IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 9TH DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

MISCL. FIRST APPEAL NO.201458/2019 (MV-I)

BETWEEN:

NAGESH S/O HANMANTH,
AGE: 42 YEARS, OCC: COOK IN BGR DHABA
AT MANNAEKHELLI, TQ. HUMNABAD,
DIST. BIDAR-585 227.

...APPELLANT

(BY SRI BASAVARAJ R. MATH, ADVOCATE)

AND:

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

1. SANGEETA J. W/O JAYAVEL,
   AGE: 42 YEARS, OCC: BUSINESS,
   R/O. NO.84, NAVAPPALIKADU MOTHIYANUR,
   POST: SANKARI,
   TAMILNADU-537 301,
   (OWNER OF LORRY BEARING REG.
   NO.TN-52/H-7612)

2. M/S. ROYAL SUNDARAM GENERAL INSURANCE
   COMPANY LTD.,
   VISHRANTI MELRAM TOWERS,
   NO.2/319, RAJIV GANDHI SALAI (OMR),
   KARAPAKKAM,
   CHENNAI-600 097,

SERVICE BRANCH AT NO.186/5,
ROYAL TOWERS, 3RD FLOOR,
NEW BUS STAND ROAD,
MEYYAPUR
SALEM-636 004.

…RESPONDENTS

(BY SRI S.S. ASPALLI, ADV., FOR R2;
R1-V/O DTD. 23.11.2022 NOTICE DISPENSED WITH)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO MODIFY THE IMPUGNED JUDGMENT AND AWARD DATED 05.04.2019 PASSED BY THE ADDL. SENIOR CIVIL JUDGE AND MACT, BIDAR, IN MVC NO.263/2017.

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)

Being aggrieved by the judgment and award dated 05.04.2019 passed in MVC No.263/2017 by the Additional Senior Civil Judge and MACT, Bidar, (for short 'the Tribunal'), the petitioner is in appeal seeking enhancement of compensation.

2. It is the case of the petitioner that on 18.09.2016 the petitioner was going on his TVX XL motorcycle bearing registration No.KA-39/L-9940 on NH-9 within the limits of Markunda Village, a lorry bearing No.TN-52/H-7612 owned by respondent No.1 and insured by respondent No.2 came from his hind side and dashed to the motorcycle of the petitioner, resulting in, he falling down and sustaining injuries. The petitioner was shifted to the Government Hospital, Mannaekhelli and based on the MLC report the Bemalkheda Police visited the hospital and after recording the statement of the son of the petitioner, registered a case and ultimately filed charge-sheet against the lorry driver. The petitioner contended that due to the injuries suffered, his right hand has became dysfunctional, totally, it is as good as an amputation itself. The petitioner contended that he was working as a Cook in BGR Dhaba in Mannaekhelli and earning Rs.15,000/- per month and he was aged 40 years at the time of accident, therefore, he sought just and reasonable compensation from the owner of the insurer of the lorry.

3. On being issued with the notice, respondent No.2 – Insurance Company appeared and filed its written statement. Respondent No.1 did not appear despite service of notice and as such, placed ex-parte.

4. Respondent No.2– Insurance Company contended that the petitioner was not having a valid driving license to drive the two wheeler and the accident was due to the negligence of the petitioner. It was contended that the compensation claimed is highly excessive and imaginary and it denied age, income and occupation of the petitioner. *Inter alia* it alleged that respondent No.1 had violated the terms and conditions of the policy and as such, the petition be dismissed as against it.

5. Based on the contentions of both the parties, the Tribunal framed appropriate issues and the petitioner was examined as PW1. Exs.P1 to P13 were marked in the evidence. The Medical Officer, who examined the petitioner and assessed the disability, was examined as PW2 though

Court Commissioner. No evidence was adduced on behalf of the respondents.

6. After hearing both the sides, the Tribunal came to the conclusion that the petitioner had sustained disability of 20% and assessed compensation of Rs.3,77,600/- under different heads as below:

1	Medical Expenses	Rs.1,10,000/-
2	Loss of earning during the period of treatment	Rs.6,000/-
3	Loss of Future earning on account of permanent disability	Rs.2,01,600/-
4	Future Medical Expenses	Rs.20,000/-
5	Pain and Suffering	Rs.20,000/-
6	Loss of Amenities	Rs.20,000/-
	TOTAL	Rs.3,77,600/-

7. Aggrieved by the said judgment, petitioner is before this Court.

8. The arguments by the learned counsel appearing for the appellant and the learned counsel appearing for respondent No.2 were heard and perused the material available on record.

9. The petitioner is present before the Court today and it is noticed that the right arm of the petitioner is in a string and on removal of the string it is seen that the muscles of the right arm have degraded and it is hanging. Petitioner says he cannot lift the arm.

10. Learned counsel appearing for the petitioner would submit that the petitioner had suffered nerve injury to his right hand along with abrasion over the temporal region and right elbow and there was a fracture of right 3rd collar bones, right wrist bones and bleeding near left ear. The above injuries have resulted disability to the petitioner and PW2 having assessed the same at 60% to the limb, the Tribunal assessed the functional disability at 20%, which is incorrect. He submits that the functional disability of the petitioner is almost to the extent of 90% since the petitioner could not work as a cook in the Dhaba. Therefore, it is submitted that the entire earning capacity has been taken away by the injuries suffered by him and as such the compensation be reassessed. He also submitted that the

compensation under the other heads are also on the lower side.

