



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 16TH DAY OF JANUARY, 2025

BEFORE

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

MISCL. FIRST APPEAL NO.202493/2018(MV-I)

BETWEEN:

SANJEEV KUMAR @ SANJU
S/O NARSAPPA DHUMMUNSUR,
AGE: 39 YEARS, OCC: DRIVER, NOW NIL,
R/O. VILLAGE MARKUNDA,
TQ. & DIST. BIDAR-585 402.

...APPELLANT

(BY SRI BASAVARAJ R. MATH, ADVOCATE)

AND:

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signed by
LUCYGRACE
Date:
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1. P. PALANIAPPAN S/O RAMASWAMY,
AGE: MAJOR, OCC: BUSINESS,
R/O C/O SANDEEP MOTOR PVT. LTD.,
GANGAPUR ROAD, BHILWARA,
DIST. BHILWARA,
RAJASTHAN STATE-311 001.
2. THE MANAGER,
S.B.I. GENERAL INSURANCE COMPANY LTD.,
104, 2ND FLOOR, EXCELLENCE BUILDING,



RACE COURSE ROAD,
COIMBATOR-641 818.

3. LAKHBIR KAUR W/O KULWANTH SINGH,
AGE: MAJOR, OCC: BUSINESS,
R/O H.NO. 23/2818, T.P.T. NAGAR,
LUDHIANA,
PUNJAB STATE,
NOW AT PLOT NO.39840, BLOCK 36-A,
AUTO NAGAR, VANASTALIPURAM,
HYDERABAD,
RANGAREDDY DIST-500 076,
TELENGANA STATE.
4. THE MANAGER,
BHARATI AXA GENERAL INSURANCE
COMPANY LTD., FIRST FLOOR,
THE FEMS ICON SURVEY NO.28,
NEXT TO AKME BALLECT DODDANEKUNDI,
OFF OUTER RING ROAD,
BANGALORE-37.

...RESPONDENTS

(BY SRI SUBHASH MALLAPUR, ADV., FOR R2;
SRI MANJUNATH MALLAYYA SHETTY, ADV., FOR R4;
R1 & R3 - V/O DTD. 11.01.2022 NOTICE DISPENSED WITH)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO CALL FOR THE RECORDS AND MODIFY THE IMPUGNED JUDGMENT AND AWARD DATED 19.07.2018 PASSED BY THE ADDL. M.A.C.T. AND PRL. SENIOR CIVIL JUDGE AND CJM, BIDAR, IN M.V.C. NO. 522/2014 BY ENHANCING THE COMPENSATION.

THIS APPEAL, COMING ON FOR ADMISSION, 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. Heard learned counsel appearing for the appellant and the learned counsels appearing for respondent Nos.2 and 4 Insurance Companies.

2. This appeal arises out of judgment and award dated 19.07.2018 passed in M.V.C. No.522/2014 on the file of the Court of the Principal Senior Civil Judge and C.J.M., Bidar, (for short 'Tribunal'). Being aggrieved by the said judgment and award, the petitioner is before this Court.

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

a) Petitioner was working as a Driver on lorry No.PB-10/BT-0766 under respondent No.3. On 14-10-2012, at about 7.00 p.m., when he was on duty proceeding from Hyderabad to Jambasar in Gujarat, near Ralesegaon Sivar in Beed District, a lorry bearing No.RJ-06/GA-0280 came from the opposite side in a high speed and negligent manner and by coming on the wrong side, it dashed against the lorry of



the petitioner. The petitioner sustained injuries to both the legs, crush injury to left humerus, left leg and the right lower limb and the right lower limb was amputated on the spot itself. He was shifted to Government Hospital, Beed, where he took treatment till 15.10.2012 and thereafter he took treatment in various other hospitals totally for a period of 113 days as inpatient. He had spent huge amount for treatment. A case was also registered in crime No.128/2012 of Neknoor Police Station and ultimately it was found that the drivers of both the lorries were negligent in driving the vehicle. The petitioner was a driver earning monthly salary of Rs.12,000/- with a daily bata of 200/- and by virtue of amputation of his right leg, he has suffered a permanent disability and therefore, he prayed for an adequate compensation from the owner and the insurer of the offending lorry.

