



NC: 2026:KHC:34403-DB
MFA No. 4606 of 2018
C/W MFA No. 4605 of 2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF JULY, 2026

PRESENT

HON'BLE MR. JUSTICE JAYANT BANERJI

AND

HON'BLE MS. JUSTICE TARA VITASTA GANJU

MISCELLANEOUS FIRST APPEAL NO. 4606 OF 2018 (MV-I)

C/W

MISCELLANEOUS FIRST APPEAL NO. 4605 OF 2018 (MV-I)

IN MFA No. 4606/2018

BETWEEN:

SRI. KRISHNAN @ KRISHNA NAIK
S/O. VENKATAN @ VENKATAPPA,
AGE: 37 YEARS, OCC: MASON,
R/AT. 5/36, MARUTI STREET,
ANCHETTY, DENKANAKOTAI TALUK,
KRISHNAGIRI DISTRICT,
TAMILNADU – 635 102.

...APPELLANT

(BY SRI. SURESH.M.LATUR., ADVOCATE)

AND:

1. SRI. S.ABHISHEK
S/O. SRI. M.V.SUBRAMANI,
R/O. SURMA, PETE BEEDI,
MALAVALLI TALUK,MANDYA DISTRICT.
2. THE MANAGER,
NEW INDIA ASSURANCE CO. LTD.,
MAHALAKSHMI COMPLEX, OPP. AJANTHA HOTEL,
M.G.ROAD, BENGALURU – 560001.

...RESPONDENTS

(BY SRI. C.R.RAVISHANKAR., ADVOCATE FOR R2,

Digitally signed by
SUMATHY KANNAN
Location: HIGH
COURT OF
KARNATAKA



NC: 2026:KHC:34403-DB
MFA No. 4606 of 2018
C/W MFA No. 4605 of 2018

NOTICE TO R-1 DISPENSED WITH
V/O/DTD. 18.12.2018)

THIS MFA FILED U/S 173(1) OF MV ACT AGAINST THE
JUDGMENT AND AWARD DATED 09/01/2018, PASSED IN MVC
NO.6816/2016, ON THE FILE OF THE MEMBER, PRINCIPAL MACT
AND CHIEF JUDGE, COURT OF SMALL CAUSES, BENGALURU,
PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION
AND SEEKING ENHANCEMENT OF COMPENSATION.

IN MFA NO. 4605/2018

BETWEEN:

1. SRI. BALAJI @ BALAJI NAIK
S/O KRISHNAN,
AGE : 29 YEARS, OCC: MASON,
R/AT 5-1047 NA, ANCHETTY,
DENKANAKOTAI TALUK,
KRISHNAGIRI DISTRICT,
TAMILNADU – 635 102.

...APPELLANT

(BY SRI. SURESH. M. LATUR., ADVOCATE)

AND:

1. SRI. S.ABHISHEK
S/O SRI.M.V.SUBRAMANI,
R/O SURMA, PETE BEEDI,
MALAVALLI TALUK, MANDYA DISTRICT.
2. THE MANAGER,
NEW INDIA ASSURANCE CO. LTD.,
MAHALAKSHMI COMPLEX,
OPP. AJANTHA HOTEL,
M.G.ROAD, BENGALURU – 560001.

...RESPONDENTS

(BY SRI. C.R.RAVISHANKAR., ADVOCATE FOR R2;
NOTICE TO R1-DISPENSED WITH V/O/DTD:18.12.2018)



THIS MFA FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 09/01/2018, PASSED IN MVC NO.6817/2016, ON THE FILE OF THE MEMBER, PRINCIPAL MACT, AND CHIEF JUDGE, COURT OF SMALL CAUSES, BENGALURU, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THESE APPEALS, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
&
HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORAL JUDGMENT

(PER: HON'BLE MS. JUSTICE TARA VITASTA GANJU)

1. These appeals have been filed impugning a common Judgment and Award dated 09.01.2018, passed in M.V.C.Nos.6816/2016 and 6817/2016 by the Member, Principal Motor Accident Claims Tribunal and Chief Judge, Court of Small Causes at Bangalore (hereinafter referred to as the 'Impugned Award'). By the Impugned Award, the learned Tribunal has awarded Rs.7,03,931/- in M.V.C.No.6816/2016 and awarded Rs.4,32,250/- in M.V.C.No.6817/2016, along with interest at the rate of 9% per annum from the date of petition till the date of deposit in both the petitions.



