



NC: 2026:KHC:29223-DB
MFA No. 916 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JUNE, 2026

PRESENT

HON'BLE MR. JUSTICE JAYANT BANERJI

AND

HON'BLE MS. JUSTICE TARA VITASTA GANJU

MISCELLANEOUS FIRST APPEAL NO. 916 OF 2019 (MV-I)

BETWEEN:

KRISHNA.B
AGED ABOUT 53 YEARS,
S/O LATE BADIYA NAIK,
REP: BY GUARDIAN/DAUGHTER
RENUKA.K,
AGED ABOUT 25 YEARS,
W/O KRISHNA.B,
R/O KADIKERE ROAD,
HOSAGADDE, MOODUGOPPA VILLAGE,
CHIKKAPET NAGAR, HOSANAGAR, SHIMOGA.

AT PRESENT R/O C/O JAYARAM,
S/O BASAVA NAIK,
R/O NEAR TRINITY SCHOOL,
MOODUPERAMPALLI,
KUKNJIBETTU POST,
UDUPI TALUK AND DISTRICT-576 201.

...APPELLANT

(BY SRI. PAVANA CHANDRA SHETTY H., ADVOCATE)

AND:

1. SAYYED ASEEF
AGED ABOUT 31 YEARS,
S/O SAYYED HASHEEM,
R/O AKKIPETE, SHIRALAKOPPA TOWN,
SHIKARIPURA TALUK,
SHIMOGA DISTRICT-574 002.

Digitally signed by
SUMATHY KANNAN
Location: HIGH
COURT OF
KARNATAKA



2. SHRI RAM GENERAL INS. CO. LTD.,
DIVISIONAL MANAGER, DIVISIONAL OFFICE,
PRIYADARSHINI, 1ST FLOOR,
NEAR CITY BUS STAND,
UDUPI-576 201.

...RESPONDENTS

(BY SRI. B.C.SHIVANNE GOWDA., ADVOCATE FOR R2;
NOTICE TO R1-DISPENSED WITH V/O/DTD:25.11.2022)

THIS MFA FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 06.10.2018 PASSED IN MVC NO.69/2016 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE & ADDITIONAL MACT, UDUPI, 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: HON'BLE MR. JUSTICE JAYANT BANERJI
&
HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORAL JUDGMENT

(PER: HON'BLE MS. JUSTICE TARA VITASTA GANJU)

1. The present appeal seeks to challenge the Judgment and Award dated 06.10.2018 in M.V.C.No.69/2016 passed by the Additional Motor Accidents Claims Tribunal & Principal Senior Civil Judge, Udupi (hereinafter referred to as the 'Impugned Award'). By the Impugned Award, the learned Tribunal has awarded Rs.16,03,666/- to the



appellant/claimant along with interest at 6% per annum from the date of petition till its realisation.

2. The Appeal though listed for admission, given the pendency of this appeal for seven years, with the consent of the parties, this Court has heard and decided the appeal finally today itself.

3. Heard the learned Counsel for the appellant/claimant and learned Counsel for respondent No.2/Insurance Company. Notice to respondent No.1 has been dispensed with, by an order dated 25.11.2022.

4. The brief facts are that, on 23.05.2015 at about 1.50 p.m. the appellant/claimant was riding a motorcycle bearing registration No.KA-15Q-8629 and proceeding from Chakra Nagara towards Nooligeri side. When he reached Mundalli Cross, one goods vehicle (Lorry) bearing registration No.KA-11-6408 coming from the opposite direction hit the appellant/claimant from right side. As a result of the accident, the goods Lorry dragged the bike to a distance of 30 ft. from the place of the accident. The



appellant/claimant sustained grievous injuries and was shifted to a Government Hospital in Nagara and thereafter to Nanjappa Hospital in Shimoga. Later on, he was shifted to Adarsha Hospital, Udupi. The appellant/claimant did not regain his consciousness for three days after the accident.

