



NC: 2026:KHC:27108-DB
MFA No. 5143 of 2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF JUNE, 2026

PRESENT

HON'BLE MR. JUSTICE JAYANT BANERJI

AND

HON'BLE MS. JUSTICE TARA VITASTA GANJU

MISCELLANEOUS FIRST APPEAL NO. 5143 OF 2018

(MV-I)

BETWEEN:

SRI. CHELUVARAJ,
AGED ABOUT 61 YEARS,
S/O LATE CHELUIAIY
R/AT KAMPALAPURA VILLAGE,
PERIYAPATNA TALUK
MYSURU DISTRICT - 571 107

...APPELLANT

(BY SRI. C MOHAN, ADVOCATE FOR
SRI. P NATARAJU., ADVOCATE)

AND:

1. SRI. P UMMER
MAJOR,
S/O MOOSA,
R/AT NO.5-88, ASHRAYA,
TEMPLE STREET,
VITTAL, BANTWAL TALUK
SOUTH CANARA - 574 211

2. THE UNITED INDIA INSURANCE COMPANY
BALLAL CIRCLE,
CHAMRAJAPURAM
MYSURU - 570 005

...RESPONDENTS

(BY SRI. S.V.HEGDE MULKHAND, ADVOCATE FOR R2;
NOTICE TO R1 IS DISPENSED WITH

Digitally signed by
SUMATHY KANNAN
Location: HIGH
COURT OF
KARNATAKA



VIDE ORDER DATED 18.07.2024)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT PRAYING TO MODIFY THE JUDGMENT AND AWARD DATED 09.11.2017 PASSED IN MVC NO.350/2015 ON THE FILE OF THE COURT OF THE JUDGE, ADDITIONAL SMALL CAUSES AND SENIOR CIVIL JUDGE, MYSURU AND ENHANCE THE COMPENSATION BY ALLOWING THIS APPEAL IN THE INTEREST OF JUSTICE AND EQUITY.

THIS MFA COMING ON FOR ORDERS 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. The present appeal seeks to challenge the Judgment and Award dated 09.11.2017, in M.V.C.No.350/2015 passed by the learned Motor Accident Claims Tribunal, Court of Judge, Additional Small Causes and Senior Civil Judge, Mysuru (hereinafter referred to as the 'Impugned Award'). By the Impugned Award, the learned Tribunal has awarded Rs.1,03,000/- to the appellant/claimant along with interest at 9% per annum from the date of petition till its realisation.



2. Although the matter is listed for admission today, with the consent of the parties, the matter is taken up for hearing and final disposal today itself.

3. 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 18.07.2024.

4. The brief facts of the case are on 15.01.2015, at around 6:30 a.m., the appellant/claimant was traversing on B.N. Road when a Lorry bearing registration No.KA-19-D-2015, being driven in a rash and negligent manner, hit the appellant/claimant. Due to the accident, the appellant/claimant fell down and sustained injuries all over his body and he became unconscious. The appellant/ claimant was taken to Banavi Hospital, Mysuru and then to Aravinda Hospital and thereafter to K.R. Hospital for treatment.

4.1. It is the case of the appellant that he was an in-patient for thirty days and spent an amount of Rs.5,00,000/- towards medical expenses.A claim petition was filed under



Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the M.V. Act') by the claimant before the learned Tribunal, seeking compensation.

5. Although service was effected on both the respondent No.1/owner and respondent No.2/insurance company, it is the respondent No.2/insurance company alone which contested the matter before the Tribunal.

6. Based on the pleadings filed by the parties, the following issues were framed by the learned Tribunal:

"ISSUES

- 1. Whether the Petitioner proves that on 15.1.2015 at about 6.30 a.m., near Keeranahalli Gate, B.M. Road, Periyapatna, when he was proceeding by walk at Shivanna Farm, at that time the driver of lorry bearing registration No.KA-19-D-2105 drove it in a high speed with rash and negligent manner and dashed to the petitioner, as a result of which, he sustained grievous injuries?*
- 2. Whether the respondents prove that they are not liable to pay any compensation to the petitioner?*
- 3. Whether the petitioner is entitled for compensation? If so, at what rate and from whom?*
- 4. What Order or award?"*



7. In order to prove his case, the appellant/claimant examined himself as PW-1 and examined Dr. Kiran Kalaiah as PW-2. Documents including FIR (Ex.P-1), complaint (Ex.P-2) seizure mahazar (Ex.P-4), Wound Certificate (Ex.P-7), medical bills (Ex.P-10) and other related documents were also placed on record and exhibited as Exs.P-1 to P-24. The respondents did not produce any evidence in their behalf.

