years at the time of accident and he was a mason. He has suffered the fracture of distal end of right radius, shaft of right femur, medial condyle and medial malleolus of the right tibia, which has

definitely resulted in restricted movements of the right wrist right knee, right ankle and definitely these restrictions would result in functional disability of the appellant. In addition to that, there is also shortening of the limb by one and half inch. Therefore, the functional disability that is attributable to the appellant on account of his avocation as a mason definitely would be on the higher side. In the considered opinion of this Court, the disability would be 25%.

11. So far as the income of the petitioner is concerned, obviously the petitioner has not produced any documentary proof regarding the income. Therefore, the notional income has to be assessed. The guidelines issued by the Karnataka State Legal Services Authority in respect of the settlement of the claims arising out of the motor vehicle accidents before the Lok Adalath prescribes the notional income for the year 2018 at Rs.11,750/- p.m. In umpteen number of cases, this Court has held that the said guidelines issued by the KSLSA are in general

conformity with the wages fixed under the Minimum Wages Act. Therefore, the notional income of the appellant is held to be Rs.11,750/- p.m. Therefore, the compensation under the head of loss of future income is calculated as: Rs.11,750 x 12 x 18 x 25% = Rs.6,34,500/- by adopting the multiplier of 18.

12. As a consequence and keeping in view the nature of the injuries suffered, the loss of income during the laid up period for six months is calculated at Rs.11,750 x 6 = 70,500/-.

13. The compensation awarded by the Tribunal under the head of pain and suffering to the extent of Rs.50,000/- is also on the lower side when juxtaposed against the nature of the injuries suffered by him. Therefore, the same is enhanced to Rs.60,000/-.

14. The Tribunal has awarded a sum of Rs.8,550/- towards food, extra nourishment and medical attendant. The same is enhanced to Rs.15,000/-.

15. The compensation awarded by the Tribunal under the head of loss of amenities to the extent of Rs.30,000/- is also on the lower side and the same is also enhanced to Rs.40,000/-.

16. The compensation awarded by the Tribunal under the remaining heads does not call for any interference by this Court. Hence, the appellant is entitled for the modified compensation under different heads as below:

Pain and suffering	Rs.60,000/-
Medical expenses	Rs.2,01,600/-
Future medical expenses	Rs.30,000/-
Food, extra nourishment, and medical attendant	Rs.15,000/-
Conveyance	Rs.10,000/-
Loss of income during laid up period	Rs.70,500/-
Loss of future earnings	Rs.6,34,500/-
Loss of amenities	Rs.40,000/-
Total Less: awarded by Tribunal Enhancement	Rs.10,61,600/- Rs.7,07,100/- **Rs.3,54,500**/-

Thus, the appellant is entitled for enhanced compensation of Rs.3,54,500/- with interest and

therefore, the appeal deserves to be allowed in part. Hence, the following:

ORDER

(i) The appeal is allowed in part.

(ii) The impugned judgment and award passed by the Tribunal is modified by awarding a sum of **Rs.3,54,500**/- in addition to what has been awarded by the Tribunal together with interest at 6% p.a. from the date of petition till its realization.

(iii) Respondent No.2 - Insurance Company is directed to deposit the entire compensation amount within a period of six weeks from the date of this order.

(iv) Rest of the order passed by the Tribunal remains unaltered

Sd/-
(C M JOSHI)
JUDGE

LG
List No.: 1 Sl No.: 63