IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 7TH DAY OF MARCH, 2025

PRESENT

THE HON'BLE MR JUSTICE K NATARAJAN

AND

THE HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL

MISCL. FIRST APPEAL NO. 202262 OF 2017 (MV-I)

BETWEEN:

SRI. SANGAPPA S/O MANAPPA BITLAR,
AGE: 39 YEARS, OCC: KSRTC BUS DRIVER, NOW NIL,
R/O DIGGI VILLAGE, TQ. SHAHAPUR,
DIST: YADGIRI, NOW R/AT SRINIVAS SARADAGI, TQ. &
DIST.KALABURAGI – 585101.

...APPELLANT

(BY SRI BABU H METAGUDDA, ADVOCATE)

AND:

THE DIVISIONAL CONTROLLER
NEKRTC DIVISIONAL OFFICER, YADGIRI
DIVISION, YADGIRI,- 585101.

...RESPONDENT

(BY SMT. PREETI PATIL MELKUNDI, ADVOCATE)

Digitally signed by RAMESH MATHAPATI
Location: HIGH COURT OF KARNATAKA

THIS MFA IS FILED U/S.173(1) OF MV ACT, PRAYING TO ALLOW THIS APPEAL AND MODIFY THE JUDGMENT AND AWARD DATED 25.07.2017 PASSED IN MVC NO.998/2013 BY SENIOR CIVIL JUDGE AND JUDICIAL MAGISTRATE OF THE FIRST CLASS AT JEWARGI. AND ENHANCING THE COMPENSATION FROM RS.4,35,000/- WITH 6 INTEREST TO RS.40,00,000/- WITH 12% INTEREST.

THIS APPEAL, COMING ON FOR HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE K NATARAJAN
AND
HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL)

This appeal is filed by the injured claimant challenging the judgment and award dated 25.07.2017 passed in MVC No.998/2013 by the Court of Senior Civil Judge and JMFC, Jewargi, (hereinafter referred to as 'the Tribunal', for short).

2. For the sake of convenience, parties are referred to as per their ranking before the Tribunal.

3. The facts giving rise to the filing of the appeal briefly stated are that, claimant while working as a driver in KSRTC met with an accident on 17.08.2011 at about 3.00 p.m. when he was driving the bus bearing registration No.KA32/F-1310. It is averred that he was driving the bus in a moderate speed by following the traffic rules on Jewargi-Shahapura main road, at that time, the

driver of NEKRTC bus bearing registration No.KA-32/F-1382 came from the opposite side driven by its driver in a rash and negligent manger and dashed into the bus driven by the claimant resulting in the claimant sustaining severe fractural injuries. It is further averred that he was shifted to Government Hospital, Jewargi and further treatment was provided at Basaveshwara Hospital, Gulbarga. It is also averred that the injured was shifted to Avinash Shah Memorial Multi Specialty Hospital & Research Centre, Gulbarga, and he was inpatient there from 28.08.2011 to 30.08.2011 and thereafter he was shifted to KLE's Dr.Prabhakar Kore Hospital and Medical Research Centre, Belagavi and he was inpatient in the said hospital from 31.08.2011 to 24.09.2011. It is contended that during the treatment the claimant has undergone surgeries and spent a substantial amount for treatment. In spite of the aforesaid treatment, he could not recover and has become physically disabled. The injured claimant filed a claim petition under Section 166 of the Motor Vehicles Act, 1988

seeking compensation on the ground of injuries sustained in the road traffic accident.

4. After service of notice, respondent-Corporation appeared and filed written statement denying the contents of the claim petition and prayed to dismiss the claim petition.

5. On the basis of the pleadings, the Tribunal framed relevant issues for consideration.

6. The claimant, in order to substantiate his case, got himself examined as PW.1 and also examined one doctor as PW.2 and got marked documents as Exs.P1 to P14. On the other hand, respondent-Corporation examined its driver as RW.1 and got marked documents Ex.R1 to R5.

7. The Tribunal, after recording the evidence, hearing both sides and on the assessment of oral and documentary evidence allowed the petition in part with costs and it was ordered that, the claimant is entitled for compensation of Rs.4,35,000/- with interest @ 6% p.a. from the date of petition till realization of compensation

amount and directed the respondent to deposit the compensation amount. The claimant, dissatisfied with compensation awarded by the Tribunal has filed the present appeal seeking for enhancement of compensation amount.

8. Learned counsel for the appellant/claimant submits that the Tribunal has erred in assessing the disability of the claimant at 13% which is contrary to the evidence of PW.2 and the documents on record. It is submitted that the Tribunal has awarded meager compensation under the heads of future medical expenses as the claimant needs to undergo further surgery to remove the implants. It is further submitted that the award of compensation by the Tribunal under the head pain and suffering, loss of amenities and on conventional heads is also on the lower side. Hence, he seeks to enhance the compensation. It is further submitted that the claimant has lost his job due to the accident. The Medical Board examined the claimant and was of the opinion that

the claimant has suffered disability to the extent of 42% to the whole body. Hence, he seeks to reassess the disability by enhancing the compensation appropriately by allowing the appeal.

9. Per contra, the learned counsel for the respondent/Corporation supports the judgment and award passed by the Tribunal contending that the same does not call for any interference. It is submitted that the Tribunal was fully justified in assessing the disability of the claimant at 13% as PW.2 the doctor who treated the claimant and without any basis he has assessed the disability of the claimant at 39%, which is on the higher side. It is further submitted that the claimant was unauthorizedly absent in KSRTC hence he has been removed from the services of the KSRTC as a driver. It is further submitted that in the said proceeding the Medical Board has assessed his disability at 42%, which cannot be the basis to assess the disability in the case on hand. It is also submitted that Tribunal taking note of the evidence

available on record has awarded just compensation to the claimant which does not call for any modification. Hence, she seeks to dismiss the appeal.