4. The respondent No.1 is owner of the offending lorry and respondent No.3 is the lorry owner driven by the petitioner and they remained ex-parte before the Tribunal. The respondent Nos.2 and 4, who are the insurers of both



the vehicles appeared and filed the written statement. They denied the petition averments regarding the age, occupation and income and also the manner of occurrence of the accident and contended that the disability contended by the petitioner is highly exorbitant, imaginary and untenable in law. It was contended that there was head-on collision between the two lorries, therefore, the contributory negligence by the petitioner may also be considered by the Tribunal. The respondent No.4 filed additional written statement and contended that the accident occurred due to the negligence of the petitioner, as the charge-sheet was filed against both the drivers. On the basis of such contentions, the Tribunal framed following issues:

- "1. *Whether the claimant proves that the accident occurred on 14.10.2012 at about 07.00 p.m., when his lorry bearing Reg. No.PB-10/BT-0766 near Chousala Manjra Shuba at NH-211, Releseegaon Sivar Dist, Gujrath another lorry bearing Reg. No.RJ-06/GA-0280 driven it in high speed rash and negligent manner and lost control and dashed the lorry of claimant due to which he sustained grievous injuries?*



2. *Whether the respondent No.4 proves that due to the contributory negligence of both drivers the accident occurred?*
3. *Whether the respondent No.2 & 4 proves that the respondent No.1 and 3 have violated the conditions of insurance policy?*
4. *Whether respondent No.2 proves that petition u/s 166 of MV Act is not maintainable?*
5. *Whether the claimant proves that he is entitled for the compensation? To what extent and from whom?*
6. *What Order or Award?"*

5. The petitioner was examined as PW1 and two witnesses were examined on his behalf as PWs.2 and 3. Exs.P1 to P107 were marked. The respondent No.2 examined RW1 and Exs.R1 and R2 were marked. The respondent No.4 examined RW2 and Exs.R3 and R4 were marked. After hearing both the parties, the Tribunal came to conclusion that the drivers of both the lorries had contributed equally and held that the income of the petitioner at Rs.10,000/- per month and the disability being at 80%, awarded a compensation under different heads as below:



1	Towards loss of future income	Rs.14,40,000/-
2	Towards pain and suffering	Rs.75,000/-
3	Towards loss of income for 10 months	Rs.1,20,000/-
4	Towards medical bills	Rs.83,034/-
5	Towards conveyance charges	Rs.10,000/-
6	Towards food & extra nourishment	Rs.15,000/-
7	Towards attendant's charges	Rs.18,000/-
8	Towards disfigurement	Rs.50,000/-
9	Towards the cost of Jaipur artificial limb	Rs.1,00,000/-
	Total	Rs.19,11,034/-

6. Due to the fixing of 50% negligence on the part of appellant-petitioner, the award amount is Rs.9,55,517/-.

7. Being aggrieved by the said judgment, the petitioner approached this Court in appeal.

8. As before, only the insurers of both the lorries have appeared before this Court also. The arguments by learned counsel appearing for the petitioner and the learned counsel appearing for respondent Nos.2 and 4 are heard.

9. The learned counsel appearing for the petitioner mainly contended that, (i) the compensation awarded by the Tribunal is on the lower side and the petitioner being a driver



of a heavy goods vehicle, has suffered a disability of 100%.
(ii) The Tribunal erred in holding that there was contributory negligence on the part of the petitioner. (iii) The Tribunal failed to note that the petitioner being a driver of a heavy goods vehicle, had the earning capacity and his income at Rs.10,000/- per month without considering future prospects was not just and proper.

10. Elaborating on the above contention, the learned counsel appearing for the petitioner contended that the amputation of the right leg of the petitioner below knee has resulted in 100% disability and the Tribunal failed to consider the same. At the age of 35 years, the petitioner cannot find a new avocation to carry on his life and therefore, the conclusions reached by the Tribunal about the disability are incorrect. He further contended that the contributory negligence has not been properly assessed by the Tribunal. He contends that the testimony of the PW1 as well as the PW2, unequivocally shows that the negligence was on the part of the offending vehicle and it erroneously believed the Police Papers to hold that there was contributory negligence



in equal proportion by the petitioner. The Police Papers clearly show that the investigation was done after the vehicles were removed from the spot to avoid the traffic jam, hence, the spot manager could not have been believed by the Tribunal. Therefore, he submits that the contributory negligence could not have been attributed to the petitioner in any way. Regarding his third contention, he submits that the income of the petitioner at 12,000/- per month was just and proper as he being a driver of heavy goods vehicle, the Tribunal erred in reducing the income from Rs.12,000/- to Rs.10,000/-.

