IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 22ND 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. 201237 OF 2019 (MV-I)

BETWEEN:

SHASHIKANTH
S/O SUBHASH @SUBHSHCHANDRA BEVINKAR
AGE: 21 YEARS, OCC: STUDENT,
R/O NAVADAGI VILLAGE,
TQ: CHINCHOLI, DIST: KALABURAGI,
NOW AT PRASHANT NAGAR(B), KUSNOOR ROAD,
KALABURAGI – 585104.

…APPELLANT

(BY SRI JIDAGE KAILASH .C, ADVOCATE)

AND:

Digitally signed by RAMESH MATHAPATI
Location: HIGH COURT OF KARNATAKA

1. NAGARAJ S/O VITHALRAO,
   AGE:33 YEARS OCC: OWNER&DRIVER OF VEHICLE,
   BEARING NO.KA-32/B-1835,
   R/O HALCHERA VILLAGE, TQ: CHINCHOLI,
   DIST: KALABURAGI – 585305.

2. THE DIVISIONAL MANAGER
   ORIENTAL INSURANCE COMPANY LIMITED,
   N.G. COMPLEX, IST FLOOR,
   OPP MINI VIDHAN SOUDHA,
   KALABURAGI – 585101.

…RESPONDENTS

(BY SRI SANJYA M. JOSHI, ADV. FOR R2;
NOTICE TO R1 DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLE ACT, PRAYING TO SET ASIDE THE JUDGMENT AND AWARD DATED 27/08/2018 IN MVC NO.919/2016 PASSED BY THE HON'BLE PRINCIPAL SENIOR CIVIL JUDGE & MACT KALABURAGI, IN AWARDING RS.9,74,540/- TO THE APPELLANTS MAY KINDLY BE MODIFIED TO RS.1,20,00,000/- AND ABOVE ALONG WITH INTEREST AT 12% FROM THE DATE OF PETITION TILL REALIZATION BY ALLOWING THE APPEAL.

THIS APPEAL, COMING ON FOR ADMISSION, 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 K NATARAJAN)

This appeal is filed by the claimant under Section 173(1) of Motor Vehicles Act, 1988 (for short, 'M.V. Act') seeking enhancement of compensation as against the judgment and award in MVC.No.919/2016 dated 27.08.2018 passed by the Principal Senior Civil Judge and MACT, Kalaburagi (for short, 'the Tribunal').

2. Though this appeal is listed for admission, with the consent of both the learned counsels, it is taken up for final disposal.

3. Heard the arguments of learned counsel for the appellant and the learned counsel for respondent No.2 - Insurance Company.

4. Parties are referred to as per their rank before the Tribunal for the sake of convenience.

5. The case of the claimant before the Tribunal is that the minor claimant filed a claim petition under Section 166 of M.V. Act claiming compensation of Rs.1,20,00,000/- for the injury sustained by him in a road traffic accident. It alleged that on 30.03.2016 at 9:30 a.m., when the minor-petitioner along with his friend proceeding in a motorcycle bearing registration No.KA-32/ V-9970 in order to bring the hall ticket from the house at Kodli Village, the driver of the Bolero Pick up Jeep bearing registration No. KA-32/B-1835 drove the jeep in a rash and negligent manner and dashed to the petitioner's bike, due to which the petitioner sustained injuries on all parts of the body including the right leg and due to infection, the right leg was amputated at the knee level in the hospital.

It was contended that though the earning capacity of the petitioner was 100%, due to the accident, the bright future of the petitioner was lost. Hence, prayed for granting compensation on various heads.

6. The respondent No.1 – owner of the vehicle appeared through counsel and filed detailed objections denying the rash and negligent driving and also denied the age, income, occupation, injuries and disability of the petitioner and contended that respondent No.2 should be held liable to pay the compensation.

7. The respondent No.2 – insurance company also appeared through counsel and filed objections denying the age, income, occupation of the petitioner, the medical expenses, nourishment charges and the disability claimed by the claimant as false and also contented that there is a violation of terms and condition of the policy by respondent No.2 and hence, prayed for dismissal of the claim petition.

