



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF AUGUST, 2026

PRESENT

HON'BLE MR. JUSTICE JAYANT BANERJI

AND

HON'BLE MS. JUSTICE TARA VITASTA GANJU

MISCELLANEOUS FIRST APPEAL NO.2117 OF 2017(MV-I)

C/W

MISCELLANEOUS FIRST APPEAL NO.1763 OF 2017(MV-I)

MISCELLANEOUS FIRST APPEAL NO.2116 OF 2017(MV-I)

IN MFA No. 2117/2017 :

BETWEEN:

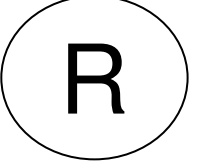
SMT. VINUTHA.G. R,
W/O MAHANTHARAJ G.M,
AGED ABOUT 33 YEARS,
ENGINEER IN COMPUTER
SCIENCE, BENGALURU,
NOW R/O DHAVALAGIRI EXTENSION,
CHITRADURGA TOWN,
CHITRADURGA – 577 501

...APPELLANT

(BY SRI. D.L.SURESH, ADVOCATE)

AND:

1. DALBEER SINGH,
S/O SUMAD SINGH,
DRIVER CUM OWNER OF THE
LORRY BEARING REGN. NO.
PB-05, M-2930,



Digitally signed by
SUMATHY KANNAN
Location: HIGH
COURT OF
KARNATAKA



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

R/O VIJAY MILAN SOCIETY,
D-2/2/3, SECT. NO. 10,
SHIRKE COLONY,
KALAMBOLI, RAIGARH,
MAHARASTHRA STATE-410 218.

2. THE BRANCH MANAGER,
RELIANCE GENERAL INSURANCE
COMPANY LIMITED,
BRANCH OFFICE,
MAGANUR COMMERCIAL COMPLEX,
B.D. ROAD, NEAR UNION PARK,
CHITRADURGA-577 501.

...RESPONDENTS

(BY SRI. ASHOK N PATIL ADVOCATE FOR R2,
NOTICE TO R1 IS DISPENSED WITH
V/O DTD 30.10.2017)

THIS MISCELLANEOUS FIRST APPEAL IS FILED U/S 173(1) OF
MV ACT, AGAINST THE JUDGMENT AND AWARD DATED 31.12.2016
PASSED IN MVC NO.179/2013 ON THE FILE OF THE II ADDITIONAL
SENIOR CIVIL JUDGE AND ADDITIONAL MACT-V, CHITRADURGA,
PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND
SEEKING ENHANCEMENT OF COMPENSATION.

IN MFA NO. 1763/2017 :

BETWEEN:

THE BRANCH MANAGER,
RELIANCE GENERAL INSURANCE COMPANY LTD.,
BRANCH OFFICE, MAGANUR COMMERCIAL
COMPLEX, B. D. ROAD,
NEAR UNION PARK,
CHITRADURGA

ALSO AT RELIANCE GENERAL
INSURANCE COMPANY LIMITED,
EAST WING, 5TH FLOOR,
NO.28, CENTENARY BUILDING,



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

M. G. ROAD, BENGALURU-560 001,
NOW REPRESENTED BY MANAGER LEGAL

...APPELLANT

(BY SRI. ASHOK N. PATIL, ADVOCATE)

AND:

1. MAHANTHARAJ G. M,
S/O M. R. MAHADEVAPPA,
AGED ABOUT 36 YEARS,
ENGINEER IN IBM, BENGALURU,
NOW RESIDENT OF DAVALAGIRI EXTENSION,
CHITRADURGA TOWN – 577 501.
2. DALBEER SINGH,
S/O SUMAD SINGH,
MAJOR,
R/O VIJAY MILAN SOCIETY,
D-2/2/3 SECT. NO.10,
SHIRKE COLONY,
KALAMBOLI, RAIGARH,
MAHARASHTRA STATE-414 001.

...RESPONDENTS

(BY SRI. D.L. SURESH ADVOCATE FOR R1;
NOTICE TO R2 IS DISPENSED WITH
V/O/DTD 30.10.2017)

THIS MISCELLANEOUS FIRST APPEAL IS FILED U/S 173(1) OF MV ACT, AGAINST THE JUDGMENT AND AWARD DATED 31.12.2016 PASSED IN MVC NO.178/13 ON THE FILE OF THE II ADDITIONAL SENIOR CIVIL JUDGE & ADDITIONAL MACT-V, CHITRADURGA, AWARDING COMPENSATION OF RS.5,88,600/- WITH INTEREST AT 7.5% P.A. FROM THE DATE OF PETITION TILL THE DATE OF DEPOSIT.

