



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF NOVEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA

MISCELLANEOUS FIRST APPEAL NO. 3431 OF 2013 (MV-I)

BETWEEN

SRI. T.B. PRABHAKARA
S/O. T.R. BALAN,
AGED ABOUT 32 YEARS
NEERUKOLLI IBNIVALAVADI VILLAGE,
MADIKERI TALUK, KODAGU DISTRICT.

... APPELLANT

(BY MISS. AKANKSHA NATESAN, ADVOCATE FOR
SRI. G.K.V MURTHY AND P.E. UMESH, ADVOCATES)

AND

1. SRI. M.M. SURESHA S/O. M.N. MANI,
AGED ABOUT 28 YEARS,
NEERUKOLLI,
IBNIVALAVADI VILLAGE
MADIKERI TALUK, KODAGU DISTRICT.

2. M/S. NATIONAL INSURANCE CO. LTD.,
DIRECT AGENTS BRANCH
371/A, 3RD FLOOR,
PRESTIGE SHOPPING ARCADE,
RAMASWAMY CIRCLE MYSORE,
REPRESENTED BY ITS BRANCH MANAGER.



3. SRI. MOHAMMED AFTHAL A.A.
S/O. M.K. AHMED
8/43, MUTHAPPA TEMPLE ROAD,
MADIKERI-571201. ...RESPONDENTS

(BY SRI. B.C. SEETHARAMA RAO, ADVOCATE FOR R2;
R1 SERVED AND UNREPRESENTED;
V/O. DATED 17.07.2014 NOTICE TO R3 DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 31.12.2012 PASSED IN MVC NO.12/2010 ON THE FILE OF THE SENIOR CIVIL JUDGE, MACT, MADIKERI, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 30.08.2024 AND COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT', THIS DAY, THIS COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA

CAV J U D G M E N T

In this appeal, the petitioner is seeking enhancement of compensation.

2. The rank of the parties shall be referred to as per their status before the Tribunal.

3. Brief facts of the case are, on 30.03.2009 while the petitioner was traveling in an autorickshaw bearing



Reg.No.KA-12/A-748 at about 4-45 p.m. near Kandanakolli village in a slope road, the driver of the said auto lost control, due to which, the auto got toppled. The petitioner being the passenger fell down from the autorickshaw, his right hand was crushed. After taking treatment at Government Hospital, Madikeri, BGS Apollo Hospital, Mysuru, he was treated at Command Hospital, Bengaluru under 9 months' hospitalization where his right hand thumb was amputated. His right hand was not restored in spite of grafting of right forefinger in place of thumb and thereby his entire right hand has become useless.

3.1. The petitioner was serving in the Indian Army, because of the amputation of his right thumb, he was forced to take retirement on completion of 15 years of service though he can serve upto 60 years and he lost his promotional prospects. Seeking grant of compensation of Rs.61,58,000/, he has approached the Tribunal against the driver and the owner of the autorickshaw as well as the



United India Insurance Co. Ltd. as the insurer of the autorickshaw. Respondent No.1 and the United India Insurance Co. Ltd. have filed objection statement. Later the United India Insurance Co. Ltd. was deleted and National Insurance Co. Ltd. was brought on record in its place as second respondent. The National Insurance Co. Ltd. did not file its objection statement. The Tribunal, after taking the evidence and hearing both the parties, by the impugned judgment allowed the claim petition in part and granted compensation of Rs.4,78,472/- with interest at 6% p.a. and fastened liability against the respondents, directed the National Insurance Company to deposit the compensation. Pleading inadequacy and seeking enhancement, the petitioner is before this Court.

4. Heard the arguments of Ms. Akanksha Natesan, learned counsel for Sri G.K.V. Murthy, learned counsel appearing on behalf of the petitioner and Sri B.C. Seetharama Rao, learned counsel for the National Insurance Co. Ltd.



5. Ms.Akanksha argued that, the petitioner was a Soldier in the Indian Army, the medical evidence is placed through the treated Doctor from Command Hospital, Bengaluru that the petitioner has suffered disability of 50%. On account of the amputation of thumb, grafting of his another thumb was also carried out, both were failed, thereby the petitioner has suffered permanent disability and even under the Schedule-I of the Workmen's Compensation Act, amputation of right thumb, the statutory disability will be 30%.