8. Based upon the pleadings, the Tribunal framed the following issues:

> *"(i) Whether the petitioner proves that, on 30-03-2016 at about 9.30 a.m., on Ratkal to Kodli Road, he met with an accident and sustained injuries due to the rash and negligent driving by the driver of the Bolero Pickup bearing No.KA-32/B-1835?*
>
> *(ii) Whether the respondent No.2 proves that driver of the Bolero Pickup bearing No.KA-32/B-1835 had no valid and effective DL at the time of accident?*
>
> *(iii) Whether the petitioner proves that he is entitled for compensation? If so, how much and from whom?*
>
> *(iv) What order or Award?"*

9. In order to prove the case of the claimant, the father of the claimant examined himself as PW-1 and got marked 42 documents and also examined the doctors as PW-2 and PW-3. Except filing the written statement, the respondents have not chosen to lead any evidence. After hearing the arguments the Tribunal awarded compensation of Rs.9,74,537/- as under:

Heads of compensation	Compensation amount
Towards permanent disability	Rs. 5,00,000/-
Medical expenses	Rs. 2,96,537/-
Loss of marriage prospectus	Rs. 1,00,00/-
Food, and attendant charges	Rs. 28,000/-
Future Medical exp., for artificial limb	Rs. 50,000/-
Total	**Rs. 9,74,537/-**

The Tribunal held liability on the insurance company with 6% interest per annum. Being aggrieved by the quantum of compensation, the claimant is before this Court.

10. The learned counsel for the appellant-claimant has contented that the Tribunal has committed error in granting global compensation of Rs.5,00,000/- towards the disability which is not correct. There is a huge amount of Rs.3,00,000/- spent on the medical expenses, there is loss of marriage prospectus and food, nourishment and future medical expenses are not considered properly. He further contended that the age of the claimant at the time of accident was 16 years and he could have attended the examination and he could have become a very good

student and would have a bright future. Due to the accident, he is dropped out from the school as he was amputated below the knee. Therefore, the income of the claimant should be considered as notional income and par with the other injured-claimants and therefore, it cannot be considered as a minor injury case. Taking into consideration of the evidence of PW-2 and PW-3 that 100% disability should be considered as loss of income by calculating Rs.8,750/- as notional income and also contended that when the disability is more than 50% or 70%, the Court is required to consider 40% of future prospects. Hence, prayed for enhancing the same.

11. *Per contra*, learned counsel for respondent No.2 supported the judgment and award passed by the Tribunal and contended that the Tribunal by considering the decision of the Hon'ble Supreme Court in the case of ***Master Mallikarjun vs. Divisional Manager, The National Insurance Company Ltd., and another*** reported in ***ILR 2013 KAR 4891***, has rightly granted global compensation

of Rs.5,00,000/- towards the permanent disability, apart from medical expenses, marriage prospects and attendant charges and future medical expenses and there is no need to interfere with the same. Hence, prayed to dismiss the appeal.

12. Having heard the arguments of learned counsel for the parties and perused the records, the points that arise for our consideration are:

i) Whether the Tribunal fixing the global compensation of Rs.5,00,000/- towards permanent disability is just and proper, which requires modification?

ii) Whether the claimant-appellant is entitled for enhanced compensation? If so, to what extent?

13. On perusal of the record, it is not in dispute the accident dated 30.03.2016 occurred due to the rash and negligent driving of the driver of respondent No.1. The respondents have also not led any evidence disputing the liability and for violation of terms and conditions of the

policy and there is no appeal in respect of issue No.1 which is answered in affirmative. Now the only consideration is computation of compensation by the Tribunal awarding only Rs.5,00,000/- towards permanent disability. We are of opinion that Tribunal committed error in fixing Rs.5,00,000/- as a global compensation towards disability. Since the evidence of PW-2 and PW-3 reveals that disability certificate shows 70% of disability to the whole body as below knee of the right leg has been amputated by a surgery. Almost Rs.3,00,000/- has been spent by the claimant towards the medical expenses.

