



NC: 2026:KHC:28020-DB
MFA No. 1512 of 2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JUNE, 2026

PRESENT

HON'BLE MR. JUSTICE JAYANT BANERJI

AND

HON'BLE MS. JUSTICE TARA VITASTA GANJU

MISCELLANEOUS FIRST APPEAL NO. 1512 OF 2018 (MV-I)

BETWEEN:

K. G. RAJU KUTTI,
AGED ABOUT 58 YEARS,
S/O LATE V. K. GOPALAN,
R/AT KAPPIYIL HOUSE,
MALA POST AND VILLAGE,
KARKALA TALUK - 574 104.

...APPELLANT

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

AND:

1. AKSHAY KUMAR
AGED ABOUT 46 YEARS,
S/O BABANNA INDRA,
R/AT NEAR JAIN TEMPLE,
KERVASHE POST, BAJAGOLI,
KARKALA TALUK - 574 104.
2. THE BRANCH MANAGER
TATA AIG GENERAL INSURANCE CO LTD.,
MANGALORE BRANCH,
RAJ TOWERS, OPP: HOTEL ROOPA,
HAMPANKATTA, MANGALORE - 01.

...RESPONDENTS

(BY SRI. PRADEEP B., ADVOCATE FOR R2;
V/O/D.29.06.2021 NOTICE TO R1 IS DISPENSED WITH)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE
JUDGMENT AND AWARD DATED 09.10.2017 PASSED IN MVC

Digitally signed by
SUMATHY KANNAN
Location: HIGH
COURT OF
KARNATAKA



NO.51/2017 ON THE FILE OF THE SENIOR CIVIL JUDGE, AMACT, KARKALA, 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
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 09.10.2017 in M.V.C.No.51/2017 passed by the learned Senior Civil Judge, Additional Motor Accident Claims Tribunal, Karkala (hereinafter referred to as the 'Impugned Award'). By the Impugned Award, the learned Tribunal has awarded Rs.4,10,550/- to the appellant/claimant-Sri. K.G. Raju Kutti along with interest at 8% per annum on Rs.3,75,550/-, from the date of petition till its realisation.

2. We have heard the learned counsel for the appellant/claimant and the learned counsel for respondent



No.2/Insurance Company. Notice to respondent No.1 has been dispensed with by an order dated 29.06.2021.

3. The appeal, though listed for admission, with the consent of the learned counsel for the parties, is taken up for final hearing and disposal today itself.

4. The brief facts are that, on 22.07.2015 at 11.45 a.m., when the appellant/claimant was riding his motorcycle bearing Registration No.KA-20-X-1094 from Mallar towards Mullur, and when he reached near Patnahithlu of Mallar Village, a bus bearing Registration No. KA-19-B-8485 came from Mullur side in a rash and negligent manner and collided with the appellant/claimant. Due to the accident, the appellant/claimant sustained injuries. He was taken to Nitte Gajria Hospital, Karkala and thereafter, shifted to Yenepoya Speciality Hospital, Mangalore. The appellant/claimant was admitted as an inpatient for 13 days, and he spent amounts towards medical expenses, attendant and other charges. In view of the injuries and hospitalisation, a claim petition was filed before the



learned Tribunal under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'MV Act'). The claim was contested by the respondent No.1/owner as well as the respondent No.2/Insurance Company.

5. On the basis pleadings between the parties, the following issues were framed by the learned Tribunal:

"ISSUES

1. *Whether the Petitioner proves that, he has sustained injuries in a motor vehicle accident on 22.07.2015 at 11.45 a.m., near Patnahithlu, Mala, Mala Village, due to rash and negligent driving of bus bearing Reg.No.KA-19-B-8485 by its driver as contended?*
2. *Whether the respondent No.2 proves that respondent No.1 has violated the policy and permit conditions?*
3. *Whether the petitioner is entitled for the compensation amount, if so what is the amount and from whom it is recoverable?*
4. *What Order or Award?"*

