IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 7TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

MISCL. FIRST APPEAL NO.201244 OF 2018 (MV-I)
C/W
MFA CROSS OBJ NO. 200067 OF 2018

IN MFA NO.201244/2018:

BETWEEN:

THE DIVISIONAL MANAGER,
ICICI LOMBARD GENERAL INSURANCE CO. LTD.,
NEAR TIMMAPURI CIRCLE, STATION ROAD,
KALABURAGI,
REP. BY LEGAL MANAGER.

…APPELLANT

(BY SRI. SUBHASH MALLAPUR, ADVOCATE)

AND:

1. RAJKUMAR S/O KALYANI @ KALLAPPA KANAKE,
   AGE: 37 YEARS, OCC: MASON & AGRI.,
   R/O: SALGAR V.K., TQ: ALAND,
   DIST: KALABURAGI-585102.
2. RAJKUMAR S/O NAMA RATHOD,
   AGE: MAJOR OCC: OWNER OF VEHICLE
   NO.KA-32/EJ-0031,
   R/O: MADAKI,
   TQ: ALAND, DIST: KALABURAGI-585102.

…RESPONDENTS

(BY SRI. BABU H METAGUDDA FOR R1
SRI. ANANTH S. JAHAGIRDAR FOR R2)

THIS MFA IS FILED UNDER SECTION 173 (1) OF MV ACT, PRAYING TO ALLOW THE ABOVE APPEAL BY SETTING ASIDE THE JUDGMENT AND AWARD DATED 09.03.2018, IN MVC.NO.866/2016 PASSED BY THE III ADDL. SENIOR CIVIL JUDGE AND MACT, KALABURAGI.

Digitally signed by LUCYGRACE
Location: HIGH COURT OF KARNATAKA

IN MFA CROSS OBJECTION NO.200067/2018:

BETWEEN:

RAJKUMAR S/O KALYANI @ KALLAPPA KANAKE,
AGE: 37 YEARS, OCC:MASON AND AGRICULTURE,
R/O: SALGAR V.K., TQ: ALAND,
DIST: KALABURAGI.

…CROSS OBJECTOR

(BY SRI. BABU H. METAGUDDA, ADVOCATE)

AND:

1. RAJKUMAR S/O NAMA RATHOD,
   AGE: MAJOR, OCC: OWNER OF VEHICLE
   NO.KA-32/EJ-0031,
   R/O: MADAKI,
   TQ: ALAND, DIST: KALABURAGI-585101.
2. THE DIVISIONAL MANAGER,
   ICICI LOMBARD GENERAL INSURANCE CO. LTD.,
   NEAR TIMMAPURI CIRCLE, STATION ROAD,
   KALABURAGI-585101.

…RESPONDENTS

(BY SRI. ANANTH S. JAHAGIRDAR FOR R1
SRI. SUBHASH MALLAPUR FOR R2)

THIS MFA CROB. IS FILED UNDER ORDER 41 RULE 22 OF CPC, PRAYING TO A) CALL FOR RECORDS IN MVC NO.866/2016 ON THE FILE OF THE III ADDL. SENIOR CIVIL JUDGE AND MACT, KALABURAGI, B) ALLOW THIS CROSS OBJECTION AND MODIFY THE JUDGMENT AND AWARD DATED 09.03.2018 PASSED IN MVC NO.866/2016 BY THE III ADDL. SENIOR CIVIL JUDGE AND MACT, KALABURAGI AND ENHANCING THE COMPENSATION FROM RS.2,55,600/- WITH 6% INTEREST TO RS.14,99,000/- WITH 12% INTEREST AND ETC.,

THESE APPEALS, 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)

Being aggrieved by the judgment and award in MVC.No.866/2016 passed by the learned III Addl. Senior Civil Judge and MACT, Kalaburagi dated 09.03.2018, the claimant as well as the insurance company are before this Court in these appeals.

02. The parties would be referred as per their ranks before the Tribunal.

03. The factual matrix of the case are that 12.02.2016 at 07.30 p.m. when the claimant was proceeding towards his house, near V. K. Salagar Tanda, the rider of the offending motorcycle bearing Reg.No.KA-32-EJ-0031 rode the same in a rash and negligent manner and collided with the claimant, resulting in grievous injuries. When he was admitted to the Hospital, it was diagnosed that he had sustained the injuries like cut

lacerated wound on the parietal region and hemorrhage on the head. Therefore, he was referred to further investigation. Further, it was found that the claimant had sustained parietal fracture of the parietal bone. The claimant contended that he was inpatient from 13.02.2016 to 19.02.2016 and he was working as an agriculturist, aged about 35 years and due to accidental injuries he is unable to do his regular activities as before.