5. On account of the accident, appellant/claimant suffered severe and grievous injuries based on which a claim petition was filed. The claim petition was contested by respondent No.2/Insurance Company. Although respondent No.1/owner of the offending vehicle was served, he did not appear and hence was proceeded with *ex parte* by the learned Tribunal.

6. Based on the pleadings between the parties, the following issues were framed by the learned Tribunal:

"ISSUES

1. *Whether the Petitioner proves that on 23.05.2015 at about 1.50 p.m, while the injured was proceeding in a motor bike bearing Reg.No.KA-15Q-8629 from Chakra Nagar towards Nooligeri side and when he reached Mundalli cross, one Goods vehicle bearing Reg.No.KA-11-6408 driven by its driver from Nooligeri side came in high speed and negligent manner with uncontrollable speed, dashed the motor bike and in the result petitioner has sustained injury?*



2. *Whether the petitioner is entitled for compensation?
If so, what is the quantum? From whom payable?*
3. *What award or order?*

7. The doctor who treated the appellant/claimant was examined as PW.1, the guardian/wife of the appellant/claimant was examined as PW.2, an eyewitness was examined as PW.3 and the doctor of SDM Hospital, Udupi, was examined as PW.4. Several documents were marked as exhibits including Disability Certificate (Ex.P1), Scanning Report (Ex.P3), Wound Certificate (Ex.P7), Charge Sheet (Ex.P8), Medical Bills and prescriptions (Ex.P10, Ex.P11, Ex.12, Ex.14, Ex.15 and Ex.20). In addition, the charge sheet and FIR are also on record as Ex.P8 and Ex.P4 respectively. The respondent No.2/Insurance Company did not lead any evidence in the matter.

8. On the basis of the evidence adduced by the parties, the learned Tribunal found that appellant/claimant had suffered grievous injuries and after examining the Disability Certificate (Ex.P1) found that the disability



stated by the doctor at Ex.P1 is not based on any calculation and also found that the doctor had admitted that although the injured had recovered and all four limbs are 'intact', his movement was restricted. Thus, 50% disability for the whole body was considered. In addition, given the age of the appellant/claimant and taking notional of income at Rs.9,000/- per month, the loss of future income was awarded at Rs.7,02,000/- ($\text{Rs.9,000} \times 12 \times 13 = \text{Rs.14,04,000} \times 50\%$). The Tribunal has also awarded amounts towards the total medical bills produced. In addition, amounts for loss of income during laid-up period and loss of amenities were also awarded in the following manner:

Sl.No.	Heads of Compensation	Amount (Rs.)
1	Pain and suffering	1,00,000-00
2	Loss of future income	7,02,000-00
3	Medical Expenses	5,47,666-00
4	Loss of income during treatment period	54,000-00
5	Conveyance, food, nourishment, attendant charges	50,000-00
6	Loss of amenities in life	1,50,000-00
	TOTAL	16,03,666-00



8.1 Thus, an amount of Rs.16,03,666-00 along with interest at 6% per annum was awarded by the learned Tribunal.

9. This Court had briefly heard the matter on 08.06.2026 and directed as follows:

“Learned counsel for the appellant is present and states that his argument is only on two grounds, i.e., ‘Loss of future prospects’ and ‘Loss of future medical expenses.”

10. Learned counsel for the appellant/claimant draws attention of the Court to the evidence placed on record on behalf of the appellant/claimant, more specifically, the evidence of PW.1 and PW.4. He submits that the injuries of the appellant/claimant were grievous in nature and that the doctors also found that the appellant/claimant is suffering from right hemiplegia (paralysis of the right side of the body). He further submits that in terms of Ex.P17-certificate issued by PW.1-Dr.A.Raja, the future medical expenses were ascertained by the doctor at Rs.2.2 Lakhs to Rs.2.5 lakhs, which was a conservative estimate for the treatment to be incurred by him in the future. However, it



is contended that no award for future medical expenses was granted.

