IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 17TH DAY OF MARCH, 2025

BEFORE

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

MISCL. FIRST APPEAL NO.202539/2024(MV-I)

BETWEEN:

BHARATI W/O. HANAMANT CHALAWADI,
AGE: 32 YEARS, OCC: AGRICULTURE &
COOLIE, (NOW NIL),
R/O. SUTAGUNDI,
TQ. BABALESHWAR,
DIST. VIJAYAPURA.

...APPELLANT

(BY SRI SANGANAGOUDA V. BIRADAR, ADVOCATE)

AND:

Digitally signed by SHIVALEELA DATTATRAYA UDAGI
Location: HIGH COURT OF KARNATAKA

1. NINGAPPA S/O MOHAN GANI,
   AGE: 42 YEARS, OCC: BUSINESS,
   R/O KOLHAR OLD, TQ. B. BAGEWADI,
   DIST. VIJAYAPURA-586 203.

2. THE MANAGER/LEGAL CLAIMS,
   RELIANCE GENERAL INS. CO. LTD.,
   2ND FLOOR, V.A. KALABURAGI SQUARE,
   DESHPANDE NAGAR, DESAI CROSS,
   HUBLI-29.

...RESPONDENTS

(BY SMT. PREETI PATIL MELKUNDI, ADVOCATE, FOR R2;
R1 - V/O. DTD. 16.01.2025 NOTICE DISPENSED WITH)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO ENHANCE THE COMPENSATION AMOUNT PAYABLE TO THE APPELLANT BY SUITABLY MODIFYING THE JUDGMENT AND AWARD DATED 26.03.2024 PASSED BY THE MEMBER, III ADDL. SENIOR CIVIL JUDGE AND MEMBER MACT-XII, VIJAYAPURA IN MVC NO.47/2022.

THIS APPEAL COMING ON FOR ORDERS, 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)

1. For the reasons stated in the accompanying affidavit, I.A.No.1/2024 is allowed. The delay of 16 days in filing the appeal is condoned.

2. Though the matter is slated for admission, with the consent of both the parties, matter is taken up for final disposal.

3. Heard learned counsel appearing for the appellant – petitioner and learned counsel appearing for the respondent-Insurance Company.

4. This appeal is by the petitioner-claimant against the judgment and award dated 26.03.2024 passed in MVC No.47/2022 by the III Additional Senior Civil Judge and MACT-XII, Vijayapura, seeking enhancement of the compensation amount.

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

a) On 30.04.2021 when the petitioner was traveling as a pillion rider on the motorcycle bearing No.KA-63/H-7089 towards Sutagundi from Uppaldinni, a lorry bearing No.KA-28/C-1176 owned by respondent No.1 and insured with respondent No.2, came in rash and negligent manner and dashed to the said motorcycle, resulting in the petitioner suffering the injuries. She was shifted to BLDEA Hospital, Vijayapura, and then shifted to Vijaya Ortho and Trauma Center Belagavi for higher treatment. The petitioner has to suffer amputation of her left lower limb above knee. The jurisdictional Police had registered a case and charge-sheet was filed against the driver of the lorry. Thus, the petitioner filed a claim petition before the Tribunal seeking adequate

compensation, contending that she was aged 30 years, doing agriculture work and contributing Rs.15,000/- per month to the family.

b) Respondent Nos.1 and 2 appeared before the Tribunal and only respondent No.2 – Insurance Company contested the petition, contending that there was delay of 1 day in filing the complaint and the compensation claimed is highly exorbitant imaginary and untenable in law. It was also alleged that the Driver of the lorry was not having valid driving license and as such, the terms and conditions of the policy were violated.

c) The Tribunal framed appropriate issues and the petitioner was examined as PW1, the Doctor was examined as PW2 and Exs.P1 to P19 were marked in evidence. An official of respondent No.2 was examined as RW1 and the three witnesses were examined on their behalf as RWs.2 to 4 and Exs.R1 to R5 were marked. After hearing both sides, the Tribunal rejected the contention of respondent No.2 that there were violation of the terms and conditions of the policy and that there were suspicious circumstances in respect of

the accident, arising out of the delay in filing the FIR. The Tribunal allowed the claim petition in part and awarded compensation of Rs.15,41,000/- under different heads as below:

Sl. No.	Head of Compensation	Amount in Rs.
I.	PECUNIARY DAMAGES (Special Damages)	
1.	Expenses relating to:	
	a) To treatment, hospitalization, medicines.	4,05,000-00
	b) nourishing food and miscellaneous expenditure	10,000-00
2.	Loss of earnings which the injured would have made had she not been injured, comprising:	
	a) Loss of earnings during period of treatment	47,750-00
	b) Loss of future earnings on account of permanent disability.	09,58,000-00
II.	NON-PECUNIARY DAMAGES (General Damages)	
3.	Damages for pain, suffering and trauma as a consequence of the injuries	1,00,000-00
4.	Loss of amenities (and/or loss of prospects of marriage)	20,000-00
5.	Loss of expectation of life (shortening of normal longevity)	-
	Total	Rs.15,40,750/- Rounded off to Rs.15,41,000/-

6. Being aggrieved by the said judgment, the claimant has filed this appeal.

7. Learned counsel appearing for the appellant contends that the Tribunal erred in assessing the functional disability of the petitioner at 35% even though the PW2-Doctor had stated 80%. He also contended that even the Medical Board of District Hospital, Vijayapura, assessed the disability at 80% as per Ex.P18. Therefore, he contends that the conclusion of the Tribunal in reducing the disability to 35% is not sustainable. He further submits that future prospects have not been added to the income of the petitioner and therefore, compensation needs to be reassessed.

