NC: 2025:KHC-K:3499
MFA No. 202881 of 2022

HC-KAR

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 30TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

MISCL. FIRST APPEAL NO. 202881 OF 2022 (MV-I)

BETWEEN:

TUKKAPPA S/O KALLAPPA,
AGE: 35 YEARS,
OCC: LABOUR WORK, NOW NIL,
R/O: VILLAGE HONNADI,
TQ. AND DIST: BIDAR – 585 401.

...APPELLANT

(BY SMT VIJAYALAXMI P. NAIKODI, ADVOCATE FOR
SRI BASAVARAJ R.MATH, ADVOCATE)

AND:

1. MOHAMMED KHADEER
S/O MOHAMMED ANWAR,
AGED :MAJOR, OCC: BUSINESS,
R/O: H.NO. E/11/3855/377/3977,
JEELANABAD, GULBARAG,
(OWNER OF MOTORCYCLE
BEARING NO. KA32/S-3536)

2. SANJEEV KUMAR
S/O BANDEPPA BAWGE
AGE: MAJOR, OCC: BUSINESS,
R/O: KAMTHANA,
TQ. AND DIST BIDAR – 585 401,
(OWNER OF HERO HONDA MOTORCYCLE
BEARING NO. KA -38/J-2652)

3. REVANAPPA
S/O CHANDRASHEKAR HILALPURE,
AGE: MAJOR, OCC: BUSINESS,

Digitally signed by NIJAMUDDIN JAMKHANDI
Location: HIGH COURT OF KARNATAKA

R/O: VILLAGE, BAWGI,
TQ. AND DIST BIDAR – 585 401.
(PRESENT OWNER)

4. THE DIVISIONAL MANAGER,
UNITED INDIA INSURANCE COMPANY LTD.,
GULBARGA, THROUGH ITS BRANCH MANAGER,
BIDAR AT MAIN ROAD, BIDAR – 585 401,
(POLICE NO.246/31/10/02/00004074)

…RESPONDENTS

(BY SMT. PREETI PATIL MELKUNDI, ADVOCATE FOR R4;
NOTICE TO R1 TO R3 ARE DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173(1) OF M.V., ACT, PRAYING TO ENHANCEMENT AWARD AMOUNT BY MODIFYING THE IMPUGNED JUDGMENT AND AWARD DATED 12.04.2022 PASSED BY THE ADDITIONAL SENIOR CIVIL JUDGE AND MACT AT BIDAR IN M.V.C.NO.185/2020, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS MFA, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL JUDGMENT

Challenging judgment and award dated 12.04.2022 passed by Addl. Senior Civil Judge and MACT, Bidar (for short, 'Tribunal') in MVC no.185/2020, this appeal is filed.

2. Smt.Vijayalaxmi P Naikodi, learned counsel appearing for Sri Basavaraj R Math, learned counsel, submits, appeal was by claimant for enhancement of compensation. It was submitted, on 16.11.2010 at about 17:45 hours, when claimant was riding pillion on motorcycle No.KA-38/J-2652 from

Bidar to Kamathana village, near Manna-E-Khelli road, rider of another motorcycle no.KA-32/S-3536, rode it in rash and negligent manner and dashed against claimant's motorcycle causing accident. In said accident, claimant sustained grievous injuries and was admitted to Government Hospital, Bidar. Despite treatment, he sustained permanent physical disability and loss of earning capacity. Hence, he filed claim petition under Section 166 of MV Act against insurer and owner of other motorcycle.

3. On contest, wherein owners remained ex-parte and insurer of motorcycle no.KA-32/S-3536 opposed petition, not only denying age, occupation, income, permanent physical disability of claimant, but also alleged violation of policy conditions, tribunal framed issues and recorded evidence. Claimant examined himself and Dr.Nitin Loharkar as PWs.1 and 2 and got marked Exs.P-1 to 17. Respondents did not lead any evidence.