2. The challenge in these appeals has been made by the appellants/claimants. For the sake of convenience, appellant in MFA No.4606/2018 is referred to as petitioner No.1 and appellant in MFA No.4605/2018 as petitioner No.2.

3. Since the Impugned Award passed is a common Award and arising out of the same accident, both these appeals have been heard and decided at the admission stage with the consent of the parties.

4. The brief relevant facts are that on 29.08.2016, the petitioners were proceeding on a motorcycle bearing registration No.TN.70/C.4530 as rider (petitioner No.1) and pillion rider (petitioner No.2). At about 11.00 a.m., when they reached near Dhanagere Village on Kollegala Bengaluru Road, a private bus bearing Reg.No.KA.54/1899 coming from opposite side stated to being driven in a rash and negligent manner, hit the motorcycle. As a result of the accident, both persons fell down and sustained injuries.



5. The petitioner No.1 was taken to Kollegala Government Hospital and from there, he was shifted to K.R. Hospital, Mysuru, where he was treated as inpatient.

5.1 The petitioner No.2 was also taken to Kollegala Government Hospital and from there, he was shifted to K.R. Hospital, Mysore wherein he was treated as inpatient.

6. In view of the accident, both petitioners filed separate claim petitions under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'MV Act').

6.1 It was contended there that at the time of the accident, the petitioner No.1 was aged 35 years and was working as a Mason / Coolie and earning Rs.25,000/- per month.

6.2 It was also contended that at the time of the accident, the petitioner No.2 was aged 27 years and was also working as a Mason / Coolie and earning Rs.25,000/- per month.



7. It was stated by both the petitioners in their respective petitions, that the accident occurred due to rash and negligent driving of the offending private bus.

8. The claim petitions were contested by the respondent / Insurance Company. Although the respondent No.1/owner of the offending vehicle was served, he did not file any objections to the claim petition and was proceeded with *exparte*.

9. Based on the pleadings of the parties, the following common issues were framed by the learned Tribunal in both petitions which are set out below:

"1) Whether the petitioner proves that, he sustained injuries in the motor vehicle accident that occurred on 29.08.2016 at about 11.00 a.m., near Dhanagere Village, Kollegala Bengaluru road within the jurisdiction of Kollegala Rural Police Station on account of rash and negligent driving of the bus bearing registration No.KA.54/1899 by its driver?

2) Whether the respondent No.2 proves that the accident occurred on account of the negligent act of the petitioner himself/rider of the motorcycle?

3) Whether the petitioner is entitled for compensation? If so, how much and from whom?

4) What Order?"



10. The petitioner No.1 was examined as PW-1, while petitioner No.2 was examined as PW-2. The petitioners also examined three witnesses, PW-3 to PW-5, who included a Medical Records Officer (PW-3), their Doctor (PW-4), and an eye-witness (PW-5). Several documents were marked as exhibits which included FIR (Exhibit-P1), Mahazar (Exhibit-P2), Chargesheet (Exhibit-P3), IMV Report (Exhibit-P4) and Wound Certificate (Exhibit-P5). In addition, the Wound Certificate of petitioner No.1 and petitioner No.2 were marked as Exhibit-P5 and Exhibit-P11, respectively. The medical bills, X-ray films and other related documents were marked as Exhibits P14 to P24.

10.1 On behalf of the respondents, three witnesses were examined as RW-1 to RW-3, which included RW-1 being Dr.Venugopal Aras, Medical Officer at General Hospital, Kollegal, RW-2 being a Medical Records Officer at K.R. Hospital, Mysore and RW-3 being Legal Assistant Manager of the Insurance company/respondent No.2, respectively as well as documents were marked as Exhibits R1 to R12.