8. The learned Tribunal, after examining the evidence found that the accident in question had occurred due to the rash and negligent driving of the offending Lorry and that there was nothing on record to disbelieve the version of the appellant. In addition, the learned Tribunal found that from the FIR, complaint and seizure mahazar, the rash and negligent driving was proved. The learned Tribunal also found that the appellant/claimant was hospitalised from 17.01.2015 to 20.02.2015 (34 days) and during this period, he had undergone a surgery and spent around Rs.5,00,000/- on medical expenses. However, since the medical bills produced were for a sum of Rs.42,782/- and



an amount of Rs.10,000/- for physiotherapy and nourishment, the learned Tribunal awarded Rs.53,000/- towards medical expenses. The learned Tribunal also awarded the compensation under the other heads as under:

Sl.No.	Heads of Compensation	Amount (in Rs.)
1	Medical expenses and nourishment	53,000-00
2	Loss of income during laid up period and rest	Nil
3	Injury pain and sufferings	30,000-00
4	Loss of future income	Nil
5	Loss of amenities of life	20,000-00
6	Future medical expenses	Nil
	TOTAL	1,03,000-00

8.1 Thus, an amount of Rs.1,03,000/-, along with interest at 9% per annum was awarded as compensation by the learned Tribunal.

9. The learned counsel for the appellant/claimant submits that the appellant/claimant sustained disability to his right lower limb which was assessed at 41% and to his right upper limb at 15%. He further submits that he was hospitalised for more than a month and thus, the award under the head loss of amenities and pain and suffering was



inadequate. In addition, learned counsel submits that the loss of future income was also not given to the appellant/claimant.

10. The learned counsel for the respondent No.2/ Insurance Company, on the other hand, submits that the appellant/claimant was a retired Bank employee and living on pension. He did not file any document to support his averment that he was an agriculturist and continued to be working. Thus, the amount towards loss of amenities of life was correctly awarded and no amounts can be paid for loss of future income. The learned counsel for the respondent No.2/insurance company thus submits that the Impugned Award does not suffer from any infirmity.

11. The question that arises for consideration before this Court is whether the appellant/claimant is entitled to any amount as enhanced compensation?

12. An examination of the records reflects that the disability of the right lower limb was assessed at 41% and right upper limb at 15% by the treating doctor of the



appellant/claimant. This aspect is not disputed by the parties. The evidence of PW-2 (Dr. Kiran Kalaiah) also sets this out in the following manner:

"Recently, I have examined the patient on 25-06-2017, he complains of;

a) **Pain in right shoulder, right leg and right chest**

b) **Difficulty in squatting, sitting cross legged, climbing stair case**

c) *Difficulty in sleeping in lateral position and also lifting right upper limb above fore head and to bring back upper limb behind*

On examination, the patient finds;

a) **Difficulty in squatting**

b) **Difficulty in sitting and cross legged**

c) **Difficulty in climbing stair case**

d) *Tenderness present on the right limb*

e) *Tenderness present on the right knee and ankle*

f) *Operative scar present on right leg*

g) **Muscle wasting present on right leg and thigh**

h) **Muscle power around knee is 4/5**

i) **Right lower limb appears short**

j) **Movements of right knee and right ankle is painful and limited**

k) *Right knee flexion $100^{\circ} > 160^{\circ}$*

l) *Dorsiflexion $20^{\circ} > 35^{\circ}$*

m) *Plantar flexion $30^{\circ} > 55^{\circ}$*

n) *Right lower limb short by 2 Cms*

o) *Right thigh small by 2 Cms*



Right shoulder:- Tenderness present over right clavical region, movement of right shoulder is painful and limited, patient finds difficulty in lifting right upper limb above forehead and to bring TA Rack right upper limb behind chest.

