



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

MISCELLANEOUS FIRST APPEAL NO. 3225 OF 2017 (MV-I)

BETWEEN:

MR. MADESHA,
S/O MR. PARVASHETTY,
AGED ABOUT 32 YEARS,
R/AT UTHUTHAMBALLI VILLAGE,
KOLLEGALA TALUK,
CHAMARAJANAGARA DIST.-571 440

...APPELLANT

(BY SRI B KESHA MURTHY, ADVOCATE)

AND:

1. MR. R. NALLASHIVAM,
S/O LATE RAMASWAMY,
AGED ABOUT 43 YEARS,
DRIVER OF TEMPO BEARING
REGD.NO.TN-54-Y-7654,
R/AT NO.115/122, THENUTRUVARI,
KATTUKOTTAI POST, ATHUTHURU TALUK,
SALEM DISTRICT, TAMIL NADU-636 115.
(CLAIM PETITION WAS DISMISSED AS AGAINST
RESPONDENT NO.1)
2. MR. K C ARUNACHALAM,
S/O LATE CHINNASWAMY,
AGED ABOUT 61 YEARS,
OWNER OF TEMPO BEARING
REGD NO.TN.54-Y-7654,
R/AT NO.7-955, THENUTRUVARI,
KATTUKOTTAI POST, ATHUTHURU TALUK,
SALEM DIST TAMIL NADU 636115.



3. M/S. ORIENTAL INSURANCE CO. LTD.,
DIVISION NO.2,
MUSLIM HOSPITAL COMPLEX,
SARASWATHIPURAM, MYSORE-570 009,
REP. BY ITS MANAGER.

...RESPONDENTS

(BY SRI B S UMESH, ADVOCATE FOR R-3;
R-1 SERVED AND UNREPRESENTED;
V/O DATED 26.04.2018 NOTICE TO R-2 IS DISPENSED
WITH)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE
JUDGMENT AND AWARD DATED 21.06.2016 PASSED IN MVC
NO.15/2011 ON THE FILE OF THE ADDITIONAL DISTRICT &
SESSIONS JUDGE, MEMBER, OF MACT, CHAMARAJANAGARA,
SITTING AT KOLLEGALA, 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 C M JOSHI

ORAL JUDGMENT

1. Heard learned counsel appearing for the
appellant/petitioner and the learned counsel Sri B. S.
Umesh, appearing for respondent No.3-Insurance
Company.

2. The petitioner in MVC No.15/2011 is before this
Court being aggrieved by the judgment and award of the



learned Additional District and Sessions Judge and MACT, Chamarajanagara, sitting at Kollegala dated 21.06.2016.

3. The factual matrix of the case is that on 27.07.2010 at about 06.00 p.m., while the petitioner was driving his TVS Moped bearing No. KA.02.ET.3975 along with a pillion rider near Venkateshwara Garage at about 07.30 p.m., a tempo bearing No.TN.54.Y.7645 driven by respondent No. 1, owned by respondent No. 2 and insured by respondent No. 3 came in a rash and negligent manner and collided with the two wheeler of the petitioner resulting in the petitioner sustaining injuries to his right leg, right hand etc. The petitioner and the pillion rider were admitted to the hospital and it was found that the petitioner had sustained fracture of the right radius coupled with a nerve palsy on the right hand. The petitioner contended that he was a driver by profession and was earning Rs.10,000/- per month and as such, he is entitled for adequate compensation.



4. The petition was opposed by respondent No. 2 and respondent No. 3 contending that there was no such negligence on the part of the driver of the tempo and the compensation claimed is highly exorbitant, imaginary and untenable. Respondent No.3-Insurance Company contended that there is violation of the terms and conditions of the policy and therefore, it is not liable to pay any compensation to the petitioner.

5. On the basis of the above contentions, appropriate issues were framed by the Tribunal. The petitioner was examined as PW1 and Exhibit P1 to 14 were marked. The doctor who has treated the petitioner was examined as CW1 and Exhibit C1 to C4 were marked through him. The official of respondent No. 3 was examined as RW1 and Exhibit R1 to R3 were marked through him.