11. The learned Tribunal after examining the evidence on record found that the rash and negligent driving of the offending vehicle to be proved. In addition, the learned Tribunal examined the evidence placed on record separately by both the petitioners and found that both the petitioners sustained grievous and simple injuries. After examining the evidence of PW-4 and Exhibits P1 to P24, the learned Tribunal found that the total disability as assessed by the Doctor in respect of petitioner No.1/Krishnan the rider of the motorcycle as 82% to both limbs, while the whole-body disability was assessed at 41%. It was also found that his Right Ulna was united, however, his radius was not united nor was his middle finger of right hand. However, the disability was taken by the learned Tribunal at 27%, i.e., $\frac{1}{3}^{\text{rd}}$ of the whole-body disability.

11.1 To calculate 'loss of income due to disability', the learned Tribunal took the income at Rs.9,000/- per month and awarded Rs.45,000/- under the head of 'loss of income during the period of treatment'. Amounts were also awarded



for attendant, conveyance and miscellaneous charges. The 'loss of income on account of disability' was awarded in the following manner:

$$9,000 \times 27\% = 2430 \times 15 \times 12 = \text{Rs.}4,37,400/-$$

11.2 In addition, after examining the Wound Certificate (Exhibit-P5) as well as the discharge summary, evidence of PW-3 and PW-4 and the medical records, it was held that the petitioner No.1 was an inpatient for 57 days from 29.08.2016 to 18.10.2016 and thereafter from 05.12.2016 to 11.12.2016 for undergoing surgery and was awarded medical expenses at Rs.56,531/-.

11.3 Thus, the compensation awarded by the learned Tribunal to petitioner No.1 under various heads is as below:

Sl.No.	Heads of Compensation	Amount (Rs.)
1.	Injury, Pain and Suffering	60,000/-
2.	Loss of Income during laid up period (9,000 x 5)	45,000/-
3.	Loss of income on account of disability	4,37,400/-
4.	Medical Expenses	56,531/-



5.	Attendant, Conveyance and other miscellaneous expenses	40,000/-
6.	Future Medical expenses	25,000/-
7.	Loss of amenities in life	40,000/-
	TOTAL	7,03,931/-

12. So far as concerns the petitioner No.2, who was examined as PW-2, the learned Tribunal found that he also sustained some grievous injuries and was operated upon. His injuries included multiple fractures and the following:

- "1) Swelling of the hand right;*
- 2) Lacerated wound over the back of head right;*
- 3) Abrasion over the back of hands;*
- 4) Abrasion over the back of fore arm right;*
- 5) Fracture lateral condyle fore arm right;*
- 6) Fracture 2nd and 3rd metacarpal right hand"*

12.1 The learned Tribunal also found that the evidence of the Doctor (PW-4) showed that the petitioner No.2 had sustained fractures on his right-side femur, as well as right hand and that he had difficulty in using his right hand for daily activities and difficulty in walking, climbing stairs and



had an inability to lift weight, inability to squat or sit cross-legged. Based on the evidence, the learned Tribunal awarded compensation of Rs.50,000/- under the head of 'injury, pain and suffering' and for calculating the 'loss of income during laid-up period' as well as on account of disability, took the income of the petitioner No.2 as Rs.8,000/- per month. Since petitioner No.2 was an in-patient for 21 days, Rs.32,000/- was awarded under the head 'loss of income during treatment period'. In addition, Rs.20,000/- was awarded towards 'attendant, conveyance and other miscellaneous expenses'.

12.2 For calculating the compensation towards the loss of income due to disability, the learned Tribunal found that the Doctor had assessed 53% disability to both (right) sided limbs, with 27% disability to the whole-body and that two fractures were united. The learned Tribunal had once again reduced the disability to 1/3rd of the whole-body and marked as 17% disability in respect of petitioner No.2.



Thus, the 'loss of income on account of disability' was calculated as follows:

$$8,000 \times 17\% = 1360 \times 17 \times 12 = 2,77,440/-$$

12.3 Accordingly, the petitioner No.2 was awarded compensation in the following amounts:

Sl.No.	Heads of Compensation	Amount (Rs.)
1.	Injury, Pain and Suffering	50,000/-
2.	Loss of Income during laid up period (8,000 x 4)	32,000/-
3.	Loss of income on account of disability	2,77,440/-
4.	Medical Expenses	7,810/-
5.	Attendant, Conveyance and other miscellaneous expenses	20,000/-
6.	Loss of amenities in life	25,000/-
7.	Future medical expenses	20,000/-
	TOTAL	4,32,250/-

13. Thus, compensation was awarded in the amount of Rs.7,03,931/- to petitioner No.1 and at Rs.4,32,250/- to petitioner No.2, with the applicable interest at 9% per annum.