04. On issuance of notice, the respondents No.1 and 2 who are the owner and insurer of the vehicle appeared and filed the written statement.

05. The respondent No.1 owner of the vehicle contended that the compensation claimed by the claimant is highly exorbitant, imaginary and untenable. There was no such negligence on the part of the rider of the offending vehicle. He further contended that he was having a valid driving license and therefore, compensation has to be fastened upon the respondent No.2.

06. The respondent No.2 – insurance company contended that the rider of the motorcycle was not having a valid and effective driving license. Therefore, it is not liable to pay any compensation to the claimant.

07. On the basis of the above contentions the appropriate issues were framed by the Tribunal. The claimant was examined as PW.1 and the doctor who assessed the disability was examined as PW.2 and Ex.P.1 to 14 were marked. The official of the respondent No.2 – insurance company examined as RW.1 and owner of the vehicle examined as RW.2 and Ex.R.1 to 9 were marked.

08. After hearing both sides, the Tribunal came to the conclusion that the respondent No.1 was not having a valid and effective driving license at the time of accident. Therefore, by relying on the several judgment, it came to conclusion that the insurance company is liable to pay the compensation, but it is at liberty to recover the same from the respondent No.1 – owner.

09. After assessing the evidence on record, the Tribunal granted the compensation of Rs.2,55,600/- under the following heads:-

Sl. No.	Heads	Compensation Awarded
1.	Towards pain and suffering	Rs.30,000/-
2.	Towards medical expenses	Rs.26,300/-
3.	Towards future income	Rs.1,61,280/-
4.	Towards attendant's charges, food and conveyance	Rs.7,000/-
5.	Towards loss of amenities and nutrition food	Rs.10,000/-
6.	Towards loss of income during the period of treatment	Rs.21,000/-
	Total	Rs.2,55,580/-
	Rounded off	Rs.2,55,600/-

10. The learned counsel appearing for the claimant submits that the compensation awarded by the Tribunal is on the lower side. Though, the claimant had sustained hearing impairment, which has resulted in functional disability of 41%, the Tribunal has assessed the disability

at 12%. Further, he submits that the notional income adopted by the Tribunal is on the lower side. The compensation under the head of loss of amenities in life has not been awarded to the claimant. He fairly submits that the principles laid down by the Hon'ble Supreme Court in the case of ***Pappu Deo Yadav vs. Naresh Kumar and others***[1], is applicable, since, the respondent No.1 has appeared and contested the matter by filing his written statement.

11. Per contra, the learned counsel appearing for the insurance company submits that the C.T. Scan report shows that there was no such facture on the parietal bone and even then the PW.2 has assessed the disability at 41% which cannot be sustained. Secondly he submits that the compensation awarded by the Tribunal is sufficient. There is no need for enhancement of the same.

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[1] ***AIR 2020 SC 4424***

12. The learned counsel appearing for the respondent No.1 owner of the vehicle has also reiterated the ratio laid down by the Hon'ble Supreme Court in the case of *Pappu*.

13. In view of the fact that the respondent No.1 had appeared before the Tribunal and had contested the matter by filing his written statement, the principles laid down in the case of *Pappu*, squarely applicable to the case on hand. It is pertinent to note that the respondent No.1, who was also rider of the vehicle had no valid and effective driving license as on the date of accident. Therefore, the conclusion of the Tribunal that the insurance company is liable to pay the compensation to the claimant and it is at liberty to recover the same from the owner of the vehicle need not be interfered with. As a consequence the appeal filed by the insurance company challenging the pay and recovery order is not sustainable in law.

