



NC: 2026:KHC:54907
MFA No. 4337 of 2024

CNR: KAHC010364352024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MRS. JUSTICE GEETHA K.B.

MISCELLANEOUS FIRST APPEAL NO. 4337 OF 2024 (MV-I)

BETWEEN:

1. THE MANAGER
CHOLAMANDALAM MS GIC LTD.
N.S.C. BOSE ROAD,
CHENNAI-600001.
NOW REP BY ITS THE MANAGER,
CHOLAMANDALAM MS GIC LTD.,
UNIT NO.4, 9TH FLOOR, LEVEL-06,
GOLDEN HEIGHTS COMPLEX,
59th C CROSS, RAJAJINAGAR,
BANGALORE-560 010.

...APPELLANT

(BY SRI. PRADEEP B,ADVOCATE)

AND:

1. PRAKASH @ GUNAKARA NAIK
S/O. VAGGA NAIK
AGED ABOUT 44 YEARS,
R/AT. MOODABETTU,
ONIBACCHALU, HENGAVALLI VILLAGE
AND POST, KUNDAPURA.
2. SHRITHIL SHETTY,
S/O. SRIDHARA SHETTY,
AGED ABOUT 32 YEARS,
R/AT GUNDANA RATTADI

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VILLAGE,
KUNDAPURA.

...RESPONDENTS

(BY SRI. SHETTY PREKSHA BALAKRISHNA,
ADVOCATE FOR R1; R1 IS SERVED)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 21.10.2023 PASSED IN MVC NO.1047/2017 ON THE FILE OF THE SENIOR CIVIL JDUGE AND ADDITIONAL MACT, KUNDAPURA, AWARDING COMPENSATION OF RS.8,71,462/- WITH INTEREST AT 6 PERCENT P.A. FROM THE DATE OF PETITION, TILL THE DATE OF DEPOSIT.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MRS. JUSTICE GEETHA K.B.

ORAL JUDGMENT

This is the appeal filed under Section 173(1) of the Motor Vehicles Act, 1988 (for short M.V. Act) by the insurance Company i.e., appellant herein challenging the judgment and award dated 21.10.2023 in MVC No.1047/2017 on the file of the Senior Civil Judge and Addl. MACT, Kundapura (for short, 'the Tribunal').

2. Parties would be referred with their ranks, as they were before the Tribunal for the sake of convenience and clarity.

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3. The claimant has filed the claim petition under Section 166 of the M.V. Act, claiming compensation in respect of the injuries suffered by him in the road traffic accident that has taken place on 01.03.2017 at about 6.00 p.m. near Joy Estate, Hengavalli Village, Kundapura involving motorcycle bearing registration No.KA-20-EE-1340 and tipper lorry bearing registration No.KA-20-D-1805. The contention of claimant is that he was the rider of the motorcycle and because of rash and negligent driving of driver of the tipper lorry, the accident has taken place. Due to the accident, he sustained grievous injuries and taken treatment in the hospital for long period. He was aged about 37 years as on the date of accident and doing coolie work at the time. Hence, claimed compensation under different heads from respondent Nos.1 and 2 who are the owner and insurance company of the tipper lorry.

4. Respondent No.1 has not filed the objection statement.



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5. Respondent No.2 filed its objection statement wherein it denied the averments made in the petition in *toto* but admitted that there was valid insurance with respondent No.2 in respect of the offending tipper lorry. Hence, prayed for dismissal of the petition.

6. Based on the above pleadings, the tribunal after framing issues, recording evidence and hearing arguments of both sides, came to the conclusion that the claimant is entitled for total compensation of Rs.8,71,462/- under following heads:

1.	Loss of income due to disability (13,350+40%x12x15x20%)	Rs. 8,71,462
2.	Towards pain and suffering	Rs. 50,000
3.	Towards medical expenses	Rs. 68,572
4.	Towards conveyance, diet and attendants charges	Rs. 20,000
5.	Towards loss of income during laid up period	Rs. 40,050
6.	Towards loss of amenities	Rs. 20,000
	TOTAL	Rs. 8,71,462

7. Aggrieved by the said quantum, the insurance company-appellant is before this Court.

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8. Heard arguments of both sides.