8. *Per contra*, learned counsel appearing for respondent No.2 would submit that the assessment of the compensation by the Tribunal is proper and correct. It is contended that there is no need for enhancement of the compensation and therefore, the appeal is bereft of any merits.

9. Having heard the learned counsel for both the sides and on perusal of the material available on record, the fact that the involvement of motorcycle over which the petitioner was pillion rider and lorry owned by respondent No.1 insured by respondent No.2 dashing to the motorcycle is not in dispute. That the delay in filing the complaint by one day was held to be explained properly and therefore the liability on the Insurance Company is also not in dispute.

10. It is pertinent to note that the petitioner is a married lady, aged about 32 years, working as an agricultural coolie, looking after her family. The functional disability on account of amputation of left lower limb above knee definitely impairs her functionality.

11. It is pertinent to note that it is the functional disability, which has to be assessed by the Tribunal, but not mechanically calculating the functional disability based on the physical disability stated by the Medical Officer. Considering the age, occupation of the petitioner, it is evident that she would suffer considerably for the entire rest

of her life and therefore, it is not only the working of the petitioner as coolie, which would be impaired, but also her assistance to the family as a homemaker would also gets affected. This aspect should have been properly appreciated by the Tribunal. In the considered opinion of this Court, the functional disability of the petitioner has to be held at 80%.

12. The income of the petitioner is assessed by the Tribunal at Rs.14,250/-, which is proper and correct and does not require any reconsideration.

13. In the light of the above, the loss of future income on account of the disability is calculated as **Rs.30,64,320/-** [(Rs.14,250/- + Rs.5,700/-) x 12 x 80% x 16] by adopting a multiplier of '16' and adding 40% towards future prospects.

14. The Tribunal has awarded a sum of Rs.47,750/- towards loss of earning during the period of treatment. Obviously it is for a period of 3 months, which needs to be calculated for a period of 6 months. Therefore, a sum of

Rs.14,250/- x 6 = **Rs.85,500/-** has to be awarded to the petitioner.

15. So far as the non pecuniary damages are concerned, the Tribunal has awarded a sum of Rs.1,00,000/- towards the pain and suffering, which do not require any enhancement.

16. However, the Tribunal has awarded a sum of Rs.20,000/- towards loss of amenities in life. Considering the fact that the petitioner has to bear with the amputation for the rest of her life, the compensation under the head of loss of amenities has to be enhanced to **Rs.75,000/-**.

17. The Tribunal has overlooked to see that lady aged about 32 years has lost her left lower limb and definitely she can adopt herself to the new way of life using prosthesis. Though PW.2 has not stated anything about the cost of the prosthesis, this Court holds that the petitioner is entitled for a sum **Rs.75,000/-** under the head of future medical expenses, which would not carry any interest.

18. The Tribunal has awarded a sum of Rs.10,000/- under the head conveyance, food, nourishment, attendant charges, etc., considering the fact that petitioner was inpatient for a period of 32 days, a sum of **Rs.35,000/-** is awarded to her under this head.

19. Rest of the compensation awarded towards remaining heads do not require any enhancement.

20. Thus, the petitioner is entitled for revised compensation on the following heads:

Sl. No	**Heads**	**Amount awarded by the Tribunal (Rs.)**	**Amount awarded by this Court (Rs.)**
1.	To treatment hospitalization, medicines.	4,05,000/-	4,05,000/-
2.	Conveyance, food, misc. expenditure.	10,000/-	35,000/-
3.	Loss of earning during laid up period	47,750/-	85,500/-
4.	Loss of future earnings on account of permanent disability.	9,58,000/-	30,64,320/-
5.	Pain and suffering	1,00,000/-	1,00,000/-
6.	Loss of amenities.	20,000/-	75,000/-
7.	Future Medical Expenses	----	75,000/-
Total		**15,40,750/-**	**38,39,820/-**
Enhancement		**22,99,070/-**	

21. In the result, the appeal deserves to be allowed in-part and hence, the following:

ORDER

(i) The appeal is allowed in part.

(ii) The appellant/petitioner is entitled for a sum of **Rs.22,99,070/-** in addition to the compensation awarded by the Tribunal, along with interest at 6% p.a. (excluding Rs.75,000/- awarded towards future Medical Expenses) from the date of petition till its deposit.

(iii) The respondent No.2-Insurance company is directed to deposit the compensation amount within a period of six weeks from the date of this order.

(iv) Rest of the order of the Tribunal stands unaltered.

Sd/-
(C M JOSHI)
JUDGE

SBS/SDU
LIST NO.: 1 SL NO.: 28
CT:AK