Muscle wasting present over right shoulder, muscle power is 4/5 grade.

Movement of right shoulder;

Abduction $120^{\circ} > 180^{\circ}$

Flexion extension $50^{\circ} > 70^{\circ}$

Right Chest:-

Tenderness present over right chest, mild air entry restricted right chest.

Recent X-ray shows:- Lung function test, **air entry restriction present**

Right leg:- Old fracture both bones united, implants insitu

Right clavicle united

Lung function test:- Air entry restriction present

He was advised for removal of implant.

Taking into consideration of patient complaints, radiological findings, clinical findings and as per guidelines disability to right upper limb is 15% and right lower limb is 41%.

[Emphasis Supplied]

12.1 PW-2 was cross-examined by the Insurance Company qua the deposition. The cross-examination revealed that there is a muscle crush injury and such an injury where the nerve endings are damaged, the muscle power cannot be



reversed. The relevant extract of the cross-examination is set out below:

"It is true to suggest that whenever there is crush injury and the muscles are torn into pieces and the nerve ending are damaged, then the muscle power cannot be reversed. It is true to suggest that the petitioner nerve injury are muscle crush injury. The petitioner has complained me that he has pain over chest, right shoulder and lower limb. It is true to suggest that I have not mentioned the reason for the pain in my affidavit and disability assessment sheet."

[Emphasis Supplied]

13. Thus, the two factors which cannot be controverted are firstly that the hospitalisation took place for nearly 34 days and that the injury that was caused was such that would create some discomfort for a long time and would be permanent to the appellant/claimant. However, the fact that the appellant/claimant was doing any business after his retirement or even had agricultural lands in his possession is not reflected from the record. The learned counsel for the appellant/claimant fairly concedes that no such evidence was placed on record nor were any deposition in this behalf made. However, clearly and given the hospitalisation, the amounts for pain and suffering and loss of amenities awarded by the learned Tribunal were inadequate.



14. The Supreme Court in ***Kavita v. Deepak and others¹***, the Supreme Court observed that while determining the quantum of compensation payable to victims of accidents suffering permanent or temporary disability, efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the inability to lead a normal life and enjoy those amenities which would have been enjoyed but for the disability caused due to the accident. It was further held that compensation awarded under the head of loss of earning capacity is distinct and does not overlap with the amount awarded for pain, suffering and loss of enjoyment of life. The relevant paragraph is set out below:

"19. In the light of the principles laid down in the aforementioned cases, it is suffice to say that in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily, efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and inability to lead a normal life and enjoy amenities, which would have been enjoyed but for the disability caused due to the accident. The amount awarded under the head of loss of earning capacity are distinct and do not overlap with the amount awarded for pain, suffering

¹ (2012)8 SCC 604



and loss of enjoyment of life or the amount awarded for medical expenses."

[Emphasis Supplied]

15. In addition and given the evidence of PW-2 as set out above, it is clear that the appellant/claimant would continue to experience discomfort and restrictions in his day-to-day activities on account of the injuries sustained. Having regard to the prolonged hospitalization for 34 days and the residual disability affecting the right upper and lower limbs, the amount awarded by the learned Tribunal towards loss of amenities of life is found to be inadequate and deserves enhancement.

16. The learned Tribunal has not awarded any amounts for loss of income during the laid-up period and loss of future income. So far as concerns the loss of income during the laid up period, the learned Tribunal has found that there was no material placed on record to show that there was any loss of income and without documentary evidence, there cannot be any compensation awarded. loss of future income, the learned Tribunal has found that since the



claimant was a Government servant and now he is getting a monthly pension, there cannot be any loss of income and hence he is not entitled for any loss of future income.

17. This Court is unable to agree with these contentions. Although the claimant may be getting a monthly pension, it is not in dispute that the claimant was hospitalised for more than 34 days and that he had to undergo a surgery. As is reproduced in paragraph 12 above, the Doctor who had examined the claimant had found that the claimant is suffering from disability to his right upper limb at 15% and right lower limb at 41%. The cross examination also reveals that some of these injuries suffered by the claimant are permanent in nature.