14. The learned counsel for the appellants/petitioners contends that the calculation of the disability was wrongly taken by the learned Tribunal in both cases. He submits that both petitioners being Masons/Coolies, are unable to carry on their avocation after this accident, in view of their disability. According to the learned counsel for the appellants/petitioners, the loss of income due to disability should have been taken @ 100% by the learned Tribunal.

14.1 In support of his contention the learned counsel places reliance on the judgments of the Supreme Court in the cases of (i) ***Syed Sadiq and Others vs. Divisional Manager, United India Insurance Co. Ltd.***¹ (ii) ***Raj Kumar Vs. Ajay Kumar and Another***².

15. The learned counsel for the respondent No.2/insurance company on the other hand contends that the disability was calculated by the learned Tribunal after examining all the evidence produced and does not require

¹ 2014 (2) SCC 735

² (2011) 1 SCC 343



to be interfered with. He also seeks to rely upon the evidence and documents produced by the respondent No.2/ insurance company.

16. The point for determination that arises in both these appeals, is whether the compensation awarded under the 'loss of future income due to disability', given the evidence produced, has been awarded by the learned Tribunal in accordance with the law or requires interference?

I. MFA NO.4606/2018 (MVC NO.6816/2016):

17. So far as concerns the award on 'loss of income due to disability', the learned Tribunal found from the medical records and discharge summaries that the petitioner No.1 had suffered fracture of both bones of right forearm, fracture of proximal phalanx middle finger right hand and compound fracture of upper 3rd fibula with foot drop and has undergone surgeries. He was an inpatient for 57 days from 29.08.2016 to 18.10.2016 and then from 05.12.2016 to 11.12.2016 and was subjected to multiple surgeries. The Doctor (PW-4) who was working as an Orthopedic Surgeon



at Bowring & Lady Curzon Hospital at Bangalore, has assessed the disability of 82% to both limbs and 41% to the whole-body taking into account mobility, comfort and stability. The Doctor assessed the whole-body disability of petitioner No.1 at 41%. However, the learned Tribunal took 1/3rd disability at 27%, to award compensation to the petitioner No.1.

17.1 The evidence of the Doctor (PW-4) shows that after an examination of the records produced of the accident, as well as his discharge summaries, he proceeded with his examination of petitioner No.1. In order to assess the disability, the Doctor examined the petitioner No.1 and found his right upper limb as "dangling and deformed" with stiffness of the movement of his fingers. He also found injuries on the right lower limb. He found that there was loss of mobility in the arm by 65% and the total disability of the right upper limb at 72% while that of the right lower limb was at 50%. Thus, the disability of both limbs was assessed by him at 82%. The Doctor (PW-4) also deposed



that given that the petitioner No.1 worked as a Mason/Coolie, he would not be able to carry out his work or any manual work at all. The relevant extract of his evidence is set out below:

"4. He was diagnosed to have:

-Post traumatic, raw area (right) leg and (right) Forearm, he is said to have suffered.

(i) Compound comminuted fractures of both bones (right) Forearm (ii) Fracture proximal phalanx middle finger (right) hand and (iii) Compound fracture u/3rd fibula with foot drop.

He is said to have undergone surgery in the form of:

- Wound debridement and Ex-fix application for (right) Forearm on 30-08-2016.

SSG for both (right) sided limbs on 06-10-2016.

During his 2nd admission he underwent surgery in the form of Ex-fix removal and ORIF with plate and screws with bone grafting under GA on 07-12-2016.

I have gone through his 2 discharge summaries before assessing the disabilities.

Now on presentation he Complained of:

Pain and inability to use (right) upper limb for activities of daily living. Complained of pain and difficulty to walk, climb stairs. He gives history of inability to lift weight, grasp, eat or drink using (right) upper limb. He also gives history of inability to squat and sit cross-legged.

On examination:

(Right) upper limb is dangling. Wasting is seen. Deformity of (Right) Forearm and swelling of (right) wrist and hand is seen. Stiffness of all the 5 fingers is present.