11. Per contra, learned counsel appearing for the respondent No.2 would submit that though there is a disability to the petitioner, it cannot be more than 40%. He submit that the petitioner can work as a watchman or any such activity and therefore, the disability cannot be more than 40%. He defends the impugned judgment in respect of the compensation awarded under the remaining heads.

12. The fact that the petitioner sustained the injuries in the road traffic accident involving the lorry owned by respondent No.1 and insured by respondent No.2 is not in dispute. So also the liability to pay the compensation by the respondent No.2 is also not in dispute. What is required to be determined is only the compensation amount that is to be awarded to the petitioner.

13. A careful perusal of the records would disclose that as per the wound certificate at Ex.P7, there was a head injury on the right temporal region with bleeding from left

ear. He also had fracture of right collarbone, fracture of right wrist bones. The discharge summary at Ex.P9 would disclose that there was a fracture of the right shoulder third part with Bartons, right with brachial plexus injury. It was also found that there were abrasions over the head and right elbow. It was found that the brachial plexus injury needs a Neurologist's opinion. He was inpatient at Shree Hospital from 18.09.2016 to 24.09.2016. The testimony of the PW2 coupled with the disability certificate issued by him at Ex.P10 would show that there is a right shoulder malunited fracture and dislocation with soft tissue swelling. It was observed that there is no movement in the right arm due to the nerve injury and that alone accounted for 25% disability. It was also observed that there is total loss of strength in the right upper limb and the said limb cannot be used for weight lifting etc. and there is total loss of sensation. It was opined by the PW2 that petitioner cannot perform his daily activities and he cannot work as a cook. Therefore, he comes to the conclusion that there is permanent partial disability of about 60% of that limb.

14. The opinion of the PW2 that there is 60% disability cannot be brushed aside. The petitioner was present in the Court when the matter was heard. This Court also observed that there is total disability as mentioned in Ex.P10. The question that needs to be answered is what is the functional disability of the petitioner. It is pertinent to note that when there is a total dis-functional, hanging right arm, the disability of that limb is 100%. It cannot be used for any purpose by the petitioner. The petitioner states that he is aged 40 years but the records reveal that he is aged 42 years and he was working as a cook. There is nothing else which would show that he working as a cook. Accepting that he was working a cook in an Dhaba, which may be found in the complaint at Ex.P2 also, the functional disability has to be assessed with reference to his age. At the age of 42 years, it would be difficult for any person to change his avocation and adopt a new one. The argument that the petitioner is capable of doing any other work can be accepted provided he was of the younger age. But at the age of 42 years, such change over to any other avocation would be

difficult. Therefore, in the considered opinion of this Court, the functional disability of the petitioner has to be taken almost on par with an amputation of the limb. Therefore, the functional disability is considered at 70%.

15. So far as the income of the petitioner is concerned, there being no acceptable evidence, the Tribunal has adopted to notional income. But while assessing the notional income, no yardstick is followed by the Tribunal. The guidelines issued by the KSLSA for settlement of disputes before Lok-Adalath prescribe a notional income of Rs.10,250/- per month for the year 2016. 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.10,938/-.

16. The disability of the petitioner being the 70%, the loss of future prospects are also to be added. The future prospects for the age group of 42 years is 25%. Therefore,

the effective multiplicand would be Rs.8,750/- + Rs.2,188/- = Rs.10,938. Therefore, the loss of future income is calculated as Rs.10,938/- x 12 x 14 x 70% = **Rs.12,86,308/-.**

17. Consequently, the loss of income during the laid-up period has to be considered for a period of six months. Hence, Rs.8,750/- x 6 = **Rs.52,500/-** has to be awarded to the petitioner.

18. Tribunal has awarded a sum of Rs.20,000/- towards pain and suffering. The same needs to be enhanced to **Rs.40,000/-**.

19. The Tribunal has awarded a sum of Rs.20,000/- towards loss of amenities in life. Since the petitioner is to suffer his rest of the life with the above said disability, it would be just and proper to award a sum of **Rs.60,000/-** under the head of loss of amenities in life.

20. The compensation awarded by the Tribunal under the head of medical expenses and future medical expenses

do not need any indulgence. Hence, the petitioner is entitled for a total compensation of Rs.15,68,808/- under following heads:

Sl. No.	Heads	Award by the Tribunal	Award by this Court
1	Medical Expenses	Rs.1,10,000/-	Rs.1,10,000/-
2	Loss of earning during the period of treatment	Rs.6,000/-	Rs.52,500/-
3	Loss of Future earning on account of permanent disability	Rs.2,01,600/-	12,86,308/-
4	Future Medical Expenses	Rs.20,000/-	Rs.20,000/-
5	Pain and Suffering	Rs.20,000/-	Rs.40,000/-
6	Loss of Amenities	Rs.20,000/-	Rs.60,000/-
	Total	Rs.3,77,600/-	Rs.15,68,808/-
	Less: Award by the Tribunal		Rs.3,77,600/-
	Total enhancement		**Rs.11,91,208/-**

21. Thus, the appellant is entitled for enhanced compensation of Rs.11,91,208/- with interest.

22. Therefore, the appeal deserves to be allowed in part. Hence, the following;

O R D E R

I. The appeal is allowed in part.

II. The appellant is entitled for a sum of **Rs.11,91,208/-** in addition to what has been awarded by the Tribunal

along with interest at the rate of 6% p.a. from date of petition till the date of deposit.

III. Rest of the order passed by the Tribunal regarding deposit etc., remain unaltered.

Office is directed to send back the Trial Court records forthwith.

Sd/-
(C.M. JOSHI)
JUDGE

SBS,SMP
List No.: 1 Sl No.: 58
CT: AK