HC-KAR

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 6TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

MISCL. FIRST APPEAL NO.201040 OF 2022 (MV-I)

BETWEEN:

VAIBHAV S/O SHANT KUMAR
AGE: 22 YEARS, OCC: DRIVER,
R/O: PRATAP NAGAR,
UDGIR ROAD, NAUBAD,
BIDAR, DIST: BIDAR – 585 401.

…APPELLANT

(BY SRI RAVI B.PATIL, ADVOCATE)

AND:

1. LOKESH S/O CHANDRAKANTH,
AGE: MAJOR, OCC: BUSINESS,
R/O: SAINAGAR NAUBAD,
BIDAR, BIDAR – 585 401.
2. M/S TATA AIG GENERAL INSURANCE CO. LTD.,
REGD. AND HEAD OFFICE,
PENINSULA BUSINESS PARK,
TOWER A, 15TH FLOOR, G.K. MARG,
LOWER PAREL, MUMBAI-400 013.
REPRESENTED BY ITS
AUTHORIZED SIGNATORY.

…RESPONDENTS

(BY SRI S.S.ASPALLI, ADVOCATE FOR R2;
NOTICE TO R1 IS DISPENSED WITH)

Digitally signed by RAMESH MATHAPATI
Location: HIGH COURT OF KARNATAKA

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO SET ASIDE THE JUDGMENT AND AWARD DATED 06.03.2021 PASSED BY THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE AND C.J.M., AND ADDITIONAL M.A.C.T., AT BIDAR IN MVC NO.215/2019 AND CONSEQUENTLY ALLOW THE PRESENT APPEAL THEREBY ENHANCE THE COMPENSATION RS.1,86,120 TO RS.11,25,000/- AS CLAIMED IN THE PRESENT APPEAL, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS MISCELLANEOUS FIRST APPEAL COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL JUDGMENT

Though appeal is listed for admission, with consent of learned counsel for parties, it is taken up for final disposal.

2. Challenging judgment and award dated 06.03.2021 passed by Principal Senior Civil Judge and CJM and Additional MACT, Bidar, in MVC no.215/2019, this appeal is filed.

3. Sri Ravi B.Patil, learned counsel submitted that this appeal was filed by claimant seeking for enhancement of compensation. It was submitted that on 01.01.2019 at 10.00 p.m., claimant was walking near Samudaya Bhavan, Bidar, when rider of motorcycle bearing registration no.KA-38/V-7260 rode it in a rash and negligent manner and dashed against claimant. In accident, claimant sustained grievous injuries like fracture of left mandible, fracture of Zygomatic Arch, fracture of Styloid process and fracture of Maxilla. Despite taking treatment at Government Hospital, Bidar, and Guru Nanak Hospital, Bidar, he did not recover fully. He also took treatment

in Hospital at Hyderabad. But sustained physical disability and consequent loss of earning capacity. Therefore, he filed claim petition under Section 166 of Motor Vehicles Act.

4. On contest by filing objections, Tribunal framed issues and recorded evidence. Claimant examined himself as PW.1 and got marked documents as Exs.P1 to P21. Respondents did not lead any evidence.

5. On consideration, Tribunal held accident occurred due to rash and negligent riding of motorcycle by motorcycle rider, claimant had sustained injuries leading to disability and therefore, claimant was entitled for compensation. Since vehicle was insured, it held insurer liable to pay compensation. It awarded compensation as follows:

Sl.No.	**Heads**	**Amount**
1	Towards pain suffering	Rs.10,000/-
2	Towards medical expenses	Rs.1,43,120/-
3	Towards Attendant, Conveyance, Nourishing Food and other incidental charges	Rs.5,000/-
4	Towards loss of income during laid-up period	Rs.18,000/-
5	Towards loss of future income on account of permanent disability	-NIL-
6	Towards loss of amenities, life comforts and expectancy of life	Rs.10,000/-
	Total	**Rs.1,86,120/-**

6. Not satisfied with same, claimant was in appeal.

7. It was submitted though accident occurred in year 2019 and claimant had stated that his monthly income was Rs.15,000/-, Tribunal considered it at Rs.9,000/-. Since notional income for year 2019 was Rs.13,250/- per month, same was required to be considered. It was submitted that claimant sustained multiple fractures including fracture of skull and mandible which were grievous. Therefore, award of Rs.10,000/- towards pain and suffering was inadequate. It was submitted that claimant had taken treatment as inpatient for a period of 08 days. Hence, award of Rs.5,000/- towards attendant, conveyance, nourishing food and other incidental charges was inadequate. Since claimant sustained fracture, award of compensation towards laid-up period was also inadequate. Claimant had sustained multiple fractures, resulting in permanent disability, award of Rs.10,000/- towards loss of amenities was inadequate and sought enhancement.