(Right) lower limb: Scars and keloids are seen over (right) knee and proximal leg. (Right) sided foot drop is present.

His disabilities are:

	(Right) Upper limb ROM	
	(Left) side	(Right) side
Shoulder Flexion/Extension (0-220°)	0-220°	0-140°
Abduction/Adduction (0-180°)	0-180°	0-100°
Rotations (0-180°)	0-180°	0-120°
ELBOW: Flexion/Extension (0-150°)	(Left) side 0-150°	-11.37% (Right) side 0-110°
Supination/Pronbation (0-180°)	0-180°	0-60° - 14.54%
WRIST:		
Dorsiflexion/Palmarflexion	0-160°	0-60°
Radio-Ulnar deviation (0-55°)	0-55°	0-20° - 18.83%

Loss of Muscle power around (right) Elbow and (right) Wrist each by one grade.

i.e., $20 \times 0.3 \times 2 = 12\%$

Mobility component is $45 + 12 \frac{(90-45)}{90} = 51\%$

CO-ORDINATED ACTIVITIES:		
1	Lifting overhead objections remove and placing of the same place	6%
2	Touching nose with end of the extremity	3%
3	Eating Indian style	3%
4	Combing and plaiting	3%



5	Putting on shirt/kurta	3%
6	Ablution Indian style	3%
7	Drinking glass of water	3%
8	Buttoning	3%
9	Tie Nara/Dhoti	3%
10	Writing	3%
	Total	33%

Arm component is:

$$\frac{51 + 33 (90-51)}{90} = 65\%$$

Hand Component : (Right)side

- 1) Prehension 10%
- 2) Strength 15%

Disability of (right) hand component is 25%

Total disability of (right) upper limb is

$$\frac{65 + 25 (90-65)}{90} = 72\%$$

	(Right) Lower limb	
KNEE	(Left) side	(Right) side
Flexion/Extn. (0-125°)	0-130°	0-100° - 6.92%
ANKLE: Plantar/ Dorsiflexion (0-70°)	0-70°	0-20°
Inversion/ Eversion (0-60°)	0-60°	0-30° - 18.46%
GIRTH: Thigh Calf	52 cms. 38 cms.	50 cms. 35 cms.

Loss of muscle power around (Right) Ankle by 2 grades Foot drop i.e., $20 \times 0.3 \times 2 = 12\%$

Mobility component is :

$$\frac{25 + 12 (90-25)}{90} = 34\%$$

STABILITY COMPONENTS:



- | | |
|-------------------------------|------|
| 1) Walking over plain surface | - 5% |
| 2) Walking over slope | - 5% |
| 3) Climbing Stairs | - 5% |
| 4) Squatting on floor | - 5% |
| 5) Sitting cross-legged | - 5% |
| Total | 25% |

Total disability of right lower limb is

$$34 + 25 \quad \frac{(90-34)}{90} = 50\%$$

Total disability of both limbs is

$$72 + 50 \quad \frac{(90-72)}{90} = 82\%$$

**I put the total disability of both limbs at 82%
and that of his whole body at 41%.**

**Patient is said to be a Mason and with the said
disabilities he cannot carry out his work or any
other manual work.**

*He needs surgery for removal of implants and
correction of foot drop deformity which would cost
around Rs.80,000/- in private set up."*

[Emphasis Supplied]

II. MFA NO. 4605 OF 2018 (MVC NO.6817/2016) :

18. An examination of the disability certificates produced at Exhibit P5, as well as the evidence of PW-3/M.K. Vijaykumar and PW-4/Dr.S.A. Somashekar, Orthopedic Surgeon showed that the petitioner No.2 had sustained multiple fractures and underwent surgery for the same and had difficulty in lifting heavy weights, inability to squat. The Doctor after examining him, found that he had also suffered



injuries and undergone surgery. He complained of pain and difficulty in using his right hand and walking, climbing stairs and stated that he had an inability to lift heavy weights or squat or sit cross-legged. Although it was found that two fractures were united, there was a malunited fracture of his right upper limb. His disability was thus calculated of his right hand at 20%, right upper limb at 34%, right lower limb including mobility at 31%.

