IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 20TH DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

MISC. FIRST APPEAL NO.200949 OF 2018 (MV-I)

C/W

MISC. FIRST APPEAL NO.202132 OF 2017 (MV-I)

IN MFA NO.200949/2018:

BETWEEN:

CHOLAMANDALAM MS GEN. INS. CO. LTD.,
UNIT NO.4, 9TH FLOOR, GOLDEN HEIGHT COMPLEX,
59TH CROSS, INDUSTRIAL SUBURB,
RAJAJI NAGAR, 4TH MAIN BLOCK,
BANGALORE-560 010,
THROUGH ITS MANAGER.

Digitally signed by LUCYGRACE
Location: HIGH COURT OF KARNATAKA

...APPELLANT

(BY SRI. MANJUNATH MALLAYYA SHETTY, ADVOCATE)

AND:

1. KRISHNA CHAITNYA S/O BALANARASIAH,
   AGE: 28 YEARS, OCC: BUSINESS (NOW NIL),
   R/O: H.NO.4-186, RAGHAVENDRA COLONY,
   MAKTHAL, DIST. MAHABOOB NAGAR,
   NOW RESIDING AT SAIDAPUR,
   TQ. & DIST. YADGIRI-585201.

2. RAGHU S. S/O RACHAPPA S.,
AGE: 35 YEARS, OCC: OWNER OF TOOFAN
JEEP BEARING REG. NO.KA-36/A-5193,
R/O: H.NO.MIG-2-123, KHB COLONY,
YARAMARUS CAMP, RAICHUR,
TQ. & DIST. RAICHUR-584 101.

…RESPONDENTS

(BY SRI. VEERANAGOUDA MALIPATIL, ADV. FOR R1;
V/O DTD. 18.03.2019, NOTICE TO R2 IS DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173 (1) OF THE MOTOR VEHICLES ACT, PRAYING TO SET ASIDE THE JUDGMENT AND AWARD DATED 24.04.2017 PASSED BY THE MEMBER, MACT-II AT YADGIR IN MVC.NO.146/2015 AND TO MODIFY THE COMPENSATION AWARDED AND TO PASS SUCH OTHER ORDER OR ORDERS AS THIS HON'BLE COURT DEEMS FIT UNDER THE FACTS AND CIRCUMSTANCES OF THE CASE, INCLUDING THE COST.

IN MFA NO.202132/2017:

BETWEEN:

KRISHNA CHAITNYA S/O BALANARASIAH,
AGE: 27 YEARS, OCC: BUSINESS (NOW NIL),
R/O: H.NO.4/186, RAGHAVENDRA COLONY,
MAKTHAL, DIST. MAHABOOB NAGAR,
NOW RESIDING AT SAIDAPUR,
TQ. & DIST. YADGIRI.

…APPELLANT

(BY SRI. VEERANAGOUDA MALIPATIL, ADVOCATE)

AND:

1. RAGHU S. S/O RACHAPPA S.,
   AGE: 34 YEARS, OCC: OWNER OF TOOFAN JEEP
   BEARING REG. NO.KA-36-A-5193,
   R/O: H.NO.MIG-2-2123, KHB COLONY,
   YARAMARUS CAMP, RAICHUR,
   TQ. & DISTRICT RAICHUR-584 104.

2. CHOLAMANDALAM MS GEN. INS. CO. LTD.,
   UNIT NO.4, 9TH FLOOR, GOLDEN HEIGHT COMPLEX,
   59TH C CROSS, INDUSTRIAL SUBURB,
   RAJAJI NAGAR, 4TH MAIN BLOCK,
   BANGALORE-560 010,
   THROUGH ITS MANAGER.