IN MFA NO.2116/2017:

BETWEEN:

SRI. MAHANTHARAJ G.M,



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

S/O. M. R. MAHADEVAPPA,
AGED ABOUT 36 YEARS,
ENGINEER IN IBM, BENGALURU,
NOW RESIDENT OF DHAVALAGIRI EXTENSION,
CHITRADURGA TOWN,
CHITRADURGA-577 501.

...APPELLANT

(BY SRI. D.L.SURESH, ADVOCATE)

AND:

1. DALBEER SINGH,
S/O SUMAD SINGH,
DRIVER CUM OWNER OF THE
LORRY BEARING REGN. NO.
PB-05-M-2930,
R/OF VIJAY MILAN SOCIETY,
D-2/2/3, SECT. NO.10, SHIRKE COLONY,
KALAMBOLI, RAIGARH,
MAHARASHTRA STATE-410 218.
2. THE BRANCH MANAGER,
RELIANCE GENERAL INSURANCE
COMPANY LIMITED,
BRANCH OFFICE,
MAGANUR COMMERCIAL COMPLEX,
B.D.ROAD, NEAR UNION PARK,
CHITRADURGA-577 501.

...RESPONDENTS

(BY SRI. ASHOK N. PATIL ADVOCATE FOR R2;
NOTICE TO R1 IS DISPENSED WITH V/O DTD 30.10.2017)

THIS MISCELLANEOUS FIRST APPEAL IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 31.12.2016 PASSED IN MVC NO.178/2013 ON THE FILE OF THE II ADDITIONAL SENIOR CIVIL JUDGE, & ADDITIONAL MACT-V, CHITRADURGA, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

THESE APPEALS, COMING ON FOR FURTHER HEARING, 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 appeals seek to challenge a common Judgment and Award dated 31.12.2016, passed in M.V.C. Nos.178/2013 and 179/2013 by the II Additional Senior Civil Judge and Additional MACT-V, Chitradurga (hereinafter referred to as the 'Impugned Award'). By the Impugned Award, the learned Tribunal has awarded Rs.5,88,600/- to the petitioner in M.V.C. No.178/2013 and Rs.2,89,400/- to the petitioner in M.V.C. No.179/2013 along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

2. The challenge in the present appeals has been raised by the claimants in both the claim petitions as well as by the Insurance Company/ Respondent No.2 who has filed an appeal against the award *qua* M.V.C.No.178/2013.



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

3. MFA No.2116/2017 has been filed by the petitioner in M.V.C.No.178/2013 and MFA No.2117/2017 has been filed by the petitioner in M.V.C.No.179/2013. For the sake of convenience, the appellants shall be referred to as petitioner No.1 and petitioner No.2, where petitioner in MVC No.178/2013 is petitioner No.1 and the petitioner in MVC No.179/2013 will be referred to as petitioner No.2.

4. The brief facts which are applicable to these appeals are that on 24.09.2012 at about 7.00 a.m., the petitioners were travelling in a car bearing registration No.AP-28/CD-238 from Chitradurga to Bengaluru, along with their child. When the said car came near Billanakote, on Tumkur – Bengaluru NH-4 Road, in Nelamangala Taluk, at that time the driver of a lorry bearing Registration No.PB-05/M-2930 while driving in a rash and negligent manner and at a high speed hit the vehicle of the petitioners. As a result, the car fell down towards the left side of the road and both the petitioners had sustained grievous injuries and fractures. After the accident, the petitioners were shifted to



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

M.S. Ramaiah Harsha Medical College, Bengaluru, wherein both the petitioners took treatment as in-patients and out-patients. Both petitioners had to undergo surgery and were stated to be suffering from permanent disability.

5. Claim petitions were filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'MV Act') by petitioner No.1 and petitioner No.2 separately. Petitioner No.1 stated that he was working as an Engineer in IBM Private Limited and drawing a monthly salary of Rs.80,000/-, while petitioner No.2 stated that she was also working as a Computer Science Engineer and drawing a monthly salary of Rs.20,000/- per month. It was stated therein that due to the accident both petitioners have incurred medical expenses and are unable to attend their work and thus incurred loss of future income and opportunities.

6. The driver cum owner of the offending vehicle, although served, did not appear and was proceeded *ex-parte*. The claim petition was contested by the Insurance



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

Company by filing its statement of objections. The Insurance Company denied the age, occupation and earning of the petitioners and also contended that the lorry was not involved in the accident. However, the existence of the Insurance Policy was not disputed.