18.1 In addition, the Doctor (PW-4) found that the total disability of his right upper limb to be 34% and the right lower limb at 31% while the total disability of both right-side limbs at 53%. It was further deposed that since petitioner No.2 was a Mason/Coolie (building construction), it would be difficult for him to do any manual or physical work. It is apposite to set out the relevant extract of the evidence of PW-4 *qua* petitioner No.2 below:

"4) He was diagnosed to have:

- Fracture lateral condyle femur (right) sided and fracture 2nd and 3rd metacarpals (right) hand.

He underwent surgery in the form of :



K wire fixation for 2nd and 3rd metacarpal fractures with tendon repair under wrist block on 31-08-2016.

I have gone through his discharge summary before assessing the disabilities:

Now on presentation he complained of:

Pain and difficulty in using (right) hand for activities of daily life. Complained of pain and difficulty in walking, climbing stairs. He gives history of inability to lift heavy weight also gives history of inability to squat and sit cross legged.

On examination:

Walks with pain and limping, wasting of (Right) thigh is seen. Swelling (Effusion) of (right) knee is seen.

(Right) Hand: Scars are seen over dorsum of (right) hand swelling of (right) hand is seen. Index and middle finger are totally stiff. (MCP-ROM- Nil)

His recent x-ray No.23096 and 22-07-2017 shows:

i) United fractures of 2nd and 3rd metacarpals (right hand).

ii) Malunited fracture lateral condyle (right) femur.

His disabilities are:

Sl.No.	CO-ORDINATED ACTIVITIES	(Right) Upper limb
1	Lifting overhead objections remove and placing at the same place	3%
2	Eating Indian style	3%
3	Combing and plaiting	3%
4	Ablution Indian style	3%
5	Drinking glass of water	3%
6	Buttoning	3%
	Total	18%

- Arm component is 18%

Hand component: (Right) side

- i) Prehension 10%
ii) Strength 10%



20%

- Disability of (right) hand component is 20%
Total disability of (right) upper limb is
= 20 + 18 (90-20) = 34%
90

	(Right) Lower limb	
KNEE	(Left) side	(Right) side
Flexion/Extn. (0-125°)	0-130°	0-90° 9.23%
GIRTH: Thigh	52 cms.	47 cms.

Loss of muscle power around (right) Knee by one grade
Is $20 \times 0.3 = 6\%$

Mobility component is
9 + 6 (90-9) = 14%
90

STABILITY COMPONENTS:

- | | |
|-------------------------|------|
| 1) Climbing Stairs | - 5% |
| 2) Squatting on floor | - 5% |
| 3) Sitting cross legged | - 5% |
| 4) Kneeling | - 5% |
| Total | 20% |

Total disability of right lower limb is
20 + 14 (90-20) = 31%
90

Total disability of both (right) sided limbs is
34 + 31 (90-34) = 53%
90

I put the total disability of both limbs at 53% and that of his whole body at 27%. In view of the above said disabilities it is difficult for the patient to work as a Mason (Building Construction) and also difficult for him to do any other manual or physical work."



19. A detailed examination of the evidence reflects that the disability of petitioner No.1 although given by the Doctor at 82%, and the disability of petitioner No.2 given by the Doctor at 53%, the learned Tribunal chose to award compensation taking 1/3rd of the said disability. Nothing to contradict the disability assessed has been alluded to by the respondent No.2/Insurance Company either in the depositions or otherwise.

20. The Supreme Court in ***Raj Kumar Vs. Ajay Kumar and Another***³ 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 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

³ (2011) 1 SCC 343



capacity. This would depend on multiple 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 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 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.

XXX

XXX

XXX

15. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.

XXX

XXX

XXX

19. We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss



of earning capacity is the same as the percentage of permanent disability).

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."

[Emphasis Supplied]

21. Both the petitioners were below 40 years and were carrying out Mason or Coolie work, which meant that they were only doing manual labour. No educational certificates have been produced. Thus, it is unlikely that they were educated. Given the nature of their injuries, especially on the right side or their dominant side of their body, it is unlikely that they could carry out their avocation at all. Thus, the disability in the case of petitioners could not have been reduced by the learned Tribunal to 1/3rd and that too without any assessment of their functional disability.



