HC-KAR

NC: 2025:KHC-K:3696
MFA No. 30876 of 2012
C/W MFA No. 30877 of 2012

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 8TH DAY OF JULY, 2025

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

MISCL. FIRST APPEAL NO. 30876 OF 2012 (MV)

C/W

MISCL. FIRST APPEAL NO. 30877 OF 2012(MV)

IN M.F.A.NO.30876/2012

BETWEEN:

JAKKAPPA
S/O ISHWAR @ ISHWARAPPA GIRIGOUDAR,
AGE: 20 YEARS, OCC: STUDENT AND PAPER VENDOR AND AGRIL.,
R/O: AT POST: SHIVANGI,
TQ: AND DIST: BIJAPUR.

...APPELLANT

(BY SRI C.L.KOUJALAGI, ADVOCATE)

Digitally signed by RAMESH MATHAPATI
Location: HIGH COURT OF KARNATAKA

AND:

1. BALASAHEB S/O BAPUSAHEB PATIL,
   AGE: MAJOR, OCC: BUSINESS,
   A/O: AT POST: RAJAPUR,
   TQ: SANGOLA, DIST: SOLAPUR
   (MAHARASHTRA STATE).

2. THE NEW INDIA ASSURANCE CO. LTD.,
   PANDARAPUR,
   THROUGH THE NEW INDIA ASSURANCE CO.LTD.,
   HANAMASHETTY BUILDING,
   S.S. FRONT ROAD, BIJAPUR.

...RESPONDENTS

(BY SRI SHARANABASAPPA M. PATIL, ADVOCATE FOR R2;
R1 IS SERVED)

THIS MFA IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT, PRAYING TO MODIFY THE JUDGMENT AND AWARD DATED 30.08.2011 PASSED BY THE MOTOR ACCIDENT CLAIM TRIBUNAL NO.VI, BIJAPUR AT BIJAPUR IN M.V.C. NO.1315/2010, IN SO FOR AS NOT AWARDING THE COMPENSATION OF RS.21,25,000/- AS CLAIMED IN THE CLAIM PETITION AND AWARDING ONLY A MEAGER AND INADEQUATE COMPENSATION OF RS.2,16,000/- OUT OF WHICH THE RESPONDENT IS LIABLE TO PAY 80% COMPENSATION AMOUNT AND REMAINING 20% IS TO BE RECOVERED FROM INSURER / OWNER OF THE MOTOR CYCLE. HENCE THE APPELLANT IS ENTITLED FOR 80% I.E. RS.1,72,800/- WITH INTEREST AT 6% PER ANNUM THE APPELLANT HEREIN PREFERS THE ABOVE MISCELLANEOUS FIRST APPEAL.

IN M.F.A.NO.30877/2012

BETWEEN:

VISHAL
S/O DADA LOKHANDE,
AGE: 20 YEARS,
OCC: STUDENT AND PAPER VENDOR AND AGRIL.,
R/O: AT POST: SHIVANGI,
TQ: AND DIST: BIJAPUR.

…APPELLANT

(BY SRI C.L.KOUJALAGI, ADVOCATE)

AND:

1. BALASAHEB S/O BAPUSAHEB PATIL,
   AGE: MAJOR, OCC: BUSINESS,
   A/O: AT POST: RAJAPUR,
   TQ: SANGOLA, DIST: SOLAPUR
   (MAHARASHTRA STATE).

2. THE NEW INDIA ASSURANCE CO. LTD.,
   PANDARAPUR,
   THROUGH THE NEW INDIA ASSURANCE CO. LTD.,
   HANAMASHETTY BUILDING,
   S.S. FRONT ROAD, BIJAPUR.

…RESPONDENTS

(BY SRI SHARANABASAPPA M. PATIL, ADVOCATE FOR R2;
R1 IS SERVED)

THIS MFA IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT, PRAYING MODIFY THE JUDGMENT DATED 30.08.2011 PASSED BY THE MOTOR ACCIDENT CLAIM TRIBUNAL NO.VI, BIJAPUR AT BIJAPUR IN M.V.C. NO.1375/2010, IN SO FOR AS NOT AWARDING THE COMPENSATION OF RS.21,25,000/- AS CLAIMED IN THE CLAIM PETITION AND AWARDING ONLY A MEAGER AND INADEQUATE COMPENSATION OF RS.90,800/- OUT OF WHICH THE RESPONDENT IS LIABLE TO PAY 80% COMPENSATION AMOUNT AND REMAINING 20% IS TO BE RECOVERED FROM INSURER / OWNER OF THE MOTOR CYCLE. HENCE THE APPELLANT IS ENTITLED FOR 80% I.E. RS.72,640/- WITH INTEREST AT 6% PER ANNUM THE APPELLANT HEREIN PREFERS THE ABOVE MISCELLANEOUS FIRST APPEAL.