11. *Per contra*, learned counsel appearing for respondent No.2 would submit that the petitioner being aged 35 years, has suffered the disability at 70% as per Doctor's evidence, the Tribunal though should have taken the same at 70%, but enhanced the same to 80%. Hence, he submits that no fault can be found in the conclusion of the Tribunal in this regard. It is submitted that the petitioner can very well eke out his livelihood by resorting to other petty business



etc., and therefore, the assessment of the disability is proper and correct.

12. Regarding the contributory negligence, it is submitted by the counsel for respondent No.2 that the Police Papers being out come of investigation by a Statutory Authority, cannot be brushed aside. It is submitted that when the name of the PW2 is not shown in the charge-sheet as an eyewitness and as a Cleaner of the lorry of the petitioner, his testimony cannot be accepted as an eyewitness. It is submitted that there were other eyewitnesses available and the petitioner has not examined any of them, therefore, the very fact that PW2 was also an eyewitness is not corroborated by any other evidence and as such, his evidence is unbelievable. Therefore, he squarely relies on the Police Papers to contend that there was equal contributory negligence by both the drivers. He submits that the Spot Mahajar clearly depicts that the accident happened at the center of the road and therefore, there is no necessity of indulgence by this Court. Lastly, he submitted that the income of the petitioner has not been proved by examining



respondent No.3. It is submitted that respondent No.3 should have come before the Court to say about the salary paid by him to the petitioner. Therefore, in the absence of any acceptable evidence, the Tribunal has rightly considered the income of the petitioner at Rs.10,000/- per month.

13. The learned counsel appearing for respondent No.4, who appears for the Insurer of the vehicle of the petitioner has supported the version of the learned counsel for respondent No.2.

14. A perusal of the complaint shows that the FIR was registered on the basis of complaint filed by Neknoor Police Station. Obviously, he was not an eyewitness and therefore, the averments in the complaint are not of much value. However, the Spot Mahajar, which is produced at Exs.P3 and the translated version at Ex.P3(a) would shows that the petitioner in his lorry was going towards Beed from Solapur and the offending vehicle owned by respondent No.1 and insured by respondent No.2 was going towards Solapur. This document shows that the accident had occurred at the center



of the road. However, it is pertinent to note that the offending vehicle bearing No.RJ-06/GA-0280 is a ten wheeled vehicle. The vehicle driven by the petitioner is a goods lorry. In other words, it is clear that the offending vehicle owned by respondent No.1 was a special carriage and it was heavier than the vehicle of the petitioner. The Police Papers also show that the accident being at the center of the road, the Spot Mahajar was prepared after removing the vehicles from the spot. To that extent, the Spot Mahajar has a *lacuna*. The charge-sheet produced at Ex.P12 [translated copy at Exs.P12(a)] would show that the drivers of both vehicles were charge-sheeted for negligent driving. Evidently, the drivers of both vehicles were stuck under the steering wheels and the cleaners of both vehicles had not suffered much injury. The above circumstances show that the vehicles collided head on at the center of the road, and as such, negligence was attributed to both the vehicles.

15. The petitioner, who examined as PW1 and the eyewitness Sunil, who examined as PW2 say that the offending vehicle was coming from opposite direction and



while overtaking another vehicle, it collided against the vehicle of the petitioner. This say of PWs.1 and 2 though not denied specifically in the cross-examination by the learned counsel appearing for respondent No.2, it is evident that the testimony of PW2 is not supported by any Police Papers that he was also an injured. No documents were also available to show that he was the Cleaner at the time of the accident. To that extent, the testimony of the PW1 is acceptable.

16. From the above, prospectus of the things, it is evident that there was contributory negligence by the petitioner also.

17. The next aspect would be to what extent the contributory negligence is. Considering the fact that the vehicle of the petitioner was lighter than that of the offending vehicle, the driver of the heavier vehicle would have to bear higher responsibility and as such, his negligence would be higher. In the investigation made by the Police, they only found that both the drivers had contributed, but the extent of negligence has to be



ascertained by the Tribunal. It is pertinent to note that the perusal of the judgment would show that the Tribunal had not bestowed its attention on the nature of the vehicles. Therefore, considering the nature of the vehicles involved, the vehicle owned by respondent No.1 and insured by respondent No.2, being a heavier one, the negligence of its driver would be on the higher side. In the considered opinion of this Court, it would be just and appropriate to hold that the contributory negligence on part of the petitioner was 30% and that of the offending vehicle was 70%.

