IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 20TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

MISC. FIRST APPEAL NO.200199 OF 2019 (WC)

BETWEEN:

SANGAPPA @ SANGAMESH S/O GUNDAPPA,
AGE: 27 YEARS, OCC: DRIVER, NOW NIL,
R/O: H.NO.8-118, CHITAGUPPA, TQ. HUMNABAD,
DIST. BIDAR,
NOW RESIDING AT JANATA COLONY,
LALGERI CROSS, KALABURAGI-585 102.

…APPELLANT

(BY SRI. BAPUGOUDA SIDDAPPA, ADVOCATE)

AND:

1. SHIVAKUMAR S/O MADEPPA CHOUDSHETTY,
   AGE: MAJOR, OCC: BUSINESS AND
   OWNER OF TAVERA VEHICLE BEARING
   NO.KA-32/M-9548,
   R/O AINAPUR, TQ. CHINCHOLI,
   DIST. KALABURAGI-585 307.

2. THE DIVISIONAL MANAGER,
   THE UNITED INDIA INSURANCE COMPANY LTD.,
   DIVISIONAL OFFICE, DR. JAWALI COMPLEX,
   SUPER MARKET, KALABURAGI-585 102.

…RESPONDENTS

(BY SRI. SANJAY M. JOSHI, ADV. FOR R2;
V/O DTD. 19.03.2019, NOTICE TO R1 IS DISPENSED WITH)

Digitally signed by LUCYGRACE
Location: HIGH COURT OF KARNATAKA

THIS MFA IS FILED UNDER SECTION 30 (I) OF THE EMPLOYEE'S COMPENSATION ACT, 1923 PRAYING TO MODIFY THE JUDGMENT AND AWARD DATED 19.11.2018 PASSED IN ECA.NO.210/2014 ON THE FILE OF THE COURT OF I ADDL. SENIOR CIVIL JUDGE AND COMMISSIONER FOR WORKMAN COMPENSATION, KALABURAGI AT KALABURAGI AND TO MODIFY THE SAID JUDGMENT AND AWARD BY ENHANCING THE COMPENSATION OF Rs.4,12,200/- ONLY AS CLAIMED BY THE APPELLANT BEFORE THIS HON'BLE COURT.

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)

The appellant being aggrieved by the judgment and award in ECA.No.210/2014 passed by the I Additional Senior Civil Judge and Commissioner Workman Compensation, Kalaburagi dated 19.11.2018 has approached this Court in appeal seeking enhancement of compensation.

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

03. The factual matrix of the case is that the petitioner, who is the appellant herein, was the driver of the Tavera vehicle bearing Reg.No.KA-32-M-9548 owned by the respondent No.1. As such, he was an employee with the monthly salary of Rs.8,000/- per month and Bhatta of Rs.100/- per day. On 14.08.2012 at about 06.45 a.m. while the petitioner was driving the said Tavera vehicle, he rammed the same into a parked lorry bearing Reg.No.KA-32-A-8237 near S. N. Hipparga cross. The said lorry was parked on road as it had broken down. After investigation, the police have filed the charge-sheet against the appellant herein for the offences punishable under Sections 279, 283, 337, 338 and 304(A) of IPC. Whereas they filed the charge-sheet against the driver of the lorry for the offence punishable under Section 283 of the Motor Vehicles Act. The petitioner approached the Commissioner under the Employees Compensation Act,

seeking compensation, since he had suffered fracture of the humorous and thereby had also sustained permanent disability.

04. On being served with the notice, the respondents No.1 and 2, who are the employer and the insurer appeared before the Commissioner and filed objections, wherein the respondent No.1 - employer admitted the relationship of employer and employee and also admitted that he was paying a salary of Rs.6,000/- per month and Rs.100/- per day as Bhatta. He contended that there was no negligence on the part of his employee. He contended that the owner and insurer of the lorry are liable to pay the compensation.

05. Whereas the insurance company denied all the averments of the petition and it also denied the jural relationship between petitioner and the respondent No.1. It is also contended that there was negligence on the part of the petitioner himself. Therefore, it is not liable to pay the compensation to the petitioner. Inter-aliea the injuries sustained by the petitioner, nature of the disability etc., were also denied.

06. On the basis of the above contentions the Commissioner framed appropriate issues. The petitioner examined himself as PW.1. The Doctor who assessed disability was examined as PW.2 and Ex.P.1 to Ex.P.15 were marked in the evidence. The respondent No.1 did not adduce any evidence. The respondent No.2 examined its official as RW.1, but no documents were marked.

