IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 6TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

MISCL. FIRST APPEAL NO.201149 OF 2018 (MV-I)

BETWEEN:

1. YELLAMMA W/O SHANTAPPA @ SHANTKUMAR BULAKE,
   AGE: 34 YEARS, OCC: LABOUR NOW NIL,
   R/O: VILLAGE ROLLAWADI, TQ: BASAVAKALYAN,
   DIST: BIDAR.

...APPELLANT

(BY SRI. SANJEEVKUMAR C PATIL, ADVOCATE)

AND:

1. ASHOK S/O REVANASIDDAPPA MALGE,
   AGE: 42 YEARS, OCC: DRIVER OF MAHINDRA MAXMO VEHCILE BEARING REG.NO.KA-56/0912,
   R/O: VILLAGE CHIKNAGAON, TQ: BASAVAKALYAN,
   DIST: BIDAR-586101.
2. SHARANAPPA S/O SIRGAPPA HIREDODDI,
   AGE: MAJOR, OCC: OWNER OF MAHINDRA MAXMO VEHICLE BEARING REG.NO.KA-56/0912
   R/O: VILLAGE CHIKNAGAON, TQ: BASAVAKALYAN,
   DIST: BIDAR-586101.
3. SUBHASH S/O KASHAPPA CHINCHANSURE
   AGE: MAJOR, OCC: BUSINESS AND OWNER OF MINIDOR TUM TUM VEHICLE
   BEARING REG.NO.KA-39/0938
   R/O: VILLAGE YERANDI, TQ: BASAVAKALYAN,
   DIST: BIDAR-586101.

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Location: HIGH COURT OF KARNATAKA

4. THE DIVISIONAL MANAGER,
UNITED INDIA INSURANCE COMPANY LTD.,
DR. JAWALI COMPLEX, SUPER MARKET,
KALABURAGI-585101.

…RESPONDENTS

(BY SRI. NARENDRA M. UDNOOR AND
SRI. MANJUNATH GINNI, ADVOCATES FOR R1,
BY SRI. SANJEEV PATIL, ADVOCATE FOR R2
R3 SERVED
BY SMT. ANURADHA M. DESAI, ADVOCATE FOR R4)

THIS MFA IS FILED UNDER SECTION 173 (1) OF MOTOR VEHICLE ACT, PRAYING TO MODIFY THE JUDGMENT AND AWARD DATED: 02.12.2017 PASSED BY THE II ADDL. DISTRICT AND SESSIONS COURT AND ADDL. MACT BIDAR, SITTING AT BASAVAKALYAN IN M.V.C.NO.344/2016 AND FIXED THE ENTIRE LIABILITY ON RESPONDENT NO.4 TO PAY THE COMPENSATION, BY ENHANCING THE COMPENSATION.

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)

This appeal is filed by the claimant in MVC.No.344/2016 assailing the judgment and award dated 02.12.2017 by the learned II Addl. District and Sessions Court and Addl. MACT Bidar, sitting at Basavakalyan.

02. Heard the learned counsel for the appellant, learned counsel for the respondent No.4.

03. The parties will be referred as per their ranks before the Tribunal.

04. The factual matrix of the case is that on 23.08.2015 the claimant boarded in a Tum Tum Mahindra Minidor vehicle bearing No.KA-39-0938 to return to her village and when the said vehicle was near the land of one Amrut at Mudbi village, the driver of the said vehicle drove the same in a rash and negligent manner and hit a Mahindra Maximo vehicle bearing Reg.No.KA-56-0912 coming from the opposite direction. As a result, the

claimant and other inmates sustained injuries. The claimant was shifted to Dr. Kanade Accidental and Maternity Hospital, Umerga, where she took treatment as inpatient from 23.02.2015 to 19.04.2015. A criminal case was also registered in Crime No.12/2015 of Mudabi Police Station and the drivers of both the vehicles were prosecuted.

05. Now the claimant is contending that the owner and insurers of both the vehicles are liable to pay the compensation and that the compensation awarded by the Tribunal is abysmally low. The claimant had approached the Tribunal contending that she is a coolie and earning Rs.500/- per day and she has suffered disability and as such, she be compensated. The claimant also contended that the vehicle in which she was traveling was not having any valid insurance. On the other hand, the vehicle bearing Mahindra Minidor bearing Reg.No.KA-39-0938 was insured.

06. Respondents No.1 and 2 did not appear before the Tribunal.

07. The respondent No.3 appeared and contended that the vehicle was insured by the respondent No.4 and the negligence was on the part of the respondents No.1 and 2. If at all any compensation is awarded, the same be fastened upon the respondent No.4.

08. On issuance of notice to respondent No.4 – insurance company appeared and contended that the accident was due to the negligence on the part of driver of Mahindra Maximo bearing Reg.No.KA-56-0912. Therefore, the liability is to be fastened upon owner of said vehicle. Inter-alia it was also contended that the liability of the respondent No.4 is subject to the terms and conditions of the insurance policy and due compliance of the same by the respondent No.3.