…RESPONDENTS

(BY SRI. MANJUNATH MALLAYYA SHETTY, ADV. FOR R2;
V/O DTD. 13.04.2018, NOTICE TO R1 IS DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173 (1) OF THE MOTOR VEHICLES ACT, PRAYING TO ALLOW THE APPEAL, THE JUDGMENT AND AWARD DATED 24.04.2017 IN MVC.NO.146/2015 PASSED BY THE MEMBER MACT-II AT YADGIRI, MAY KINDLY BE MODIFIED BY ENHANCING THE COMPENSATION AS CLAIMED IN THE CLAIM PETITION.

THESE APPEALS COMING ON FOR FINAL HEARING, 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 appellants in both the cases.

02. Being aggrieved by the judgment and award in MVC.No.146/2015, the respondent No.2 - insurance company is in appeal before this Court in MFA.No.200949/2018 and the petitioner is in appeal before this Court in MFA.No.202132/2017. Both of them are challenging the quantum of the compensation amount.

03. The parties would be referred to as per their rank before the Tribunal.

04. The petitioner while he was traveling in a Toofan Jeep Reg.No.KA-36-A-5193 between Arikera Colony and Narasa Gondnalli village in Honnalli limits, due to rash and negligent driving of the driver the vehicle turned turtle, resulting in injuries to the petitioner. It was

contended that the petitioner had sustained fracture of C4-C5 vertebra and damage to spinal cord. As such he suffered hemiparesis on the left side. The police had registered a case in Crime No.196/2013 against the driver of the said vehicle. Ultimately, they filed the charge-sheet against him. The petitioner contends that at the time of the accident, he was aged about 24 years, working in a book stall and earning Rs.15,000/- per month. He had to spend Rs.10,00,000/- towards medical expenses. Therefore, prayed to grant of adequate compensation.

05. On being served with the notice the respondent No.1 - the owner of the Jeep contended in his written statement that the accident was not due to the rash and negligent driving of the driver. He denied the age, income and occupation of the petitioner. He further contended that the compensation claimed is highly exorbitant, imaginary and untenable in law. The driver was having a valid driving license. Therefore, the liability if any has to be fastened upon the respondent No.2 - insurance company.

06. The respondent No.2 - insurance company apart from reiterating the contentions taken up by the respondent No.1 regarding the accident and the negligence also took up the contention that there was violation of the terms and conditions of the policy. The driving license to drive particular class of vehicle was not with the driver. Therefore, sought exonerating its liability.

07. On the basis of the above contentions, the Tribunal framed the appropriate issues regarding negligence and the quantum of the compensation amount. The petitioner was examined as PW.1 and a witness who assessed the disability was examined as PW.2 and Ex.P.1 to 14 were marked in the evidence. The respondent No.2 - insurance company got marked Ex.R.1 and 2 i.e., policy and driving license.

08. After hearing the arguments by both sides, the Tribunal held that the petitioner is entitled for a compensation of Rs.12,88,400/- under following heads:-

Sl. No.	Heads	Compensation Awarded
1.	Towards loss of future income	Rs.4,53,600/-
2.	Towards pain and agony	Rs.2,00,000/-
3.	Towards Medical Expenses	Rs.4,09,800/-
4.	Towards Attendant Charges	Rs.0,12,000/-
5.	Towards food and other expenses	Rs.0,12,000/-
6.	Towards Conveyance Charges	Rs.0,16,000/-
7.	Towards loss of income during course of treatment	Rs.0,36,000/-
8.	Towards loss of amenities	Rs.1,00,000/-
9.	Towards loss of marriage prospects	Rs.0,50,000/-
	Total	Rs.12,88,400/-

09. Being aggrieved by the same, the petitioner as well as the respondent No.2 are before this Court challenging the quantum of the compensation amount.

10. The arguments by the learned counsel appearing for appellants in both the appeals are heard. The notice to the respondent No.1 - owner of the vehicle in both the appeals has been dispensed with.

11. The learned counsel appearing for the petitioner would submit that the petitioner was aged about 24 years, working in a bookstall and earning Rs.15,000/- per month.

