IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF APRIL, 2026

BEFORE

THE HON'BLE MRS. JUSTICE P SREE SUDHA

MISCELLANEOUS FIRST APPEAL NO. 1149 OF 2024 (MV-I)

BETWEEN:

MR SATTAR @ SATTAR SAB
S/O LATE SUBHAN SAB
NOW AGED ABOUT 54 YEARS
RESIDING AT NO.812
NEAR URDU SCHOOL
RAHAMATH NAGAR
KOLAR TOWN

...APPELLANT

(BY SRI. GOPAL KRISHNA N., ADVOCATE)

AND:

1. SRI S KAILASAM
S/O SENGODAN
MAJOR IN AGE
RESIDING AT NO 1-35
KURUBAPATTI AT AND POST
EDAPPADY TALUK
SALEM DISTRICT
TAMILNADU-637 105

2. HDFC ERGO GENERAL INSURANCE CO. LTD.,
1ST FLOOR, HM GENEVA HOUSE
NO 14, CUNNIGHAM ROAD
BENGALURU-560 052
REP. BY ITS MANAGER

...RESPONDENTS

(BY SRI. MALLIKARJUNA REDDY N.A., ADVOCATE FOR
SRI. B. PRADEEP, ADVOCATE FOR R2,
V/O DTD:24.09.2024, NOTICE TO R1 IS D/W)

Digitally signed by PADMASHREE SHEKHAR DESAI
Location: High Court of Karnataka

THIS MFA IS FILED U/S.173(1) OF MV ACT, AGAINST THE JUDGMENT AND AWARD DT.27.03.2023 PASSED IN MVC NO.7766/2018 ON THE FILE OF THE XIII ADDITIONAL SMALL CAUSES JUDGE, ACMM, COURT OF SMALL CAUSES AND MEMBER, MACT-15, BENGALURU, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL HAVING BEEN HEARD AND RESERVED ON 17.04.2026 COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, ***P SREE SUDHA J.,*** DELIVERED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE P SREE SUDHA

CAV JUDGMENT

This appeal is filed against the judgment and award dated 27.03.2023 passed by the Court of XIII Additional Small Causes and ACMM, Court of Small Causes and Member, MACT-15, Bengaluru, in MVC No.7766 of 2018.

2. The injured claimant, aged 49 years, met with an accident on 25.06.2018 and filed a claim application claiming compensation of Rs.30,00,000/-. The Tribunal, considering the entire evidence on record, granted the compensation of Rs.11,43,500/- with interest at the rate of 6% per annum from the date of petition till realisation.

3. Aggrieved by the said order, this appeal is preferred by the appellant-claimant in which it is mainly contended that the Tribunal ought to have assessed Permanent physical disability vis-à-vis the loss of earning capacity at higher than 50%. He sustained amputation of right lower limb above knee due to crush injuries and it resulted in 100% physical disability. It is contended that as per Employees' Compensation Act, first Schedule Part-II, Series No. 18, it indicates 70% permanent loss of earning capacity. Therefore, the Tribunal ought to have taken the loss of earning at a higher rate and no future prospects are added. The amount granted under the other heads is also meagre. Therefore, requested for enhancement of compensation.

4. Heard the learned counsel appearing for both sides.

5. Petitioner has stated that he was aged 49 years, working as a driver and earning Rs.30,000/- per month, but he has not filed any income proof. As he met with an accident in the year 2018, his notional income is to be taken as Rs.12,500/- per month as per the chart prepared by Karnataka State Legal Services Authority. As per Exhibit P7-driving

licence, he was born on 15.04.1960 and met with an accident on 25.06.2018. Thus, he was aged 58 years and the relevant multiplier is 9. The petitioner was admitted in the hospital as an inpatient from 11.07.2018 and discharged on 29.07.2018, and, again admitted in the hospital on 16.04.2020 and discharged on 27.04.2020. Thus, he was in the hospital as an inpatient for a period of 31 days. The petitioner also examined doctor as PW3, who stated that petitioner sustained physical disability to the right lower limb at 85% and that of the whole body is 42.5%. They have done re-amputation above knee level. As the petitioner was not taking regular treatment, amputated limb was infected and it led to amputation of his limb. Petitioner can use prosthesis and he can walk without any hurdle, but he stated that he does not know about the occupation of the petitioner.