18. Coming to the disability, the petitioner though contented that he was a professional driver of a heavy goods vehicle, he did not get mark his driving license. The records of the Tribunal would show that a copy of the driving license of the petitioner, which was issued by the Neknoor Police Station, is available. As per this document, the date of birth of the petitioner is 01.06.1977 and he was authorized to drive heavy passenger vehicle and the badge number is also mentioned in the same. Therefore, there cannot be any doubt in the say of the petitioner that he was a professional



driver on a heavy goods vehicle. Thus, the amputation of the right leg of the petitioner as evidenced from the medical records at Exs.P11 to P14 and P102 would establish that there was amputation of the right leg. Even the photograph of the petitioner produced at Ex.P103 would show the same. Thus, it is evident that by losing the right leg, the petitioner cannot drive a heavy goods vehicle. He has been disabled from being a professional driver. Evidently, at the age of 35 years, he had to shift his avocation to something else, which would definitely an impossible task.

19. It is worth to note, in a recent judgment, in the case of **JAYANANDAN Versus VARKEY & ORS.**, in **SLP(C) No.22423/2024**, decided on **17.12.2024**, the Apex Court has held that loss of one eye of a Diamond Cutter would result in a 100% disability. Therefore, taking clue from the said judgment, amputation of the right leg of the petitioner has definitely resulted in 100% disability. The functional disability of the petitioner was not rightly decided by the Tribunal. In that view of the matter, the disability is considered at 100%.



20. *Insofar* as the income of the petitioner is concerned, the Tribunal in the absence of any other material on record, accepted that he was a professional driver and held his income to be Rs.10,000/- per month. Therefore, no fault can be found in respect of the assessment of the income of the petitioner.

21. The Tribunal having concluded about the disability, the income and the contributory negligence, the loss of future income is to be calculated. Evidently, when the disability is to the extent of 100%, future prospects also need to be considered. Hence, by adding 40% to the income *i.e.*, 10,000/-, the effective multiplicand would come to 14,000/-. It is worth to note that the Tribunal has taken the multiplier at '15'. But as noted *supra*, the driving license of the petitioner, which remained unmarked, shows his date of birth as 01.06.1977. The same age is also mentioned in the medical records also. Therefore, he was aged 35 years at the time of accident. Thus, the appropriate multiplier would be 16. Accordingly, the loss of future income is recalculated as Rs.14,000/- x 12 x 16 that equals Rs.26,88,000/-.



22. The compensation awarded by the Tribunal under the remaining heads does not require any reconsideration. It is evident that the Tribunal had considered the loss of income during laid-up period for a period of 12 months. The Medical Bills were also considered as per the actuals. Conveyance charges were considered at Rs.10,000/- and towards disfigurement a sum of Rs.50,000/- was awarded by the Tribunal. Towards the cost of artificial limb, the Tribunal has awarded a sum of Rs.1,00,000/-. Thus, the appellant is entitled for the compensation is below:

1	Towards loss of future income	Rs.26,88,000/-
2	Towards pain and suffering	Rs.75,000/-
3	Towards loss of income for 10 months	Rs.1,20,000/-
4	Towards medical bills	Rs.83,034/-
5	Towards conveyance charges	Rs.10,000/-
6	Towards food & extra nourishment	Rs.15,000/-
7	Towards attendant's charges	Rs.18,000/-
8	Towards disfigurement	Rs.50,000/-
9	Towards the cost of artificial limb	Rs.1,00,000/-
	Total	Rs.31,59,034/-

23. Out of the above compensation amount determined by this Court, the contributory negligence of



30% of the petitioner has to be deducted. Therefore, after deducting 30% of compensation amount, it would come to Rs.22,11,324/-. Hence, the petitioner is entitled for a compensation of Rs.22,11,324/- as against Rs.9,55,517/-, awarded by the Tribunal.

24. In the result, the petition deserved to be allowed in part. Hence, the following:

ORDER

- i) The petition is allowed in part.
- ii) The impugned judgment and award passed by the Tribunal is hereby modified. The appellant is entitled for a sum of Rs.12,55,807/- in addition to what has been awarded by the Tribunal.
- iii) The respondent No.2 shall deposit the same within 08 [eight] weeks, along with the interest at the rate of 6% per annum, from the date of petition till its deposit.



- iv) The rest of the orders passed by the Tribunal regarding the fixed deposit, etc., remain unaltered.

Sd/-
(C.M. JOSHI)
JUDGE

SBS
List No.: 1 SI No.: 50
CT: AK