



IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 23RD DAY OF MARCH 2026

PRESENT

THE HON'BLE MR. JUSTICE B.M.SHYAM PRASAD

AND

THE HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

MISCELLANEOUS FIRST APPEAL NO.100256 OF 2023 (MV-I)

BETWEEN:

SHRI. APPASAB S/O. NABISAB NADAF
AGE. 48 YEARS, OCC. COOLIE,
R/O. MAYANNAVAR ONI SANGOLLI,
TQ. BAILHONGAL, DIST. BELAGAVI-591115.

...APPELLANT

(BY SRI. VIJAYKUMAR KOTIN, ADVOCATE)

AND:

1. SHRI. JAPURALLA SHAUKATALI JAMADAR
AGE. MAJOR, OCC. BUSINESS,
R/O. H.NO.90, MASJID GALI OLDE,
DANDALI, TQ. HALIYAL, DIST. KARWAR-581325.
OWNER OF HERO PASSION PRO BSIII
MOTOR CYCLE, BEARING NO.KA-65/E-2160.

2. THE BRNACH MANAGER
UNITED INDIA INSURANCE COMPANY LTD.,
DIVISIONAL OFFICER, NO.1568,
2ND FLOOR, ABOVE BANK OF BARODA,
MARUTI GALLI, BELAGAVI-590001.

INSURER OF HERO PASSION PRO BS III
MOTOR CYCLE BEARING NO.KA-65/E-2160,

VISHAL
NINGAPPA
PATTIHAL


Digitally signed by
VISHAL NINGAPPA
PATTIHAL
Location: HIGH COURT
OF KARNATAKA
DHARWAD BENCH



VALID UP TO 19-05-2017 TO 18-05-2018
POLICY NO.24010031117P102702810.

3. SHRI. SHRISHAIL S/O. GANGAYYA HIEMATH
AGE. MAJOR, OCC. BUSINSS,
R/O. SANGOLLI, TQ. BAILHONGAL,
DIST. BELAGAVI-591115.
(OWNER OF THE HERO SUPER SPLENDOR
MOTOR CYCLE BEARING NO.KA-24/J-0325)

...RESPONDENTS

(BY SRI. S.S.KOLIWAD, ADVOCATE FOR R2;
NOTICE TO R1 IS DISPENSED WITH;
NOTICE TO R3 IS SERVED)

THIS MISCELLANEOUS FIRST APPEAL IS FILED
UNDER SECTION 173(1)OF MOTOR VEHICLES ACT,
1988, AGAINST THE JUDGMENT AND AWARD DATED
01.06.2022 PASSED IN MVC NO.2249/2018 ON THE
FILE OF THE SENIOR CIVIL JUDGE AND ADDITIONAL
MOTOR ACCIDENT CLAIMS TRIBUNAL, BAILHONGAL,
PARTLY ALLOWING THE CLAIM PETITION FOR
COMPENSATION AND SEEKING ENHANCEMENT OF
COMPENSATION.

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

CORAM: THE HON'BLE MR. JUSTICE B.M.SHYAM PRASAD
AND
THE HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR



ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR)

This appeal is filed by the claimant seeking enhancement of compensation as awarded by the Tribunal in the judgment and award dated 01.06.2022 passed in M.V.C. No.2249 of 2018 by the Senior Civil Judge and Additional M.A.C.T., Bailhongal.

2. The facts leading to the filing of claim petition are as under;

On 11.12.2017 at about 05.00 p.m. the claimant was returning to his native place by riding a Hero Honda Super Splendor Motorcycle bearing registration No.KA-24/J-0352. At that time, the rider of Hero Passion Pro BSIII motorcycle bearing registration No.KA-65/E-2160 was riding his motorcycle in a rash and negligent manner without observing the traffic rules and came from Mekalamardi side and lost control over the motorcycle and dashed to front of claimant's



motorcycle and caused the accident. Due to the said impact, the claimant had sustained grievous injuries and immediately he has been shifted to Civil Hospital, Bailhongal and after first aid treatment shifted to Civil Hospital, Belagavi. The claimant was admitted in the hospital for 30 days as inpatient and underwent major operations and his right leg was amputated. It is contended that the claimant has spent an amount of Rs.50,000/- towards medical expenses. The claimant was aged 44 years as on the date of accident and he was doing coolie work earning Rs.15,000/- per month and maintaining his family. Due to the accidental injuries he has suffered permanent physical disability. With this, he made claim petition claiming compensation.