22. So far as concerns the petitioner No.1, his injuries were more severe. His right hand was dangling and manual work would be impossible for him to do. Given this background, other types of works would also be difficult. Thus, his functional disability would be assessed at 75% to the whole-body.

23. It is not disputed that the notional income as per the Chart of the Karnataka State Legal Services Authority for an accident of the year 2016 is Rs.9,500/- per month. Thus, the compensation towards 'loss of income due to disability' in respect of petitioner No.1, taking 75% as the disability to the whole-body, is calculated as follows:

Loss of income due to disability	Amount
$(9500 \times 12 \times 15) \times 75\%$	Rs.12,82,500/-

23.1 The amounts awarded towards 'pain and suffering' and 'loss of income during the laid-up period' would also require enhancement.



23.2 Thus, the compensation in respect of petitioner No.1 would require to be re-calculated as follows:

Sl. No.	Heads of Compensation	Amount (Rs.)
1.	Injury, Pain and Suffering	1,00,000/-
2.	Loss of Income during laid up period (9,500 x 8)	76,000/-
3.	Loss of income on account of disability [(9500 x 12 x 15) x 75%]	12,82,500/-
4.	Medical Expenses	56,531/-
5.	Attendant, Conveyance and other miscellaneous expenses	40,000/-
6.	Future Medical expenses	50,000/-
7.	Loss of amenities in life	50,000/-
	TOTAL	16,55,031/-
	LESS AWARDED BY THE TRIBUNAL	7,03,931/-
	ENHANCED COMPENSATION	Rs.9,51,100/-

24. With the notional income of Rs.9,500/- and taking 50% as the disability of petitioner No.2 as his injuries were not as severe and it cannot be said that he cannot do any physical work – just not constructional work, the compensation towards 'loss of income due to disability' in respect of petitioner No.2 is calculated as follows:

Loss of income due to disability	Amount
(9500 x 12 x 17) x 50%	Rs.9,69,000/-



24.1 In addition, the other amounts awarded also require to be slightly enhanced. Thus, the compensation in respect of petitioner No.2 would require to be re-calculated as follows:

Sl. No.	Heads of Compensation	Amount (Rs.)
1.	Injury, Pain and Suffering	70,000/-
2.	Loss of Income during laid up period (Rs.9,500 x 5)	47,500/-
3.	Loss of income on account of disability [(9500 x 12 x 17) x 50%]	9,69,000/-
4.	Medical Expenses	7,810/-
5.	Attendant, Conveyance and other miscellaneous expenses	20,000/-
6.	Loss of amenities in life	35,000/-
7.	Future Medical expenses	30,000/-
	TOTAL	11,79,310/-
	LESS AWARDED BY THE TRIBUNAL	4,32,250/-
	ENHANCED COMPENSATION	Rs.7,47,060/-

25. Hence, the appellant/petitioner No.1 is entitled to total compensation of **Rs.16,55,031/-** along with interest at 9% per annum from the date of petition till the date of realization. While the appellant/petitioner No.2 is entitled to total compensation of **Rs.11,79,310/-** along with interest



at 9% per annum from the date of petition till the date of realization.

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

ORDER

- (i) The appeals are ***allowed in part***;
- (ii) The Impugned Judgment and Award dated 09.01.2018, in MVC Nos.6816/2016 & 6817/2016 passed by the learned Member, Principal MACT & Chief Judge, Court of Small Causes, Bangalore, is modified, to the extent that the appellant in MFA No.4606/2018 is entitled to total compensation of **Rs.16,55,031/-** and the appellant in MFA No.4605/2018 is entitled to total compensation of **Rs.11,79,310/-**. The interest in both awards shall be calculated at the rate of 9% per annum.
- (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 along with interest



applicable thereon, within a period of eight weeks from the date of receipt of a copy of this judgment;

(v) 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.

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

(vii) The Registry is directed to transmit a copy of this judgment to the concerned Tribunal.

(viii) No order as to costs.

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

Sd/-
(JAYANT BANERJI)
JUDGE

Sd/-
(TARA VITASTA GANJU)
JUDGE

JJ/KS
List No.: 1 Sl No.: 6