9. Learned counsel for appellants Sri B.Pradeep would submit that the cross-examination of PW.2 coupled with Ex.P19, the certificate issued by PW.2 establishes that the complainant is not suffering from any seizure from the date of accident till the evidence of PW.2 except on one occasion and thus the assessment of disability at 25% on that score by the doctor is erroneous.

10. Learned counsel for the insurance Company would further submit that the Claimant contended that he was working as fully as on the date of accident. He has not produced any document to show his income. Under these circumstances, the Tribunal ought to have taken the income of the claimant based on the chart prepared by KSLSA but it has taken at Rs.13,350/- which is on higher side. Hence, prayed for allowing the appeal.

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11. Learned counsel for the claimant would further submit that adding 40% future prospect to the disability by the Tribunal is also erroneous.

12. Learned counsel for respondent/claimant No.1 Smt.Shetty Preksha Balakrishna would submit that the claimant has sustained severe injuries to his brain. Ex.P3 establishes the nature of injuries sustained by him i.e., to his temporal parietal bone and a portion of skull was removed, then operated. As of now, he is not in a position to speak and understand properly. Thus, there is cognitive disability to the claimant. The cognitive disability at 21.7% stated by the doctor is not at all disputed by the insurance company. Thus, the Tribunal ought to have taken it at 21.7% and not 20% to the whole body.

13. The income of the claimant taken by the Tribunal is also proper and requires no interference and the compensation awarded by the Tribunal on other heads is inadequate. Hence, even though the claimant has not



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filed any appeal; as per Order XLI Rule 22 of Code of Civil Procedure, 1908 (in short 'CPC), the Court can enhance the compensation. Hence, prayed for enhancement of the compensation.

14. Having heard arguments on both sides, verifying the appeal papers and trial Court records, the point that arises for consideration is:

"whether the compensation amount awarded by the Tribunal requires modification?"

15. Finding is in the **affirmative** for the following:

REASONS

16. The facts which are not in dispute and mentioned in Ex.P3-wound certificate reveals that the claimant has sustained 10 injuries on his head portion. The remarks of the doctor in Ex.P3 are as follows:

*"CT Brain:Left temporal lobe contusion.
Acute subdural haemorrhage occurred in left*

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fronto temporal area extradural in left fronto parietal area. Acute extradural haemorrhage in right temporal region. Acute subaachnoid haemorrhage in right parietal lobe. Right temporal bone was also fracture. Right zygomatic arch fracture."

17. The doctor who treated the claimant at Kasturba Hospital, Manipal has given evidence as PW.2. The claimant was inpatient for 9 days but he is continuously taking treatment as outpatient as per the evidence of PW.2.

18. PW.2 in his evidence and also in Ex.P19 has stated that the claimant post operatively gradually recovered and discharged on 09.03.2017. He is under regular follow-up and had one episode of seizure during January 2018. Now he is on two anticonvulsants. He has cognitive disability of 21.73% and 25% disability for occurrence of seizure. The patient was operated on left temporary granite and courses of treatment. He developed sensory dysphasia as his speech was



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incoherent. But he was stable and hence planned for discharge.

19. In this regard in the cross-examination, the doctor has deposed that except occurrence of seizure in January-2018, there is no document to show that after the accident before his evidence, the seizure occurred to the claimant. Thus, 25% disability for occurrence of seizure by the doctor cannot be accepted. However, PW.2 assessed 21.7% cognitive disability, which is not at all disputed by the insurance Company.

20. When there is cognitive disability, it cannot be said that it will be 1/3rd to the whole body and only in case of disability to any particular limb, the Court can assess 1/3rd of such disability as disability to the whole body, but in case of cognitive disability that is not proper. Hence, the assessment of the Tribunal that there is 20% disability to the claimant is not correct and it should be taken at 21.7% as assessed by the doctor.



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21. Order XLI Rule 22 of Code of Criminal

Procedure reads as follows:

Even though cross-appeal or cross-objection is not filed by the claimants they are entitled for compensation under Order XLI Rule 22 of CPC, if the compensation awarded by the Tribunal is not just and reasonable under Order XLI, Rule 32 of CPC.

