NC: 2025:KHC-K:438
MFA No. 204354 of 2023

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 23RD DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

MISCL. FIRST APPEAL NO.204354 OF 2023 (MV-I)

BETWEEN:

DEEPAK S/O CHANNAPPA SAJJAN,
AGE: 22 YEARS,
OCC: MILK VENDING BUSINESS & STUDENT,
R/O TAVARAGERA VILLAGE,
TQ. KUSHTAGI, DIST. KOPPAL,
NOW RESIDING AT VIDYANAGAR,
RAICHUR-584 101.

...APPELLANT

(BY SRI. BASAVARAJ R. MATH, ADVOCATE)

AND:

1. MALLIKARJUN GUDADOOR
   S/O SHARANAPPA,
   AGE: MAJOR,
   OCC: DRIVER OF TRACTOR,
   R/O TAVARAGERA TOWN,
   TQ. KUSHTAGI,
   DIST. KOPPAL-583 279.

2. MEDIKERI SRINIVAS GOUDA
   S/O NARAYAN GOUDA,
   AGE: 66 YEARS,
   OCC: OWNER OF TRACTOR BEARING
   NO. KA-37/TB-6364,
   R/O KANAKAGIRI ROAD,
   TAVARAGERA, TQ. KUSHTAGI,
   DIST. KOPPAL-583 279.

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3. MANAGER, RELIANCE GENERAL INSURANCE COMPANY LIMITED, VIVEKANAND CORNER, DESAI CROSS, DESHPANDE NAGAR, HUBLI, DIST. DHARWAD-580 029.

…RESPONDENTS

(BY SMT. PREETI PATIL MELKUNDI, ADV. FOR R3;
V/O DTD. 04.01.2024, NOTICE TO R1 & R2 DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO ENHANCE THE AWARD AMOUNT AND MODIFY THE IMPUGNED JUDGEMENT AND AWARD DATED 01.03.2023 PASSED BY THE PRL. DISTRICT AND SESSIONS JUDGE AND MACT AT RAICHUR IN MVC NO.284/2020.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 17.01.2025 AND COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT', THIS DAY, THE COURT DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE C M JOSHI

CAV JUDGMENT

This appeal is directed against the judgment and award in MVC No.284/2020 passed by the learned Principal District and Sessions Judge and MACT, Raichur (hereinafter referred to as '*the Tribunal*' for short) dated 01.03.2023.

2. By the impugned judgment and award, the Tribunal has allowed the claim petition in part and awarded a sum of Rs.8,95,000/- as compensation and directed the Insurance Company to deposit the same with liberty to recover it from the owner-respondent No.2. Aggrieved by the said judgment and award, the petitioner is before this Court, seeking enhancement contending that the quantum of compensation awarded by the Tribunal is on the lower side.

3. The factual matrix relevant for this appeal is as below:

On 26.04.2020 at about 5.15 p.m., the petitioner was standing along with his Bajaj Discovery motorcycle bearing No.KA-37/V-3840 by the side of the road near the electrical shop of one Ramesh Daroji. At that time, the offending tractor bearing No.KA-37/TB-6364 attached with a ploughing equipment came in negligent manner and dashed against the petitioner, resulting in the petitioner sustaining injuries. The petitioner was shifted to Government Hospital, Tavaragera and thereafter to K.S. Hospital, Koppal. The petitioner contend that he has suffered permanent disability and his future prospects as a sportsman have come to an end and he was also involved

in milk vending business and as such, he is entitled for a just and reasonable compensation.

4. On being issued with the notice, respondent No.2 did not appear, despite service of notice and as such placed exparte; the petition against respondent No.1-driver of the tractor was not pressed; respondent No.3-Insurance Company appeared and resisted the petition, denying the accident on the ground that there is delay of four days in filing the complaint and also that there is collusion between the police and the petitioner. It also denied the age, income and occupation of the petitioner and termed the compensation claimed as highly exorbitant. *Interalia,* it also contended that the driver of the tractor was not having a valid driving licence and there were violations of the terms and conditions of the policy.

