



CNR: KAHC010519352017

NC: 2026:KHC:51620-DB
MFA No. 7458 of 2017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE T.P.VIVEKANANDA

MISCELLANEOUS FIRST APPEAL NO. 7458 OF 2017 (MV-I)

BETWEEN:

SRI. M.K. MANOJ
S/O KRISHNE GOWDA
AGED ABOUT 32 YEARS
REPRESENTED BY SMT. S.B. RANJITHA
W/O M.K. MANOR
AGED ABOUT 25 YEARS
R/AT VENKTESHAPPA COMPOUND
BANK COLONY, YELDUR
SRINIVASAPURA TQ
KOLAR DISTRICT-563 101

...APPELLANT

(BY SMT: SUGUNA R REDDY, ADVOCATE)

AND:

1. SRI. MAYANA SYED SAB
S/O M MASOOMKHAN
MAJOR
R/AT NO.20-132, KOTHAPAVI
RAYACHOTI TALUK
KADAPPA DISTRICT
ANDRAPRADESH
2. THE BRANCH MANAGER
CHOLAMANDALAM M.S.



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GENERAL INSURANCE COMPANY LTD.,
REGISTERED & HEAD OFFICE
DARE HOUSE, 2ND FLOOR
NO.2, NSC BASE ROAD
CHENNAI CITY, TAMIL NADU

...RESPONDENTS

(BY SRI: B PRADEEP, ADVOCATE FOR R2;
VIDE ORDER DATED 15.11.2018, NOTICE
TO R1 IS DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT
AGAINST THE JUDGMENT AND AWARD DATED 01.06.2017
PASSED IN MVC NO.296/2014 ON THE FILE OF THE I
ADDITIONAL SENIOR CIVIL JUDGE AND A.C.J.M. MACT, KOLAR,
PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION
AND SEEKING ENHANCEMENT OF COMPENSATION.

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

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE T.P.VIVEKANANDA

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE T.P.VIVEKANANDA)

Being not satisfied with the compensation awarded by the
MACT and I Additional Senior Civil Judge, Kolar in MVC No.296
of 2014 dated 01.06.2017 is before this Court seeking re-
assessment and enhancement of compensation for the grievous



CNR: KAHC010519352017

injuries sustained by him in the motor accident occurred on 22.03.2014 while he was riding Motorcycle near Srinivasapura town.

2. The occurrence of accident and liability of respondent No.2 - Insurance Company is not in dispute, since respondent No.2 - Insurance Company has satisfied the award passed by the Tribunal. Now the question for determination is as to - *"Whether the assessment and awarding of compensation for the grievous bodily injuries suffered by the appellant - claimant is sufficient or whether it requires reassessment/re-determination?"*

3. Learned counsel for the appellant submitted that the appellant - claimant has suffered grievous injuries, which are as follows:

- a) *Left frontal Haemorrhagic contusion*
- b) *Compound depressed left frontal bone fracture*
- c) *ACF base fracture with CSF Rhinorrhea*
- d) *Fracture left lateral malleolus*

4. In order to prove the disability, the appellant has examined the doctor as PW3 and marked medical records, so



CNR: KAHC010519352017

also, the Neuro Psychological Assessment Report. It is on record that PW3 is not the doctor who has treated the claimant. However, his deposition is on the basis of the medical records.

5. It is the case of the appellant that he could not examine the doctor who has treated him since getting the Neuro Surgeons to Court for adducing evidence is highly difficult, inasmuch as, normally Neuro Surgeons are fully busy in attending the patients and the presence of Neuro Surgeons are very much required in hospitals rather than giving evidence in the Court. Therefore, it is the case of the claimant that it is not the requirement of law that in each case it is only the doctor who has treated the patient should be examined. However, any medical doctor who could depose before the Court on the basis of medical records, can also be examined.

6. In support of the said contention, learned counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court in ***Rajkumar Vs Ajay Kumar and another***¹. She has further submitted that Ex.P18 - Neuro Psychological Assessment Report points out that, there is a cognitive

¹2011 1 SCC 343



CNR: KAHC010519352017

disability of 77%, inasmuch as, when there is a neurological disability, there is no necessity of assessment of disability to the whole body and thus, the functional disability at 77% is required to be taken into consideration for assessment of loss of future earning capacity on account of functional disability.

7. Learned counsel further submits that taking note of the disability assessed at Ex.P18, the Tribunal in fact has assessed the future loss of income due to disability. However, the compensation is not awarded on the ground that the doctor who has treated the appellant is not examined.

8. In addition, learned counsel for the appellant submits that the compensation awarded towards pain and sufferings, incidental charges, loss of amenities and conveyance are inadequate and liable to be enhanced.

9. *Per contra*, learned counsel for respondent No.2 - insurer submits that in the absence of proof of percentage of disability, only on the basis of Ex.P18, claimant cannot be made entitled for compensation for future loss of earning by considering the disability at 77%. It is his further contention



CNR: KAHC010519352017

that there was no impediment for the appellant - claimant to examine the doctor who has treated him and it is for the said reason, the Tribunal though assessed the future loss of income for the disability, however, the same is not awarded. Accordingly, seeks dismissal of the appeal.