3. Respondent No.1 in his objections has denied the manner of accident, age, avocation and income of the claimant. He denied the claimant sustaining fracture and grievous injuries and the amputation of his right leg. He denied that the



accident was due to rash and negligent riding of Hero Passion Pro BSIII motorcycle KA-65/E-2160. Respondent No.1 has admitted that he is the owner of vehicle bearing registration No.KA-65/E-2160 and the said bike was insured at the time of the accident with respondent No.2 - insurance company.

4. Respondent No.2 -insurer denied the manner of accident, age, avocation and income of the claimant. Respondent No.2 denied that the claimant had sustained fracture, grievous injuries and his right leg was amputated in the accident. He has contented that the insurance policy of vehicle bearing registration No.KA-65/E-2160 has been issued and it was valid as on the date of accident. There was no negligence on the part of rider of vehicle bearing No. KA-65/E-2160. The owner of bike bearing No.KA-65/E-2160 on the date of accident handed over the vehicle to the rider who was not having a valid and effective driving licence to drive the vehicle and



therefore, respondent No.2 is not liable to pay the compensation.

5. Respondent No.3 remained ex-parte. Respondent No.3 is the owner of motorcycle KA-24/J-0352. The said vehicle was driven by the claimant injured at the time of the accident.

6. Based on the said pleading, the Tribunal has framed the following issues;

- 1) Whether the petitioner proves that, he has sustained injuries in the road accident that was occurred on 11.12.2017 at about 5.00 pm on Inchal -Mekalamaradi road, near Kannamma Temple due to rash and negligent riding of the rider of Motor cycle bearing No.KA-65/E-2160?*
- 2) Whether the petitioner is entitled for compensation? If so, how much? And from whom?*
- 3) What Order ?*

7. The claimant has been examined as P.W.1 and got marked documents as Ex.P1 to P12.



Both of respondents have not let oral evidence and only got marked insurance policy as Ex.R1. The Tribunal after hearing the arguments on both sides and appreciating the evidence on record has answered issue Nos.1 and 2 in the affirmative and awarded the compensation under different heads as under;

1.	Pain and suffering	Rs. 50,000
2.	Medical expenses	Nil
3.	Future Medical Expenses	Nil
4.	Towards diet food nourishment, attendant and conveyance charges	Rs. 27,000
5.	Towards loss of future earning capacity due to permanent disability	Rs. 3,02,400
6.	Loss of income during laid up period	Rs. 27,000
7.	Towards loss of amenities and enjoyment in life	Rs. 50,000
	Total	Rs. 4,56,400/-



The claimant has not satisfied with the said award of compensation and seeking enhancement of compensation has filed the present appeal.

8. Heard learned counsel for appellant -claimant and learned counsel for respondent No.2 - insurer.

9. Ex.P1 is the copy of complaint and it is filed by the claimant before Murugod Police Station and on that basis, a case came to be registered in Crime No.337/2017 of Murgod Police Station. Ex.P2 is the certified copy of FIR. The police, after investigation have filed charge sheet in the said crime. The said charge sheet has been filed against accused No.1 -Irshad Chandasab Shekha, the rider of bike bearing No.KA-65/E-2160 for offences under Section 279 and 338 of IPC. The charge sheet has been filed against the claimant -accused No.2 who was rider of bike bearing No.KA-24/J-325 for offences punishable under Sections 279, 337 of IPC and Section 3 read with Section 181 of Motor



Vehicles Act. The charge sheet has been filed against respondent No.3 -owner of KA -24/J-325 for offences punishable under Sections 5, 146 read with Sections 180, 196 of Motor Vehicles Act. Considering the charge sheet –Ex.P7 and other documents, there is a head-on collision and negligence is attributed on both the bike riders. Thus, there is negligence on the part of the riders of both bikes. Thus, there is a contributing negligence on the part of claimant and claimant is also a tortfeasor. Considering that there is a head-on collision, the Tribunal has rightly assessed the contributory negligence on the part of the appellant –claimant by 50% and rider of motorcycle bearing No.KA-25/E-2160, which is of the ownership of respondent No.1, insured with respondent No.2. Since the claimant himself is tortfeasor who drove the bike belonging to respondent No.3, liability cannot be saddled to the extent of 50% which is the contributory negligence on the part of the claimant on the owner of the bike i.e., respondent



No.3. The Tribunal has erred in that regard saddling the liability to the extent of 50% contributory negligence on respondent No.3 -owner of bike bearing No.KA-24/J-325.