5. On the basis of the above contentions, the Tribunal framed appropriate issues and the petitioner was examined as PW.1 and the Doctor, who assessed his disability was examined as PW.2. Exs.P1 to P11 were marked in evidence. The official of respondent No.3 was examined as RW.1 and Exs.R1 to R5 were marked.

6. After hearing the arguments by both the sides, the Tribunal awarded the compensation of Rs.8,95,000/- to the petitioner and directed the respondent No.3 to deposit the compensation amount under different heads as below:

1.	Mental shock and agony	Rs. 25,000/-
2.	Pain and suffering	Rs. 50,000/-
3.	Medical attendant's, conveyance and nourishment expenses	Rs. 25,000/-
4.	Loss of income during laid-up period	Rs. 41,250/-
5.	Loss of future income	Rs.5,94,000/-
6.	Medical expenses	Rs.1,50,000/-
7.	Transportation expenses	Rs. 10,000/-
	Total	Rs.8,95,250/-

While coming to such conclusion, the Tribunal held that the petitioner has sustained a disability of 20% and his notional income was Rs.13,750/- per month and he being aged 19 years, the appropriate multiplier of 18 was considered.

7. Being aggrieved by the said judgment and award, the petitioner is before this Court in appeal.

8. Heard the learned counsel appearing for the appellant and learned counsel appearing for respondent No.3. Notice to respondent Nos.1 and 2 was dispensed with.

9. Learned counsel appearing for the appellant/petitioner submits that the appellant was a sportsman, had won meddles at various athletic meets and the injuries in the accident have shut his future in the field of the sports. It is contended that even his livelihood as a milk vendor has also been curtailed due to the injuries and disability suffered by him. On that count, he seeks reassessment of the compensation by this Court.

10. Per contra, learned counsel appearing for respondent No.3-Insurance Company while defending the impugned judgment and award passed by the Tribunal, contend that the Tribunal has sufficiently and properly assessed the disability in the light of the evidence available on record. She submits that the sportsmanship of the appellant was sufficiently considered by the Tribunal and there is no need for enhancement of the compensation.

11. A perusal of the evidence on record would show that the police had filed the charge sheet against the driver of the tractor for negligent driving and this aspect is not in dispute. The charge sheet at Ex.P2 discloses that the driver of

the tractor was not having a valid driving licence and as such, an offence under Section 181 of the Motor Vehicles Act was also invoked. However, the Tribunal, by relying on the judgment of a Division Bench of this Court in the case of ***Ayisa and others vs. Manager, New India Assurance Co. Ltd. and another*** reported in ***2021 ACJ 2165***, fastened the liability to pay the compensation upon the Insurance Company with liberty to recover the same from the owner of the vehicle.

12. The wound certificate at Ex.P5, the discharge summary at Exs.P7 and P8 would show that the appellant had sustained fracture of type III open talus and cuboid with exterior tendon tear and was an inpatient from 26.04.2020 to 06.05.2020 and 14.06.2020 to 16.06.2020, during which period he underwent wound debridement, tendon repair and external fixation and thereafter, removal of the external fixator. The PW.2, who assessed the disability of the appellant found that there was crush injury of the right foot with tendon damage and there is a non-union of right talus fracture with non-union of cuboid fracture. On that ground, there is restriction of the movements and clawing of the right foot

resulting in depletion of the grasp. He opined that there is disability to the extent of 35% to the whole body.

13. A perusal of Ex.P10, which include 8 certificates show that, from the year 2017 till 2020, the appellant while studying in school and college had participated in various sports events and had won meddles at Taluka level sports meets.

14. A cumulative consideration of above facts and circumstances of the case would disclose that the appellant had a good future, if he had pursued sports activity. It is submitted by the learned counsel for the appellant that the appellant would have secured admission in the professional colleges under the sports quota and the accidental injury has resulted in deprival of such opportunity.