10.1. The learned counsel for the appellant/claimant also seeks to rely upon the judgment of the Supreme Court in ***Rajkumar Vs. Ajay Kumar & Another***¹ to submit that the functional disability in the case of the appellant/claimant should have been considered at 100%. In addition, he also submits that injured was aged 50 years, but loss of future prospects was not awarded.

11. Learned counsel for the respondent No.2/Insurance Company while fairly submitting that loss of future prospects was required to be awarded in terms of the settled law in ***National Insurance Co.Ltd. Vs. Pranay Sethi***², he submits that so far as concerns the future medical expenses, these were not required to be awarded. He further submits that as can be seen from Ex.P17 itself, the doctor's certificate stated that the approximate

¹ (2011) 1 SCC 343

² (2017)16 SCC 680



expenditure for treatment of the appellant/claimant will be around Rs.2 to 2.50 Lakhs and the certificate was issued to get the financial assistance from Government or Non-Government Organizations. He further submits that these are already included in medical bills annexed at Ex.P10.

12. The point for consideration before this Court is, whether in the circumstances of the case, was any amount required to be awarded towards future medical expenses?

13. An examination of the facts shows us that the appellant/claimant was riding on a motorcycle and at that time, he was hit by a goods vehicle (Lorry). He was dragged for 30 ft. and was unconscious when found. He also did not regain consciousness for three days while he was in hospital. These facts are undisputed.

13.1 An examination of the evidence produced including the wound certificate (Ex.P7) shows the following injuries:

"WOUND CERTIFICATE"

*No: 566/2015/ADH/US Hosp. IP No. 54277
Date of Admission: 25/05/2015*

*Date of Discharge:
13/07/2015*



HC-KAR

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This is to certify that, Mr.Krishna.B s/o Mr. Badiya Naik, male aged 50 years, an inhabitant of, Hosagadde, Chikkapete, Shivamogga had come to this hospital for report as to certain injuries, aid to have been caused on 23/05/2015 at around 01:00 PM and to be due to alleged history of Road Traffic Accident near Mundalli cross, Shimogga.

Brought By: Mr. Rathnakar (Brother-in-law).

The injured person was examined by me on 25/05/2015 at 09:55 PM when the following injuries were found (patient unconscious, initially went to Nanjappa Hospital):

1. Bluish contusion of 8 cm x 6 cm on the left side of head with CT scan showing:

- a) Subarachnoid hemorrhage over bilateral fronto parietal region
- b) Contusion of left frontal lobe
- c) Interpeduncular bleed
- d) Right sided hemiplegia
- e) Right 3rd nerve palsy

2. Bluish contusion of 6 cm x 5 cm on the right shoulder with underlying fracture of clavicle.

3. Bluish contusion of 12 cm x 10 cm on the right side of chest with CT scan showing:

- a) Fracture of 1st , 2nd & 3rd ribs
- b) Contusion of right lung.

4. Bluish contusion of 6 cm x 5 cm on the front of middle of left arm.

5. Bluish contusion of 7 cm x 5 cm on the outer aspect of right side of abdomen with CT scan showing:

- a) liver contusion with hemopritoneum
- b) Bilateral kidney injury

6. Swelling of right leg in the lower half with underlying fracture of fibula.

Treatment: Conservative.



*OPINION: I am of the opinion that injuries no. **1a, 1b, 1c, 1d, 1e, 2, 3a, 3b, 5a, 5b & 6** were **grievous**; injury no. 4 was simple in nature. All injuries were of 1 to 3 days duration and caused by blunt force trauma could be possible in a Road Traffic Accident as alleged."*

[Emphasis Supplied]

14. It is also not disputed that the injured took treatment at multiple hospitals. The evidence of two doctors who examined him were produced. PW.1-Dr.A. Raja and working as a Neurosurgeon at Adarsha Hospital, Udupi has been examined and cross-examined. He has stated that at the time of discharge, the injured was not in a position to walk and stand and was advised follow-up treatment. He further states that when he saw the injured on the last time, he had deformity in his hands and legs, upper and lower limbs with severe pain all over his joints. He also had difficulty in independent movement and thus a Treatment Certificate and a Disability Certificate were given. The doctor further deposed that the because of this disability, the appellant/claimant was unable to attend the Court proceedings or give any evidence. The relevant extract of the examination in Chief of P.W.1 is below:



