IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 11TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

MISCL. FIRST APPEAL NO.200633 OF 2023 (MV-I)

BETWEEN:

MALLIKARJUN @ MALLINATH
S/O SHANKAR,
AGE: 48 YEARS,
OCC: ATTENDER IN JIMS HOSPITAL,
NOW NIL
R/O: DHUMANSUR, VTC CHUMANSUR,
PO: DHUMANSUR, HUMNABAD,
DIST: BIDAR.
NOW AT ASHOK NAGAR,
KALABURAGI – 585 103.

...APPELLANT

(BY SRI MAHANTAPPA S.MANDEWALI, ADVOCATE)

AND:

1. DR. SHIVAPUTRA M.POTHALKAR
S/O LATE MARGAPPA POTHALKAR,
AGE: 59 YEARS,
OCC: DRIVER CUM OWNER OF VEHICLE
BEARING NO.KA32/P-0198,
R/O: PLOT NO.34, RING ROAD,
NEAR GDA OVERHEAD TANK, R.J. NAGAR
KALABURGI – 585 102.

2. THE MANAGER,
NEW INDIA ASSURANCE COMPANY LTD.,
C/O: SHIVARAJ PATIL BUILDING,
SANGAMESHWAR COLONY,
S.B. TEMPLE ROAD,
KALABURAGI – 585 102.

...RESPONDENTS

(BY SRI MANVENDRA REDDY, ADVOCATE FOR R2;
SERVICE OF NOTICE TO R1 IS DISPENSED WITH)

Digitally signed by RAMESH MATHAPATI
Location: HIGH COURT OF KARNATAKA

THIS MISCELLANEOUS FIST APPEAL IS FILED UNDER SECTION 173 (1) OF THE MOTOR VEHICLES ACT, PAYING TO ALLOW THE APPEAL, AND MODIFY THE IMPUGNED JUDGMENT AND AWARD DATED 21.07.2022 PASSED BY THE COURT OF I ADDITIONAL SENIOR CIVIL JUDGE AND M.A.C.T., KALABURAGI, IN M.V.C.NO.1165/2020 AND ENHANCE THE COMPENSATION AS PRAYED FOR, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS MISCELLANEOUS FIST APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL JUDGMENT

Challenging judgment and award dated 21.07.2022 passed by I Addl. Senior Civil Judge and MACT, Kalaburagi (for short, 'Tribunal') in MVC No.1165/2020, this appeal is filed.

2. Sri Mahantappa S.Mandewali, learned counsel submitted that appeal was filed by claimant for enhancement of compensation. It was submitted an accident occurred on 19.07.2020, when claimant was proceeding on motorcycle bearing registration no.KA-33/E-6399 near District Court cross, Kalaburagi, driver of Maruti Baleno car bearing registration no.KA-32/P-0198 drove it in a rash and negligent manner and dashed against motorcycle causing accident. In accident, claimant sustained grievous injuries and was shifted to Sunrise

Hospital, Kalaburagi for treatment. Despite taking treatment, he did not recover fully and sustained disability/loss of earning capacity. Therefore, he filed claim petition under Section 166 of M.V.Act.

3. On service of notices, owner and insurer of offending vehicle appeared and opposed claim petition. Based on pleadings, Tribunal framed issues and recorded evidence. Claimant examined himself as PW.1 and Dr.Ravi E.Shivaraya, as PW.2. Exs.P1 to P15 were got marked. Respondents did not lead any evidence.

4. On consideration, Tribunal answered issue no.1 in affirmative, issue no.2 partly in affirmative and issue no.3 by allowing claim petition in part and awarding compensation as follows:

Sl.No.	Heads	Amount
1	Pain & suffering	₹10,000/-
2	Attendant charges, food and conveyance	₹5,000/-
3	Loss of future income	₹1,50,150/-
4	Medical expenditure	₹66,000/-
5	Loss of income during treatment	₹10,000/-
6	Loss of amenities and nutrition food	₹10,000/-
	Total	**₹2,51,150/-**

5. It was submitted that though claimant sustained fracture and also amputation, Tribunal erred in granting only ₹10,000/- towards pain and suffering, same required enhancement. It was submitted that due to fracture, claimant would have been away from employment. However, award of ₹10,000/- only towards loss of income during laid up period was inadequate and sought enhancement. It was submitted even when there was amputation of 4th and 5th toes of his leg, Tribunal awarded only ₹10,000/- towards loss of amenities which was grossly inadequate. It was submitted PW.2 assessed disability to extent of 21% to whole body. However, Tribunal considered only 7% as loss of earning capacity which was grossly inadequate and sought for enhancement. On above grounds sought for allowing appeal.