5.1. It is further contended that, the Tribunal did not consider loss of income during hospitalization for more than 6 months and during laid-up. Calculation of future loss of income is not in accordance with the settled principles. The petitioner could have retired from the service at the age of 54, wherein he was made to retire at the age of 37 and he has lost huge service. From the date of accident in the year 2009 till his retirement in the year 2018, he was made to work in the lower grade/cadre from Lance Naik to Soldier



under the lesser salary. Since there is no prospects for the petitioner to continue the service on account of amputation, he was made to retire compulsorily with meager pension of Rs.7,000/-. She further argued that the petitioner apart from losing his career, suffered financial loss, sustained physical disability affecting his earning capacity and he is required to be compensated adequately.

5.2. To buttress her argument, she has relied on the judgments in **Sarnam Singh –vs- Shriram General Insurance Co. Ltd. & Ors¹**; **Sidram –vs- The Divisional Manager, United India Insurance Co. Ltd. and Anr.²** and **T.J.Parameshwarappa –vs- The Branch Manager, New India Asurance Co. Ltd.³**

6. *Per contra*, learned counsel for the Insurance Company has contended that, the Tribunal, considering the nature of injuries sustained by the petitioner has rightly assessed the disability with reference to the

¹ Civil Appeal No.3900 of 2023

² Civil Appeal No.8510 of 2022

³ Civil Appeal Nos.8598-8599 of 2022



Workmen's Compensation Schedule at 30% and taken the last drawn salary minus the pension and assessed the future loss of income, same is under the established principles of law. The argument canvassed on behalf of the petitioner is flowery and the petitioner cannot be allowed to make a windfall on account of the accident. The compensation assessed is just and proper and it is not a case for enhancement.

7. I gave my anxious consideration to the arguments addressed by the learned counsel for both the parties and perused the records.

8. Before the Tribunal, the petitioner has placed the evidence to explain the actionable negligence on the part of the petitioner. The petitioner was passenger of the autorickshaw and he has no role in the accident in question and the driver has to explain the circumstances of the accident took place. As the prosecution papers clearly point out that the accident took place within the limits of Madikeri Rural Police Station, which is a hillock



where the driver of the autorickshaw attempted to climb the upgradient road, due to which, auto was toppled, resulting in crush injury to the right hand of the petitioner.

9. The medical records show that the petitioner was treated at Government Hospital, Madikeri, BGS Apollo Hospital, Mysuru and then at Command Hospital, Bengaluru. As the treatment was not successful, right thumb of petitioner was amputated, and his middle finger was grafted to the thumb to facilitate him to operate the weapon in the middle, but it was failed. Thus, the actionable negligence on the part of the driver of the autorickshaw and the injuries sustained by the petitioner has been explained.

10. The petitioner was under hospitalization at Command Hospital from 01.04.2009 to 13.05.2009 for a period of 43 days with 3 weeks' sick leave, secondly between 03.06.2009 to 16.10.2009 for a period of 4 months 13 days with 6 weeks sick leave. It goes to show that the petitioner was under hospitalization for a period of



5 months 26 days including his sick leave during which he was laid to rest, he has lost his leave and he has to be compensated for the said period.

11. The Tribunal has awarded the compensation under the following heads:

1.	Medical expenses	Rs. 47,700/-
2.	Pain and sufferings	Rs. 20,000/-
3.	Conveyance charges	Rs. 5,000/-
4.	Nutritious food	Rs. 5,000/-
5.	Attendant charges	Rs. 1,000/-
6.	Future unhappiness and loss of amenities	Rs. 10,000/-
7.	Loss of future income	Rs. 3,89,772/-
Total		Rs.4,78,472/-

12. The accident is of the year 2009. Taking into consideration the age of the petitioner as 28 years, he has to be compensated with Rs.25,000/- towards pain and sufferings, medical expenses of Rs.47,750/-, conveyance charges of Rs.5,000/-, food and nourishment at Rs.15,000/-, for attendant charges of 5 months 26 days at the rate of Rs.5,000/- per month at Rs.29,400/-, loss of amenities and discomfort has to be compensated with Rs.25,000/-, laid-up of 5 months 26 days of



hospitalization and 9 weeks of sick leave comes to 8 months, for which the petitioner has to be compensated. As a Lance Naik, the petitioner was expected to draw a salary of Rs.25,049/- but he was paid only Rs.23,969/- as a Soldier. Then loss of income has to be calculated at the monthly income of Rs.25,049/- and for 8 months it comes to Rs.2,00,392/-.