7. Based on the contentions of the parties, the following common issues were framed in both the petitions:

"1. Whether the petitioner proves that, he sustained injuries in the RTA that occurred on 24.09.2012 at about 7.00 A.M. on Tumkur-Bengaluru NH-4 road, near Billanakote, Somapura Hobli, Nelamangala Taluk, Bengaluru District, due to rash and negligent driving of Lorry bearing Reg. No.PB-05/M-2930 by its driver?

2. Whether the petitioner is entitled for compensation? If so, at what quantum and from whom?

3. What order or award?"

8. In order to prove their claims, the petitioners examined themselves as PW.1 (Petitioner No.1) and PW.2 (Petitioner No.2). A Doctor was examined through a Court Commissioner as PW.3 and one eyewitness as PW.4 and 71 documents were marked by the petitioners, which



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

included the Ex.P1/FIR, Ex.P2/complaint, Ex.P3/spot mahazar, Ex.P5/IMV report and Ex.P6/charge sheet *qua* the accident, as well as several documents including wound certificates/Ex.P4 & Ex.P22, medical bills Ex.P7 to Ex.P17, Ex.P23 to Ex.P41 and Medical Certificate/Ex.P43. The disability certificates were marked as Ex.P46 & Ex.P63. In addition, educational degree certificate was also placed on record *qua* the petitioners as Ex.P18 and Ex.P42.

9. The Insurance Company/Respondent No.2 examined their Assistant Manager as RW.1 and two documents being the Insurance Policy and a postal endorsement, were exhibited as Ex.R1 and Ex.R2 respectively.

10. The learned Tribunal, after examining the documents in relation to the accident including the FIR, complaint, spot mahazar, IMV report and the charge sheet, found that the Investigating Officer had investigated the matter and that an FIR was registered against the driver of the offending lorry. It was held that on an examination of the



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

police records, the injuries sustained by the petitioners in the accident were on account of rash and negligent driving of the driver of the offending lorry. Thus, the petitioners had proved the issue of negligence.

11. The quantum of the compensation was calculated by the learned Tribunal based on the injuries of petitioner No.2 (M.V.C.No.179/2013) and the age of petitioner No.2 as 29 years, the learned Tribunal calculated the compensation in the following heads:

Sl.No.	Particulars	Amount (Rs.)
1	Towards loss of future income due to disability	1,83,600-00
2	Towards pain and sufferings	50,000-00
3	Towards diet, attendant charges, travelling expenses	15,000-00
4	Towards medical expenses	40,800-00
	Total	2,89,400-00

12. Petitioner No.1 (M.V.C.No.178/2013) on the other hand had also sustained fractures and dislocation of his right hip. Based on the injuries and the disability, the compensation for petitioner No.1 was calculated in the following terms:



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

Sl.No.	Particulars	Amount (Rs.)
1	Towards pain and suffering	75,000-00
2	Towards loss of opportunities	4,00,000-00
3	Towards medical expenses	13,600-00
4	Towards loss of amenities	50,000-00
5	Towards diet, transportation and attendant charges	50,000-00
	Total	5,88,600-00

13. Thus, an amount of Rs.5,88,600/- and Rs.2,89,400/- was awarded to petitioner Nos.1 and 2 respectively with interest at 7.5% per annum.

I. M.F.A.No.2117/2017 (M.V.C.No.179/2013):

14. As stated above, the three appeals have been filed. M.F.A.No.2117/2017 has been filed in respect of the claim petition filed by petitioner No.2 for enhancement. Learned counsel for the appellants / claimants submits that the loss of future income towards disability was wrongly calculated. He contends that petitioner No.2 was a MCA Graduate and has produced her educational certificate(s). However, the learned Tribunal has only calculated income at Rs.5,000/- per month instead of Rs.7,000/- per month, which was the notional income awarded by the KSLSA in the year 2012.



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

In addition, it is stated that no amounts were awarded for loss of income during laid-up period or future medical expenses or loss of amenities. In addition, it is contended that the learned Tribunal has not included future prospects to the income of the injured.

15. Learned counsel for Insurance Company / respondent No.2 on the other hand submits that no proof of income of the petitioner No.2 was produced before the learned Tribunal. He submits that the graduation certificate or the degree/Ex.P42 does not reflect any income of the petitioner No.2. Thus, he submits that the loss of future income due to disability is required to be taken as per notional income. It is however, not disputed that the notional income for the year 2012 was Rs.7,000/-.