THESE APPEALS, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL JUDGMENT

Since, both appeals are arising out of same judgment, they are clubbed together and taken up for disposal.

2. Challenging judgment and award dated 30.08.2011 passed by MACT, No.-VI, Bijapur at Bijapur in MVCs no.1315 and 1375/2010, these appeals are filed.

3. Sri CL Koujalagi, learned counsel submitted that appeals were by claimants for enhancement of compensation. It was submitted, at 12:45 p.m. on 18.07.2010, Jakkappa was riding as pillion on motorcycle bearing no.MH-12/Y-7313 on Sanglola-Mangalaweda road. Near Maan river bridge, driver of Jeep no.MH-45/A-7280 drove it in rash and negligent manner and dashed against motorcycle, causing accident. In said accident, both riders sustained grievous injuries and were admitted to hospital. Despite treatment, they sustained permanent physical disability and consequently, loss of earning capacity. Therefore, they filed MVCs no.1315 and 1375/2010 respectively against owner and insurer of Jeep.

4. On contest, wherein owner was placed ex-parte, insurer opposed claim petitions denying age, occupation, income, permanent physical disability, loss of earning capacity as well as negligence on part of driver of Jeep. Tribunal framed issues and recorded evidence. Claimants examined themselves and Dr. AA Magi, as PWs.1 to 3 and got marked Exs.P-1 to 18. Respondent did not lead any oral evidence, but copy of insurance policy was marked with consent as RW-1.

5. On consideration, tribunal held that accident had occurred due to rash and negligent driving of driver of Jeep as well as rider of motorcycle in ratio 80:20. Tribunal assessed compensation as follows:

In MVC no.1315/2010		
Sl.No.	Heads	Amount
1	For pain and suffering	₹30,000/-
2	For medical and other incidental expenses	₹52,000/-
3	For future discomfort and unhappiness	₹5,000/-
4	Loss of future income due to disability	₹1,29,500/-
	Total	**₹2,16,000/-**

In MVC no.1375/2010		
Sl.No.	Heads	Amount
1	For pain and suffering	₹15,000/-
2	For medical and other incidental expenses	₹3,000/-

3	For future discomfort and unhappiness	₹8,000/-
4	Loss of future income due to disability	₹64,800/-
	Total	**₹90,800/-**

6. In MVC no.1315/2010, it was submitted, claimant was a student/paper vendor and earning Rs.6,000/- p.m. However, tribunal considered his monthly income at Rs.3,000/, which was on lower side. It was submitted, award of Rs.5,000/- was awarded towards loss of amenities, which was also on lower side and tribunal did not award any compensation towards loss of earning during laid up period. Rs.30,000/- awarded towards pain and suffering is also on lower side. On above grounds, sought for enhancement.

7. In MVC no.1375/2010, similar grounds were urged.

8. On other hand, Sri Sharanabasappa M Patil, learned counsel for respondent no.2 opposed appeals. It was submitted, tribunal had considered injuries sustained and had awarded just compensation under separate heads, leaving no scope for enhancement.

9. Heard counsel and perused judgment and award.

10. From above, since only claimants are in appeal for enhancement of compensation, common point that would arise for consideration is

> "Whether claimants are entitled for enhancement of compensation as sought for?"

11. Same is answered partly in affirmative for following reasons.

12. In MVC no.1315/2010, claimant is said to have been working as student/paper vendor and earning Rs.6,000/- p.m. However, same is not substantiated with any specific evidence. In absence, tribunal assessed income notionally. Notional income for year 2010 as per chart prepared by KSLSA is Rs.5,500/-, which has to be considered as his monthly income. Tribunal noted claimant sustained injuries on left ankle (10x4x2cm) large wound, contaminated over left ankle on Antero laleval aspect exposing lower end of tibia out side of wound, tenderness of dorsum of foot, crushed and avulsed, distal pulsation present, toe movements not possible, abrasion over fight knee, X-ray of left ankle shows dislocation of left distal tibia and fibula joint and grade III compound dislocation

of left ankle with tendon injury of dorsum of foot. Other treatment records would indicate that claimant has taken treatment and underwent operations. He also examined PW-3, doctor to substantiate disability. As per Ex.P-15 (Disability certificate), claimant sustained limb disability to extent of 30 to 35%. But, tribunal considered whole body disability at 20%.

