IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 8TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE C.M. JOSHI

MISCL. FIRST APPEAL NO.201943/2022(MV-I)

BETWEEN:

JAGANNATH S/O. MUTTANNA,
AGE: 53 YEARS, OCC: COOK IN SW DEPARTMENT,
R/O. H.NO.19-4-406/1, NEAR DENTAL COLLEGE,
HUMNABAD ROAD,
BIDAR-585401.

...APPELLANT

(BY SRI BASAVARAJ R. MATH, ADVOCATE)

AND:

Digitally signed by LUCYGRACE
Location: HIGH COURT OF KARNATAKA

1. NAGARAJ S/O VISHWANATH HUGAR,
   AGE: MAJOR, OCC: BUSINESS,
   R/O. BACKCHOUDI,
   TQ. AND DIST. BIDAR-585401,
   (OWNER OF MOTORCYCLE BEARING
   REG. NO.KA.38/R-0814).

2. THE BRANCH MANAGER,
   NATIONAL INSURANCE CO. LTD.,
   BRANCH OFFICE,
   VEERBHADRESHWAR CHAMBERS,
   DOOR NO.8-10-135/1 AND 1A,

OPP. NEHARU STADIUM,
BIDAR-585401.

…RESPONDENTS

(BY SMT. PREETI PATIL MELKUNDI, ADV., FOR R2
R1-NOTICE DISPENSED WITH V/O. DTD. 07.02.2024)

THIS MFA IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO CALL FOR RECORDS AND MODIFY THE IMPUGNED JUDGMENT AND AWARD DATED 01.02.2022 PASSED BY THE II ADDL. SENIOR CIVIL JUDGE AND JMFC-BIDAR AND MOTOR ACCIDENT CLAIMS TRIBUNAL, AT BIDAR, IN MVC NO.252/2019.

THIS APPEAL, 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 learned counsel appearing for the appellant and the learned counsel appearing for respondent No.2.

2. This appeal is filed by the petitioner in MVC No.252/2019 being aggrieved by the judgment and award dated 01.02.2022 passed by the II Additional Senior Civil Judge and MACT, Bidar, (for short 'Tribunal'), seeking enhancement of compensation.

3. The factual matrix of the case is as below:

a) While the appellant/petitioner was riding his motorcycle on 03.07.2018 from Kannadambe Chowk towards Naubad at Bidar, near Nehru Stadium another motorcycle bearing No.KA-38/R-0814 came from opposite direction in rash and negligent manner and caused the accident by colliding with the vehicle of the petitioner. As a result, petitioner sustained injuries and immediately he was shifted to the hospital, where he had undergone surgeries by admitting in to the hospital as inpatient from 04.07.2018 to 08.07.2018. Hence, petitioner claims compensation on account of the injuries sustained by him as against the owner and insurer of the offending motorcycle.

b) On issuance of notice, the owner of the offending vehicle remained ex-parte, but, the Insurance Company contested the matter by contending that the compensation claimed is highly exorbitant, un-imaginary and untenable and that the

negligence was on the part of the petitioner himself, therefore, the Insurance Company is not liable to pay the compensation.

c) The Tribunal on the basis of the contentions of both the parties, framed appropriate issues. Petitioner was examined as PW1 and the Medical Officer, who assessed the disability, was examined as PW2. Exs.P1 to P45 were marked in evidence. Respondent No.2 examined its Officer as RW1 and Exs.R1 and R2 were marked. After hearing both sides and after appreciating evidence on record, the Tribunal has awarded the compensation under different heads as below:

1	Loss of future income	₹1,32,000-00
2	Pain and suffering	₹30,000-00
3	Medical Expenses	₹1,00,786-00
4	Loss of income during laid-up period	₹20,000-00
5	Food and nourishment, conveyance & attendant charges	₹10,000-00
6	Loss of future amenity	₹30,000-00
	TOTAL	₹3,22,768/-

4. Being aggrieved by the said judgment, the petitioner is before this Court in this appeal.

5. On the appeal being admitted, the Trial Court Records have been secured, the notice to respondent No.1 dispensed with and respondent No.2 has appeared through its counsel.