6. After hearing the arguments, the Tribunal held that the negligence was on the part of the tempo driver and fastened the liability on respondent No.3 Insurance



Company and after appreciating the evidence on record, the Tribunal has awarded a compensation of Rs.3,13,480/- under different heads as below:

1. Towards Expenses relating to treatment Hospitalization and medicines	Rs. 15,600/-
2. Towards attendant charges Nourishment and diet food	Rs. 10,000/-
3. Towards Loss of earning during the period of treatment	Rs. 12,000/-
4. Towards Pain and Suffering	Rs. 30,000/-
5. Towards Conveyance Charges	Rs. 10,000/-
6. Towards Loss of future earning on account of permanent disability	Rs.2,08,080/-
7. Towards future medical expenses	Rs. 7,800/-
8. Towards Loss of amenities	Rs. 20,000/-
Total	Rs.3,13,480/-

7. Being aggrieved by the same, the petitioner is before this Court seeking enhancement of the compensation.

8. Learned counsel appearing for the petitioner submits that the Tribunal erred in holding the income of the petitioner at Rs.6,000/- per month and since he was a driver, aged about 27 years, his income should have been taken at Rs.10,000/- per month. Secondly, he submits that the disability stated by CW1, who happens to be the



treated doctor, should have been accepted by the Tribunal and therefore, the assessment of disability at 17%, which is one third ($1/3$) of the disability to the limb as stated by CW1 is incorrect. He submits that the functional disability of the petitioner should have been assessed by the Tribunal, but the Tribunal has assessed the physical disability alone. Therefore, he contends that the compensation be reassessed.

9. *Per contra*, learned counsel appearing for respondent No. 3 would submit that there is no need for indulgence by this Court in enhancing the compensation. He submits that compensation awarded under all the heads are adequate and there is no need for any enhancement. It is his submission that CW1 is an Orthopedic Surgeon and therefore, he cannot say anything about the nerve palsy, which is the domain of a Neurologist. Therefore, he seeks to adhere to the assessment made by the Tribunal.



10. A perusal of the records would reveal that the cause of the accident and the negligence on the part of the tempo driver is not in dispute. Though a feeble attempt was made before the Tribunal that there was a contributory negligence, the Tribunal in its detailed judgment has dealt with the said matter and has fastened the liability upon respondent No. 2 and 3 which cannot be faulted with.

11. The medical records, particularly, the testimony of the CW1 would show that there was a radial nerve tearing in the right hand and therefore, there was nerve paralysis along with the fracture of the right humerus. The fracture of the right humerus was treated with the help of plates and screws and the torn radial nerve was repaired. However, such radial nerve repair has not resulted in returning his right hand to the normalcy. It is stated that due to radial nerve paralysis, there is deficiency in the touch sensation and the grip of the hand. Therefore, he has assessed the disability at 51%. Para 14 of his



deposition clearly established this aspect. The cross-examination of CW1 do not show anything which falsifies or impeach his testimony.

12. It is pertinent to note that CW1 happens to be a Doctor who treated the petitioner and he was examined through a court commissioner. The testimony of the treated doctor stands on a higher footing than a doctor who assesses the disability only for the purpose of giving a certificate. Therefore, the testimony of the CW1 being on a higher footing than any other doctor who has given a disability certificate, there is no reason as to why it should not to be considered in the right earnest.

13. Apart from that, the medical records produced at Exhibit C1 show that there is nerve palsy. The petitioner was also treated for the said injury. But however, it is a settled medical status that any damage to the nerve is unrepairable and the limb cannot return to its normalcy. Unlike a fracture or any other injury involving the muscles, neurological injuries are seldom repairable. When the



doctor who treated the petitioner has been examined as CW1 and he has stated that there is a disability of 51% to the right upper limb, the same needs to be given sufficient weightage. Therefore, the argument of the learned counsel for respondent No.3 that a Neurologist should have been examined to say about the nerve paralysis cannot be accepted.