10. P.W.2 is a doctor who has issued Ex.P9 -physical disability certificate, holding that the claimant has physical disability to the extent of 60% to the right lower limb. P.W.2 has stated in his evidence that the claimant is unable to stand, unable to walk, unable to do routine work, unable to sit and squat and unable to walk without support. Since P.W.2 is not a treated doctor, even though he has stated that disability is 60% with right lower limb, the Tribunal has taken 1/3rd of the said disability, which comes to 20%. The Tribunal has lost sight of the fact that the claimant is a coolie worker and as he lost his one leg i.e., amputation below right knee. The functional disability is more than 20%. In the Schedule of Employees' Compensation Act, the disability for amputation below the knee has to be



taken at 50%. Considering the said aspect, the disability of the claimant has to be taken at 50% as it is functional disability since the claimant is a coolie which he cannot do after the accident. The accident has taken place in the year 2017 and the Tribunal has taken the notional income of the claimant at Rs.9,000/- per month. As per chart, prepared for settlement of disputes in cases of motor compensation arising out of motor vehicle accidents, the notional income fixed for the year 2017 is Rs.10,250/-. The Tribunal ought to have taken the said notional income. The age of the claimant is 43 years and the multiplier applicable is 14. Considering the said aspect, the loss of future earning is calculated as under;

$$\text{Rs.10250/-} \times 12 \times 14 \times 50\% = \text{Rs.8, 61,000/-}.$$

11. The claimant has been admitted in the hospital for 27 days, there is a surgery i.e., amputation of his right leg below the knee. Considering the said aspect, the compensation



awarded for pain and suffering at Rs.50,000/- is not proper and under the said head, the claimant is entitled to a sum of Rs.1,00,000/-.

12. The Tribunal has not awarded medical expenses on the ground that the claimant has not produced any medical bills. It is not in dispute that the claimant's right leg has been amputated below knee. The claimant has to use artificial limb throughout his life for his movement. The Tribunal has not considered awarding compensation in that regard. Therefore, the claimant is entitled to a sum of Rs.2,00,000/- towards Knee prosthetics. The claimant has to use the said artificial limb throughout his life.

13. The claimant has been admitted in the hospital for a period of 27 days. Considering the said aspect, the Tribunal has rightly awarded Rs.27,000/- towards diet food, nourishment, attendance and conveyance charges by calculating Rs.1,000/- per day x 27 days. Even though the



claimant is admitted in the hospital for 27 days, he has to take rest at least for a period of 03 months during which he is to be awarded compensation for loss of income during laid up period in a sum of Rs.10,250/- x3 = Rs.30,750/-. The Tribunal has rightly awarded loss of amenities and enjoyment of life in a sum of Rs.50,000/-. Considering the above aspects, the claimant is entitled to total compensation of Rs.12,68,750/- calculated as under:

Sl.No.	Heads	Amount in Rupees
1	Pain and suffering	1,00,000/-
2	Knee prosthetics	2,00,000/-
3	Towards diet food nourishment, attendance and convenience charges	27,000/-
4	Towards loss of future earning capacity due to permanent disability	8,61,000/-
5	Loss of income during laid up period	30,750/-
6	Towards loss of amenities and enjoyment of life	50,000/-
	Total	12,68,750/-



Out of the said total compensation, the liability of respondent Nos.1 and 2 to pay the compensation is 50%. Therefore, respondent Nos. 1 and 2 are liable to pay compensation of Rs.6,34,375/- with interest. Since the claimant himself is a tortfeasor, there has to be a contributory negligence to the extent of 50%. The interest awarded by the Tribunal at 9% per annum is on higher side considering the rate of interest of the banks on deposits. Considering said aspect the claimant is entitled to interest at the rate of 6% per annum from the date of petition till realisation.

14. In view of the above, the following

ORDER

- i) The appeal is ***allowed in part.***
- ii) The claimant is entitled to total compensation of Rs.6,34,375/- with interest at the rate of 6% per annum from the date of petition till realisation.



- iii) Respondent Nos. 1 and 2 are jointly and severally liable to pay the said compensation amount with interest. Respondent no. 2, being the insurer, shall deposit the said compensation amount with interest within a period of 08 weeks from this day, excluding the amount already deposited.
- iv) The liability to pay the compensation saddled by the Tribunal on respondent No.3 is set aside.
- v) Draw award accordingly.

**Sd/-
(B.M.SHYAM PRASAD)
JUDGE**

**Sd/-
(SHIVASHANKAR AMARANNAVAR)
JUDGE**

DSP
CT:VH
List No.: 4 Sl No.: 2