NC: 2025:KHC-K:1278
MFA No. 201203 of 2022

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 25TH DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

MISC. FIRST APPEAL NO.201203 OF 2022 (MV-I)

BETWEEN:

NASEEM ALIYA D/O MOHAMMED YAKUB ALI,
OCC: SERVICE, AGE: 46 YEARS,
R/O: H.NO.6-342, BATLIAWALA MOMINPURA,
KALABURAGI.

...APPELLANT

(BY SRI. B. ALI MOHAMMAD, ADVOCATE)

AND:

1. SIKANDAR PASHA S/O MOHD. HUSSAIN,
   OCC: OWNER OF MARUTI DZIRE,
   CAR BEARING REG.NO.KA-36/N-4669,
   AGE: 46 YEARS, R/O H.NO.5-54/1,
   DARGA ROAD, BAKSHI HAVALI ROZA B,
   KALABURAGI.

2. THE MANAGER,
   ROYAL SUNDARAM GENERAL INSURANCE CO. LTD.,
   1ST FLOOR OF IDBI BANK, S.B.I TEMPLE ROAD,
   KALABURAGI.

3. M/S VIRAJ CEMENT CARRIER,
   LLP OWNER OF LORRY BEARING
   REG.NO.KA-34/B-5467, R/O: NEAR S.B.I. MAIN
   ROAD, HOSPET TO BELLARY ROAD, KUDATHINI,
   POST BELLARY.

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Location: HIGH COURT OF KARNATAKA

4. THE DIVISIONAL MANAGER,
NATIONAL INSURANCE CO. LTD.,
BILGUNDI COMPLEX, STATION MAIN ROAD,
KALABURAGI-585 102.

…RESPONDENTS

(BY SRI. SUDARSHAN M., ADV. FOR R2;
BY SRI. RAHUL R. ASTURE, ADV. FOR R4;
V/O DTD. 06.09.2022, NOTICES TO R1 AND R3 ARE DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173 (1) OF THE MOTOR VEHICELS ACT, PRAYING TO CALL FOR THE RECORDS IN MVC.NO.152/2020 ON THE FILE OF PRL. SENIOR CIVIL JUDGE AND MACT, AT KALABURAGI AND THE IMPUGNED JUDGMENT AND AWARD DATED 21.01.2022 CAUSED IN MVC.NO.152/2020 ON THE FILE OF THE COURT OF PRL. SENIOR CIVIL JUDGE AND MACT, KALABURAGI MAY BE MODIFIED BY GRANTING COMPENSATION AS CLAIMED IN THE CLAIM PETITION AND THIS MISCELLANEOUS FIRST APPEAL MAY BE ALLOWED AS PRAYED WITH COST.

THIS APPEAL COMING ON FOR ORDERS, 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)

Heard the learned counsel for the appellant and the respondents No.2 and 4.

02. With consent of learned counsel for both the parties, the matter is taken for final disposal.

03. The brief facts of the case are that on 02.06.2019 at about 06.00 a.m. while the petitioner along with her sister was proceeding to Gadwal from Kalaburagi in Car bearing Reg.No.KA-36-N-4669, the driver of the Car lost control over it and there was a collision with a Lorry bearing Reg.No.KA-34-B-5467, resulting in severe injuries to the petitioner. She was admitted to Government Hospital at Yadgir and then to Sunrise Hospital at Kalaburgi, where she had taken treatment for fracture of the distal right femur, fracture of both the bones of the right leg, fracture of neck of left femur, fracture of shaft of

both the bones of the left forearm, fracture of nasal bone, fracture of the ribs on the left side as well as on the right side and fracture of the left clavicle. She further contended that she was a Assistant Teacher in Fathimi Urdu Higher Primary School and was earning Rs.53,170/- per month. Therefore, she had claimed that she had to spend a sum of Rs.8,00,000/-, as such she filed a claim petition before the Tribunal. It was also conducted that she was unable to resume her duties for a period of nearly 14 months. Therefore, adequate compensation may be awarded to her.

04. The respondents No.1 and 2 are the owner and insurer of the Car and the respondents No.3 and 4 are the owner and insurer of the lorry with which Car had collided.

05. The respondent No.1 did not appear and was placed ex-parte. The respondents No.2, 3 and 4 appeared before the Tribunal. The respondent No.2 contended that the compensation claimed is highly exorbitant, imaginary and untenable in law. The accident had occurred on

account of the negligence on the part of the Lorry owned by respondent No.3. It was also contended that the driver of the Car was not holding a valid driving license. Therefore, the respondent No.2 is not liable to pay the compensation.