13. Considering facts and circumstances, award of Rs.30,000/- towards pain and suffering is justified. Even loss of earning capacity assessed at 20% is justified. Likewise, award of Rs.52,000/- towards medical expenses, would be in complete reimbursement of medical bills, would not call for interference. Claimant has taken in-patient treatment for a period of 13 days, taking note of same, Rs.10,000/- is awarded towards food, attendant and other incidental expenses.

14. Normally fractures would take three months to heal. Considering same as lay off period, Rs.16,500/- is awarded towards loss of income during laid up period. Tribunal has awarded Rs.5,000/- towards future discomfort and unhappiness i.e. loss of amenities and same is enhanced to Rs.25,000/-.

15. Loss of earning capacity of claimant works out to Rs.2,37,600/- (Rs.5,500/- x 20% x 12 X 18). Thus, total compensation would be:

In MVC no.1315/2010		
Sl.No.	Heads	Amount
1	For pain and suffering	₹30,000/-
2	For medical and other incidental expenses	₹52,000/-
3	For future discomfort and unhappiness	₹25,000/-
4	Food, attendant and other incidental expenses	₹10,000/-
5	Loss of income during laid up period	₹16,500/-
6	Loss of future income due to disability	₹2,37,600/-
	Total	**₹3,71,100/-**

16. In MVC no.1375/2010, claimant is said to have been working as student/paper vendor and earning Rs.6,000/- p.m. However, same is not substantiated with any specific evidence. In absence, tribunal assessed income notionally. Notional income for year 2010 as per chart prepared by KSLSA is Rs.5,500/-, which has to be considered as his monthly income. Tribunal noted claimant sustained cut lacerated wound in between 2nd and 3rd toe and 3rd and 4th toe, dorsum to planter aspect of right foot measuring 5x2cm, abrasion on right heel, X-ray of right foot shows fracture of proximal phalanx toe

5th right foot and fracture of head of 3rd and 4th metatarsal foot. He took in-patient treatment for period of 2 days. Considering same, award of Rs.15,000/- towards pain and suffering would be justified. Even award of Rs.3,000/- towards medical expenses would appear to be just and proper. Tribunal assessed disability at 10%. Re-computation of loss of future income would be Rs.1,18,000/- (Rs.5,500/- x 10% x 12 x 18).

17. Normally, fractures take 3 months to heal. Since, claimant sustained fracture of metatarsal, which heal faster, lay off period should be considered as 2 months and claimant would be entitled for Rs.11,000/- towards same. Award of Rs.8,000/- towards loss of amenities is just and proper. Re-assessed compensation is as follows:

In MVC no.1375/2010		
Sl.No.	Heads	Amount
1	For pain and suffering	₹15,000/-
2	For medical and other incidental expenses	₹3,000/-
3	For future discomfort and unhappiness	₹8,000/-
4	Loss of future income due to disability	₹1,18,800/-
5	Loss of income during laid up period	₹11,000/-
	Total	**₹1,55,800/-**

18. Apportionment liability at ratio of 80:20 by tribunal is not challenged. Hence, same is maintained. Therefore, claimant in MVC no.1315/2010 would be entitled for compensation of Rs.2,96,880/- and in MVC no.1375/2010 for Rs.1,24,640/-.

19. Consequently, following order:

ORDER

i. Appeals are allowed in part.

ii. Judgment and award dated 30.08.2011 in MVC nos.1315 and 1375/2010 is modified. Claimant in MFA no.30876/2012 (MVC no.1315/2010) would be entitled for compensation of Rs.2,96,880/- and in MFA no.30877/2012 (MVC no.1375/2010) would be entitled for Rs.1,24,640/-.

iii. As per order dated 08.07.2025, claimants would not be entitled for interest for delayed period.

iv. Respondent-insurer to deposit enhanced compensation with interest before tribunal within a period of six weeks.

Sd/-
(RAVI V HOSMANI)
JUDGE

NJ
List No.: 1 Sl No.: 19