10. We have considered the submissions advanced by the learned counsel for the parties, meticulously perused the pleading, evidence on record and we have given our anxious consideration to the material available on record.

11. The point that arises for our consideration in this appeal is;

> *"Whether the appellants are entitled for enhancement of compensation? If so to what extent?"*

12. There is no dispute that the claimant in a road accident dated 17.08.2011 sustained following injuries:

(a) Right segmental sub trochanteric femur fracture;
(b) Right transverse patella fracture;
(c) Right un-displaced tibia condyle fracture;
(d) Left tibia condyle fracture;
(e) Left tibia and fibula fracture;

(f) Left 3rd proximal phalanx fracture and other grevious injuries all over the body.

13. The material available on record indicates that initially the claimant was shifted to Government Hospital, Jewargi, thereafter the treatment was provided at Basaveshwara Hospital, Gulbarga, then the injured was shifted to Avinash Shah Memorial Multi Specialty Hospital and Research Centre, Gulbarga, and he was inpatient in the said hospital from 28.08.2011 to 30.08.2011 and thereafter he was shifted to KLE's Dr.Prabhakar Kore Hospital and Medical Research Centre, Belagavi and he was inpatient in the said hospital from 31.08.2011 to 24.09.2011. The claimant has undergone several surgeries and spent a substantial amount for treatment. To substantiate the injuries and to prove the disability, the claimant got examined PW.2 Dr. Ravi, who has issued disability certificate at Ex.P8. The oral testimony of PW.2 and Ex.P8, indicate that the claimant has sustained aforementioned injuries and has taken treatment at

different hospitals. Based on the medical records, PW.2 assessed the disability of the claimant at 39% to the whole body. However, the Tribunal without any justifiable reason has re-assessed the disability at 13%, in our view, the Tribunal has erred in reassessing the disability. We have taken note of the aforesaid fractures sustained by the claimant and the nature of treatment provided to him, he has undergone surgeries and was an inpatient for a substantial number of days due to the injuries. We have also taken note of the Medical Board Certificate dated 10.02.2015, which was produced by the claimant in these proceedings. We are of the considered view, the interest of justice would be met, if the physical disability of the claimant is reassessed at 30% to the whole body for computation of compensation.

14. The Tribunal, considering the pay slip assessed the income of the claimant at Rs.10,769 which is not in dispute. The parties to the proceedings do not dispute that the applicable multiplier would be 16. The Tribunal

considering the evidence has awarded Rs.25,000/- under the head of loss of amenities, Rs.25,000 under the head pain and suffering, in our view, which is required to be reassessed in view of the medical evidence available on record. The claimant was inpatient in a hospital for nearly one month, underwent surgery and was treated in four different hospitals

15. Insofar as award of compensation under the head of Food, conveyance and attendant charges, loss of income during laid up period, extra nourishment and medical expenses are concerned the same is required to be retained. The Tribunal has erred in awarding future medical expenses at Rs.25,000. The medical evidence available on record indicate that the claimant has undergone surgery and implants were inserted and as per the oral evidence of PW.2 the claimant is required to undergo further surgery to remove the said implants. Taking note of the evidence on record, we are of the considered view that it would be just and appropriate to

award Rs.50,000/ under the head of future medical expenses.

16. For the aforesaid reasons the compensation is reassessed as under:

Sl. No.	Heads	By Tribunal	By this Court
1.	Loss of income due to permanent physical disability (Rs.10769 x 12 x 30% x 16)	Rs.2,70,000/-	Rs.6,20,294/-
2.	Loss of amenities and happiness	Rs.25,000/-	Rs.35,000/-
3.	Food, conveyance and attendant charges during treatment	Rs.10,000/-	Rs.10,000/-
4.	Pain and sufferings	Rs.25,000/-	Rs.35,000/-
5.	Loss of income during laid up period	Rs.10,000/-	Rs.10,000/-
6.	Extra nourishment	Rs.10,000/-	Rs.10,000/-
7.	Medical expenses	Rs.60,000/-	Rs.60,000/-
8.	Future medical expenses	Rs.25,000/-	Rs.50,000/-
	Total	Rs.4,35,000/-	Rs.8,30,294/-

17. The claimant is entitled for a total compensation of Rs.8,30,294/- as against Rs.4,35,000/- awarded by the Tribunal. Hence, the claimant is entitled for an enhanced compensation of Rs.3,95,294/- with interest @ 6% p.a.

18. Hence, we proceed to pass the following:

ORDER

(a) The appeal is allowed in part.

(b) The impugned judgment and award passed by the Tribunal is modified.

(c) The claimant is entitled for a total compensation of Rs.8,30,294/- as against Rs.4,35,000/- awarded by the Tribunal, along with interest at the rate of 6% per annum from the date of petition till realization.

(d) The respondent-Corporation is directed to deposit the enhanced compensation amount before the tribunal within a period of eight weeks from the date of receipt of certified copy of this judgment.

(e) The rest of the order passed by the tribunal is not disturbed.

Sd/-
(K NATARAJAN)
JUDGE

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

MSR
List No.: 1 Sl No.: 23
CT: PS