16. The record reflects that the injuries were sustained by petitioner No.2 as per her wound certificate/Ex.P22 which was produced and she had sustained the following injuries:



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

- "1. Fracture of shaft humerus right side.
2. Radial nerve injury with wrist drop right side.
3. CLW over wrist 5 X 3 c.m.
4. Mild head injury."

16.1 The Doctor's opinion was that the injuries one and two are grievous while the other two are simple in nature. The petitioner No.2 was hospitalized for 10 days between 24.09.2012 to 03.10.2012 and thereafter also required follow-up treatment. The evidence of PW.3 in this behalf reveals that she was suffering from permanent disability of 18% and that she would require follow-up treatment as an outpatient as well.

17. The Supreme Court in the case of **National Insurance Co. Ltd. Vs. Pranay Sethi¹** case has held that, where the party is under permanent employment and below the age of 40 years, the future prospects should be taken at 50%. However, in case of self-employment, the future prospects would be taken at 40%. The relevant extract of the **Pranay Sethi** case is as below:-

¹ (2017) 16 SCC 680



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

"57. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardisation, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. **The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty.** But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be inapposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance one's income for sustenance. **The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees.** Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

*and move and change with the time. **Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve** acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardisation on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of percentage. **Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.***

58. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years. Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] thinks it appropriate not to add any amount and the same has been approved in Reshma Kumari [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] . Judicial notice can be taken of the fact that salary does not remain the same. **When a person is in a permanent job, there is always**



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

an enhancement due to one reason or the other. To lay down as a thumb rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self-employed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts.

XXX

XXX

XXX

*59.3 while determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. **Actual salary should be read as actual less tax.***

[Emphasis Supplied]

17.1 A similar view has been taken even by a Coordinate Bench of this Court in the case of ***New India Assurance Company Limited vs. Abdul and others***² where it has been held as follows:

"31. Resultantly we are constrained to reject the contention of Sri.G.N.Raichur, learned counsel *for the Insurance Company. 'Loss of future prospects' also has to be factored in notwithstanding the fact that this is not a case of death but a case of injury*

² 2022:KHC-D:5415-DB



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

*without amputation resulting in whole body disability to the extent of 20% which ultimately has a bearing on the reduced earning capacity. **It is essentially on account of the fact that money value does not remain constant over a long spell of years and thus claimant being aged only 40 years,** he has long years ahead of him to look forward to, the sliding value of the money will have adverse impact on his future prospects. **Accordingly, having due regard to the fact that he was aged about 40 years at the time of the accident, 25 % of his established income will have to be factored in towards compensation for 'loss of future prospects'....."***

[Emphasis Supplied]

18. Undisputedly, future prospects have not been awarded by the learned Tribunal. The petitioner No.2, injured was aged 29 years and was trained as an Engineer. As stated above, according to the judgment of the Supreme Court in ***Pranay Sethi*** case, the future prospects should be taken at 40%.

19. Since no proof of income is available for petitioner No.2 thus, the compensation under the head of future earnings due to disability is required to be modified accordingly, as per Karnataka State Legal Services Authority chart notional income for the year 2017 is Rs.7,000/-. In addition, as stated above, in view of the



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

Pranay Sethi judgment of the Supreme Court, 40% loss of future prospects shall be added. In view thereof, the loss of future income towards disability would have to be calculated as follows:

Loss of Future Earning
$[(Rs.7,000/- + 40\%) = 9,800] \times 12 \times 17 \times 18\% = Rs.3,59,856/-$

20. In addition, amounts towards future medical expenses, loss of income during laid-up period, loss of amenities would also require to be enhanced considering the gravity of the injuries. However, the compensation awarded on the heads of pain and suffering, diet attendant charges and towards medical expenses do not require any interference.

21. Accordingly, the award of compensation for petitioner No.2 is recalculated in the following terms:

Sl. No.	Heads of Compensation	Amount (in Rs.)
1	Towards loss of future income due to disability	3,59,856-00
2	Towards pain and suffering	50,000-00



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

3	Towards diet, attendant charge, travelling expenses	15,000-00
4	Towards medical expenses	40,800-00
5	Loss of income during laid up period	21,000-00
6	Future medical expenses	10,000-00
7.	Loss of amenities	25,000-00
	Total	5,21,656-00
	Less awarded by the Tribunal	2,89,400-00
	Enhanced compensation	2,32,256-00

21.1 Thus, petitioner No.2 would be entitled to total compensation of Rs.5,21,656/- along with the interest as awarded by the learned Tribunal from the date of petition till the date of realization.

MFA NO.1763 OF 2017 AND MFA NO.2116 of 2017:

22. As stated above, the challenge in the present appeals is both by the petitioner No.1 as well as by the Insurance Company.