*"I am working in Adarsha Hospital as a Neurosurgeon since 7 years. On 25.05.2015 the victim Krishna D had admitted to our hospital in the history of head injury in the motor vehicle accident. **He was inpatient for 45 days. At the time of discharge the injured was not in a position to walk and stand. He was advised for follow up treatment.** As per advise the injured was attending follow up treatment. **When I saw the injured last time, he had fixed deformity in the hands and legs upper and lower limb with severe pain all over his joint. The injured had difficulty independently moving. In this regard, I have given treatment certificate. I have given disability certificate pertaining to the injured marked as Ex.p.1. Therefore, due to the disability the petitioner is not in a position to attend the court to give evidence. The disability suffered by the petitioner is permanent in nature. I have produced Case sheet and scanning report marked as Ex.p.2 and Ex.P.3."***

[Emphasis Supplied]

15. The cross-examination by the respondent No.2/ Insurance Company also revealed that the injured claimant is only able to answer simple questions and that he has to be made to sit in a chair. Clearly thus, the appellant/claimant cannot function independently. The cross-examination of P.W.1 in this behalf reflecting these injuries is also extracted below:

"Head injury was not operated. There was no need for operation. It is true to suggest that, the victim has recovered. I did not receive any reference or advice from Nanjappa Hospital, Shimogga in respect of injuries sustained by the victim. It is true to suggest that. I have not treated the injuries immediately after



*the accident. On 03.07.2017, for the last time, I saw the victim. As per our records, Ex.p.1 was done on 30.08.2017. It is true to suggest that, the calculation for arriving at disability is not stated in the case register. I have not referred the victim to the neuro cytological assessment evaluation. Based on the response of the victim I have issued Ex.p.9. **It is true to suggest that, the victim is able to respond to answer simple questions.** As per Ex.p.1 the disability of 10% is towards the left eye. **It is true to suggest that, all the four limbs of the victim are movable, but there is a restriction. The victim can be made to sit in the chair.** Apart from the medication we prescribed there is no treatment is required for victim. I cannot say the overall disability of the victim. **It is not true to suggest that, disability will come down and victim will improve in future.** It is not true to suggest that, I have given disability on higher side to help the victim."*

[Emphasis Supplied]

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16. The other doctor, Dr.Yogish Acharya at SDM Hospital, Udupi also deposed on behalf of the injured claimant. He submitted that after examining the CT scan, it was found that the injured is suffering from right hemiplegia. The cross-examination of this witness also did not reveal anything to the contrary.

17. As can be seen from the records, the injured was working as a PWD contractor and earning Rs.7,00,000/- per year. Ex.P24 is the certificate issued in this regard by the Panchayath Raj Engineering Department, Zilla



Panchayath, Shimoga. The Income Tax Returns of the appellant/claimant for the years 2015-16 and 2016-17 have been produced as Ex.P23 and the Identity Card issued by the Government of Karnataka, Panchayath Raj Engineering Department is produced as Ex.P25. Thus, the avocation of the injured is not in dispute based on these documents.

18. Although Income Tax Returns were filed, since these were for the assessment years 2015-16 and 2016-17, but were both filed on 31.03.2017 and 14.04.2017, the learned Tribunal took the income as per the notional income chart of the Karnataka Legal Services Authority at Rs.9,000/- per month.