09. The Tribunal framed the appropriate issues and the claimant was examined as PW.1 and treated doctor was examined as PW.2. Exs.P.1 to 101 were marked in the evidence. The respondents did not lead any evidence.

10. After hearing both the parties, the Tribunal has awarded compensation under different heads as below:-

Sl. No.	Heads	Compensation Awarded
1.	Conveyance, attendance charges, nourishment, medical bills	Rs.3,24,000/-
2.	Pain and suffering	Rs.40,000/-
3.	Loss of amenities	Rs.10,000/-
4.	Income during treatment	Rs.42,000/-
5.	Loss of future income	Rs.1,61,280/-
	Total compensation	Rs.5,77,280/-

11. Assessing the above compensation, the liability was fastened upon the respondents No.2 and 4 at the ratio of 50% each.

12. Being aggrieved by the quantum of the compensation, the claimant has approached this Court in appeal.

13. The learned counsel for the claimant would submit that the Tribunal failed to assess the functional disability of the claimant, even though PW.2 had stated that the disability was to the extent of 68%. It is contended that the claimant was aged 33 years and she was a coolie. She has suffered sever injuries, as such compensation is abysmally low.

14. Per contra, the learned counsel appearing for respondent No.4 submits that the compensation awarded by the Tribunal is justifiable and no interference is required.

15. On perusal of the wound certificate, the disability certificate as well as the medical records would show that the petitioner had suffered fracture of right tibia and fibula, fracture of left tibia and fibula, fracture of mandible, fracture of right symphysis pubis, traumatic amputation of great toe 2nd toe fracture of 3rd and 4th toe of right side, degloving injury over right lower limb with foot.

16. The evidence also shows that she was inpatient from 23.02.2015 to 19.04.2015 and still she suffers from the injuries. The testimony of the PW.2 would show that he was a treated doctor and he opined that there is non healing wound and bad scanning and she is having permanent physical disability to the extent of 68%. A non healing wound coupled with the deformities as may be found from the photographs at Ex.P.91 to 95 would clearly indicate that there is a auto amputation of the toes and there is a crush and degloving injuries of the foot. Definitely, this would result in fusion of the ankle joint resulting in the disability and the functional disability has to be assessed with respect to the physical disability and the avocation of the claimant. Obviously, the Tribunal considering the physical disability at 68%, it jumped to the conclusion that functional disability is only 12%. The correlation between the functional disability and the physical disability has not been properly considered by the

Tribunal. Having the occupation of the claimant in view and also her age, it would be proper to assess the functional disability of the claimant at 40%. Definitely, the injuries suffered by her would result in gait and impediment in walking, which is essential for her avocation.

17. The guidelines issued by the Karnataka State Legal Services Authority (KSLSA) for settlement of disputes before the Lok-Adalat prescribed a notional income of Rs.8,000/- for the year 2015. In umpteen number of decisions, this Court has held that the guidelines issued by the KSLSA is in general conformity with the wages fixed under the Minimum Wages Act. Therefore, by adopting the notional income of Rs.8,000/- and functional disability of 40%, loss of future income is calculated as Rs.8,000/- x 12 x 16 x 40% = **Rs.6,14,400/-** by adopting a multiplier of 16.

18. Consequently, the loss of income during treatment period is calculated as Rs.8,000/- x 6 = **Rs.48,000/-**.

19. So far as compensation under the head of pain and suffering is concerned, having in view the nature of injuries sustained, the same is enhanced to **Rs.80,000/-**.

20. The Tribunal has awarded a sum of Rs.10,000/- towards loss of amenities in life. Obviously, the claimant has to suffer with a non healing wound and therefore, the loss of amenities is enhanced to **Rs.60,000/-**.

21. The Tribunal has awarded a sum of ***Rs.3,24,000/-*** towards ***medical and conveyance etc.***, The same need not be disturbed. Hence, the claimant is entitled for the same.

22. Therefore, the claimant is entitled for total enhancement compensation of **Rs.11,26.400/-** under the following heads :-

Sl. No.	Heads	Compensation Awarded by this Court
1.	Loss of future income	Rs.6,14,400/-
2.	Loss of income during treatment period	Rs.48,000/-
3.	Pain and suffering	Rs.80,000/-
4.	Loss of amenities	Rs.60,000/-
5.	Medical Bills and conveyance	Rs.3,24,000/-
	Total Less: awarded by Tribunal	Rs.11,26,400/- Rs.5,77,280/-
	Total enhancement	Rs.5,49,120/-

23. Hence, appeal deserved to be allowed in part. Therefore, the following;

O R D E R

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.5,49,120/- in addition to what has been awarded by the Tribunal together with interest at the rate of 6% p.a. from the date of petition till its deposit before the Tribunal.

III. The rest of the terms and conditions ordered by the Tribunal regarding apportionment and deposit remain unaltered.

Sd/-
(C M JOSHI)
JUDGE

KJJ
List No.: 1 Sl No.: 33
CT: AK