23. The learned counsel for the petitioner No.1 submits that he was working as a Software Engineer in IBM Private



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

Limited, Bangalore, and as a result of the motor vehicle accident, he sustained injuries to his right hip, as well as to his right forearm. The injuries were both grievous and simple in nature. The petitioner No.1 had undergone surgery, as well and would require future medical treatment. Learned counsel further submits that the learned Tribunal failed to award any amount for future medical expenses.

24. In addition, it is contended that although a Salary Certificate was produced as Exhibit-P21, which reflected a gross income of Rs.11,08,800/- per annum after addition of incentives and bonus net annual income of Rs.10,22,822.76 per annum. The learned Tribunal did not calculate the loss of future income due to disability based on such income. He submits that even though the Tribunal referred to a total remuneration as Rs.10,22,882/- and his evidence wherein he stated that he was drawing a salary of Rs.79,533/- earlier, for the compensation for loss of future earnings due to disability, only a lumpsum of



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

Rs.4,00,000/- was awarded. He submits that thus the disability was not taken into consideration at all.

25. The learned counsel for the Insurance Company on the other hand made three contentions. Firstly, he submits that no document has been produced for loss of income or reduction in the income of the injured. He submits that it was incumbent on the petitioner No.1 to produce the Income Tax Returns to reflect the loss of income. Reliance in this behalf is placed on the judgment of a Coordinate Bench of this Court in the case of ***Sri. Subash vs. The New India Assurance Company Limited***³.

25.1 In addition, it is contended that the amounts for loss of future prospects also could not have been awarded, since the injured continued in his avocation and there is no evidence on record to state that he had lost any opportunity.

25.2 The learned counsel further submits relying on the judgment of Supreme Court in ***Rajkumar vs. Ajay***

³ ILR 2010 KAR 2439



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

Kumar⁴ that unless deduction is shown in the salary paid, the loss of future earnings cannot be awarded.

26. On examination of the record, the issues for determination that arise in these appeals are:

(i) whether the amounts as awarded by the learned Tribunal would require any modification under the head towards 'loss of future income due to disability' and;

(ii) whether the 'loss of future prospects' ought to have been awarded by the learned Tribunal?

27. An examination of the record reflects that the petitioner No.1 also produced voluminous evidence in support of his injuries, which included a Wound Certificate (Exhibit-P4), Discharge summary (Exhibit-P44), X-ray films (Exhibit-P48 to 50), medical bills (Exhibit-P51 to 54), disability certificate (Exhibit-P63). The petitioner No.1 also produced the evidence of Doctor (PW3) who was an Orthopedic Surgeon and the Doctor who had treated the

⁴ (2011) 1 SCC 343



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

petitioner. The Doctor found that the petitioner No.1 sustained posterior dislocation of his right hip, fracture of his right shaft humerus with butterfly fragment and lacerated wound over his right forearm and a mild head injury.

27.1 In addition, the petitioner No.1 was operated upon for his injuries. During the time, he was an inpatient in the hospital between 24.09.2012 and 03.10.2012. The Doctor referred to the surgeries, which were conducted on him in his evidence and also stated that petitioner No.1 had a disability for his right upper limb of 32% and right lower limb of 27%, while the total body disability would be 16%. It was also stated in the examination of PW3 that due to the injuries, the petitioner No.1 would have difficulty to continue his avocation as a Software Engineer. The relevant extract of the Affidavit of PW3 is below:

"I am working as consultant Orthopedic Surgeon at M.S.Ramaiah Harsha Hospital, Nelamangala since last 8 years. I knew petitioner Mahanthraj. He was admitted to our hospital on 24.09.2012 with history of road traffic



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

accident. **I examined him on the same day and found the following injuries:**

1. Posterior dislocation right hip.
2. Comminuted fracture right shaft humerus with butterfly fragment.
3. CLW over right forearm 7x3x3 cm.
4. Mild head injury.

I have personally treated and conducted operation on 24.09.2012. He was in patient from 24.09.2012 to 03.10.2012. The following surgeries were conducted on him.

1. Closed reduction and Thomas splint application for right hip
2. OR+IF with 9 holed broad DCP and screws for humerus fracture.
3. Suturing.
4. Conservative for head injury.

