

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 30TH DAY OF JANUARY, 2026

BEFORE

THE HON'BLE DR. JUSTICE K.MANMADHA RAO

MISCELLANEOUS FIRST APPEAL NO.100491 OF 2016(ECA)

BETWEEN:

SHRI SUNIL S/O DHARMAPPA LAMANI,
AGE: 33 YEARS, OCC: AT PRESENT NIL,
R/O: UCHAGAON-591128,
TQ: AND DIST: BELAGAVI.

...APPELLANT

(BY SMT. SUNANDA P. PATIL, ADVOCATE)

AND:

1. DASTAGIR S/O APPALAL ZANJE,
AGE: 40 YEARS, OCC: BUSINESS,
R/O: NANDANI ROAD, AVACHIT NAGAR,
JAYSINGPUR-591101,
TQ: SHIROL, DIST: KOLHAPUR, MAHARASTRA STATE.
(OWNER OF PASSENGER AUTO NO.MH/09/J-2860)

2. DIVISIONAL MANAGER,
THE NEW INDIA ASSURANCE CO. LTD.,
CLUB ROAD, BELAGAVI-590001
(INSURER OF PASSENGER AUTO
RICKSHAW NO.MH-09/J-2860
INSURANCE NO.152302/31/09/01/00002314
VALID FROM 27/06/2009 TO 26/06/2010)

...RESPONDENTS

(BY SRI. M.K. SOUDAGAR, ADVOCATE FOR R2;
NOTICE TO R1-DISPENSED WITH)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 30(1) OF THE EMPLOYEES COMPENSATION ACT 1923, PRAYING TO CALL FOR THE RECORDS CONNECTED WITH ECA NO.221/2014 ON THE FILE OF THE III ADDITIONAL SENIOR CIVIL JUDGE AND COMMISSIONER UNDER EMPLOYEES COMPENSATION ACT BELAGAVI, EXAMINE THE SAME AND SET ASIDE THE ORDER DATED 23.11.2015 TO THE EXTENT OF DISALLOWED CLAIM AND ENHANCE THE COMPENSATION TO THE TUNE OF Rs.10,00,000/-, IN THE INTEREST OF JUSTICE AND EQUITY.

Digitally signed by
MOHANKUMAR B
SHELAR

Location: High
Court of
Karnataka,
Dharwad Bench

THIS MFA HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 23.01.2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE DR. JUSTICE K.MANMADHA RAO

CAV JUDGMENT

This appeal is filed by the claimant under Section 30(1) of the Employees' Compensation Act, 1923 (for short, 'EC Act'), for enhancement of compensation calling in question the judgment and award dated 23.11.2015 passed by the III Additional Senior Civil Judge and Commissioner for Employees' Compensation, Belagavi ('the Commissioner', for short), in ECA No.221/2014, wherein compensation of Rs.84,672/- with interest at 12% per annum was awarded.

2. The appellant/respondents herein are the claimant/respondents before the Commissioner.

3. The brief facts of the case are that:-

The claimant/appellant was employed as a driver under respondent No.1 and was driving Auto Rickshaw bearing registration No.MH-09/J-2860, which was insured with respondent No.2-Insurance Company. On 03.02.2010 at about 2.15 a.m., while proceeding from Ganapatipula to Jayasingpur on

Ratnagiri–Kolhapur Road via Amba Ghat, the appellant met with an accident arising out of and in the course of his employment. As a result of the accident, he sustained grievous injuries and was admitted to CPR Hospital, Kolhapur, where he remained as an inpatient from 03.02.2010 to 22.03.2010 and underwent two major surgeries. It is the case of the appellant/claimant that he incurred medical expenses of more than Rs.75,000/- and continues to be under follow-up treatment.

4. It was further contended before the Commissioner that at the time of the accident, the appellant was aged about 26 years and was earning Rs.3,300/- per month. According to him, due to the injuries sustained in the accident, he has suffered permanent physical disability resulting in loss of earning capacity, loss of future prospects, and amenities of life. On these grounds, he sought compensation of Rs.10,00,000/- under the EC Act.

5. Upon service of notice, respondents appeared and filed their objections. Respondent No.1 admitted the employer–employee relationship, ownership of the vehicle, and payment of salary of Rs.3,300/- per month to the appellant. Respondent

No.2-insurer denied the age, income, nature of injuries, extent of disability, and employer-employee relationship, and further contended that the appellant did not possess a valid and effective driving licence at the time of the accident.

6. Before the Commissioner, the appellant examined himself as PW-1 and examined the doctor as PW-2, and got marked documents as per Exs.P1 to P9. On the other hand, respondent No.2 got marked documents at Ex.R1.

