NC: 2025:KHC-K:3680
MFA No. 201993 of 2023

HC-KAR

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 7TH DAY OF JULY, 2025

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

MISCL. FIRST APPEAL NO. 201993 OF 2023 (MV-I)

BETWEEN:

GOUSA PATEL S/O RUKKUM PATEL,
AGE: 43 YEARS, OCC: BUILDER,
R/O: CHONCHI, NOW AT ISLAMABAD COLONY,
RING ROAD, KALABURAGI.

…APPELLANT

(BY SRI SANJEEV PATIL, ADVOCATE)

AND:

1. MANSUR PATEL S/O AJIMA PATEL,
AGE: MAJOR,
OCC: BUSINESS & OWNER OF
INNOVA BEARING REG.NO.KA-32/N-7799,
R/O: NO.2/52, CHONCHI VILLAGE,
TQ: CHITTAPUR, DIST: KALABURAGI – 585 211.

2. RELIANCE GENERAL INSURANCE CO. LTD.,
THROUGH ITS BRANCH MANAGER,
ASIAN PLAZA, NEAR SVP CHOWK,
STATION AREA, KALABURAGI – 585 102.

…RESPONDENTS

(BY SMT. PREETI PATIL MELKUNDI, ADVOCATE FOR R2;
NOTICE TO R1 IS DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT, PRAYING TO MODIFY THE JUDGMENT AND AWARD DATED 28.12.2022 PASSED BY THE LEARNED II-ADDITIONAL SENIOR CIVIL JUDGE AND MACT AT KALABURAGI IN MVC NO.151/2019 BY ENHANCING THE COMPENSATION AMOUNT AS PRAYED FOR.

Digitally signed by NIJAMUDDIN JAMKHANDI
Location: HIGH COURT OF KARNATAKA

THIS MFA, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL JUDGMENT

Though appeal is listed for admission, with consent of learned counsel for parties, it is taken up for final disposal.

2. Challenging judgment and award dated 28.12.2022 passed by II Additional Senior Civil Judge and Motor Accident Claims Tribunal, Kalaburagi, (for short, 'tribunal') in MVC no.151/2019, this appeal is filed.

3. Sri Sanjeev Patil, learned counsel submitted, appeal was by claimant for enhancement of compensation. It was submitted, on 29.11.2017 when claimant was waiting to cross road near Madbool cross, driver of car no.KA-32/N-7799 drove it in rash and negligent manner and dashed against claimant causing accident. Due to injuries sustained in accident, he was shifted to P.G.Shah Hospital, Kalaburagi and later to Kothadia Hospital, Solapur. Despite treatment, he sustained permanent physical disability and loss of earning capacity. Therefore, he

filed claim petition under Section 166 of Motor Vehicles Act, against owner and insurer of car.

4. On contest, wherein, only insurer filed objections denying rash and negligent driving by driver of insured vehicle, age, occupation, income and disability sustained by claimant as well as alleging violation of policy conditions, tribunal framed issues and recorded evidence. Claimant examined himself and Dr.Ravi E.Shivaraya as PWs.1 and 2. Exs.P1 to P15 were got marked. In rebuttal, insurer examined its official as RW.1 and got marked Exs.R1 and R2.

5. On consideration, Tribunal held accident had occurred due to rash and negligent driving of insured vehicle by its driver, claimant had sustained permanent physical disability/loss of earning capacity and was entitled for compensation from insurer as follows:

1	Pain and sufferings	₹40,000/-
2	Medical expenses	₹1,05,771/-
3	Loss of earning during laid up period	₹30,750/-
4	Loss of future earning disability	₹3,44,400/-
5	Nutritious food and attendant charges	₹20,000/-
6	Loss of future amenities and loss of happiness	₹20,000/-
		₹5,60,921/-

6. Dissatisfied with same, claimant was in appeal. It was submitted, though claimant had stated that he was working as builder earning ₹25,000/- per month, tribunal erred in assessing it notionally at ₹10,250/- only. It was submitted, accidental injuries had led to amputation of his right limb below knee. PW.2 had assessed limb disability at 65%. However, tribunal erred in considering functional disability at 20% only and sought enhancement.

7. Relying upon decision of Hon'ble Supreme Court in case of ***Mohd.Sabeer @ Shabir Hussain*** **v.** ***Regional Manager, U.P. State Road Transport Corporation***[1] it was submitted that future prospects were required to be added to monthly income even in case of personal injury claims. It was submitted compensation awarded to other heads namely pain and suffering, loss of amenities, attendance and loss of income during laid-up period were also on lower side and sought enhancement. It was submitted, tribunal had not awarded any compensation towards future medical expenses for artificial

[1] (2022) 18 S.C.R. 427

limb, its periodic maintenance and replacement. On above grounds sought enhancement.

