



NC: 2026:KHC:28164-DB
MFA No.4354 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF JUNE, 2026

PRESENT

HON'BLE MR. JUSTICE JAYANT BANERJI

AND

HON'BLE MS. JUSTICE TARA VITASTA GANJU

MISCELLANEOUS FIRST APPEAL NO. 4354 OF 2019 (MV-I)

BETWEEN:

MR.MOHAMMAD FAROOQ @ FAROOQ
S/O SABAJAN @ SAFH JHON,
AGED ABOUT 28 YEARS,
R/AT: K/E 618, LAKSHMAN PURI,
GANDHINAGAR, BENGALURU-560 023.

NEW ADDRESS:
NO.21, 6TH CROSS, CHELUVADIPALYA,
DR. TCM ROYAN ROAD,
BENGALURU-560 023.

...APPELLANT

(BY SMT. B.H.SUNITHA, ADVOCATE FOR
SRI. SURESH M. LATUR., ADVOCATE)

AND:

1. SRI NANDISHA H. S.,
S/O SHIVANNA,
NO. 401, 2ND CROSS,
6TH MAIN ROAD, NAGARBHAVI,
BENGALURU-560 072.
2. THE MANAGER,
BAJAJ ALLIANZ GENERAL
INSURANCE COMPANY LIMITED,
GOLDEN HEIGHTS, 4TH FLOOR,
NO. 112, 59TH CROSS,
4TH BLOCK, RAJAJINAGAR,
BENGALURU-560 037.

...RESPONDENTS

(BY SRI B.PRADEEP., ADVOCATE FOR R2;

Digitally signed by
SUMATHY KANNAN
Location: High
Court of
KARNATAKA



NOTICE TO R1 DISPENSED WITH VIDE ORDER
DTD:12.12.2022)

THIS MISCELLANEOUS FIRST APPEAL IS FILED U/S 173(1) OF MV ACT PRAYING TO SET ASIDE THE JUDGMENT AND AWARD DATED 22.12.2018 PASSED BY THE I ADDITIONAL SMALL CAUSES JUDGE AND MACT, (SCCH-11), BENGALURU, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

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

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
and
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 22.12.2018, in M.V.C.No.1519/2017 passed by the I Additional Small Causes Judge & MACT, Bengaluru, (SCCH-11) (hereinafter referred to as the 'Impugned Award'). By the Impugned Award, the learned Tribunal has awarded Rs.3,20,488/- to the appellant/claimant along with interest at 9% per annum from the date of petition till its realisation.

2. The Appeal though listed for admission, given the pendency of this appeal for eight years, with the consent



of the learned Counsel for the parties, this Court has heard and decided this appeal finally today.

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 12.12.2022.

4. The brief facts of the case are that the appellant/claimant, on 22.12.2016 at around 04.45 a.m., was riding his motorcycle bearing Registration No.KA-03-EF-3944 from Anand Rao Circle towards Trilight Junction on Race Course Road, a car bearing Registration No.KA-41-B-2849, driven by its driver at a very high speed and in a rash and negligent manner, collided with the motorcycle of the appellant/claimant. As a result of which, the appellant/claimant fell down and sustained grievous injuries all over the body. He was taken to Mallige Hospital, Bangalore and later shifted to NIMHANS Hospital for further treatment and admitted to Abhaya Hospital where he was treated as an inpatient from 22.12.2016 to 30.12.2016. The appellant/claimant suffered head injury



having right temporal acute EDH and right clavicular fracture. The appellant/claimant also underwent surgery in the form of right temporo-parietal craniotomy-evacuation of acute EDH under GA. In view of the injuries sustained, a claim petition was filed before the learned Tribunal. The claim was contested by respondent No.2/Insurance Company. Respondent No.1/owner of the offending vehicle was proceeded with ex-parte before the learned Tribunal, since he did not appear.

5. Based on the pleadings filed by the parties, the following issues were framed by the learned Tribunal:

"ISSUES

1. Whether the Petitioner proves that, he sustained grievous injuries in the accident that occurred on 22.12.2016 at about 4.45 a.m., near Race view Hotel, Race Course Road, Bengaluru, when he was riding a motor cycle bearing reg. No.KA-03-EF-3944, due to the rash and negligent driving of the car bearing reg. No.KA-41-B-2849 by its driver?

2. Whether the petitioner is entitled for the compensation as prayed in the claim petition? If so, what is the quantum of compensation and from whom?