He is still under follow up treatment on OPD basis even today. I have conducted all the relevant investigations including X-Rays on him. The disability certificate was given by me on 10.05.2014 which is marked as Ex.P.46. My signature is marked as Ex P.46(a). I have issued discharge summary, which is marked as Ex.P.47. X-Ray films which are marked as Ex.P.48 to 50. Four hospital bills marked as Ex.P.51 to 54. I have deposed on the basis of certificates issued by our hospital authorities and also X-Ray films. **I am producing today the case sheet pertaining to petitioner Mahanthraj.** The entire case sheet marked as EXP55. Containing 48 sheets and I have producing today 7 X-Ray films which are marked as Ex.P.56 to 62. **The disability to Mahanthraj pertaining to the particular injury for right upper limb is 32% and right lower limb is 27% and total body disability is 16%. Due to the injuries he has difficulty to continue**



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

his avocation of Software Engineer. He needs one more surgery implant removal later."

[Emphasis Supplied]

28. In the cross-examination of the Doctor (PW-3), a question has been put as to why the mobility and stability have not been assessed In addition, it has also been stated in the cross-examination by the Doctor that he has advised his patient for implant removal, but the implant not been removed at that time. The Doctor has also stated that the petitioner No.1 has taken treatment as an outpatient for about 10 times. The relevant extract of his cross-examination of PW-3 is set out of below:

"Petitioner came to my hospital on 24.09.2012 around 8-00 a.m. I admitted him to the hospital. The case sheet return by our hospital staff. I do not know the vehicles involved in the accident. At the time of admission he had the injuries mentioned in my certificate. **I conducted the operation on the same day after stabilizing him.** I have taken the consent of the patient and also his father before operation. I have conducted the operation under general anesthesia by Dr. Harish. The patient had comminuted fracture of right arm and dislocation of hip joint. I have not mentioned the particular portion of fracture area. Shaft means middle 1/3d of arm. I have not mentioned accurate place of fracture of area. I have not obtained the opinion of radiologist. There is a



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

radiologist in our hospital. **I have conducted open reduction operation and plating on right arm. The plate is still in the fracture area it has not been removed. The said plate shall be removed in future. After 8 months the fracture is united with antero posterior mal union.** On 10.05.2014 I advised the patient for implant removal. After 1 and half years of the accident. But the same as not been removed after my suggestion. **After the discharge the petitioner taken treatment as outpatient for about 10 times. The close reduction was done for right hip dislocation. No implant put to the right hip.** I have not produced any document to show that the patient was an outpatient for 10 times. We have maintained OPD register in our hospital and also give copy to the patient. I have taken the check X-Rays periodically whenever required. The check X-Rays not available in the Court records and also regular treatment as outpatient. **I have not mentioned the improvements of the injuries in the periodical treatment. The arm component disability is 90%. For each joint which is 30%.** It is not true to suggest that I have not mentioned the amount restriction of movement. It is true that there is no loss of sensation of movement. It is not true that I have not mentioned the power of muscles.

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It is not true to suggest that since the fracture is in the middle there will not any in the movement. It is true to suggest that the petitioner came today without any crutches and he carries the files independently. It is true that the patient sitting before me today at the time of giving evidence for about one hour. **It is true that there are three joints in the lower limb. Each limb as got 30% disability in total 90%. It is true that I have not given any additional points for the dominant**



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

limb. *It is not true to suggest that disability is to be given compounding with co-ordinate factor and dominant limb but on mobility and co-ordinate activities. **It is true that I have not mentioned mobility and stability while calculating the disability but can be inferred. I have given 32% for right upper limb and 27% for lower limb.** It is not true to suggest that I have not used combined formula while calculating total body disability. It is true to suggest that I have considered only mobility and stability for assessing disability to the lower limb. It is true that I have mentioned **only physical disability and not avocational disability. It is true that the disability depends of avocation of the patient.***

[Emphasis Supplied]

29. The evidence-in-chief of PW1 states that after the accident, petitioner No.1 took treatment as an inpatient for 10 days and has incurred medical expenses in the sum of Rs.4,00,000/-. It also states that the petitioner No.1 has got a permanent disability and cannot sit and work for a long time. The promotion that he was due for, has been held up because of the accident. By this time, his income would have increased to Rs.1,20,000/- per month. However, he is now drawing only Rs.79,533/- as before. He has also stated that there is a loss of Rs.40,000/- per



CNR: KAH010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

month. Petitioner no.1 further states that his right hand was operated and a rod, plate and screws were inserted, which are still not removed. He has also been operated for a hip joint dislocation. Thus, he has been more often unable to do excess work and that he is taking follow-up treatment. The relevant extract of the evidence-in-chief of PW-1 is below:

*"Immediately after the accident, we have shifted to Harsha M.S.Ramaiah Hospital, Bangalore and there we took treatment as inpatients for a period of 10 days and we have taken follow-up treatment as out patient and incurred medical expenses of Rs.4,00,000/- for my treatment and it is further required for future treatment for Rs.4,00,000/-. We have become unconscious, only after shifting to the Hospital, we have regained the consciousness, **I have got permanent disability, I cannot sit and work for long time. Therefore the Company has been held up the promotion. I was due for promotion as a project Manager, by this time I would have reached Rs.1,20,000/- as salary per month but I could not get the promotion. Now I am working as project lead and I am drawing the same Rs.79,533/- as before.** Therefore there is a loss of Rs.40,000/- per month, bonus also not given around Rs.1,25,000/- per year. **Still I myself and my wife taking follow up treatment, my wife is not completely cured, she is unable to do even house hold work, therefore, we have appointed a cook for preparation of food.***

I have operated right hand and rod, plate, screws were inserted, still it is not removed, and I have



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

also operated hip joint dislocation. Therefore, I have got pain often and often. Therefore there is an heavy loss to me, even I cannot drive my Car. Hence I have appointed a driver to the drive the vehicle and I have to pay Rs.10,000/- per month to the driver."

[Emphasis Supplied]

29.1 He has also deposed that he cannot drive his car anymore and he has to appoint a driver and is paying a monthly salary of Rs.10,000/-.

30. In the cross-examination, the respondent/Insurance Company has suggested to him that he still continues to work and that he has not lost any income, which suggestion has been affirmed to the extent that he is still working in the same company. No other admission has been extracted, which would assist the argument of the Insurance Company.

31. An examination of the compensation as awarded by the learned Tribunal shows that the learned Tribunal fixed sum towards loss of future income due to disability and awarded amounts towards pain and suffering and loss of



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

amenities. However, no amounts were awarded towards future medical expenses and loss of income during laid-off period. Concededly, the petitioner No.1 was hospitalized for more than 10 days and also underwent surgeries of right forearm and right hip. The Doctor has deposed that the petitioner does have a permanent physical disability and that he will have difficulty to continue his avocation as a Software Engineer.

32. A contention has been raised by the learned counsel for the insurance company that no document has been placed on record to show the loss of future income and thus this amount cannot be awarded.

33. A Coordinate Bench of this Court while discussing loss of future prospects in the case of **Abdul** case has set out that the component for 'loss of future prospects' is a forensic tool forged by the Supreme Court to set-off adverse effect of imponderable vagaries of inflation on the assessment of loss of earning. To link this Component only to disability arising from amputation of limbs defies logic.



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

It was further held that the Courts are enjoined under law to award just compensation and no compensation can be regarded as just unless proper adjustments to the needs of the time are made. The relevant extract of the judgment is set out below:

*"27. It is thus evident that this component of 'loss of future prospects' is a forensic tool forged **by the Supreme Court to off-set the adverse effect of imponderable vagaries of inflation on the assessment of loss of future earning.** To link this component only to disability arising from amputation of limbs defies logic and has no sanction of law. It is undoubtedly true that it is no part of the statutory law governing the field of award of compensation in motor vehicle accident cases. **But, Courts are enjoined under law to award "just compensation" and no compensation can be regarded as just unless law is capable of reinventing itself by making proper adjustments as the "needs of the time require". Judges some times make law if the statutes made by the Parliament fall short of meeting the requirements of the time.***

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*31. Resultantly we are constrained to reject the contention of Sri. G. N. Raichur, learned counsel for the Insurance Company. **'Loss of future prospects' also has to be factored in notwithstanding the fact that this is not a case of death but a case of injury without amputation resulting in whole body disability to the extent of 20% which ultimately has a***



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

bearing on the reduced earning capacity. It is essentially on account of the fact that money value does not remain constant over a long spell of years and thus claimant being aged only 40 years, he has long years ahead of him to look forward to, the sliding value of the money will have adverse impact on his future prospects. Accordingly, having due regard to the fact that he was aged about 40 years at the time of the accident, 25% of his established income will have to be factored in towards compensation for 'loss of future prospects'.

[Emphasis Supplied]

34. So far as concerns the argument of the Insurance Company that no document has been produced for reduction / loss of income due to disability, this Court is unable to agree. The petitioner No.1 has produced his evidence and the evidence of the Doctor (PW-3). The petitioner himself in his evidence admits to earning certain amounts. The Doctor states that he would have difficulty to continue his avocation. Since the petitioner is a Software Engineer it would require him to be seated for long hours. The nature of injuries are to his right forearm and his right hip. This would certainly impact him being seated for long durations of time. The surgery of the



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

petitioner No.1 and his right hand in rod, plate and screws were inserted and his hip joint was dislocated. Both of these injuries would hamper the work of the petitioner No.1 and that is the evidence of the Doctor as well. The learned Tribunal however has not calculated the loss of future income towards disability even though there was a permanent physical disability of the petitioner No.1.