8. Learned counsel further submitted merely on ground that claimant had not examined doctor or produced

disability certificate, Tribunal was not justified in denying compensation towards loss of future income. On said grounds also, sought for allowing appeal.

9. On other hand, Sri S.S.Aspalli, learned counsel for respondent no.2-insurer sought to oppose appeal. It was submitted that Tribunal had rightly assessed nature of injuries sustained and awarded adequate compensation. Since claimant did not examine doctor, claimant was not entitled for future loss of income.

10. Heard learned counsel. Perused impugned judgment and award and records.

11. From above and since only claimant is in appeal for enhancement of compensation while insurer has accepted award, point that would arise for consideration is:

> Whether claimant is entitled for enhancement of compensation as sought for?

12. From above it is seen, there is no dispute about accident involving insured vehicle, claimant sustaining grievous injuries and liability of insurer to pay compensation. While

passing impugned award, Tribunal considered two months as laid-up period and awarded Rs.18,000/- towards same which would indicate that monthly income assessed was at Rs.9,000/. Since accident occurred in year 2019, even in absence of proof of income, notional income to be considered, Rs.13,250/- ought to be considered. Therefore, compensation towards loss of income during laid-up period would be Rs.26,500/-.

13. Taking note of fact that claimant sustained several fractures i.e., fracture of left mandible, fracture of Zygomatic Arch, fracture of Styloid process and fracture of Maxilla, award of Rs.10,000/- towards pain and suffering is grossly inadequate, it would be appropriate to enhance it to Rs.50,000/-.

14. Taking note of fact of total amount towards medical bills submitted in light of treatment records, Tribunal awarded Rs.1,43,120/- towards medical charges, same would not call for enhancement.

15. Claimant has taken in-patient treatment for 8 days at Bidar. He has also stated that he has taken treatment at Hyderabad. Therefore, award of Rs.5,000/- towards attendant,

conveyance, nourishing food and other incidental charges would be inadequate. It would be appropriate to enhance it to Rs.15,000/-.

16. Admittedly, claimant has not examined doctor to establish suffering of permanent physical disability or loss of earning capacity. In absence of specific evidence and as fractures sustained by claimant to skull and mandible which without specific evidence of Neurosurgeon or Dentist, there cannot be any presumption about same resulting in loss of earning capacity. Under such circumstances, Tribunal would be justified in denying compensation towards future loss of income. However, notional award of Rs.10,000/- towards loss of amenities etc., would not be justified. Taking note of fact that claimant was only 19 yeas old, same is enhanced to Rs.35,000/-. Thus, total compensation would be:

Sl.No.	**Heads**	**Amount**
1	Towards pain suffering	Rs.50,000/-
2	Towards medical expenses	Rs.1,43,120/-
3	Towards Attendant, Conveyance, Nourishing Food and other incidental charges	Rs.15,000/-
4	Towards loss of income during laid-up period	Rs.26,500/-
5	Towards loss of future income on account of permanent disability	-NIL-

6	Towards loss of amenities, life comforts and expectancy of life	Rs.35,000/-
	Total	**Rs.2,69,620/-**

17. Point for consideration is answered partly in affirmative as above.

18. Consequently, following:

ORDER

i. Appeal is allowed in part.

ii. Claimant is held entitled for total compensation of Rs.2,69,620/- as against Rs.1,86,120/- awarded by Tribunal with interest at 6% per annum from date of claim petition till realization.

iii. Respondent-insurer to deposit same before Tribunal within a period of six weeks.

Sd/-
(RAVI V HOSMANI)
JUDGE

NB,MSR
List No.: 1 Sl No.: 36