8. On other hand, Smt.Preeti Patil Melkundi, learned counsel for insurer opposed appeal. It was submitted, considering facts and circumstances wherein claimant had failed to substantiate his monthly income, tribunal had assessed it notionally and rightly awarded compensation under various heads. Same was adequate and did not call for interference.

9. Heard learned counsel. Perused impugned judgment and award.

10. From above and since only claimant is in appeal for enhancement of compensation, point that would arise for consideration is:

> *"Whether claimant is entitled for enhancement of compensation as sought for?"*

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

12. Insofar as monthly income, indeed claimant stated that he was builder earning more than ₹25,000/- per month. However to substantiate same, no material is placed. Neither his Contractor's licence or contract agreements for construction of building or income tax assessments are filed. In absence, tribunal was justified in assessing it notionally. It is seen that notional income for year 2017 as adopted by KSLSA for settlement of cases before Lok-adalat being ₹10,250/-, tribunal would justified in taking same as his monthly income. It is not in dispute that accidental injuries had led to amputation of right lower limb of claimant below knee. In view of amputation, award of ₹50,000/- towards pain and suffering would be grossly inadequate, same is enhanced to ₹1,50,000/-. Tribunal awarded ₹1,05,771/- towards medical expenses which would be in complete reimbursement of amount for which bills were produced. Therefore, there would be no scope for enhancement. Normally, in case of amputation of lower limb, period of six months is taken as layoff. Therefore, claimant would be entitled for ₹61,500/- as against ₹30,750/- towards loss of income during period of layoff. Claimant had taken inpatient treatment for period of 23 days. Award of ₹20,000/-

towards food, attendant and conveyance charges appears just and proper. As per decision of Hon'ble Supreme Court in ***Raj Kumar v. Ajay Kumar & Anr.***[2], in view of amputation, tribunal erred in awarding only ₹20,000/- towards loss of amenities. Same is enhanced to ₹1,50,000/-. Taking note of amputation below knee, which would require artificial limb, tribunal ought to have awarded compensation towards future medical expenses i.e., towards artificial limb. Considering requirement of maintenance and periodical replacement, it is appropriate to award lump-sum of ₹1,00,000/- towards artificial limb. As noted above, claimant sustained amputation of right lower limb below knee.

13. PW.2 assessed limb disability at 65%. Claimant is stated to be a builder and would require to move around climb up and down upstairs for inspection etc. Therefore, assessment of functional disability at 20% would not be justified, it would be appropriate to considered it 50% of loss of earning. As per decision in ***Mohd.Sabeer***'s case (supra) even in personal injury claims, future prospects has to be added to monthly income.

[2] (2011) 1 SCC 343

Since claimant was 42 years of age and self-employed, future prospects at rate of 25% has to be added. Tribunal has applied correct multiplier by '14', while assessing compensation. Thus, compensation towards future loss of income has to be re-computed as follows:

(₹10,250/- + 25%) x 12 x 14 x 50% = ₹10,76,250/-.

14. Thus, claimant is held entitled for re-assessed compensation under the following heads :

1	Pain and sufferings	₹1,50,000/-
2	Medical expenses	₹1,05,771/-
3	Loss of earning during laid up period	₹61,500/-
4	Loss of future earning disability	₹10,76,250/-
5	Nutritious food and attendant charges	₹20,000/-
6	Loss of future amenities and loss of happiness	₹1,50,000/-
7.	Towards artificial limb	₹1,00,000/-
	Total	**₹16,63,521/-**

15. Point for consideration is answered partly in affirmative. Consequently following:

ORDER

i. Appeal is allowed in part, impugned judgment and award dated 28.12.2022 passed by II Additional Senior Civil Judge and Motor

Accident Claims Tribunal, Kalaburagi, in MVC no.151/2019 is modified. Claimant is held entitled for total compensation of ₹16,63,521/- as against ₹5,60,921/- awarded by Tribunal with interest at rate of 6% per annum as awarded by Tribunal.

ii. Insurer is directed to deposit same before tribunal within a period of six weeks.

iii. Other conditions about deposit and release of compensation would apply as per award of tribunal to enhanced amount proportionately.

Sd/-
(RAVI V HOSMANI)
JUDGE

SN
List No.: 1 Sl No.: 44