35. The Supreme Court in ***Raj Kumar Vs. Ajay Kumar and Another***⁵ has in detail discussed how the Court must calculate 'loss of future earning' due to a permanent disability, as a result of injuries in a motor vehicle accident. It was held that the percentage of economic loss is distinguishable from the percentage of permanent disablement. What is required to be assessed by the learned Tribunal is the 'loss of earning capacity' of the injured in terms of his capacity to earn. The learned Tribunal has to estimate how the disablement will affect his earning capacity. This would depend on multiple

⁵ (2011) 1 SCC 343



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

factors which include his avocation, education, age and other factors. The principles for assessment of disability have been summarized in the following manner:

"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**



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

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



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

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.

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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.

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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**



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

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]

36. This Court has also examined the judgments cited by the learned counsel for the Insurance Company. The judgments referred to are distinguishable on facts, and thus are of no help to the Insurance Company's case.

37. The admitted income of the petitioner No.1 as per his evidence is Rs.79,080/- per month, the disability is taken at 20%, since the petitioner No.1 was 32 years of age, the multiplier of 16 would be used, to calculate the loss of future income. Given the discussion above, the functional disability of the petitioner No.1 would be taken as 20% In



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

addition, as stated above, in view of the **Pranay Sethi** judgment of the Supreme Court, 40% loss of future earning shall be added. Accordingly, and given the admitted income of the petitioner No.1, the loss of future income is calculated as follows:

Loss of Future Earning
$[(Rs.80,000 \text{ (Approx)} + 40\%) = 1,12,000] \times 20\% \times 12 \times 16 = Rs.43,00,800/-$

37.1 In addition, amounts towards loss of income during laid-up period and since the petitioner No.1 had to have a surgery for removal of implants, future medical expenses would also require to be awarded and loss of amenities would also require to be enhanced considering the gravity of the injuries. Accordingly, the award of compensation for petitioner No.1 is recalculated in the following terms:

Sl. No.	Heads of Compensation	Amount (in Rs.)
1	Towards loss of future income due to disability	43,00,800/-
2	Towards pain and suffering	75,000/-
3	Towards diet, attendant charge, travelling expenses	50,000/-



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

4	Towards medical expenses	13,600/-
5	Loss of income during laid up period (Rs.80,000 x 3)	2,40,000/-
6	Future medical expenses	50,000/-
7.	Loss of amenities	50,000/-
	Total	47,79,400/-
	Less awarded by the Tribunal	5,88,600/-
	Enhanced compensation	41,90,800/-

38. Thus, petitioner No.1 would be entitled to total compensation of Rs.47,79,400/- along with the interest as awarded by the learned Tribunal from the date of petition till the date of realization.

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

ORDER

(i) MFA No.2117/2017 and MFA No.2116/2017 are ***allowed in part***; MFA No.1763/2017 is ***Dismissed***.

(ii) The Impugned Judgment and Award dated 31.12.2016, in M.V.C. Nos.178/2013 and 179/2013



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

passed by the II Additional Senior Civil Judge and Additional MACT-V, Chitradurga is modified, to the extent that the appellant/petitioner No.2 in MFA No.2117/2017 is entitled to total compensation of **Rs.5,21,656/-** and the appellant/petitioner No.1 in MFA No.2116/2017 is entitled to total compensation of **Rs.47,79,400/-**. The interest in both awards shall be calculated at the rate of 7.5% per annum.

(iii) The remaining portion of the Impugned Award of the learned Tribunal remains undisturbed.

(iv) Amounts in deposit before this Court, if any, shall be transmitted to the concerned Tribunal for disbursement.

(v) The Insurance Company shall deposit the enhanced compensation along with interest applicable thereon, within a period of eight weeks from the date of receipt of a copy of this judgment.



CNR: KAHC010247952017

NC: 2026:KHC:41811-DB
MFA No. 2117 of 2017
C/W MFA No. 1763 of 2017
MFA No. 2116 of 2017

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

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

(viii) The Registry is directed to transmit a copy of this judgment to the concerned Tribunal along with its records.

(ix) All pending application(s) stand closed.

(x) No order as to costs.

Sd/-
(JAYANT BANERJI)
JUDGE

Sd/-
(TARA VITASTA GANJU)
JUDGE

KG / JJ
List No.: 2 Sl No.: 40