7. Upon appreciation of the evidence on record, the Commissioner framed issues and partly allowed the claim petition and awarded compensation of Rs.84,672/- with interest at 12% per annum.

8. Learned counsel for the appellant contended that as per the discharge summary at Ex.P4, the appellant had sustained fracture of shaft of femur, distal fracture of tibia, and fracture of the right wrist. PW-2 assessed permanent disability at 55% to the right lower limb, 30% to the right upper limb, and 25% to the left upper limb, which comes to 110% disability to the three limbs in all. It was argued that the cumulative effect of the injuries resulted in substantial loss of earning capacity,

particularly considering that the appellant was working as a driver. It was further contended that the income and age of the appellant were not properly taken into consideration and that the compensation awarded is meager and requires enhancement.

9. In support of her contentions, learned counsel for the appellant has placed reliance on the judgment of the Hon'ble Madras High Court in the case of **D.Shanmuga Anand Vs.M.Balasubramanian and another** reported in **2012 ACJ 2456**, wherein at paragraph 14 it has held as follows:

"14. The evidence on record indicated that the appellant-claimant was unable to perform the work that he was doing earlier. Appellant was employed as a driver. The accident has caused an injury to him which has resulted in malunited fracture of wrist and malunited tibia on the right leg, more particularly, there has been loss of bone segment on the right tibia. This handicap has resulted in decreasing the muscle power of the limbs as also its movements. The right leg is essential for driving and is used for accelerating the vehicle as well as for applying brakes. Likewise, the left arm is essential for holding and operating the steering wheel. In such circumstances, when there is evidence on record to show that the appellant was unable to carry out the work of driving the vehicle, it obviously means that he had suffered an injury which resulted in complete disablement."

10. Learned counsel for respondent No.1 supported the case of the appellant to the extent that the employer–employee relationship and payment of wages were admitted.

11. Per contra, learned counsel for respondent No.2-insurer contended that the Commissioner has assessed the compensation on the basis of evidence on record and that no perversity or illegality is demonstrated. Learned counsel filed objections denying the employee and employer relationship and the mode of accident. He also denied the occurrence of the accident and spending Rs.75,000/- towards treatment and also denied that he was aged 26 years and earning Rs.3,300/- per month and due to accidental injuries he has totally become disable. He also submits that the claimant was not holding valid driving licence. The counsel also submits that the orthopedic surgeon has given disability to the extent of 110% to the three limbs which he submits is disproportionate as 100% disability to body means a person dead and very strangely submits that the disability is assessed 10% more. Therefore, the insurer is not liable to pay the compensation and hence, prays to dismiss the appeal.

12. Heard learned counsel for the parties and perused the materials available on record.

13. Having considered the submissions advance, in the present case, the fact that the accident occurred arising out of and in the course of employment is not in serious dispute. The employer–employee relationship is admitted by respondent No.1. The Commissioner has assessed the age and income of the appellant on the basis of available evidence. With regard to disability, though PW-2 assessed limb-wise disability, the Commissioner has considered the functional disability at 15% to the whole body. Looking into the nature of the injuries and by considering the submissions of both the parties, and the materials placed on record, this Court deems it appropriate to consider disability to the whole body at 20%. With regard to other heads, the Commissioner has awarded just and proper compensation. Therefore, this Court deems it appropriate to consider the disability to the whole body at 20% instead of 15% taken by the Commissioner. Hence, loss of earning capacity comes to **Rs.85,300/-** ($\text{Rs.3300/-} \times 60\% \times 215.38 \times 20\% = \text{Rs.85,290/-}$ rounded of to Rs.85,300/-). Therefore, the claimant is entitled for compensation of **Rs.1,03,032/-** ($\text{Rs.85,300/-} + \text{Rs.17,732/-}$ [medical bills]).

14. In view of the foregoing discussion, this Court proceeds to pass the following:

ORDER

- i. The appeal is ***allowed-in-part***.
- ii. The judgment and award dated 23.11.2015 passed in ECA No.221/2014 by the III Additional Senior Civil Judge and Commissioner for Employees' Compensation, Belagavi, is hereby modified. The claimant is entitled for compensation of ***Rs.1,03,032/- *as against Rs.84,672/- awarded by the commissioner with interest at the rate of 12% p.a. after 30 days from the date of accident till deposit on the enhanced compensation of Rs.18,360/-.***
- iii. Apportionment and disbursement shall be in the same manner as directed by the Commissioner.
- iv. The trial Court records, if any, shall be transmitted to the Tribunal forthwith.

**Sd/-
(DR. K.MANMADHA RAO)
JUDGE**

KGK,CT:VP

*Corrected vide court order dated 05.02.2026

Sd/-
(DR.KMRJ)