10. We have considered the submissions on behalf of the appellant and respondent No. 2 and perused the memorandum of appeal, judgment and award of the Tribunal, so also, the Trial Court records.

11. The fact that the appellant - claimant has produced medical bills for the medical expenses incurred in a sum of Rs.13,68,073/-is more than sufficient to come to a conclusion that the injuries/fractures sustained by the claimant is serious in nature. Added to that, the appellant has undergone three surgeries and was hospitalized for 45 days.

12. We have perused Ex.P7 - the discharge summary, Ex.P13 - the photographs showing the injuries and fractures sustained by the appellant - claimant, Ex.P17 - case sheet and Ex.P18 - Neuro Psychological Assessment Report.



CNR: KAHC010519352017

13. On a cursory reading of all the aforesaid documents, we have no hesitation in concluding that the appellant - claimant has suffered serious injuries which has completely affected his future life and expectations. We are conscious of the fact that the appellant - claimant has not examined the doctor who has treated him and the assessment of cognitive disability at 77% in Ex.P18, is not a conclusive proof. However, it cannot be said that the appellant - claimant has not suffered any disability.

14. On consideration of the aforementioned exhibits, more particularly, Exs.P13 and P18, the photographs and Neuro Psychological Assessment Report and taking note of the evidence of PWs.1 and 3, we are of the opinion that in order to meet the ends of justice, it would be just and appropriate to consider the functional disability at 50% and assess the compensation accordingly. Thus, the entitlement of the appellant for the compensation on his sustaining grievous injuries and fractures, this Court deems it appropriate to re-determine the compensation as follows:



CNR: KAHC010519352017

NC: 2026:KHC:51620-DB
MFA No. 7458 of 2017

15. The accident is of the year 2014. Since the avocation and income of the appellant - claimant is not proved, we have no other option except to consider the notional income of Rs.8,500/- with addition of 40% future prospectus and accordingly, the compensation for loss of future earning capacity would be **Rs.12,13,800/-** ($8500 + 40\% \times 12 \times 17 \times 50\%$).

16. Considering the nature of injuries and the period of treatment, surgery undergone by the appellant - claimant, we are of the opinion that the appellant - claimant shall be made entitled to enhancement of another **Rs.50,000/-** towards pain and sufferings. On overall consideration of the nature of injuries and the period of hospitalization and post discharge treatment, we are of the opinion that total sum of **Rs.1,00,000/-** shall be awarded under the heading incidental charges, conveyance, food, nourishment and attendant charges.

17. The Tribunal has awarded a sum of Rs.29,295/- towards loss of income during laid up period for 135 days. Taking note of the period of hospitalisation and the nature of



CNR: KAHC010519352017

injuries suffered, we are of the opinion that the claimant shall be made entitled for compensation for loss of earning during laid up period for 6 months at Rs.8,500/- per month, which comes to **Rs.51,000/-** (8,500 x 6).

18. The Tribunal has awarded compensation of Rs.5,000/- towards loss of amenities and expectations which is completely inadequate looking at the facts and circumstances obtaining in the present case. Therefore, we are of the opinion that the appellant shall be made entitled for another **Rs.45,000/-** towards the loss of amenities and expectations.

19. The Tribunal has awarded compensation of Rs.13,68,073/- which is the actual medical expenses based on the medical bills and hospital records produced before the Tribunal, which require no enhancement.

20. Thus, the appellant is entitled for the re-assessed compensation as detailed below:



CNR: KAHC010519352017

NC: 2026:KHC:51620-DB
MFA No. 7458 of 2017

Sl. No.	Particulars of heads	As per the Award of MACT	Re-assessed compensation (Rs.)
1	Pain and Sufferings	1,00,000/-	1,50,000/-
2	Medical Expenses	13,68,073/-	13,68,073/-
3	Incidental Charges and Conveyance	14,000/- + 2000/-	1,00,000/-
4	Loss of income during hospitalization	29,295/-	51,000/-
5	Loss of amenities & expectations	5,000/-	50,000/-
6	Loss of future prospectus/disability	Not awarded	12,13,800/-
	Total	15,18,368/-	29,32,873/-

The total re-assessed compensation, to which the appellants are entitled is **Rs.29,32,873/-**.

21. In the result,

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

(ii) The judgment and award dated 01.06.2017 in MVC No.296 of 2014 passed by the MACT and I Additional Senior Civil Judge, Kolar, is modified.

(iii) The appellant is entitled for total re-assessed compensation of **Rs.29,32,873/-** as against the compensation already granted by the Tribunal in a sum of Rs.15,18,368/-.

(iv) The enhanced compensation shall carry interest at 6% per annum from the date of petition, till its realization.



**NC: 2026:KHC:51620-DB
MFA No. 7458 of 2017**

CNR: KAHC010519352017

(v) Considering the circumstances at which the appellant is presently situated, we are of the opinion that the entire compensation shall be released in favour of the appellant - claimant.

Registry is directed to transmit the Trial Court records, forthwith, along with the copy of this judgment, for needful action.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(T.P.VIVEKANANDA)
JUDGE**

BGN
List No.: 1 Sl No.: 1