**IN THE HIGH COURT OF KARNATAKA**

**KALABURAGI BENCH**

**DATED THIS THE 3RD DAY OF FEBRUARY, 2025**

**BEFORE**

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

**MISCL. FIRST APPEAL NO.201374/2021(MV-I)**

**BETWEEN:**

SUNIL S/O SHIVAPUTRA @ SIDDAPPA METRI,
AGE: 27 YEARS, OCC: HOTEL BUSINESS,
R/O NAGATHAN,
TALUK AND DISTRICT VIJAYAPURA.

...APPELLANT

(BY SRI SANGANAGOUDA V. BIRADAR, ADVOCATE)

**AND:**

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Location: HIGH COURT OF KARNATAKA

1. BANDAPPA S/O KALLAPPA KATTIMANI,
   AGE: 46 YEARS, OCC: BUSINESS,
   R/O CHIKKA-BEVANUR,
   TALUK INDI,
   DISTRICT VIJAYAPURA-586 101.

2. THE BRANCH MANAGER,
   UNITED INDIA INSURANCE COMPANY LIMITED,
   FIRST FLOOR, SANGAMA BUILDING,
   S.S. FRONT ROAD,
   VIJAYAPURA-586 101.

...RESPONDENTS

(BY SRI S.S. ASPALLI, ADV., FOR R2;
R1 - V/O. DTD. 19.01.2022, NOTICE DISPENSED WITH)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO ALLOW THIS APPEAL AND ENHANCE THE COMPENSATION AS CLAIMED IN THE CLAIM PETITION BY MODIFYING THE JUDGMENT AND AWARD DATED 21.03.2020 PASSED BY THE COURT OF IV ADDITIONAL DISTRICT AND SESSIONS JUDGE AND MEMBER, MACT-XIII, AT VIJAYAPURA, IN MVC NO.1565/2015.

THIS APPEAL COMING ON FOR FINAL HEARING, 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-petitioner and learned counsel appearing for respondent No.2-Insurance Company.

2. Being aggrieved by the judgment and award dated 21.03.2020 passed in MVC No.1565/2015 by the IV Additional District and Sessions Judge and Member, MACT-13, Vijayapura (for short 'the Tribunal'), the petitioner is before this Court in appeal seeking enhancement of the compensation.

3. The petitioner contended that on 23.10.2014 while he was walking on the left margin of the road at Indi, the driver of the vehicle bearing No.KA-28/A-3688 came from the side of Hirerugi Village and dashed to the petitioner, as a result petitioner sustained injuries. He rushed to Government Hospital for first aid and then took treatment at BLDEA Hospital, Vijayapura, for 11 days. In the said accident, the petitioner had sustained fracture of the clavicle and injury to the abdomen resulting in damage to the spleen and thereafter spleenectomy was done. Contending that he has suffered permanent disability, the petitioner approached the Tribunal for adequate compensation.

4. The petition was resisted by the Insurance Company contending that the compensation claimed is highly exorbitant, imaginary and that there were violations of terms and conditions of the policy. Respondent No.1-owner of the vehicle did not contest. The petitioner examined himself as PW1 and a Doctor, who assessed the disability as PW2 and marked the documents at Exs.P1 to P13. The copy of the

policy was marked as Ex.R1, but no oral evidence was lead on behalf of respondent No.2.

5. The Tribunal after hearing both the parties, has awarded compensation under different heads as below:

| | Head of claim | Award |
|---|---|---|
| 1 | For the injuries and pain and suffering | Rs.80,000/- |
| 2 | Loss of income during the treatment and resting period | Rs.18,000/- |
| 3 | Medical Bills | Rs.21,296/- |
| 4 | Nourishment & Transportation | Rs.20,000/- |
| 5 | For disfiguration | Rs.20,000/- |
| | **Total** | **Rs.1,59,296/-** |

6. The learned counsel appearing for the appellant submits that the Tribunal has failed to consider the disability of the petitioner, though the PW2-Doctor had stated that there is disability of 17% on account of the fracture of the clavicle and 15% on account of the injury to the abdomen. It is submitted that disability was not at all considered by the Tribunal and therefore, the compensation needs to be reassessed.