15. It is worth to note that an accidental injury definitely has resulted in an opportunity of pursuing the career as a sports person is closed forever. It cannot be overlooked that the appellant had certain talent at Taluka level, but, that would not be sufficient enough to seek a seat under sports quota. Therefore, though the argument of the learned counsel for the appellant cannot be accepted fully, it needs a

consideration, as the aspirations of a young adult has been shut.

16. Coming to the quantum of compensation, the Tribunal has awarded sufficient compensation under the heads of pain and suffering, loss of income during the laid-up period, medical attendant's, conveyance and nourishment expenses and medical expenses. Hence, no enhancement is required under these heads.

17. So far as the compensation under the head of loss of future income is concerned, the Tribunal has considered the disability at 20% and has awarded the compensation. As per PW.2, the disability is 35% of the whole body. Curiously PW.2 has not stated any disability to the limb. Obviously, PW.2 could not have decided the whole body disability, but he should have assessed disability of the limb. It is the Tribunal, which has to decide the functional disability. Therefore, considering the nature of the injuries suffered and the difficulties of the appellant noted in the disability certificate at Ex.P9, this Court is of the view that the functional disability of the appellant should have been taken at 23%.

18. Therefore, the loss of future income, by taking the notional income at Rs.13,750/- as per the guidelines issued by the KSLSA for the purpose of settlement of disputes before the Lok Adalath, which has been held to be in a general conformity with the wages fixed under Minimum Wages Act by umpteen number of judgments of this Court, is calculated as: Rs.13,750 x 12 x 18 x 23% = Rs.6,83,100/- by adopting the multiplier of 18.

19. The Tribunal has awarded a sum of Rs.10,000/- under the head of transportation expenses, which appears to be on the lower side and the same is enhanced to Rs.20,000/-.

20. As noted above, the career of the appellant as a sports person has come to an end. The Court notices the imponderables that would have come in the life of the appellant in his pursuit for a career as a sportsman. Therefore, it would be just, proper and reasonable to award a sum of Rs.50,000/- under the head of loss of career prospects as a special category.

21. It is pertinent to note that the Tribunal has not awarded any compensation under the head of loss of amenities

in life, but it has awarded a sum of Rs.25,000/- under the head of mental shock and agony, in addition to the compensation under the head of pain and suffering. In fact, mental shock and agony and pain and suffering cannot be bifurcated. Therefore, the compensation under the head of mental shock and agony is impermissible. As such, a sum of Rs.40,000/- is awarded to the appellant under the head of loss of amenities in life.

22. Hence, the appellant is entitled for the modified compensation under different heads as below:

Pain and suffering	Rs. 50,000/-
Medical expenses	Rs. 1,50,000/-
Medical attendant's, conveyance and nourishment expenses	Rs. 25,000/-
Loss of income during laid-up period	Rs. 41,250/-
Loss of future income	Rs. 6,83,100/-
Loss of amenities in life	Rs. 40,000/-
Transportation expenses	Rs. 20,000/-
Loss of career prospects	Rs. 50,000/-
Total Less: awarded by Tribunal Enhancement	Rs.10,59,350/- Rs. 8,95,250/- **Rs. 1,64,100**/-

Thus, the appellant is entitled for enhanced compensation of Rs.1,64,100/- with interest.

23. The Tribunal has rightly considered the liability by relying on the judgment of this Court in the case of ***Ayisa and***

others *supra*. Hence, respondent No.3-Insurance Company shall pay the compensation to the appellant with liberty to recover the same from respondent No.2-owner. Therefore, the appeal deserves to be allowed in part. Hence, the following:

ORDER

(i) The appeal is allowed in part.

(ii) The impugned judgment and award passed by the Tribunal is modified by awarding a sum of **Rs.1,64,100**/- in addition to what has been awarded by the Tribunal together with interest at 6% p.a. from the date of petition till its realization.

(iii) Respondent No.3 - Insurance Company is directed to deposit the entire compensation amount within a period of six weeks from the date of this order, with liberty to recover the same from respondent No.2-owner.

(iv) Rest of the order passed by the Tribunal remains unaltered.

Sd/-
(C M JOSHI)
JUDGE

LG
List No.: 1 Sl No.: 50