IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MRS. JUSTICE P SREE SUDHA

MISCELLANEOUS FIRST APPEAL NO. 6820 OF 2016 (WC-)

BETWEEN:

SRI LAKSHMIKANT
S/O JWALANDAR PARADHANI,
AGED ABOUT 23 YEARS,
R/AT HOOVALLI VILLAGE,
ARAHALLI POST,
KOLAR TALUK AND DISTRICT 562603

...APPELLANT

(BY SMT. SUGUNA R. REDDY.,ADVOCATE)

AND:

1. SRI VENKATESHAPPA
S/O MUNIYAPPA,
MAJOR IN AGE,
R/AT HOOVALLI VILLAGE,
ARAHALLI POST,
KOLAR TALUK AND DISTRICT

2. THE BRANCH MANAGER
TATA AIG GENERAL
INSURANCE COMPANY LIMITED
2ND FLOOR,
JP & DEVI JAMBUKESHWAR ARCADE,
NO.69, MILLERS ROAD, BANGALORE

...RESPONDENTS

(BY SRI. O MAHESH FOR R2.,ADVOCATE
NOTICE TO R.1 DISPENSED WITH VCO DT.22.11.2017)

THIS MFA FILED U/S 30(1)(c) OF EMPLOYEES COMPENSATION ACT, 1923 AGAINST THE JUDGMENT AND AWARD DATED 02.03.2016 PASSED IN ECA NO.3/2014 ON THE FILE OF THE I ADDITIONAL SENIOR CIVIL JUDGE, KOLAR, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION.

THIS APPEAL, HAVING RESERVED ON 03.02.2026 COMING ON FOR PRONOUNCEMENT, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MRS. JUSTICE P SREE SUDHA

CAV JUDGMENT

This appeal is preferred against the award of the I Addl. Senior Civil Judge, Kolar in ECA No.3/2014 dated 02.03.2016 seeking enhancement of compensation.

2. The petitioner-appellant was working as coolie under the first respondent in the brick factory as well as in his fields. During the course of employment he met with an accident on 08.12.2011 and sustained injuries. Hence he filed petition under Section 22(4) of the Workmen's Compensation Act, 1923 claiming compensation of Rs.18,00,000/-. The Tribunal after considering the entire evidence on record awarded an amount of Rs.8,68,317/- with interest at the rate of 12% p.a. from 08.01.2012 till realization.

3. Aggrieved by the said order this appeal is preferred.

4. Learned counsel for the appellant contended the following substantial questions law:

"i) Whether the Court below was right in taking percentage of loss of earning capacity as 80% though the appellant sustained total disablement as defined under Section 2(1)(L) of Employees Compensation Act, 1923 ('the Act' for short) ?

ii) Whether the Court below was right in following the Part II Schedule I of the Act in order to assess loss of earning capacity though the appellant being manual labourer and he sustained amputation of right leg above the knee which rendered his unfit for work of coolie ?"

In support of his contentions, he relied on the following judgments:

i) Chanappa Nagappa Muchalagoda vs. Divisional Manager, New India Insurance Company Ltd[1]

[1] AIR 2020 SC 166

ii) Indra Bai vs. Oriental Insurance Company Ltd & anr[2]

iii) Oriental Insurance Co.Ltd. vs. Ramesh Poojary[3]

5. Learned counsel for respondent No.2 contended that the Tribunal rightly considered all the aspects and granted reasonable compensation and it needs no interference.

6. It is stated that the petitioner-appellant sustained amputation of his right leg and incapacitated to do any manual work and he thus sustained 100% functional disability. But, the Tribunal has considered the disability at 80%. On 08.12.2011 petitioner got loaded the manure and was travelling in a tractor-trailer to unload the same. On the way back, when tractor and trailer was proceeding near Indian Oil Petrol Bank, the driver of the tractor drove it with high speed in a rash and negligent manner as a result of which, it toppled and thus he fell down and sustained severe injuries on his right leg and multiple fractures of right tibia and fibula, cut lacerated wound on the left thigh and other injuries.

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[2] AIR 2023 SC 3478
[3] LAWS (KAR)-2024-9-28

7. The petitioner-appellant has produced the discharge summary of Sri Bhagwan Mahaveer Jain Hospital which states that it was almost a nonsalvageable leg and as such under anesthesia the right leg amputation below the knee was done. Again he was shifted to KIMS Hospital and the skin grafting was done on 21.12.2011. Hence the discharge summary produced by the petitioner-appellant as per Exs.P7 and 8 shows that right leg above knee was amputated.