3. What order or award?"

6. The appellant/claimant examined himself as PW.1 and produced nine documents as Exhibits P1 to P11. He



got examined Dr. S.A. Somashekar, in support of his claim as PW.2. On behalf of respondent No.2, RW.1/Senior Executive–Legal and RW.2 the MRO of Mallige Hospital, Bengaluru were examined and produced six documents as Exhibits R1 to Ex.R6.

7. On the basis of the evidence adduced by the parties, the learned Tribunal found that the accident was caused by the negligent driving of the driver of the offending vehicle. In addition, the Tribunal also found that since the appellant/claimant failed to prove his income, his income was taken at the rate of Rs.8,000/- per month to calculate disability as well as loss of earning capacity. Accordingly, the learned Tribunal held that the appellant/claimant is entitled to the following amounts as compensation:

Sl. No.	Heads of Compensation	Amount (in Rs.)
1	Pain, shock and agony	20,000/-
2	Medical expenses	1,88,685/-
3	Food, attendant, conveyance, nourishment and incidental charges	3,000/-
4	Loss of income during treatment period	2,403/-
5	Loss of earning capacity	86,400/-
6	Loss of amenities in life	20,000/-



	TOTAL	3,20,488/-
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7.1. Thus, an amount of Rs.3,20,488/-, along with interest at 9% per annum was awarded.

8. The challenge in the present appeal is on three grounds. The learned Counsel for the appellant/claimant submits that firstly, the notional income was wrongly taken at Rs.8,000/- per month by the Tribunal. The notional income for the year 2016 was Rs.9,500/- per month. Secondly, she submits that the disability awarded should have been higher, given the documents produced and the evidence adduced. Lastly, it is contended that in view of the fact that the appellant/claimant sustained grievous injuries and submits that the amounts as awarded under various heads including pain and agony, loss of earning capacity, loss of amenities, as well as under other non-pecuniary heads, was not adequate.

9. The learned Counsel for respondent No.2/Insurance Company on the other hand, fairly concedes that the notional income of the appellant/claimant was wrongly



taken as Rs.8,000/- per month and it ought to be at Rs.9,500/- per month for the accident of the year 2016. However, he contends that since there was no surgery and only conservative treatment was advised by the doctor, the other amounts awarded do not require to be interfered with. He seeks reliance on Exhibit P6 and the cross-examination of the doctor in this behalf.

10. The only point that arises for consideration before this Court is, whether the Impugned Award requires any interference by this Court?

11. The undisputed fact is that the notional income for the year 2016 was Rs.9,500/- p.m., as per the Chart prepared by the Karnataka State Legal Services Authority. That amount needs to be reassessed. So far as the award on pain and agony, as well as food and attendant charges, given the injuries stated, the amounts awarded would require enhancement, given the fact that several injuries were sustained which required hospitalisation and surgery.



12. On the aspect of disability, the learned Tribunal, on examination of the evidence produced rightly found that although there were various fractures and injuries sustained by the claimant, since PW.2 was not the treating doctor, the disability was kept at 12%.

13. The examination of the evidence of PW.2/ Dr.S.A.Somashekhar shows that he has examined the claimant and all the documents and has found that the claimant would have difficulty in lifting heavy objects etc. The doctor also found that there is total disability of 24% to the right upper limb and to the whole-body at 12%. The disability calculations are set out by PW-2 in his evidence in the following manner:

"He was diagnosed to have:

- 1) Head injury having (right) temporal Acute EDH.**
- 2) (Right) clavicular fracture.**

He underwent surgery in the form of:

Right temporo parietal craniotomy Evacuation of acute EDH under GA on 24-12-2016.

- Fracture Right clavicle was treated conservatively.

I have gone through his Discharge Summary before assessing the disabilities:

Now on presentation he complained of:



-Pain and difficulty in using (right) upper limb for activities of daily living.

He gives History of inability to lift heavy weight and carryout over head activities.

On Examination:

-Wasting of (right) shoulder girdle is seen. Prominence of medial half of (right) clavicle is seen.

His recent x-ray No.5272/06-02-2018 shows:

- Malunited fracture clavicle,
- Acromio clavicular disruption grade 1.