06. The respondent No.3 - the owner of the Lorry contended that the compensation claimed is highly exorbitant and denied the age, income and occupation of the petitioner. He also denied any negligence that could be attributed to the driver of Lorry. Further, it was contended that the Lorry was insured with the respondent No.4 and any liability would have to be fastened upon the respondent No.4.

07. The respondent No.4 - insurance company took up similar contentions as that of respondent No.3 alleging the negligence on the part of the Car driver. Inter-alia it also denied the valid license of the lorry driver and sought its exoneration.

08. The Tribunal framed appropriate issues and the petitioner was examined as PW.1, the doctor who assessed the disability was examined PW.2 and another witness was examined PW.3 and Ex.P.1 to 15 were marked in the evidence. The official of the respondent No.2 was examined as RW.1 and the official of respondent No.4 was examined as RW.2 and Ex.R.1 marked in the evidence.

09. After hearing the arguments, the Tribunal has awarded the compensation of Rs.10,97,000/- under the following heads:-

Sl. No.	Heads	Compensation Awarded
1.	Towards pain and suffering	Rs.75,000/-
2.	Towards medical expenses	Rs.7,92,574/-
3.	Towards diet and attendant charges	Rs.65,000/-
4.	Towards loss of income during laid up period	Rs.1,54,190/-
5.	Towards loss of future earning capacity	-NIL-
6.	Towards loss of amenities	Rs.10,000/-
	Total	Rs.10,96,764/-
	Total rounded off	Rs.10,97,000/-

10. The Tribunal also fastened the liability of 75% on the respondents No.1 and 2 and 25% upon the respondents No.3 and 4.

11. Being aggrieved by the same, the petitioner is before this Court seeking enhancement of the compensation.

12. The learned counsel appearing for the petitioner would submit that the Tribunal in Para 17(IV), though notices that the petitioner was on loss of pay from 01.06.2019 to 27.08.2020 and there being a certificate issued as per Ex.P.9 by the employer, calculates the compensation at Rs.1,54,090/-. The Tribunal failed to notice the leave without pay and this being a pecuniary compensation entitled by the petitioner, there is no reason assigned by the Tribunal to reduce the compensation amount.

13. *Per contra*, the learned counsel appearing for the respondents No.2 and 4 contended that the nature of the injuries suffered by the petitioner, there was no requirement to take leave from her employment for a period of 14 months. It is submitted that the petitioner could have taken the treatment for only about 03 months and the rest of the absence from duty, is not a justifiable or relatable to the injuries sustained in the accident. Therefore, they defend the impugned judgment passed by the Tribunal.

14. On a careful perusal of the records, it is evident that the petitioner after sustaining the accident on 02.06.2019, she was admitted to Sunrise Hospital, Kalaburagi on 03.06.2019 and she was inpatient till 23.07.2019, which is about 51 days. The nature of the injuries sustained by the petitioner is mentioned in detail. It is evident that the Hospital bill alone runs to the tune of Rs.4,10,150/-. Considering the nature of the injuries, which are mentioned above, which are in consonance with the discharge summary produced at Ex.P.10, the absence

of the petitioner from her duties for a period of 14 months cannot be said to be un-relatable. The injuries sustained by the petitioner to her right lower limb as well as right upper limb are clear enough to say that the rest period of the petitioner was to the extent of about 14 months. The perusal of Ex.P.9 shows that she was absent from her job from 01.06.2019 to 27.08.2020. The certificate at Ex.P.9 is supported by the Headmistress of the said school, who is examined as PW.3. Nothing is elicited in her cross-examination, which would render the Ex.P.9 unbelievable. Therefore, it is evident that the Tribunal erred in not awarding the compensation in consonance with the loss of pay suffered by the petitioner for the period of her absence from the school i.e., from 01.06.2019 to 27.08.2020.

15. Under these circumstances, the petitioner is entitled for a sum of Rs.53,170/- x 14 = Rs.7,44,380/- instead of Rs.1,54,090/- as awarded by the Tribunal. The petitioner / appellant is entitled for Rs.5,90,290/- (Rs.7,44,380/- minus Rs.1,54,090/-).

16. No other contentions are raised before this Court in this appeal. 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.5,90,290/- 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. The rest of the order passed by the Tribunal regarding apportionment and contributory negligence of respondents No.2 and 4 remain unaltered.

IV. The Trial Court records be returned to the Tribunal along with copy of this judgment forthwith.

Sd/-
(C M JOSHI)
JUDGE

KJJ
List No.: 1 Sl No.: 6
CT: AK