22. In this regard, this Court place reliance on the judgment in the case of ***Ranjana Prakash and others vs. Divisional Manager and another reported in (2011) 14 SCC 639***, wherein head note-A reads as follows:

"A. Motor Vehicles Act, 1988 - S. 173 - Appeal to High Court - Powers available - Proper mode of disposal of appeal - Applicability of principles contained in Or. 41 Rr.33 and 22 CPC - Failure by any party to appeal, cross-appeal or cross- object - Effect - Party against whom relief not granted by Tribunal though claimed - If such party may be made liable - Principles explained in detail - Civil Procedure Code, 1908, Or. 41 Rr. 33 and 22".

23. Relying on the principles noted in the above said citation, the claimants are entitled to claim enhanced



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compensation even though they have not filed cross-appeal or cross-Objections, if the Tribunal has not awarded just and reasonable compensation to the claimants but not entitled for the interest for the appeal period.

24. With this background, the other facts are to be assessed.

25. When there is no document to show the actual income of the claimant, placing reliance on the chart prepared by KSLSA in respect of notional income is to be considered. However, without considering it, the Tribunal has taken the income of claimant at Rs.13,350/- which is erroneous. Thus, the income of claimant shall be taken at Rs.11,000/- per month in the absence of documentary proof. The age of claimant was 37 years. Hence, the relevant multiplier is 15 and the same was taken by the Tribunal correctly; as far as adding future prospects is concerned, generally only in case of death and severe disability cases, future prospects will be added. Further, in



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this case, the injury is not to any particular limb but to the brain of the claimant. Hence, this Court holds that adding 40% future prospects by the Tribunal is proper. Thus, the claimant is entitled for Rs.6,01,524/- (11,000/- +40% x12x 15 x 21.7%) towards loss of earning capacity due to disability is instead of Rs.8,71,462/- awarded by the Tribunal.

26. The claimant is entitled for Rs.33,000/- (11,000x3) towards loss of income during laid up period instead of Rs.40,050/- awarded by the Tribunal. As far as loss of amenities is concerned, the Tribunal has awarded only Rs.20,000/- which is on lower side and it shall be enhanced to Rs.50,000/-.

27. As far as compensation under other heads i.e. pain and sufferings, conveyance, diet and attendance charges, the compensation awarded by the Tribunal is just and reasonable and as far as medical expenses, considering the bills and prescriptions, the Tribunal has



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awarded compensation which also requires no interference. Thus, the claimant is totally entitled for compensation as follows:

1.	Loss of income due to disability (11,000+40%x12x15x21.7%)	Rs. 6,01,524.00
2.	Towards pain and suffering	Rs. 50,000.00
3.	Towards medical expenses	Rs. 68,572.00
4.	Towards conveyance, diet and attendants charges	Rs. 20,000.00
5.	Towards loss of income during laid up period	Rs. 33,000.00
6.	Towards loss of amenities	Rs. 50,000.00
	TOTAL	Rs. 8,23,096.00

28. Hence, this Court passes the following:

ORDER

- a. Appeal filed under Section 173(1) of the Motor Vehicles Act, 1988 is **allowed in part**.
- b. Judgment and award dated 21.10.2023 passed in MVC No.1047/2017 on the file of the Senior Civil Judge and Addl. MACT, Kundapura, is modified holding that the claimants are entitled for total compensation of Rs.8,23,096/- as against Rs.8,71,462/- awarded by the Tribunal. Except the

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quantum of compensation, the other findings of the Tribunal are unaltered.

- c. Disbursement and deposit shall be as per the order of the Tribunal.
- d. The Insurance Company shall deposit the compensation amount with accrued interest before the Tribunal within a period of 8 weeks from the date of receipt of certified copy of this judgment.
- e. Draw modified award accordingly.
- f. No order as to costs.
- g. Amount in deposit, if any, is ordered to be transmitted to the Tribunal forthwith. If there is excess compensation deposited, the Tribunal to refund it to the insurer on proper identification.
- h. Registry to transmit the TCR to the Tribunal forthwith.

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(GEETHA K.B.)
JUDGE

SSD
List No.: 1 Sl No.: 58