His disabilities are:

ROM

SHOULDER	(Left) side	(Right) side
Flexion/Extension (0°-220°)	0-220°	0-16°
Abduction/Adduction (0°-180°)	0-180°	0-130°
Rotations (0-180°)	0-180°	0-140°
		7.75%

Disability involving the Mobility component is 7.75%

CO-ORDINATED ACTIVITIES:

1) Lifting overhead objects remove and placing at the same place	4.5%
2) Combing and plaiting	4.5%
3) Putting on shirt/Kurts	4.5%
4) Ablution Indian style	4.5%
Total	18%

Total disability of (right) upper limb is

$$\mathbf{18 + 7.75 (90 - 18) / 90 = 24\%}$$

I put the total disability of (Right) upper limb at 24% and that of his whole body at 12%. In view of the above said disabilities, it is difficult for the



patient to work as a Fish vendor and also difficult for him to do any other manual or physical work.”

[Emphasis Supplied]

13.1.The doctor also gave his opinion that the appellant/claimant being fish vendor, it would be difficult in view of his disability to carry out his vocation.

14. The appellant/claimant has also produced Exhibit P6/ Wound certificate dated 22.12.2016, which sets out the fractures to his right clavicle and also sets out various injuries. The discharge summary also reflects the injuries to the claimant. Thus, there cannot be any dispute that the appellant/claimant did suffer severe injuries which have led to physical disability, and owing to the nature of his job, functional disability as well.

15. The learned Tribunal has not taken the disability to the whole body only in view of the fact that the doctor was not the treating doctor. This Court is unable to agree. The Supreme Court in ***Rajkumar vs. Ajay Kumar & Another***¹ case held that since the doctor has examined

¹ (2011) 1 SCC 343



the patient, as well as all other materials produced, disability could have been assessed and formulated to be given by the doctor. It was held that:

"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*



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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)**



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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.

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]

16. Accordingly, this Court deems it apposite to award disability to the whole body, at 8%. It is not disputed that the claimant was hospitalized for 9 days. The accident took place in the year 2016. The claimant was aged 25 years at the time of the accident. The notional income during the relevant period was Rs.9,500/- per month. The claimant was aged 25 years, and the applicable multiplier is '18'. Thus, the compensation under head 'loss of earning capacity' works out to :

<u>Loss of earning capacity</u>	<u>Compensation</u>
<u>Rs.9,500/- x 12 x 18 x 8%</u>	<u>Rs.1,64,160/-.</u>

17. In view of the nature of the injuries sustained by the appellant/claimant as observed by the learned Tribunal in the Impugned Award, this Court deems it apposite to enhance the award towards pain and suffering to Rs.40,000/-.



17.1. In addition, the loss of amenities would also be proportionately enhanced. In addition, in view of the fact that the appellant/claimant took treatment for nine days in the hospital and obtained conservative treatment, he would not be able attend to his regular work at least for two months. Therefore, it would be appropriate to proportionately enhance the amount on the head loss of income during laid up period for two months.

17.2. The medical expenses awarded by the learned Tribunal is based on medical bills and prescriptions produced, the compensation awarded needs no interference.

18. Given the evidence produced *qua* the injuries which are reflected in the Impugned Judgment, this Court deems it apposite to award compensation on these grounds as well. Accordingly, the compensation awarded by the learned Tribunal is enhanced in the following terms:

Sl. No.	Heads of Compensation	Amount (in Rs.)
1	Pain, shock and agony	40,000/-
2	Medical expenses	1,88,685/-
3	Food attendant charges	10,000/-



4	Loss of income during laid up period (9500 x 2)	19,000/-
5	Loss of earning capacity (9500 x 8/100 x 12 x 18)	1,64,160/-
6	Loss of amenities	40,000/-
	TOTAL	4,61,845/-
	Less: Awarded by MACT	3,20,488/-
	Enhancement	1,41,357/-

19. Hence, the appellant/claimant is entitled to total compensation in the sum of **Rs.4,61,845/-** along with interest at 9% p.a. as awarded by the learned Tribunal from the date of petition till the date of realization.

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

ORDER

(i) The appeal is ***allowed in part***;

(ii) The Impugned Judgment and Award dated 22.12.2018 in M.V.C.No.1519/2017 passed by the I Additional Small Causes Judge & MACT, Bengaluru, (SCCH-11) is modified, to the extent that the claimant is entitled to enhanced compensation of **Rs.1,41,357/-** along with interest at the rate of 9% per annum in addition



to **Rs.3,20,488/-** 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.



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(viii) No order as to costs.

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

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

KSR/BMV*
List No.: 1 Sl No.: 6