17.1 Concededly, the claimant was hospitalised for more than a month. The injuries that were suffered by him would have caused him difficulty in squatting, sitting cross-legged and muscles around his knees and ankles would be painful. These injuries would hamper him from doing any kind of avocation. Even though the claimant was 58 years old at



the time of the accident and having retired and getting a monthly pension, it would not mean that the claimant would not be able to take up any avocation in this phase.

18. The Supreme Court in ***Hanumantharaju B. (Dead) by Lr v. M. Akram Pasha and Another***², held that pension is a deferred benefit earned during service and constitutes an independent statutory entitlement. The same cannot be treated as a pecuniary advantage liable to deduction while determining compensation under the M.V. Act. The Supreme Court disapproved the reduction of disability merely on the ground that there was no material to show that the claimant was engaged in any employment after discharge from service. Thus, receipt of pension by itself cannot lead to an inference that the earning capacity of the deceased stood extinguished. It is a matter of common experience that retired persons often continue to engage themselves in agriculture, small businesses and other gainful avocations. Therefore, the mere fact that the deceased was drawing pension cannot, by itself, furnish a

² 2025 SCC OnLine SC 1106



ground to deny compensation towards loss of future income. In the absence of documentary evidence, the same is required to be assessed on the basis of the surrounding circumstances and the evidence available on record. The relevant paragraph is set out below:

"19. It is also now well settled that the amount of compensation is to be calculated on the basis of last drawn salary of the injured/deceased in respect of salaried persons and pension and such retirement benefits enjoyed cannot be deducted for computing the income, these being statutory rights receivable by the employee or his legal heirs irrespective of any unforeseen incident of accidents, fatal injuries etc. and such pensionary benefit is not directly relatable to the motor accident. Hence, pensionary benefit could not have been treated as "pecuniary advantage" liable to be deducted for the purpose of computation of compensation within the scope of Motor Vehicles Act, 1988.

For this proposition of law, we may refer to the decision in Vimal Kanwar v. Kishore Dan (2013) 7 SCC 476, wherein this Court, by referring to the earlier decision in Helen C. Rebello v. Maharashtra SRTC (1999) 1 SCC 90, held as follows:—

*"19. The aforesaid issue fell for consideration before this Court in Helen C. Rebello v. Maharashtra SRTC [(1999) 1 SCC 90 : 1999 SCC (Cri) 197]. In the said case, this Court held that provident fund, pension, insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a "pecuniary advantage" receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. **Such an amount will not come within the periphery of the***



Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. The following was the observation and finding of this Court : (SCC pp. 111-12, para 35)

"35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event viz. accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No co-relation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly, any cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no co-relation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as



'pecuniary advantage' liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any co-relation. The insured (the deceased) contributes his own money for which he receives the amount which has no co-relation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual."

Thus, this Court has categorically held that any amount receivable on account of PF, pension or insurance cannot be deducted from the salary of the victim for the purpose of determining the income or loss of earning for calculating compensation. This principle was reiterated in Reliance General Insurance Co. Ltd v. Shashi Sharma (2016) 9 SCC 627 and National Insurance Company Ltd. v. Birender (2020) 11 SCC 356.

21. As regards computing the loss of income, in the light of the above referred decisions, it would not be permissible to deduct the pensionary amount of Rs. 15,247/- from the salary of Rs. 36,231/- as was done by the High Court. Hence, for the purpose of computing the loss of earning, the said monthly salary of Rs. 36,231/- has to be accepted without deducting the pension amount.

[Emphasis Supplied]



19. So far concerns the agricultural income, the learned Tribunal has not awarded any compensation towards 'loss of future income' on the ground that the appellant/claimant was a Government employee getting pension and that he has not produced any documentary evidence to show the 'loss of future income'. In the absence of documentary proof of agricultural income, it is apposite to assess the agricultural income of the appellant/claimant at Rs.9,000/- per month on the basis of the Notional Income Chart prepared by the Karnataka State Legal Services Authority (KSLSA), Bengaluru. To this income, 10% escalation has to be given as held by the Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi***³. Thus, the loss of agricultural income works out to Rs.9,900/- [Rs.9000+(10%) 900].