6. The appellant/claimant examined himself as PW-1 and Dr.Ullas Shetty as PW.2 and exhibited 25 documents as Exs.P1 to P25 including Complaint [Ex.P2], Spot Mahazar [Ex.P3], Sketch [Ex.P4], MV Accident Report [Ex.P5], Accident Information Report [Ex.P6], Wound



Certificate [Ex.P7], and Chargesheet [Ex.P8]. In addition, the Disability Certificate [Ex.P11], Discharge Summary [Ex.P12] and Medical Bills [Ex.P13] issued by the Hospital were also marked as exhibits. In addition, Exhibits C1 to C3 viz., Case Sheet [Ex.C1], X-ray [Ex.C2] and C.T. Scan Films [Ex.C3] were tendered during evidence by the claimant and they were marked accordingly. The respondents neither examined any witnesses nor produced any documents on their behalf.

7. The learned Tribunal after examining the evidence on record, found that the rash and negligent driving was proved. In addition, it was held that there was no violation of the Insurance policy and permit conditions. On the injuries, the learned Tribunal found that the nature of the injuries are all simple in nature and awarded a sum of Rs.30,000/- towards pain and suffering. The learned Tribunal also considering the evidence of PW.2/Doctor that implants fixed over appellant/claimant's right tibia and fibula bones to be removed in future by another surgery



and the removal of implants will cost about Rs.35,000/-, has awarded a sum of Rs.35,000/- in addition to the medical expenses awarded at Rs.1,45,650/-, and an amount of Rs.43,500/- was also awarded towards 'loss of income during laid-up period'. Accordingly, the compensation awarded by the learned Tribunal was as follows:

Sl.No.	Heads of Compensation	Amount (in Rs.)
1	Pain and Agony	30,000/-
2	Loss of amenities of life	25,000/-
3	Rest, nourishment and attendant charges	10,000/-
4	Medical expenses	1,45,650/-
5	Conveyance	8,000/-
6	Loss of income during laid up period	43,500/-
7	Loss of future income	1,13,400/-
8	Future medical expenses	35,000/-
	TOTAL	4,10,550/-

7.1 Thus, an amount of Rs.4,10,550/-, along with interest at 8% per annum (excluding the interest on Future Medical Expenses of Rs.35,000) was awarded.

8. The learned counsel for the appellant/claimant submits that, even relying on the evidence placed before



the learned Tribunal, that given the injuries suffered, it cannot be said that these were merely simple injuries. The disability certificate was provided for proving 43% disability to the whole body and thus, the award under the head of 'loss of amenities', 'pain and suffering' and 'food and attendant charges' was inadequate. In addition, it is contended that the whole-body disability could not have been taken at 7%, instead, it should have been taken as 1/3rd of the physical disability in the right lower limb of 43%, for which a disability certificate was produced.

9. The learned counsel appearing for the respondent /Insurance Company, on the other hand, has contended that the award under the non-pecuniary heads does not require any change. He however, submits that usually 1/3rd of the total disability to the affected limb, is taken as the whole body disability.

10. Having heard the learned counsel for the parties, the point for determination that arises before this Court is,



whether the Impugned Award requires any interference by this Court?

11. An examination of the wound certificate as well as the disability certificate shows that, the appellant/claimant suffered four injuries. Out of 4 injuries, the wound certificate (Ex.P7) sets out that, although injuries 1, 2 and 3 are simple, injury No.4 is grievous. The relevant extract of the wound certificate is set out below:-

"I examined the injured person on 22/07/2015 at 05.30 PM when the following injuries were found (Patient conscious at the time of arrival, initially treated in Nitte Hospital):

1. Laceration of 6 cm x 1 cm x bone deep on the right foot.
2. Laceration of 2 cm x 1 cm x bone deep on the left forearm.
3. Laceration of 3 cm x 2 cm x muscle deep on the middle 1/3rd of right forearm.
- 4. Crushed laceration of 5cm x 3cm x bone deep on the middle of right leg with fracture of right tibia and fibula, media malleolus.**

Opinion: I am of the opinion that injury no.4 is grievous; injuries no.1, 2 & 3 are simple in nature. All injuries were fresh and caused by blunt force impact could be possible in a Road Traffic Accident as alleged."

