NC: 2026:KHC:16805
M.F.A. No.9248/2018

HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

MISCELLANEOUS FIRST APPEAL NO.9248/2018 (MV-I)

BETWEEN:

HUMAYUN PASHA
S/O ASLAM PASHA
AGED ABOUT 37 YEARS
R/O. ARENAHALLI VILLAGE
RAVANDOOR HOBLI AND POST
PERIYAPATNA TALUK-571 107.

...APPELLANT

(BY SMT. SUMA KEDILAYA, ADV., FOR
SRI. PADMANABHA KEDILAYA V, ADV.)

AND:

1. K.A. SEETHAMMA
   W/O A.B. AYYAPPA
   AGED ABOUT 64 YEARS
   R/AT "SHILPASHREE"
   MAIN ROAD, GANDHINAGARA
   MURNAD VILLAGE AND POST
   MADIKERI TALUK-571 252.

2. THE MANAGER
   NATIONAL INSURANCE CO LTD
   DIVISIONAL OFFICE (TP HUB)
   ADICHUNCHANAGIRI ROAD
   KUVEMPUNAGARA, MYSURU-570 023.

...RESPONDENTS

(BY SRI. B.J. ROHITH GOWDA, ADV., FOR R1
SRI. A.M. VENKATESH, ADV., FOR R2)

THIS MFA IS FILED U/S 173(1) OF MV ACT, AGAINST THE JUDGMENT AND AWARD DATED:08.06.2018 PASSED IN MVC NO.67/2015 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC AND MACT, PERIYAPATNA, ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL JUDGMENT

This appeal is filed by the injured/claimant seeking enhancement of compensation being aggrieved by the judgment and award dated 08.06.2018 passed in MVC.No.67/2015 by the Senior Civil Judge & JMFC, MACT, Periyapatna, (for short, 'Tribunal').

2. Though this appeal is listed for orders, with the consent of learned counsel for the parties, it is taken up for final disposal.

3. Smt.Suma Kedilaya, learned counsel for Sri.Padmanabha Kedilaya V., learned counsel for the appellant-injured submits that the appellant, who was aged about 33 years and Mason by vocation, met with a

road accident on 30.10.2013 and later his right limb from above the knee was amputated. In order to prove the claim, the appellant examined himself as PW1 and Dr.Giridhar Kumar, as PW2, who has assessed the disability of the appellant to the extent of 85%. However, the Tribunal assessed the disability at 80%. It is submitted that the Tribunal has failed to consider the fact that PW2 has clearly deposed that due to the amputation, the appellant is unable to continue his vocation i.e., mason work, and he cannot lift the weights. Hence, the functional disability of the appellant is required to be re-assessed at 100%. It is further submitted that the Tribunal has also committed an error in assessing the income of the injured, hence, she submits that the income of the injured is required to be re-assessed notionally at Rs.8,000/- per month. It is also submitted that the appellant was in-patient for 181 days on different occasions and the Tribunal has awarded meager compensation on all the heads. It is contended that the appellant is entitled to compensation at the rate of 40% of the assessed income towards the loss of future prospects, as well as the appellant is entitled to Rs.1,00,000/- towards the purchase of artificial limb and these aspects were are not considered by the Tribunal and awarded the meager compensation of Rs.13,42,400 with interest at 9% per annum. In support of her contentions, she placed reliance on the decision of the Hon'ble Supreme Court in the case of ***S.Ettiappan v. D.Kumar and Anr.***[1] Hence, she seeks to allow the appeal.

4. Per contra, Sri.A.M.Venkatesh, learned counsel appearing for the respondent No.2-Insurance Company supports the impugned judgment and award of the Tribunal and submits that the appellant has sustained amputation above knee; however, he can carry out any other work other than the mason work and considering these aspects, the Tribunal has rightly assessed the disability at 80%. Hence, there is no scope to consider the disability on the higher side. It is submitted that the

[1] SLP (C) No.15621/2025 DD 16.10.2025

Tribunal, taking note of the evidence on record, has awarded just and fair compensation on all the heads. Hence, he seeks to dismiss the appeal.

5. I have heard the arguments of the learned counsel appearing on both the sides and meticulously perused the material available on record including the Tribunal records.