6. On other hand, Sri Manvendra Reddy, learned counsel for respondent no.2 opposed appeal. It was submitted Tribunal had considered entire material in proper perspective and passed just award and there was no scope for enhancement.

7. Heard learned counsel and perused impugned judgment and award.

8. From above, since claimant is in appeal for enhancement of compensation, while insurer has accepted award, only point that would arise for consideration is "Whether claimant is entitled for enhancement of compensation as sought for?" Same is answered partly in affirmative for following reasons.

9. Occurrence of accident involving insured vehicle resulting in claimant sustaining grievous injuries/disability and loss of earning capacity are not in dispute. Liability of insurer to pay compensation is also not in dispute. Claimant is seeking for enhancement. While, passing impugned award, Tribunal took note of fact that claimant had sustained fracture of 4^{th} and 5^{th} metatarsal bone and amputation of 4^{th} and 5^{th} toes of distal middle parts. When claimant had sustained fracture as well as amputation, award of ₹10,000/- towards pain and suffering would be grossly in-adequate, it would be appropriate to enhance it to ₹40,000/-.

10. Claimant was inpatient for a period of four days, award of ₹5,000/- towards attendant, food and other incidental expenses would be reasonable. Therefore, not calling interference. Tribunal awarded ₹66,000/- towards complete reimbursement of medical expenses. Leaving no scope for enhancement. Normally, fractures take about three months to heal. As claimant not only sustained fracture but, also amputation. It would be reasonable to consider three months as lay-off period. Taking monthly income at ₹13,750/-, claimant would be entitled for ₹41,250/- towards loss of income during laid-up period.

11. PW.2 assessed disability of 21% to whole body. He has issued Ex.P.8 – disability certificate. In his cross-examination, it is elicited that he had not treated claimant, but stated about restriction of movement and its effect on earning capacity. He has also referred to x-ray report at Ex.P9. Tribunal moderated disability/earning capacity only on ground that PW.2 had not treated claimant. Even a Doctor who may not have treated claimant, would be competent to depose about disability, if he has subjected claimant to clinical examination. In instant case, there is sufficient material to hold PW.2

examined claimant. However, taking note of fact that claimant was working on contract basis in a mortuary of hospital at GIMS, Kalaburagi and not permanent employment, it would be appropriate to consider loss of earning capacity at 12%. Thus, compensation towards loss of future income would have to be reworked as follows :-

₹13,750 x 12 x 13 x 12% = ₹2,57,400/-.

12. Admittedly, claimant sustained fracture and amputation of 4th and 5th toes of distal middle parts due to which claimant stated that he is unable to work as earlier. Taking note of age of claimant as 46 years and noting disability, award of ₹10,000/- towards loss of amenities would be grossly inadequate, it would be appropriate to enhance it to ₹40,000/-. Thus, claimant would be entitled for total reassessed compensation as follows:

Sl.No.	Heads	Amount
1	Pain and suffering	₹40,000/-
2	Attendant charges, food and conveyance charges	₹5,000/-
3	Loss of future income	₹2,57,400/-
4	Medical expenditure	₹66,000/-
5	Loss of income during treatment	₹41,250/-
6	Loss of amenities and nutrition food	₹40,000/-
	Total	**₹4,49,650/-**

13. Point for consideration is answered partly in affirmative as above. Consequently, following:

ORDER

i. Appeal is allowed in part.

ii. Claimant is held entitled for re-assessed compensation of ₹4,49,650/- as against ₹2,51,150/- awarded by Tribunal.

iii. Needless to say that claimant is entitled for interest on said amount at rate of 6% per annum from date of claim petition till realization.

iv. Respondent no.2-insurer is liable to pay same with interest at rate of 6% p.a. from date of claim petition.

Sd/-
(RAVI V HOSMANI)
JUDGE

MSR/SN
List No.: 1 Sl No.: 10
Ct: Vk