19.1 Since the appellant/claimant was aged about 58 years as on the date of the accident, the proper multiplier applicable would be '9' as per the law laid in the case of

³ (2017) 16 SCC 680



Sarla Verma and others Vs. Delhi Transport Corporation and Another⁴.

19.2 As stated above, PW-2, the treating Doctor has assessed the functional disability of the appellant/claimant at 41% towards right lower limb and 15% towards right upper limb. Thus, the functional disability works out to 56%. 1/3rd of it would be the whole-body disability, which comes to 18.66%, rounded off to 19%.

19.3 Accordingly, the 'loss of the future income' would be required to be awarded at Rs.2,03,148/- by re-calculating the same by considering the permanent disability at 19%, in the following manner:

Loss of future income	Amount
Rs.9,900/-x12x'9'x19%	Rs.2,03,148/-

20. So far concerns the compensation towards 'loss of income during treatment period and rest', the learned Tribunal has not awarded any compensation on the ground

⁴ (2009) 6 SCC 121



that the appellant/claimant was a retired Bank Employee and getting regular pension. However, as per the Wound Certificate, the appellant/claimant had sustained comminuted fracture of lower third of right tibia, fracture of right clavicle-lateral end and fracture base of 2nd metatarsal bone of right foot. The relevant extract of the Wound Certificate (Ex.P-7) is set out below:

"The injured person was brought to Bhavani Hospital, Mysore, on the 15.1.2015 and the examination was commenced at 8:40 a.m. on 15.1.2015 when the following injuries were found:

1.Cut lacerated wound present over the right great toe 1x5 cm, 4th and 5th toe 1x3 cms.

2.Abrasion present over the medical aspect of the ankle 1x3 cm.

3.Pain and swelling in the right shoulder joint and mid 1/3rd of the right clavicle.

*4.**Comminuted fracture of lower third of right tibia.***

*5.**Fracture of right clavicle-lateral end.***

*6.**Fracture base of 2nd metatarsal bone of right foot.***

*The patient attenders were not willing for surgery and in-patient management and **I am of opinion that the injury is Grievous.**"*

[Emphasis Supplied]

20.1 Thus, considering the nature of injuries and the physical disability assessed by the treated Doctor at 56%,



this Court deems it apposite to award compensation towards 'loss of income during treatment period and rest' at Rs.29,700/- @ Rs.9,900/- per month for a period of three months.

21. Accordingly, and in view of what is stated above, this Court deems it apposite to award the revised compensation as follows:

Sl. No.	Heads of Compensation	Amount (in Rs.)
1	Medical expenses and nourishment	53,000/-
2	Loss of income during laid up period and rest [Rs.9,900/-x3 months]	29,700/-
3	Injury pain and suffering	50,000/-
4	Loss of future income [Rs.9,900/-x12x'9'x19%]	2,03,148/-
5	Loss of amenities of life	50,000/-
6	Future medical expenses	Nil
	TOTAL	3,85,848/-
	Less: Compensation awarded by Tribunal	1,03,000/-
	Enhanced compensation	2,82,848/-

22. Hence, the appellant/claimant is entitled to a total compensation of **Rs.3,85,848/-** along with interest at 9%



p.a. as awarded by the learned Tribunal from the date of petition till the date of realization.

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

ORDER

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

(ii) The Impugned Judgment and Award dated 09.11.2017 in M.V.C.No.350/2015 passed by the learned Motor Accidents Claims Tribunal, Court of Judge, Additional Small Causes and Senior Civil Judge, Mysuru, is modified, to the extent that the claimant is entitled to enhanced compensation of **Rs. 2,82,848/-** along with interest at the rate of 9% per annum in addition to Rs.1,03,000/- 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 six 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.

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

(viii) No order as to costs.

**Sd/-
(JAYANT BANERJI)
JUDGE**

**Sd/-
(TARA VITASTA GANJU)
JUDGE**

BMV*

List No.: 1 Sl No.: 14