19. The Supreme Court in ***Rajkumar Vs. Ajay Kumar*** case, while explaining as to how functional disability has to be calculated has held that in order to assess functional disability, the Tribunal is required to ascertain what activities the claimant could carry out in spite of the disability and what he would not be able to do and also



what is his avocation and profession and how he is disabled from earning in spite of the accident. The relevant extract is set out below:

"10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanent 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 terms 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 the 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. (See for example, the decisions of this Court in Arvind Kumar Mishra v. New



India Assurance Co. Ltd. [(2010) 10 SCC 254 : (2010) 3 SCC (Cri) 1258 : (2010) 10 Scale 298] and Yadava Kumar v. National Insurance Co. Ltd. [(2010) 10 SCC 341 : (2010) 3 SCC (Cri) 1285 : (2010) 8 Scale 567]).

12. Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence:

(i) whether the disablement is permanent or temporary;

(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;

(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity.

But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

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 disability (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 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.

XXX

XXX

XXX

15. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.

XXX

XXX

XXX

19. We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in



different persons, depending upon the nature of profession, occupation or job, age, education and other factors."

[Emphasis supplied]

20. Based on the evidence produced by the appellant/claimant, it is clear that the functional disability of the injured would require to be taken as 100%, because he would not be able to return to his profession as a PWD contractor and for that he would require to be mobile. Since he is even unable to sit on his own, much less walk, his functional disability would be taken as complete. Accordingly, the loss of future income is to be recalculated in the following terms:

Loss of Future Income	Rs.9,000+25%=11,250/- Rs.11,250x12x13x100%=17,55,000/-
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21. In addition, this Court is unable to agree with the contentions of the learned Counsel for the respondent No.2/Insurance Company with that injuries of such a severe nature as well as right side paralysis and some amounts should have been awarded for future medical expenses as well. Ex.P17 sets out that he would need Rs.2 to 2.5 lakhs



towards medical expenses. Since, the amount for loss of amenities in life and conveyance, food etc. have been awarded by the learned Tribunal, we award Rs.1,50,000/- towards loss of future medical expenses.

22. Accordingly, the compensation awarded by the learned Tribunal is enhanced in the following terms:

Sl. No.	Heads of Compensation	Amount (in Rs.)
1	Loss of future income	17,55,000-00
2	Medical expenses	5,47,666-00
3	Pain and suffering	1,00,000-00
4	Loss of income during laid up period (9000 x 6)	54,000-00
5	Conveyance, food etc.	50,000-00
6	Loss of amenities in life	1,50,000-00
7	Future Medical expenses	1,50,000-00
	TOTAL	28,06,666-00
	Less: Awarded by MACT	16,03,666-00
	Enhancement	12,03,000-00

23. Hence, the appellant/claimant is entitled to total compensation in the sum of **Rs.28,06,666/-** along with interest at 6% p.a. as awarded by the learned Tribunal from the date of petition till the date of realization.

24. Accordingly, the Court proceeds to pass the following:



ORDER

- (i) The appeal is ***allowed in part***;
- (ii) The Impugned Judgment and Award dated 06.10.2018 in M.V.C.No.69/2016 passed by the Principal Senior Civil Judge & Additional MACT, Udupi, is modified, to the extent that the claimant is entitled to enhanced compensation of **Rs.12,03,000/-** along with interest at the rate of 6% per annum in addition to **Rs.16,03,666/-** as awarded by the learned Tribunal.
- (iii) The remaining portion of the Impugned Award of the learned Tribunal remains undisturbed.
- (iv) The respondent No.2/Insurance Company shall deposit the enhanced compensation with interest applicable thereon, as awarded by the learned Tribunal, within a period of eight weeks from the date of receipt of a copy of this judgment;



(v) On such deposit of compensation, the same shall be released in favour of the appellant/claimant, on filing of an appropriate application by the appellant/claimant for withdrawal of the enhanced amount.

(vi) The Registry is directed to draw the modified Award accordingly.

(vii) The Registry is directed to transmit a copy of this judgment to the concerned Tribunal.

(viii) No order as to costs.

**Sd/-
(JAYANT BANERJI)
JUDGE**

**Sd/-
(TARA VITASTA GANJU)
JUDGE**

Yn.
List No.1 Sl.No.10