[Emphasis Supplied]



12. In addition, an examination of the disability certificate at Ex.P11 also reflects that there is a loss of mobility not only in the right lower limb, but also in other limbs. The extreme loss of mobility is in the right lower limb. The mobility component was found to only be 90%. The disability certificate also sets out that there is a restriction in active movement of the right knee and ankle, difficulty in walking and persistent pain in the right knee. Thus, the disability certificate reflects that the permanent physical disability of 43% is there in the right lower limb. However, it also reflects that the mobility loss would be 18%. The relevant extract is as set out below:

"He was admitted again on 26/11/2015(D 7657) and discharged on 28/11/2015.

He was seen on 17/03/2016 for disability evaluation. The fractures have healed now clinically and radiologically (X ray no-2848 shows fracture union with intact implants in right tibia and fibula). I (undersigned) have examined him and found following problems:

i) Restriction of active range of movement of right knee and ankle

ii) Difficulty in walking, standing on the right leg, climbing upstairs, walking downstairs, kneeling, sitting cross leg and squatting

iii) Persistent pain (tenderness present) in right knee



Disability assessed using: Modified Kessler's Formula
(Ministry Of Social Justice And Empowerment, Notification,
GOI, New Delhi, 1st June, 2001).

I. Calculation of impairment of right lower limb extremity

- 1) Mobility component (total 90%)
A) Range of Active movement (total 90%)

Joint	Movement	Normal range (degrees)	Right (degrees)	Left (degrees)	Mean loss
Hip	Flexion-extension are Abduction-adduction are Rotation are	(0-140) (0-90) (0-90)	(0-140) (0-90) (0-90)	(0-140) (0-90) (0-90)	Nil
Knee	Flexion-Extension	(0-125°)	(0-90°)	(0-125°)	28%
Ankle	Planter flexion – Dorsiflexion – Inversion – eversion are	(0-70°) (0-60°)	(0-50°) (0-40°)	(0-70°) (0-60°)	(28+32)/2=30%

Loss of range of movement = Hip + Knee + Ankle =
0 x 0.3 + 28 x 0.3 + 30 x 0.3=18%

B) Muscle strength (total value 90%)

Loss of muscle strength = Hip + Knee + Ankle =
0x0.3+0x0.3+0x0.3=0+0+0=0%

Mobility component = a + [b (90-a)/90] = 18%

(Loss of range of movement = a =18%, Loss of muscle strength=b=0%)

2) Stability component (total value = 90%)''

[Emphasis Supplied]



13. The disability certificate also reflects that, there would be a requirement to remove the implants, which would cost about Rs.35,000/-. Thus, setting out that there would be future medical expenses as well to the given the nature of injuries and the hospitalisation, it would be requisite to enhance the amount awarded both for loss of amenities as well as for attendant charges and conveyance.

14. It is observed that the learned Tribunal has considered the income of the appellant/claimant as on the date of accident in the year 2015 at Rs.15,000/- p.m. Since the appellant/claimant was 60 years old as on the date of accident as his birth date being 03.10.1955, the learned Tribunal has rightly adopted a multiplier of '9'. The appellant/claimant has also produced the evidence of Doctor/PW.2 on the aspect of disability. It is the contention of the learned counsel for the appellant/claimant that the evidence on record reflected that the disability is 43% in terms of movement and in



terms of muscle strength evaluation. The Doctor has also found that the permanent physical disability to the whole body is at 43%. Thus, the contention of the appellant/claimant is that the disability was required to be taken as 14% and not 7%.