13. As regarding loss of future income is concerned, it has been vehemently argued that the petitioner has to be compensated with the salary equivalent to the Captain if he was continued his job upto the age of 54 and he could have earned the higher salary, because of the amputation, he was lowered from Lance Naik to Soldier. He was subjected to Medical Board where he was put under the low medical risk category and ultimately he was made to take a compulsory retirement on completion of 15 years of service at the age of 37 years. The petitioner has lost 17 years of service and therefore the income of the petitioner has to be taken equivalent to the rank of the



Captain. This argument is strange as on the date of accident, the petitioner was working as a Lance Naik at Four Engineers and he was drawing salary of Rs.25,049/-. He was permitted to work as a Soldier on account of amputation of his right hand, he was paid salary of Rs.23,969/- and he was allowed to retire on 31.01.2018, post-retirement, he was drawing pension of Rs.7,000/-.

14. The evidence of Mr.Antony, the Accounts Officer of the Madras Engineers Regiment is placed on record, he has stated that the petitioner was working as a Soldier for a period of 14 years at the Madras Engineer Regiment and he was expected to superannuate at the age of 54 as an Honorary Captain, but on account of his amputation he was made to retire after completion of 15 years of service on 31.01.2018 but his retirement is a premature retirement.

15. According to him, the salary of a Lance Naik is Rs.25,049/-, for Soldier is Rs.23,969/- and for Hawaldar is Rs.23,292/-. According to him, 15 years of loss of salary



itself comes to Rs.55,31,220/-. This kind of evidence is strange and that cannot be considered as if a person working in the Madras Engineer Regiment as a Lance Naik, there is no evidence that he was assured of the promotion to the level of Honorary Captain. The qualification of the petitioner is not established. Hence, on the date of accident, the rank of the petitioner was Lance Naik and he was paid Rs.25,049/-. Post accident he was made to work as a Soldier under the salary of Rs.23,969/- because of the amputation, he was continued in the job at the lower rank and therefore, the petitioner suffered loss of salary between the Lance Naik and Soldier will be Rs.25,049/- minus Rs.23,969/- = Rs.1,080/-.

16. The petitioner was compelled to work for a period of five years on the lower cadre and therefore, loss of income will be Rs.1,080/- x 12 x 5 years = Rs.64,800/-. Apart from this, post-retirement, the petitioner is drawing pension of Rs.7,000/-. Even if his salary is taken as Lance Naik at Rs.25,049/- minus Rs.7,000/- (pension), loss of



income will be Rs.18,049/-. The petitioner was retired at the age of 37 years, the applicable multiplier will be 15. Though medical evidence speaks of 50% of disability, Schedule-I of Workmen's Compensation Act contemplates amputation of thumb, functional disability at 30%. Then loss of future income will have to be calculated on the date of retirement for the purpose of calculation of the multiplier. Multiplier cannot be calculated for the date of accident as the loss of pay of Rs.64,800/- is assessed. Then loss of future income will be Rs.18,049/- x 12 x 15 x 30% = Rs.9,74,646/-. If this is added to the loss of pay for five years at Rs.64,800/-, future loss of income comes to Rs.10,39,444/-. Thus, total compensation comes to Rs.13,86,938/- as against Rs.4,78,472/- assessed by the Tribunal, thereby enhancement of Rs.9,08,466/-. The Tribunal has considered interest at 6% p.a. and the same is kept in tact.

17. The argument with reference to the judgment of the Hon'ble Apex Court in **Sarnam Singh's** case (supra) is



considered, in the said case, Gunman lost the lower limb and thereby the percentage of disability is taken to 80% to 100%. In **Sidram**'s case (supra), a cart puller has suffered grievous injuries, where functional disability of 100% is taken. In **T.J.Parameshwarappa**'s case (supra), a lorry cleaner has sustained the injuries where he has suffered 100% of disability. As the petitioner is drawing pension post-retirement, the said principle is not applicable to the facts of this case. Schedule-I of the Workmen's Compensation Act points out the functional disability of 30% for amputation of thumb of the right hand. Hence, the compensation assessed is just compensation in the facts and circumstances of the case.

18. In view of the above discussion, the appeal merits consideration, in the result, the following:

ORDER

- i. The appeal is **allowed in part**;
- ii. The impugned judgment and award is modified;



- iii. The petitioner would be entitled to enhanced compensation of **Rs.9,08,466/-** with interest at 6% per annum from the date of petition till the date of deposit;
- iv. Insurance Company is directed to deposit the enhanced compensation amount with interest within eight weeks from the date of receipt of certified copy of this judgment.

Sd/-
(T.G. SHIVASHANKARE GOWDA)
JUDGE