IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 29TH DAY OF JANUARY, 2025

BEFORE

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

MISCL. FIRST APPEAL NO.201306/2021(MV-I)

BETWEEN:

JAVEED MIYAN S/O PASHAMIYAN,
AGE: 37 YEARS, OCC: PAINTER,
R/O MOMIN MOHALLA, TQ: BASAVAKALYAN,
DIST: BIDAR-585 401.

…APPELLANT

(BY SRI BABU H. METAGUDDA, ADVOCATE)

AND:

1. RAJKUMAR S/O REVANAPPA PATIL
   AGE: 31 YEARS, OCC: DRIVER-CUM-OWNER,
   R/O JIRGA (B), TQ: AURAD (B),
   DIST: BIDAR-585401.

2. THE MANAGING DIRECTOR,
   NATIONAL INSURANCE CO. LTD.,
   BRANCH OFFICE,
   AT VEERBHADRESHWAR CHAMBERS,
   OPP. NEHARU STADIUM
   BIDAR-585 401.

…RESPONDENTS

(BY SRI DEEPAK V. BARAD, ADV., FOR R2;
R1-V/O DTD. 21.01.2022 NOTICE DISPENSED WITH)

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THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO CALL FOR THE RECORDS, ALLOW THE APPEAL AND MODIFY THE JUDGMENT AND AWARD DATED 22.09.2020 PASSED IN MVC NO.245/2016 BY THE SENIOR CIVIL JUDGE AND ADDL. MACT, BHALKI AND ENHANCE THE COMPENSATION FROM RS.3,56,950/- WITH 9% INTEREST TO RS.11,00,000/- WITH 12% INTEREST.

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 counsel appearing for respondent No.2-Insurance Company.

2. Though the matter is slated for admission, by consent of both the counsels, the same is taken up for final disposal.

3. Being aggrieved by judgment and award dated 22.09.2020 passed in MVC No.245/2016 by the Senior Civil Judge and Addl. M.A.C.T. (for short 'Tribunal'), the petitioner is before this Court seeking enhancement of the compensation.

4. The petitioner, who suffered fracture of right femur in a road traffic accident on 22.08.2015, had approached the Tribunal seeking compensation from the owner and the insurer of the offending vehicle. Respondent Nos.1 and 2 being the owner and insurer of the offending vehicle, resisted the claim petition on several grounds. The Tribunal considering the oral and documentary evidence allowed the claim petition in part and awarded compensation of Rs.3,56,950/-, with interest at 9% per annum the date of filing the petition till its realization and held respondent No.2 – Insurance Company liable to pay the compensation to the petitioner, since there were no such violation of the terms and conditions of the policy and that the policy was in force covering the risk of the owner of the vehicle. Therefore, the

only question that arises for consideration in the present appeal is regarding the quantum of the compensation.

5. The appellant-petitioner contented that he was aged 32 years, working as a Painter and due to the accidental injuries, *i.e.,* fracture of the shaft of the right femur, he has been disabled. He further contended that even though the PW2-Doctor had assessed the disability at 42%, the Tribunal took the same at 14%, hence, the compensation awarded under the remaining heads is also on lower side. Therefore, he submits that the compensation has to be reassessed.

6. *Per contra,* learned counsel appearing for respondent No.2 submits that though the Tribunal has assessed the compensation by taking the notional income at Rs.10,000/- per month, which is little on higher side, the award in respect of the other heads are compensated adequately.

7. Here it is worth to note that the Tribunal has awarded the compensation under different heads as below:

1	Pain & Sufferings	Rs.20,000/-
2	Medical Expenses	Rs.53,132/-
3	Conveyance, Attendant charges & Nourishment	Rs.5,000/-
4	Amenities and unhappiness	Rs.10,000/-
5	Loss of future earning capacity on account of Permanent disability	Rs.2,68,800/-
	Total	Rs.3,56,932/-

8. The evidence on record would show that the Tribunal after assessing the disability stated by the PW2 has held the functional disability at 14%. In the light of age and occupation of the petitioner, the disability of 14% on account of a single fracture to the right humerous and it having been treated with nailing cannot be faulted. The income of the petitioner assessed by the Tribunal at Rs.10,000/- per month also cannot be faulted for the reason that it is slightly higher than the notional income *i.e.,* considered by the Karnataka State Legal Services Authorities for settlement of disputes before the Lok Adalat. Obviously, the petitioner has not produced any documentary evidence to prove the income.

9. The petitioner having suffered the fracture of the shaft of the femur, he being a Painter could not have

resumed his work at least for a period of three months, but the Tribunal has not awarded any compensation in respect of loss of income during the laid up period. Therefore, on this count the petitioner is entitled for a sum of Rs.30,000/-.

10. The compensation awarded by the Tribunal under the heads pain and suffering, loss of amenities are under lower side. Therefore, it would be just and proper to award a sum of Rs.25,000/- which would fill the gap of the shortage of the compensation under the head of pain and suffering and amenities in life.

11. Further, the PW2 had stated that there is requirement of a further surgery for removal of the implants, hence, the future medical expenses have not been awarded by the Tribunal. Therefore, the petitioner is also entitled for a sum of Rs.25,000/- under this head, which would not carry any interest. The compensation awarded under the remaining heads does not require any interference. Hence, the appeal succeeds in part and as such, the following:

O R D E R

i) The appeal is allowed in part.

ii) The petitioner is entitled for a sum of Rs.80,000/- in addition to what has been awarded by the Tribunal, along with interest at the rate of 6% per annum from the date of petition till its deposit before the Tribunal, excluding the interest in respect on the compensation awarded under future medical expenses to the tune of Rs.25,000/-.

iii) Rest of the order passed by the Tribunal remains unaltered.

Sd/-
(C.M. JOSHI)
JUDGE

SBS
List No.: 1 Sl No.: 59
CT: AK