6. The appellant-injured as well as the insurance company do not dispute that the appellant met with a road accident on 30.10.2013 and he was provided treatment initially at the Government Hospital, Kushalanagar and thereafter, at K.R.Hospital as in-patient. The parties to the proceedings also do not dispute that the accident was caused due to the actionable negligence on the part of the vehicle insured with respondent No.2-Insurance Company and they are liable to pay the compensation. In order to prove the averments made in the claim petition and for award of compensation, the appellant-injured examined

himself as PW1 and examined Dr.Giridhar Kumar as PW2 and got marked Exs.P1 to P21. The respondent examined RW1 and got marked Exs.R1 to R3. The Tribunal considering the evidence available on record, allowed the claim petition and awarded compensation of Rs.13,42,200/- by assessing the income of the injured at Rs.7,000/- per month and by assessing disability at 80%. In so far as income of the injured is concerned, admittedly the appellant has not produced any proof of income. Hence, his income is notionally re-assessed at ***Rs.8,000/-*** per month by placing on the notional income chart prepared by KSLSA. It is averred that the injured was Mason by vocation and aged about 33 years at the time of accident. Hence, the appropriate multiplier would be 16, which has been rightly considered by the Tribunal.

7. The perusal of the oral evidence of PW2-Doctor, wound certificate at Ex.P6, discharge cards at Exs.P9 to P11 and photographs and bill at Exs.P13 to 15 indicate that the appellant sustained grievous injuries and fractures

and he was in-patient in the hospitals for 130 days and 18 days as out-patient. Based on the nature of treatment provided and taking note of the fact that the appellant's right limb above the knee was amputated, PW2 has assessed the disability of the appellant at 85%. However, the Tribunal assessed the disability for the purpose of award of compensation at 80%.

8. The Hon'ble Supreme Court in the case of ***S.Ettiappan*** referred supra at para No.7.1 has held as under:

> *"7.1 While assessing the compensation in case of claims arising out of motor vehicle accident, it would be the functional disability which will have to be taken into consideration for award of future loss of income. In the instant case, though the doctors have assessed physical disability to whole body at 70%, the tribunal has substituted its view to that of the experts inspite of there being no contra-material available before it to arrive at a conclusion that functional disability being 50%. This Court has time and again stated that tribunal would not sit in the armchair of an expert and re-assess the disability, particularly, when there is clear evidence available. In the instant case, the disability assessment certificate Exhibit-C1 revealed that appellant had suffered 70% physical disability as certified by the Medical Board. There being no other evidence tendered by the insurer or the insured, the tribunal*

could not have substituted its view by assessing the disability at 50%. This erroneous view of the tribunal has been rightly set aside by the High Court. However, the High Court while reappreciating the evidence has restricted the whole-body disability at 70% on the basis of Medical Board Certificate (Ex. C-1) without noticing the fact that on account of said disability suffered by the claimant, his functional disability would be 100%. It is not in dispute that appellant was working as a loader who used to discharge his duties of loading and unloading vegetables into the vehicles. This physical or manual activity would require support of both legs or in other words claimant is required to use both the legs for discharging his duties as a loader. By virtue of amputation of his right leg below the knee, he has become immobile or in other words, he is not in a position to discharge his daily routine work as a loader. It is not the case of insurer or insured that claimant was carrying on any other avocation and as such the disability of 70% suffered would not come in the way of his earning. To earn his bread, he had to work by loading or unloading vegetable into the vehicle which was the only avocation he was carrying on. Now by virtue of amputation of his leg below the knee appellant is not only unable to work as a loader but even unable to stand without support. As such the functional disability requires to be considered at 100% and not 70% as held by High Court."

9. It is also to be taken note of the fact that this Court in the case of ***Madhukumar vs. P.H.Mallikarjun and another***[2] by considering the decisions of the Hon'ble Supreme Court assessed the disability at 90% in the case

[2] MFA No.100381/2021 DD.21.03.2024

of an amputation, wherein the doctor has assessed the disability at 85%.

10. It would be useful to refer the decisions of the Hon'ble Apex Court in the case of ***Rajkumar Vs Ajay Kumar & Another*[3]*,*** wherein relevant paragraphs read thus:

> "**11.** What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terns of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation.
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> 13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively

[3] (2011) 1 SCC 343

carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

14. For example, 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 percent, 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 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.**”** **(Emphasis supplied)**

11. It is apt and necessary to refer the judgment of Hon’ble Apex Court in the case of ***Jagdish Vs. Mohan & Others***[4], wherein at paragraph-14 is observed as under:

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[4] (2018) 4 SCC 571

14. In making the computation in the present case, the Court must be mindful of the fact that the appellant has suffered a serious disability in which he has suffered a loss of the use of both his hands. For a person engage in manual activities, it requires no stretch of imagination to understand that a loss of hands is a complete deprivation of the ability to earn. Nothing- atleast in the facts of this case- can restore lost hands. But the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law. Our conversations about law must shift from a paternalistic subordination of the individual to an assertion of enforceable rights as intrinsic to human dignity.