14. Coming to the assessment of the functional disability, it is to be noted that the Medical Officers can depose only about the physical disability and not about the functional disability. Assessing the functional disability is the domain of the Tribunal. The avocation of the petitioner coupled with the nature of the injury and the disability of the limb has to be balanced and assessed by the Tribunal. In the present case, it is on record that the petitioner was a driver. The driving involves use of the right hand and therefore, the injury to the right upper limb which has resulted in disability of 51%, definitely affects his earning capacity. The normal rule of considering the functional



disability at one third (1/3) or one fourth (1/4) of the physical disability as the functional disability cannot be made applicable when the actual functional disability has to be assessed by the Court. It is settled principle of law that where it is difficult to assess the functional disability on the basis of the physical disability, a rule to take one third (1/3) or one fourth (1/4) of the physical disability has to be adopted. The judgment of the Apex Court in the case of **Rajkumar Vs. Ajaykumar and another**¹ lays down the principles under which the functional disability has to be assessed. In a given circumstance, a person who is extensively dependent upon his right hand would be affected to the extent of 100% also even though the physical disability may be less than 50%. Therefore, the argument of the learned counsel appearing for the respondent No. 3 is unsustainable and the same is rejected.

¹ (2011) 1 SCC 343



15. In the considered view of this Court, the testimony of the CW1 shows that there was some repair of the nerves. Despite that there is a disability of 51% as stated by him, the conversion of the physical disability of 51% to the functional disability of the petitioner has to be held at 30% as argued by learned counsel for the appellant. This is done in view of the fact that the petitioner was a driver by profession which is not in dispute. Hence, the functional disability of the petitioner is held at 30%.

16. So far as the income of the petitioner is concerned, there is no material to show that he was earning Rs.10,000/- per month. The guidelines issued by the KSLSA for the purpose of settlement of the disputes before the Lok Adalat, prescribe notional income at Rs.4,000/- per month, but the Tribunal has taken the notional income at Rs.6,000/- per month, which cannot be interfered with in the absence of any appeal by respondent



No. 3. In that view of the matter, the assessment of the compensation has to be made by this court.

17. The compensation awarded by the Tribunal under the head of medical expenses, pain and suffering and future medical expenses cannot be interfered with. In view of the above discussion, the compensation under the head of loss of future earnings on account of disability is calculated as $\text{Rs.}6,000/- \times 12 \times 17 \times 30\% = \text{Rs.}3,67,200/-$.

18. The Tribunal has awarded a sum of Rs.10,000/- towards attendant charges, nourishment and Rs.10,000/- towards conveyance expenses. The petitioner was inpatient for 22 days as per the records. Therefore, together the attendant charges and conveyance expenses has to be enhanced to Rs.25,000/-.

19. The petitioner has been awarded a sum of Rs.12,000/- under the head of loss of income during laid-up period. Considering the same at 3 months, the same is enhanced to Rs.18,000/-.



20. The injury involving nerve paralysis definitely calls for a higher compensation under the head of loss of amenities in life. Therefore, the same is enhanced to Rs.40,000/-. In the result, the petitioner is entitled for a total compensation of Rs. 5,03,600/- under the following heads:

Sl. No.	Description	Amount
1.	Medical expenses	Rs. 15,600/-
2.	Attendant charges, nourishing food and conveyance expenses	Rs. 25,000/-
3.	Pain and sufferings	Rs. 30,000/-
4.	Loss of earnings during laid up period	Rs. 18,000/-
5.	Loss of future earnings on account of disability	Rs. 3,67,200/-
6.	Future medical expenses	Rs. 7,800/-
7.	Loss of amenities	Rs. 40,000/-
	Total	Rs.5,03,600/-
	Less: awarded by the Tribunal	Rs.3,13,480/-
	Enhancement	<u>Rs.1,90,120/-</u>

Thus, the petitioner is entitled for additional sum of Rs.1,90,120/- together with interest at 6% p.a.

21. For the aforesaid reasons, the appeal deserves to be allowed in part. Hence, the following



ORDER

(i) The appeal is allowed in part

(ii) The impugned judgment and award passed by the Tribunal is modified. The petitioner is entitled for a sum of Rs.1,90,120/- in addition to what has been awarded by the Tribunal along with interest at the rate of 6% p.a. from the date of petition till its deposit.

(iii) The rest of the terms and conditions ordered by the Tribunal remain unaltered.

(iv) Respondent No.3 Insurance Company is directed to deposit the compensation amount within four weeks from the date of the receipt of the copy of this judgment.

Sd/-
(C M JOSHI)
JUDGE

tsn*
List No.: 1 Sl No.: 12