6. Learned counsel appearing for the appellant would submit that at the time of accident the petitioner was aged about 51 years, working as a Cook and he suffered the fracture of bilateral parietal bone, fracture of left temporal, fracture of left mastoid bone, fracture of left clavicle and fracture of right tibial condyle. The said injuries have resulted in disability to the extent of 32% as opined by the PW2 and therefore it is contended that the functional disability assessed by the Tribunal at 10% is abysmally low and not proper. He further contends that the compensation awarded under the other heads is also on the lower side, hence, seeks enhancement of the compensation.

7. *Per contra,* learned counsel appearing for respondent No.2 would submit that the disability assessed by the PW2 being 32%, the 1/3 of the same has been taken by the Tribunal *i.e.,* 10% and no fault can be found in respect of the same. She further submit that the appellant though had contended that he was working as a Cook on salary of ₹30,000 per month, had not produced any document in support of the same. Therefore, she submits that the notional income considered by the Tribunal is proper and correct.

8. On perusal of the Trial Court Records it appears that the petitioner had sustained injuries to his head as well as fracture to the tibia of the right leg. In fact, PW2 assessed the disability in respect of the right lower limb and in his opinion it was to the extent of 32%. It is pertinent to note that the petitioner was working as a Cook in the hostel, where the nature of the work requires the manual lifting of the heavy utensils. This definitely requires a physical exertion and therefore the assessment of the functional disability by the Tribunal appears to be slightly on the lower

side. In the considered opinion, the disability of 12% would be proper and correct.

9. The guidelines issued by the Karnataka State Legal Services Authority in respect of settlement of the disputes before the Lok Adalat prescribe the notional income of ₹11,750/- for the year 2018. In umpteen number of decisions, this Court has held that the guidelines issued by KSLSA are held to be acceptable on the ground that they are in general conformity with the minimum wages fixed under the Minimum Wages Act. Therefore, the notional income of the petitioner is accepted as ₹11,750/- per month. Thus, the loss of future income is calculated as ₹11,750/- x 12 x 11 x 12% that equals to ₹1,86,120/- by adopting a multiplier of '11' for the appellant being aged 51 years.

10. Consequently, the loss of income during the laid up period is calculated as ₹11,750 x 3 months, that equals to ₹35,250/-.

11. The Tribunal has awarded a sum of ₹30,000/- towards pain and suffering and considering the number of fractures suffered by the appellant it would be just and proper to award a sum of ₹40,000 under this head.

12. The Tribunal has considered has the loss of amenities at ₹30,000/-, the same requires to be enhanced to ₹40,000/-. The compensation awarded under remaining heads does not require any interference. Hence, the appellant is entitled for total compensation of ₹4,42,130/- as against ₹3,22,768/- awarded by the Tribunal, as below:

Sl. No.	Head	Award by the Tribunal	Award by this Court
1	Loss of future income	₹1,32,000/-	₹1,86,120/-
2	Pain and suffering	₹30,000/-	₹40,000/-
3	Medical Expenses	₹1,00,786/-	₹1,00,786/-
4	Loss of income during laid-up period	₹20,000/-	₹35,250/-
5	Food and nourishment, conveyance & attendant charges	₹10,000/-	₹10,000/-

6	Loss of future amenity	₹30,000/-	₹40,000/-
	TOTAL	₹3,22,768/-	₹4,12,156/-
There will be enhancement of ₹89,370/-.			

13. It is pertinent to note that the Tribunal has fixed the contributory negligence on the part of the petitioner at 50%, the same do not require any interference by this Court. Therefore, the appellant is entitled for 50% of the total compensation amount as determined above.

14. For the aforesaid reasons, the appeal deserved to be allowed in part. Hence, the following:

ORDER

(i) The appeal is allowed in part.

(ii) The appellant is entitled for a sum of ₹4,12,156/- instead of ₹3,22,768/-.

(iii) The rest of the terms and conditions regarding contributory negligence on the part of the petitioner-

appellant, deposit, disbursement and etc., ordered by the Tribunal remain unaltered.

(iv) The 2nd respondent – Insurance Company is directed to deposit 50% of the total compensation amount along with interest at the rate of 6% per annum from the date of petition till date of deposit.

(v) The enhanced compensation amount is ordered to be released in favour of the appellant.

Sd/-
(C.M. JOSHI)
JUDGE

SBS
List No.: 1 Sl No.: 73
CT: AK