4. On consideration, tribunal held accident occurred due to rash and negligent riding by riders of both motorcycles.

Tribunal apportioned negligence equally against both riders and assessed compensation as under:

Sl.No.	Heads	Amount
1	Pain and suffering	Rs.20,000/-
2	Medical, attendant and incidental charges	Rs.6,000/-
3	Loss of basic amenities	Rs.8,000/-
4	Laid up period charges	Rs.8,000/-
5	Medical bills	Rs.13,142/-
6	Loss of earnings	Rs.69,120/-
	Total	1,24,262**/-**

5. It held that insurer liable to pay 50% of award amount. Dissatisfied with award, claimant was in appeal.

6. It is submitted, claimant was working as coolie and earning Rs.15,000/- p.m. However, tribunal assessed his income notionally at Rs.4,000/- p.m., which was on lower side. It was further submitted, though claimant sustained compound fracture to right tibia and fibula, assessed by PW-2 to have caused permanent physical disability to extent of 40% to limb. But, tribunal assessed it at only 8%. It was submitted, even compensation awarded towards, pain and suffering, loss of income during laid up period, attendant and other incidental

charges, as well as loss of amenities were grossly on lower side and sought enhancement.

7. On other hand, Smt.Preeti Patil Melkundi, learned counsel for insurer opposed appeal. It was submitted that accident occurred in year 2010. Taking note of facts and circumstances of case, just compensation was awarded under separate heads and same did not call for any interference.

8. Heard counsel and perused impugned judgment and award.

9. From above and since only claimant is in appeal for enhancement of compensation, while owner/insurer has accepted award, point that would arise for consideration is :

> "Whether claimant is entitled for enhancement of compensation as sought for?"

10. Same is answered partly in affirmative for following reasons.

11. Though, in claim petition claimant had stated that he was working as coolie and earning Rs.15,000/- p.m., same was not substantiated with specific evidence. In absence, it was

assessed notionally with notional income for year 2010 being Rs.5,500/-, tribunal was not justified in taking it at Rs.4,000/-. It is appropriate to assess notional income of claimant at Rs.5,500/-. Claimant sustained compound fracture of right tibia and fibula, which was a major fracture and award of Rs.20,000/- towards pain and suffering would be inadequate and therefore, is enhanced to Rs.30,000/-. Claimant took treatment as inpatient for a period of 15 days at different hospitals. Award of Rs.6,000/- towards attendant and other incidental charges would be inadequate, same is enhanced to Rs.15,000/-.

12. Normally, fractures take three months to heal and same has to be considered as period of layoff. Claimant would thus be entitled for Rs.16,500/- towards same. Since, claimant sustained fractures and disability, award of Rs.8,000/- towards loss of amenities would be grossly inadequate. It is appropriate to enhance it to Rs.25,000/-. PW-2 has examined claimant and assessed limb disability at 40%. While, passing impugned award, tribunal noted that separate assessment based on effect on disability of stability component, mobility component etc., i.e restriction of movements of limb and its effect on earning

capacity was not given. It observed, restriction of knee joint movement would not result in disability as assessed by PW-2. It therefore, considered functional disability at 8%. Considering facts and circumstances, assessment of tribunal appears adequate and does not call for interference. Thus, compensation towards future loss of income would be Rs.95,040/- (Rs.5,500 x 12 x 8% x 18). Tribunal has awarded Rs.13,142/- against medical bills produced, which was in complete reimbursement, same does not call for interference. Re-determined compensation is as follows:

Sl.No.	Heads	Amount
1	Pain and suffering	Rs.30,000/-
2	Medical, attendant and incidental charges	Rs.15,000/-
3	Loss of basic amenities	Rs.25,000/-
4	Laid up period charges	Rs.16,500/-
5	Medical bills	Rs.13,142/-
6	Loss of earnings	Rs.95,040/-
	Total	1,94,682**/-**

13. Consequently, following:

ORDER

i. Appeal is partly allowed.

ii. Judgment and award dated 12.04.2022 passed by Addl. Senior Civil Judge and MACT, Bidar in MVC no.185/2020 is modified. Claimant is held entitled for re-assessed compensation of Rs.1,94,682/- as against Rs.1,24,262/- awarded by Tribunal.

iii. Insurer is directed to deposit compensation within a period of six weeks to extent of its liability.

iv. On deposit, same is ordered to be released to claimant.

Sd/-
(RAVI V HOSMANI)
JUDGE

NJ
List No.: 1 Sl No.: 49