7. *Per contra,* learned counsel appearing for respondent No.2 - Insurance Company defends the judgment contending that there are no discernible injuries which would result in a disability.

8. The petitioner claiming himself to be doing Hotel Business, aged about 21 years, states that he has suffered the disability on account of the fracture of the clavicle and loss of spleen. The PW2, as stated above has assessed the disability at 17% and 15%, respectively. The PW2 also states that the petitioner frequently suffers from fever and loose motion. However, the testimony of PW2 does not create any nexus between the spleenectomy and the above discomforts, which are stated by him.

9. A careful assessment of the avocation of the petitioner as a person running the hotel with the disability coupled with the discomforts faced by him on account of loss of spleen which results in depleted immunity, it would be just and proper to hold the disability at 5%.

10. The guidelines issued by the Karnataka State Legal Services Authority (KSLSA) for settlement of the disputes before the Lok Adalat prescribe the notional income of Rs.7,500/- for the year 2014. In umpteen number of decisions, this Court has held that the guidelines issued by KSLSA are held to be acceptable on the ground that they are in general conformity with the minimum wages fixed under the Minimum Wages Act. Therefore, the notional income of the petitioner is accepted as Rs.7,500/- per month.

11. Therefore, the loss of income due to disability is calculated as Rs.7500/- x 12 x 18 x 5% = Rs.81,000/-.

12. Consequently, the petitioner is entitled for compensation under the heads loss of income during laid up period for two months, which equals to (Rs.7,500/- x 2) Rs.15,000/-, as against Rs.18,000/- awarded by the Tribunal.

13. The Tribunal has awarded a sum of Rs.80,000/- towards injury, pain and sufferings. Since the petitioner has

been awarded adequate compensation under the head loss of future income, the petitioner is entitled for Rs.40,000/- towards pain and suffering as against Rs.80,000/- awarded by the Tribunal. So far as the loss of amenities is concerned, the Tribunal has not awarded any compensation, therefore, considering the fact that there is disfiguration as well as loss of spleen, which he has to suffer till last breath of his life, therefore, it would be just and proper to award a sum of Rs.40,000/- under this head.

14. The compensation awarded under the head of medical expenses, transportation, nourishment, etc., including the attendant's charges do not require any interference.

15. Accordingly, the petitioner is entitled for a total compensation as below:

| Sl. No. | Head | Award by the Tribunal | Award by this Court |
|---|---|---|---|
| 1 | Loss of future income due to disability | -- | Rs.81,000/- |
| 2 | Pain and sufferings | Rs.80,000/- | Rs.40,000/- |

| | | | |
|---|---|---|---|
| 3 | Medical expenses | Rs.21,296/- | Rs.21,296/- |
| 4 | Loss of income during laid up period | Rs.18,000/- | Rs.15,000/- |
| 5 | Loss of amenities in life | -- | Rs.40,000/- |
| 6 | Disfiguration | Rs.20,000/- | -- |
| 6 | Nourishment and Transportation | Rs.20,000/- | Rs.20,000/- |
| | TOTAL | Rs.1,59,296/- | Rs.2,17,296/- |
| | Less award by the Tribunal | | Rs.1,59,296/- |
| | Enhancement | | Rs.58,000/- |

16. Hence, the following:

ORDER

(i) The appeal is allowed in part;

(ii) The impugned judgment and award passed by the Tribunal is hereby modified. The petitioner is entitled for a sum of Rs.58,000/- as compensation in addition to what has been awarded by the Tribunal along with interest at the rate of 6% p.a. from the date of petition till its deposit before the Tribunal.

(iii) The rest of the terms and conditions regarding deposit and etc., ordered by the Tribunal remain unaltered.

(iv) Respondent No.2 – Insurance Company is directed to deposit the enhanced compensation amount with interest within four weeks from the date of the receipt of the copy of this judgment.

Sd/-
**(C.M. JOSHI)**
**JUDGE**

SBS
List No.: 1 Sl No.: 78
CT: AK