6. Learned counsel for the petitioner has relied upon judgment of the Hon'ble Supreme Court in the case of ***SUSHILA AND OTHERS VS. RAM SWAROOP AND OTHERS*** reported in ***2023 ACJ 2080***, wherein it was stated that deceased was a truck driver. As such, the Apex Court

considering the fact that he was a heavy vehicle driver and accident occurred in the year 2012, fixed his income as Rs.20,000/- per month including daily allowance, and added 40% towards future prospects and deducted one fourth towards personal expenses and adopted the multiplier of 15. The learned counsel also filed another judgment of Hon'ble Supreme Court in the case of ***K. JANARDHAN VS. UNITED INDIA INSURANCE COMPANY LIMITED AND ANOTHER*** reported in ***(2008)8 SCC 518*** in respect of disability.

7. The learned counsel further relied upon another judgment of the Hon'ble Supreme Court in the case of ***RAJ KUMAR VS. AJAY KUMAR AND ANOTHER*** reported in ***(2011)1 SCC 343***, wherein the Hon'ble Supreme Court has observed as under:

> *"19. We may now summarise the principles discussed above:*
>
> *(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.*
>
> *(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of*

earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

14. XXX. if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%, If the claimant was a driver or a carpenter, the actual loss of earning capacity. may virtually be hundred per cent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or *carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of "loss of future earnings", if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not be found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity.*

15. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation."

8. In the present case, admittedly, the petitioner is a driver and also filed his driving license. He met with an accident in the year 2018 and sustained above knee

amputation to an extent of 85% and he could not continue his job as a driver after the accident in view of the amputation sustained. Therefore, this Court finds it reasonable to take the functional disability as 100%. The petitioner was aged 58 years and the relevant multiplier is 9. If the disability is more than 20%, petitioner is entitled for future prospects as per the judgment in the case of ***New India Assurance Company Limited Vs. Abdul, son of Mehaboob Tahasildar and Others*** (M.F.A. No.103807/2016 c/w. M.F.A. No.103835/2016 decided on 27.05.2022). He is entitled for 10% towards future prospects. So, loss of future earning capacity comes to Rs.14,85,000/- (12,500+10% x 12 x 9 x 100%). The Tribunal granted an amount of Rs.93,500/- towards medical expenses and the said amount is confirmed.

9. The petitioner was admitted in the hospital for a period of 31 days. Considering the nature of injuries, occupation and the period of hospitalisation and the other relevant factors, the Tribunal has already granted reasonable amounts and this Court finds no reason to interfere with the said amounts.

10. Thus, in all, the claimant is entitled for the compensation of Rs.18,86,000/- with interest at 6% per annum as against Rs.11,43,500/- awarded by the Tribunal.

11. The award of compensation passed by the Tribunal is modified as under:

Heads	**Amount in Rs.**
1. Loss of future income	14,85,000/-
2. Medical expenses	93,500/-
3. Pain and Suffering	75,000 /-
4. Loss of amenities	75,000 /-
5. Attendant charges, extra nourishment and conveyance	45,000 /-
6. Loss of earning during the laid up period	62,500 /-
7. Compensation towards Prosthesis	50,000/-
Total	18,86,000/-

12. In the result, the following order is passed:

(i) Appeal is allowed in part.

(ii) The Claimant is entitled for the total compensation of Rs.18,86,000/- with interest at 6% per annum from the date of petition till the date of realization.

(iii) The respondent insurance company has already deposited the award amount before the Tribunal, and therefore, they are directed to deposit the enhanced amount of Rs.7,42,500/- with interest at 6% per annum within one month from the date of this order.

(iv) On such deposit, the claimant is permitted to withdraw the entire amount along with the interest accrued on it.

(v) The Claimant is not entitled for interest for the delayed period of 217 days in view of the order dated 27.11.2024 passed on I.A.No.1/2024.

Sd/-
(P SREE SUDHA)
JUDGE

CS
CT:NR
List No.: 1 Sl No.: 1