8. It is not in dispute that the accident occurred during the course of employment. Since he was aged 25 years, he is covered under Schedule IV of the amended Employees' Compensation Act. The First respondent admitted employer and employee relationship and stated that he was paying salary of Rs.7,500/- per month. The policy was in force at the time of the accident. Accident occurred on 08.12.2011, but complaint was given on the next day. Insurance company stated that it was a goods carriage vehicle and driver's cabin shall not carry more number of persons than that is mentioned in the registration certificate and shall not carry the passengers for hire or reward. As per Rule 28 of the Central Motor Vehicles

Rues while driving the tractor, driver shall not carry or allow any person to be carried on tractor. As the claimant was travelling on a tractor-trolley, liability cannot be fastened against the insurance company. Risk of coolies, loader or unloader is not covered under the policy.

9. Charge sheet is filed against the driver of the tractor for his negligence. It was stated that petitioner-appellant was watering the tomato garden belonging to respondent No.1 and he was paying Rs.8,000/- per month. The Tribunal held that the petitioner-appellant proved employer and employee relationship. As respondent No.1 admitted that he was paying Rs.7,500/- per month and petitioner was working with him from the past 8 years, the Tribunal has taken the income as Rs.7,500/- per month.

10. The Tribunal has observed that the driving licence of the driver was filed under Ex.P10 which was issued for non-transport vehicle. When the other side questioned the validity of the license, the Tribunal observed that tractor and trailer was used for agriculture purpose which is a non-transport vehicle.

The vehicle was not used for commercial or transport purpose and thus he had got valid driving license.

11. Another point which was raised by respondent/Insurance company is that he was an unauthorised passenger. It was observed by the Tribunal that as per the terms of the policy which was extracted in Para No.22 of the judgment, it was held that additional premium of Rs.25/- is paid under Ex.R2 and thus insurance company is liable for the person who was employed for loading and unloading.

12. As it is a case of amputation, the disability was assessed as 80% as per Part II of Schedule I of the Employees Compensation Act. The main contention of the appellant is that his functional disability is to be taken as 100% instead of 80%. In ***Indra Bai's*** case referred to supra the Hon'ble Supreme Court held that if disablement incurred in an accident incapacitates a workman for all work which he was capable of performing at the time of accident resulting in such disablement, disablement would be taken as total for purposes of award of compensation under S.4(1)(b) regardless of injury sustained being not one as specified in Part I of Schedule I of

Act. The expression 'total disablement' has been defined in Section 2(1(l) of the Act as follows:

> "total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement."

In ***Ramesh Poojary'***s case relied on by learned counsel for the appellant it was held as follows:

> "Even though, there would not be 100% of permanent physical disability, but it affects the avocation of the injured to carry out the profession as he was doing before the accident. Then it would amount to 100% functional disability. The injured being a driver met with an accident and as per the doctor's evidence, he suffered 55% of permanent physical disability and cannot drive any motor vehicle in future. Therefore with such disability, when the driver is not able to carry on the profession as driver, then it is amounting to functional disability and accordingly, awarded compensation by holding functional disability at 100%. Further the Hon'ble Supreme Court in the case of MOHAN SONI VS. RAM AVTAR TOMAR AND OTHERS reported in (2012) 2 SCC 267 had held that the injured being a cart-puller

met with an accident and left leg was amputated below the knee. Under these circumstances, the Hon'ble Supreme Court held the functional disability at 100%. Since, the injured is not able to work as a cart-puller and had suffered functional disability at 100% and accordingly, awarded compensation."

13. Admittedly, he was a manual labourer, there is amputation of right leg above the knee and he cannot discharge his duties as a coolie in future and his functional disability can be taken as 100%. Therefore, this Court finds it reasonable to take the functional disability of 100%.

14. When the income of the appellant is taken as Rs.7,500/-, as it is a case of injury, 60% of the income has to be multiplied by the relevant factor. As he was aged 25 years the relevant factor is 216.91 as per Schedule IV of the Act. Hence the loss of earning capacity comes to Rs.9,76,095/- (7500X60%X216.91).

15. The petitioner-appellant has incurred a sum of Rs.87,441/- towards medical bills. Hence, the Tribunal has rightly awarded the said amount towards medical expenses and the same does not warrant any interference.

16. Therefore, the appellant is awarded total compensation of **Rs.10,63,536/-** as against Rs.8,68,317/- awarded by the Tribunal. Thus the petitioner is entitled for an enhanced compensation of **Rs.1,95,219/-,** along with interest at 12% per annum from the date of accident till its actual realization.

17. Accordingly, I pass the following:

ORDER

i. The appeal is **allowed in part**.

ii. The appellant-coolie is entitled for enhanced compensation of Rs.1,95,219/-, along with interest at 12% per annum from the date of the accident till its realization.

iii. Respondent Nos.1 and 2 are jointly and severally liable to pay the compensation.

iv. Respondent No.2 - Insurance Company is directed to deposit the enhanced compensation of Rs.1,95,219/- with accrued interest within a period of one month from the date of this order.

v. On such deposit, petitioner is permitted to withdraw the amount along with accrued interest

Sd/-
(P SREE SUDHA)
JUDGE

AKC
List No.: 1 Sl No.: 64