14. In the case of ***Kajal vs. Jagadish Chand and others*** reported in ***(2020) 4 SCC 413*** in a similar situation where the claimant was the age was of 12 years, the Hon'ble Supreme Court considered the notional income of the injured-claimant as Rs.15,000/- per annum and awarded compensation. In the recent case of ***Miss Rushi @ Ruchi Thapa through her father, Sri. Dhan Bahadur Thapa vs. M/s. Oriental Insurance Company Ltd., and***

another reported in ***(2024) SAR (Civ) 1265***, the Hon'ble Supreme Court has considered 75% of the disability towards whole body, where the High Court has reduced to 50% from the disability fixed by the Tribunal, as Hon'ble Apex Court enhanced to 75% by considering the notional income of the injured-claimant of 12 years of age. Therefore, the Tribunal considering the global compensation at Rs.5,00,000/- is not correct. The Court is required to consider the income of the claimant as notional income for the accident in the year 2016. Therefore, we propose to take Rs.8,750/- has notional income of the injured-claimant by relying upon the State Legal Services Authority Chart.

15. Admittedly, the claimant has suffered amputation below the knee and the photographs were also verified by us, which disclose that amputation was just below the knee where maximum leg has been amputated at the edge of the right knee of the claimant. Therefore, 40% is required to be considered as future prospects of

the claimant. As regard the disability is concerned, though the doctor has opined 70% to the whole body, Tribunal has considered only 40% disability and has not considered any loss of future income. The Hon'ble Apex Court in the case of ***Kajal*** (referred supra) has observed that though the disability to the whole body is 1/3rd or 70% for loss of disability, but loss of earning capacity is to be considered as 100%. However, looking to the fact of the case and relying upon the judgment of Hon'ble Apex Court in ***Miss Rushi's*** (referred supra) case we propose to consider 75% disability to the whole body instead 100%. If, Rs.8750/- is considered as income, by adding 40% towards future prospects, it comes to Rs.12,250/-. 75% the same would be Rs.9187.5/-. Hence, compensation under the head of permanent disability works out to Rs.19,84,500/- (Rs.9187.5 x 12 x 18).

16. With regard to the medical expenses, the Tribunal awarded Rs.2,96,537/- and the same is retained. The Tribunal under the head of loss of marriage prospects

has awarded Rs.1,00,000/-, whereas Hon'ble Apex Court in the above cited cases has awarded more than Rs.1,00,000/-. Therefore, looking into the facts of the case, we proposed enhance it to Rs.1,50,000/-. The loss of amenities the Tribunal has not awarded any amount. Hence, we propose to award a sum of Rs.1,50,000/- loss of amenities. The Tribunal has also not properly calculated the compensation towards pain and suffering. Hon'ble Apex Court has awarded a sum of Rs.3,00,000/- towards pain and suffering in similar cases. Therefore, this Court awards Rs.1,50,000/- towards of pain and sufferings. As regards the future medical expenses, the Tribunal has awarded Rs.50,000/- and the same is retained. Towards food and attendant charges, the Tribunal has awarded Rs.28,000/- and we propose to enhance the same to Rs.50,000/-. Accordingly, the compensation re-assessed is as under:

Heads of compensation	**Compensation amount**
Towards permanent disability	Rs. 19,84,500/-

Medical expenses	Rs. 2,96,537/-
Loss of marriage prospectus	Rs. 1,50,000/-
Loss of amenities	Rs.1,50,000/-
Pain and suffering	Rs.1,50,000/-
Food, and attendant charges	Rs. 50,000/-
Future Medical exp., for artificial limb	Rs. 50,000/-
Total	**Rs. 28,31,037/-**
Rounded off to	**Rs.28,31,000/-**

17. Accordingly, following order:

ORDER

i. The appeal is ***allowed in part***, and the compensation is entitled to Rs.28,31,000/- as against Rs.9,74,537/- along with 6% interest per annum, from the date of petition, till realization of entire compensation.

ii. 50% of the enhanced compensation shall be kept in deposit in any nationalized bank in the name of claimant for a period of 10 years. However, the claimant would be entitled to draw periodical interest.

iii. Eight weeks' time is granted for the insurance company to deposit the balance compensation amount, failing which 9% p.a. interest would be charges on the belated period.

iv. Registry is directed to return all the records to the concerned Tribunal.

Sd/-
(K NATARAJAN)
JUDGE

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

MCR,NJ
List No.: 1 Sl No.: 27
CT: PS