14. Sofar as the quantum of the compensation is concerned, the Ex.P.6 and 9 which are the wound certificate and the medical certificate issued by Basaveshwar Teaching and General, Hospital, Gulbarga, where the claimant was treated at the first instance would clearly show that he had sustained fracture of the right parietal bone. Ex.P.9 is the dated 02.03.2016. Ex.P.11 – C.T. Scan report, which is relied by the learned counsel appearing for the insurance company would show that there was no such fracture of skull vault and base, as obviously this report is dated 03.07.2017. It is pertinent to note that the Ex.P.11 pertains to a C.T. Scan which was done at the instance of the PW.2, so that he could give an opinion about the disability. Therefore, when Ex.P.11 is dated 03.07.2017 and on the basis of which Ex.P.10 disability certificate issued is obviously subsequent to several months after the accident, by which time the fracture might have healed. Therefore, the contention of the learned counsel for the insurance company that there was no such fracture of the skull cannot be accepted.

15. Coming to the assessment of the compensation it is evident that the claimant was aged about 35 years, working as an agriculturist and according to PW.2 he has suffered hearing impairment and thereby there is 41% disability. It is settled principle of law that the while assessing the disability, which would translate in terms of the economic impairment, it is the functional disability which has to be considered by the Tribunal. The physical disability is nothing to do with the assessment of the compensation. The Tribunal has to make an exercise of finding out the functional disability, based on the physical disability assessed by the medical officer.

16. The Hon'ble Supreme Court in the case of ***Raj Kumar vs. Ajay Kumar and another***[2]***,*** and several other decisions has made it clear that the assessment of the functional disability is an exercise which has to be under taken by the Tribunal. The medical officers, obviously being unable to assess about the avocation of the injured,

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[2] ***(2011) 1 SCC 343***

cannot give an opinion about the functional disability of the injured. Therefore, when we examine the case on hand, the Tribunal has assessed the functional disability at 12%, even though the physical disability on account of hearing impairment is 41%. Therefore, this Court does not find any reason to interfere with such finding of the Tribunal.

17. The Tribunal has assessed the loss of future income by taking the notional income at Rs.7,000/- per month. The guidelines issued by the KSLSA for the purpose of settlement the disputes before the Lok-Adalath, prescribed a notional income of Rs.8,750/- for the year 2016. In umpteen number of judgment this Court has held that the guidelines issued by the KSLSA are in general conformity with the wages fixed under the Minimum Wages Act. Therefore, they can be adopted for the purpose of assessing the compensation. Hence, the compensation under the head of ***loss of future income*** is calculated as Rs.8,750/- x 12 x 16 x 12% = ***Rs.2,01,600/-*** by adopting a multiplier of 16 for the age of 35 years.

18. Consequently, the ***loss of income during the laid up period*** is also enhanced to ***Rs.26,250/-***.

19. The compensation under the head of ***pain and suffering*** deserves to be enhanced to ***Rs.40,000/-***.

20. Further the Tribunal has not awarded any compensation under the head of loss of amenities in life. Therefore, when the claimant had suffered hearing impairment, it would be proper to award a sum of ***Rs.30,000/-*** under the head of ***loss of amenities in life***.

21. The compensation awarded by the Tribunal under remaining heads do not require any indulgence by this Court.

22. Therefore, the claimant is entitled for total enhancement compensation of **Rs.3,31,150/-** under the following heads :-

Sl. No.	Heads	Compensation Awarded by this Court
1.	Loss of future income	Rs.2,01,600/-
2.	Loss of income during the laid up period	Rs.26,250/-
3.	Pain and suffering	Rs.40,000/-
4.	Loss of amenities in life	Rs.30,000/-
5.	Towards medical expenses	Rs.26,300/-
6.	Towards attendant's charges, food and conveyance	Rs.7,000/-
	Total Less: awarded by Tribunal	Rs.3,31,150/- Rs.2,55,600/-
	Total enhancement	Rs.75,550/-

23. In view of the above discussion, the MFA.No.201244/2018 filed by the insurance company is liable to be dismissed. The MFA.Crob.No.200067/2018 deserved to be allowed in part. Hence, the following;

O R D E R

I. MFA.No.201244/2018 is dismissed.

II. MFA.Crob.No.200067/2018 is allowed in part.

III. The impugned judgment and award passed by the Tribunal is modified by awarding a sum of Rs.75,550/- 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.

IV. The insurance company shall pay the compensation amount to the claimant, with liberty to recover the same from the owner of the vehicle.

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

VI. The amount in deposit before this Court is ordered to be transmitted to the Tribunal.

Sd/-
(C M JOSHI)
JUDGE

KJJ
List No.: 1 Sl No.: 50
CT: AK