15. This Court has examined the evidence of PW-2. The evidence reflects that PW-2 was the treating Doctor of the appellant/claimant and the evidence also sets out the disability calculations in the following manner:

*"Combining the value of mobility and stability component
= $a + [b (90-a)/90]$ = $24 + [18(90-24)/90]$ = 37%
(mobility= b =18%, stability= a =24%)*

Extra points: Maximum -10% (excluding shortening-4%). = 0

i) Deformity	In functional position	3%	0
	In non-functional position	6%	
ii) Pain	Sever(grossly interfering with function)	9%	6%
	Moderate (moderately interfering with function)	6%	
		3%	
	Mild (mildly interfering with function)		
iii) Loss of sensation	Complete Loss	9%	0
	Partial Loss	6%	



Total=37+6=43%

OPINION: After perusal of case sheet, discharge summaries, physical and radiological examination, I am of the opinion that he has a permanent physical disability of 43% in the right lower limb. The removal of implants will cost about 35,000/-.

[Emphasis Supplied]

16. However, the learned Tribunal, after examining this aspect of the matter, has reduced the whole-body disability to 7%. Given the nature of the injuries sustained and the evidence produced, it would be appropriate to consider it as 14% .

17. Accordingly, the loss of the future earnings would be required to be awarded at Rs.2,26,800/- by re-calculating the same by considering the permanent disability as 1/3rd of the total whole body disability, which works out at 14% of the permanent disability to the whole body, in the following manner:

Loss of future income	Amount
Rs.15,000/-x14%x9x12	Rs.2,26,800/-

17.1 Accordingly, **Rs.2,26,800/-** in total is awarded towards 'Loss of Future Income'.



18. In addition, a contention has been raised *qua* 'pain and suffering' amounts to be enhanced. The learned Tribunal although has examined the Wound Certificate Exhibit P-7 and found that there were severe injuries and the appellant/claimant required to undergo surgeries and awarded Rs.30,000/- for pain and suffering.

19. 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 proper to enhance the award towards pain and suffering to Rs.50,000/-.

20. In addition, the loss of amenities would also be proportionately enhanced. Hence, we deem it appropriate to enhance the amount awarded towards loss of amenities from Rs.25,000/- to Rs.40,000/-.

20.1 Given the nature of grievous injury sustained by the appellant/claimant and the aspect of the surgery he underwent and as per the evidence of Doctor-PW.2, the Tribunal has awarded a sum of Rs.43,500/- by considering



the laid-up period as 27 days. But, we deem it appropriate to consider the laid-up period as 3 months and enhance the award amount to Rs.45,000/- and awarded accordingly.

21. Learned counsel for the appellant/claimant contends that, considering the nature of injuries and hospitalisation of the appellant/claimant for a considerable period of length, even the amount awarded under the head of Rest, Nourishment and Attendant Charges at Rs.8,000/- also requires enhancement. Given the evidence produced *qua* the severity of injuries which are reflected in the Impugned Award, this Court deems it appropriate to award an amount of **Rs.30,000/-** towards Rest, Nourishment and Attendant Charges.

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

Sl.No.	Heads of Compensation	Amount (in Rs.)
1	Pain and Suffering	50,000/-
2	Loss of amenities of life	40,000/-
3	Rest, nourishment and attendant charges	30,000/-



4	Medical expenses	1,45,650/-
6	Loss of income during laid up period (Rs.15,000x3=Rs.45,000/-)	45,000/-
7	Loss of future income (Rs.15,000/-x14%x9x12=2,26,800/-)	2,26,800/-
8	Future medical expenses	35,000/-
	TOTAL	5,72,450/-
	Less: Awarded by MACT	4,10,550/-
	Enhanced Compensation	1,61,900/-

23. Hence, the appellant/claimant is entitled to a total compensation of **Rs.5,72,450/-** along with interest at 8% p.a. as awarded by the learned Tribunal from the date of petition till the date of realization. Interest is awarded on the entire compensation awarded.

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

ORDER

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

(ii) The Impugned Judgment and Award dated 09.10.2017 in MVC No.51/2017 passed by the learned Senior Civil Judge and AMACT, Karkala, is modified, to the extent that the claimant is entitled to enhanced compensation of



Rs.1,61,900/- along with interest at the rate of 8% per annum in addition to Rs.4,10,900/- 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.



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(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**

KGR
List No.: 1 Sl No.: 6