(Emphasis supplied)

12. In a recent decision, the Hon'ble Supreme Court in the case of ***SARNAM SINGH Vs. SHRIRAM GENERAL INSURANCE CO. LTD. AND ORTHERS***[5]***,*** has held as under::

"9. As to how compensation, in case where permanent disability of an injured affects his functional disability, is to be assessed has been considered by this Court, repeatedly. Reference can be made to the judgment of this Court in Mohan Soni vs. Ram Avtar Tomar And Others. In the aforesaid case the injured was working as a cart puller. As a result of the accident, his left leg was amputated. His permanent disability was assessed at 60%. The Tribunal assessed the compensation taking the loss of earning at 50% on the theory that he can still do some other work while sitting. The High Court did not disturb the finding regarding loss of income on account of disability. This

[5] 2023 LiveLaw (SC) 498

Court found that the Tribunal was in error in taking the loss of earning at 50% as the injured was 55 years of age and it may be difficult for him to find a job at that stage. <u>In fact, any physical disability resulting from an accident has to be judged with reference to the nature of the work being performed by the person who suffered disability. The same injury suffered by two different persons may affect them in different ways. Loss of leg by a farmer or a rickshaw puller may be end of the road as far as his earning capacity is concerned. Whereas, in case of the persons engaged in some kind of desk work in office, loss of leg may have lesser effect. This Court enhanced the loss of earning capacity from 50% to 90%."</u>

(Emphasis supplied)

13. Keeping in mind the enunciation of law laid down by the Hon'ble Apex Court referred supra, I am of the considered view that the appellant herein was a Mason by vocation and evidence of PW2 is very clear that in view of disability and amputation, the appellant cannot continue his vocation as he is unable to lift the weight, considering the specific evidence of the expert, i.e., PW2, I am of the view that the functional disability of the appellant-injured is required to be re-assessed at 90% for the purpose of determination of compensation.

14. Having re-assessed the income and disability, the appellant would be entitled to an addition of 40% of the assessed income towards the loss of future prospects as per the law laid down by the Hon'ble Supreme Court in the case of ***National Insurance Company Limited vs. Pranay Sethi and others***[6]. The evidence on record indicate that the appellant was treated as in-patient for 130 days and as out-patient for 18 days and his limb was amputated. Thus, I am of the considered view that the compensation under the other heads is also required to be re-assessed appropriately. Hence, the appellant is entitled to compensation under the head of loss of future income due to disability as under:

Rs.8,000 + 40% X 12 X 16 X 90% = ***Rs.19,35,360/-.***

15. The appellant would be entitled to compensation of ***Rs.1,00,000/-*** towards pain & suffering; ***Rs.50,000/-*** towards food, nourishment, conveyance and

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[6] (2017) 16 SCC 680

attendant charges; ***Rs.1,00,000/-*** towards loss of amenities; ***Rs.75,000/-*** towards future medical expenses which includes the purchase of artificial limb. The appellant would be entitled to ***Rs.24,000/-*** (Rs.8,000 X 3) towards the loss of income during laid-up period. The compensation awarded by the Tribunal towards medical expenses is unaltered. Thus, the appellant would be entitled to modified compensation as under:

HEADS	**AMOUNT (in Rs.)**
Medical expenses	92,000
Pain & suffering	1,00,000
Loss of future income due to disability	19,35,360
Food, nourishment, conveyance and attendant charges	50,000
Loss of amenities	1,00,000
Future medical expenses including purchase of artificial limb	75,000
Loss of income during laid up period	24,000
Total	**23,76,360**

Thus, the appellant-claimant shall be entitled to a total compensation of **Rs.23,76,360/-** as against Rs.13,42,200/- awarded by the Tribunal.

16. In the result, this Court proceeds to pass the following:

ORDER

a) Appeal is ***allowed in part***.

b) The impugned judgment and award of the Tribunal is modified to an extent that the appellant-claimant would be entitled to a total compensation of **Rs.23,76,360/-** as against Rs.13,42,200/- awarded by the Tribunal.

c) The enhanced compensation amount shall carry interest at the rate of 6% per annum from the date of petition till the date of payment.

d) The Insurance Company shall deposit the enhanced compensation amount with accrued interest before the Tribunal within a period of six weeks from the date of receipt of certified copy of this judgment.

e) Out of the enhanced compensation, 40% of the award amount shall be kept in Fixed Deposit in any Nationalized/Scheduled Bank for a period of three years and 60% of the award amount shall be released in favour of the appellant-claimant. The appellant is at liberty to withdraw the periodical interest on the deposit amount.

f) Registry shall transmit the records to the Tribunal forthwith.

g) Draw modified award accordingly.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

BSR
List No.: 2 Sl No.: 2