He has a suffered hemiparesis on the left side, resulting in depleted strength in the left upper and lower limbs. He contends that the petitioner has to suffer the said disability for the rest of his life. He is unable to lift his left hand and the fingers are contracted. He is unable to hold anything with his left hand as there are contractures and while walking he pulls his a left leg. Therefore, the disability considered by PW.2 though at 60%, the functional disability of the petitioner to be taken at 100%. He points out that the functional disability of the petitioner with reference to his avocation was not properly considered by the Tribunal. On this count, there is a need for reassessment of the compensation amounts.

12. Per contra, the learned counsel appearing for the insurance company contends that the petitioner has suffered physical disability, the functional disability assessed by the Tribunal at 35% is on the higher side; that the compensation awarded under the head of pain and suffering, loss of amenities in life is also on the higher

side. He submits that the petitioner has not produced any material to show his income as well as avocation. Therefore, the compensation awarded by the Tribunal being exorbitant, there is a need for reduction in the same.

13. The fact that there was an accident involving the vehicle owned by the respondent No.1 insured by the respondent No.2 and that the driver had a valid driving license are not in dispute in these appeals. Therefore, it is only the compensation amount, which needs to be reassessed by this Court, with reference to the evidence available on record.

14. It is trite law that the Tribunals have to consider the functional disability of an injured person, but it is not the physical disability alone. The physical disability may be lesser, but its effects on the earning of the injured would be drastic. In a recent judgment of the Apex Court has noted that the loss of an eye of a diamond cutter, though there is a physical disability of 50%, the functional

disability would be 100%. Therefore, it is a functional disability, which has to be assessed by the Court, but not the physical disability. Keeping in mind the principles laid down by the Apex Court in the case of ***Raj Kumar vs. Ajay Kumar and Another***[1]***,*** *t*he compensation has to be assessed.

15. The perusal of the medical records would show that though the petitioner had not suffered any external injuries, there was a blunt trauma to the neck and head and to the left lower limb, tenderness over the neck, left lower limb is immobile. Further investigations showed that there is retro mysticism after C5 spine and few other injuries.

16. The discharge summary produced at Ex.P.5 would show that he was admitted to BBR Super Specialty Hospital, with history of cervical spine injury of a C4 and C5, with traumatic PIVD cord compression. The investigations were done. He was admitted to

[1] *(2011) 1 SCC 343*

neurosurgery. The MRI scan showed Gr.I - anterior translocation of C4 over C5 with right facetal subluxation suggestive of edema/contusion. He was treated with surgery with bone grafting, plating etc. He was inpatient from 06.07.2013 to 20.07.2013. The certificate issued by Basava Hospital at Ex.P.6 shows that he is suffering from Traumatic quadriparesis. The petitioner was examined by PW.2. He gave a disability certificate as per Ex.P.9, wherein it was noted as below :-

1. *Patient is very slow in answering, understands routine commands.*
2. *His pulse, respiration and temperature within normal limits.*
3. *Operation mark over R-front of neck and R-iliac crest are noted.*
4. *L-Upper Limb – Contractures and atrophy of Hand and Fingers, hyperreflexia.*
5. *L-Lower Limb-Power-2/5, hyperreflexia, hypertonia, and stiff joint movements.*
6. *Gait is waddling, Unable to walk fast.*
7. *Unable to sit or squat due to pain in L-hip=region and joint.*

17. It is also evident that the petitioner had suffered subluxation and discprolapse with cord edema. Therefore, there was depletion of the strength in the left limbs. It is worth to note that according to PW.2, the petitioner has suffered a disability of 60% to the entire body, out of it, 50% is attributed to left hemiparesis and 20% to the neck pain tenderness etc.,

18. The petitioner was present before the Court. On being examined by this Court as well as the learned counsels appearing for both the sides, it was found that the petitioner is still unable to walk freely. There is depletion of the strength in the upper as well as lower left limbs. The left hand of the petitioner is also contractured. His speech was also slurred.

19. After observing these aspects, this Court is of the view that the disability assessed by the Tribunal at 35% is improper. In considered view of this Court, the disability has to be taken at 50%.