07. After hearing both sides, the Commissioner awarded a compensation of Rs.1,87,800/- by considering the income of Rs.8,000/- per month by adopting the appropriate factor at 219.95.

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

09. After hearing the learned counsel appearing for the appellant the following substantial questions of law were framed by this Court.

I. *Whether the Court below was justified in not taking into consideration the monthly income of the Appellant at Rs.8,000/- per month and bhatta of Rs.100- per day which was supported by the oral evidence of the Appellant, which is quite contrary to Sections 58, 59 and 60 of the Indian Evidence Act, 1872.?*

II. *Whether the Court below was justified in taking into consideration the provisions of minimum wages Act for calculating the compensation amount as against the Material Evidence on record for the proof of actual income of the Appellant.?*

III. *Whether the Court below was justified in taking into the consideration of the disability of the Appellant.?*

10. The learned counsel appearing for the respondent No.2 has appeared and records have been secured.

11. The learned counsel appearing for the appellant would submit that the Commissioner erred in holding that there is only 10% disability even though PW.2 had stated that there is a disability of 28.8%. He submits that the disability of 28.8% has to be attributed towards the functional disability also in as much as the petitioner was a driver. PW.2 has stated that he cannot drive a heavy passenger vehicle or a goods vehicle in future. Therefore, the Commissioner has erred in assessing the disability in a proper way.

12. Per contra, the learned counsel appearing for the respondent No.2 would submit that the Commissioner has considered the disability in appropriate manner. It is argued that the Commissioner also noted that the petitioner can still work as a driver of the Tavera vehicle, but his future prospects for driving a goods vehicle was not spoken to by him in his evidence. Therefore, in the absence of any provision under the scheme of the E.C. Act, to consider the future prospects, the same is not permissible.

13. The learned counsel appearing for the petitioner has fairly admitted that the monthly income of the petitioner considered by the Commissioner at Rs.8,000/- per month, in the light of the Notification issued by the Government of India under the provisions of Section 4 of the Employees Compensation Act, holds good. Therefore, he is restricting his claim to the monthly wages at Rs.8,000/- per month.

14. Having heard both sides, the income of the petitioner considered by the Commissioner at Rs.8,000/- per month cannot be interfered with in as much as the provisions of Section 4 of the Act, are clear and for the purpose of assessing the monthly wages, it is only the notification which is issued under Section 4 of the Act, would be relevant. Therefore, either the provisions of the Minimum Wages Act or any other higher income that might have been received by the employee are not of any relevance. In umpteen number of judgments, this Court has held that irrespective of the income claimed by the

petitioner or admitted by the respondent - employer for the purpose of calculating the compensation under the provisions of the E.C. Act, it is only the notification issued by the Government, which would be relevant. In that view of the matter, the substantial questions of law No.1 and 2 are answered in the negative.

15. Insofar as the third substantial question of law is concerned, the PW.2 has categorically stated that there is a disability of 28.8%. Obviously, the said 28.8% disability happens to be the disability of the left upper limb due to fracture of the humorous and would definitely result in depleted strength of the said limb, which would deprive the petitioner from driving a heavy goods vehicle. This functional disability has to be considered by the Court.

16. The Commissioner in the impugned judgment has opined that the functional disability would be 10%. It is pertinent to note that 1/3rd of the disability of the limb translating as a functional disability, would be a proper course of action when it cannot be easily translated into

functional disability. When the PW.2 has stated that the petitioner is debarred from driving any heavy goods vehicle, this would definitely result in a functional disability for the rest of his life. Therefore, in the considered opinion of this Court, such disability would translate into 15%. Hence, the compensation is rework out to Rs.8,000/- per month x 60% x 219.95 x 15% = Rs.1,58,364/- minus Rs.1,05,600/- awarded by the Commissioner = Rs.52.764/-. Thus, there shall be an enhancement of Rs.52,764/- in addition to what has been awarded by the Commissioner. Consequently, the appeal would succeed in part. Hence, the following;

O R D E R

I. The appeal allowed in part.

II. The appellant is entitled for a sum of Rs.52,764/- in addition to what has been awarded by the Commissioner.

III. Such enhancement of compensation is ordered to be released to the petitioner on the deposit made by the respondent No.2 within a period of 04 weeks.

IV. The other terms of the order regarding interest remain are unaltered.

Sd/
(C M JOSHI)
JUDGE

KJJ
List No.: 1 Sl No.: 75
CT: AK