20. While coming to such conclusion, the Court has bestowed its attention on the submission made by the petitioner that now also he attends the bookstall occasionally, but he is unable to lift anything, except sitting in the bookstall and somebody else is present for doing the business.

21. Evidently the petitioner has not produced any material to show that he has an income of Rs.15,000/- per month. Therefore, the Tribunal was justified in adopting the notional income. The Tribunal in its wisdom has accessed the notional income at Rs.6,000/- per month.

22. The guidelines issued by the KSLSA for settlement of disputes before Lok-Adalath prescribe a notional income of Rs.7,000/- per month for the year 2013. In umpteen number of judgments, 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 are acceptable. Hence, the notional income of the petitioner is considered at Rs.7,000/-.

23. There is no dispute that the petitioner was aged about 24 years. Therefore, the appropriate multiplier is 18. The petitioner having suffered the disability and even after 12 years, the disability remains as observed by this Court. Therefore, it would be a fit case where future prospects has to be considered while assessing the loss of future income.

24. Hence, by adding 40% to the notional income, the appropriate multiplicand would be Rs.7,000 + Rs.2,800/- = Rs.9,800/-. Hence, the loss of future income is calculated as Rs.9,800/- x 12 x 18 x 50% = Rs.10,58,400/-.

25. In view of the nature of the injuries suffered by the petitioner, it can safely be said that he was unable to resume his work at least for a period of 06 months. Therefore, the loss of income during the laid up period is calculated as Rs.7,000/- x 6 = Rs.42,000/-.

26. The petitioner was inpatient from 06.07.2013 to 20.07.2013. He had taken treatment at Secandrabad. Therefore, the compensation under the heads of attendant charges, food and other expenses, conveyance expenses, together is assessed at Rs.50,000/-.

27. The Tribunal has awarded a sum Rs.2,00,000/- under the head of pain and suffering, this Court feels that a sum of Rs.1,00,000/- would be appropriate amount under this head.

28. The Tribunal has awarded a sum of Rs.1,00,000/- under the head of loss of amenities in life. This Court having considered the future prospects also, the quantum of the amount under the head of loss of amenities is reduced to Rs.75,000/-.

29. The petitioner being a bachelor, the Tribunal has rightly awarded a sum of Rs.50,000/- towards loss of marriage prospects.

30. The Tribunal has rightly awarded the compensation amount towards the other heads. The same do not require any interference.

31. Hence, the petitioner is entitled for a total enhanced compensation of Rs.04,96,800/- under the following heads:-

Sl. No.	Heads	Compensation Awarded by this Court
1.	Loss of future income	Rs.10,58,400/-
2.	Loss of income during laid up period	Rs.00,42,000/-
3.	Towards attended charges, food and other expenses and conveyance expenses	Rs.00,50,000/-
4.	Pain and suffering	Rs.01,00,000/-
5.	Loss of amenities in life	Rs.00,75,000/-
6.	Marriage prospects	Rs.00,50,000/-
7.	Towards Medical expenses	Rs.4,09,800/-
	Total Less: Awarded by the Tribunal	Rs.17,85,200/- Rs.12,88,400/-
	Total enhancement	Rs.4,96,800/-

32. As a result the appeal filed by the insurance company deserves to be dismissed and the appeal filed by the petitioner deserves to be allowed in part. Accordingly, the following;

O R D E R

I. The MFA.No.200949/2018 is dismissed.

II. The amount in deposit before this Court be transmitted to the Tribunal.

III. The MFA.No.202132/2017 filed by the petitioner is allowed in part.

IV. The petitioner is entitled for Rs.4,96,800/- in addition to the amount of the compensation awarded by the Tribunal along with interest at 6% per annum from date of petition till its deposit.

V. Out of the compensation amount 75% to be released to the petitioner on proper identification and the remaining amount to be kept in FD as ordered by the Tribunal.

Sd/-
(C M JOSHI)
JUDGE

KJJ
List No.: 1 Sl No.: 52
CT: AK