



IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 20TH DAY OF FEBRUARY, 2024

PRESENT

THE HON'BLE MR. JUSTICE B.M.SHYAM PRASAD

AND

THE HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

MISCL. FIRST APPEAL NO.201482 OF 2021 (MV-I)

BETWEEN:

SATISH S/O KAMALAKARRAO
AGE: 42 YEARS
OCC: ELECTRICIAN CONTRACTOR (NOW-NIL)
R/O PLOT NO.70,
N.G.O. LAYOUT
NEAR HADI BASAVANNA TEMPLE
UDANOOR ROAD,
KALABURAGI.

...APPELLANT

(BY SRI NARENDRA REDDY, ADVOCATE FOR
SMT. SRIDEVI J. TUPPAD, ADVOCATE)

AND:

1. BASAVARAJ
S/O SOMALINGAPPA KAULAGI
AGE: 49 YEARS
OCC: DRIVER CUM OWNER OF VEHICLE
R/O. MADIYAL,
TQ: ALAND
DIST. KALABURAGI - 585 211.



2. THE ORIENTAL INSURANCE CO. LTD.,
THROUGH ITS DIVISIONAL MANAGER
1ST FLOOR,
N.G. COMPLEX
OPP. MINI VIDHANA SOUDHA MAIN ROAD,
KALABURAGI – 585 102.

...RESPONDENTS

(BY SRI MOHAMMAD ABDUL QAYUM, ADV., FOR
SRI. J. AUGUSTIN, ADVOCATE FOR R2;
R1 SERVED)

THIS MFA IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT, PRAYING TO CALL FOR RECORDS AND MODIFY THE JUDGMENT AND AWARD DATED 08.03.2021 ENHANCE THE COMPENSATION OF RS.32,02,800/- AS PRAYED BY THE APPELLANT HEREIN M.V.C. NO.751/2019 BY THE HON'BLE IN THE COURT OF THE I ADDL. SENIOR CIVIL JUDGE AND M.A.C.T. AT KALABURAGI BY HOLDING THE BOTH RESPONDENTS JOINTLY AND SEVERALLY BY ALLOWING THE APPEAL IN THE INTEREST OF JUSTICE AND EQUITY, AND ENHANCE THE RATE OF INTEREST AWARDED FROM 6% TO 9% IN THE ENDS OF JUSTICE.

THIS APPEAL COMING ON FOR ORDERS THIS DAY
B.M.SHYAM PRASAD J., DELIVERED THE FOLLOWING:



JUDGMENT

This appeal is by the claimant in MVC No.751/2019 on the file of the I Addl. Senior Civil Judge and Civil Judge and MATC, Kalaburagi, [for short, '*the Tribunal*']. The Tribunal, by the impugned judgment and award dated 08.03.2021, has partly allowed the appellant's claim petition granting compensation in a sum of Rs.10,47,200/- along with interest at 6% per annum from the date of the claim petition till the date of deposit under the following heads:

Pain and suffering	Rs.30,000/-
Attendant Charges, Food and Conveyance Charges	Rs.6,500/-
Loss of future income	Rs.5,58,100/-
Medical expenses	Rs.4,11,100/-
Loss of income during treatment	Rs.26,500/-
Loss of amenities and nutrition and food	Rs.15,000/-
Total	Rs.10,47,200/-

2. Sri Narendra Reddy, the learned counsel is permitted to appear on behalf Smt. Sridevi J. Tuppad who is on record for the appellant, and Sri Mohd. Qayum, the



learned counsel for the second respondent-Insurer, are heard for final disposal of the appeal in the light of the submission there is no dispute that the appellant has suffered debilitating injuries in a road traffic accident on 23.03.2019, and that the accident is because of the Motorcycle bearing Registration KA-32/ES-9313. The learned counsels further submit that the questions for consideration would be whether the Tribunal is justified in fastening the liability on the first respondent [*the owner of the motorcycle*] absolving the Insurer and whether the appellant is entitled for any enhancement in compensation.

3. Sri Narendra Reddy submits that the Insurer's case is that the first respondent permitted his nephew, Sri Manoj [*a 15 year old boy*] who did not hold a driving licence to ride the motorcycle and such the Insurer cannot be made liable, and that Tribunal has accepted this defense solely because the first respondent remained *ex parte*. The learned counsel submits that the Tribunal should have permitted the Insurer to pay the appellant the compensation determined with liberty to recover the same from the first



respondent because the appellant would be a third party. Sri Mohd. Abdul Qayum is unable to controvert these contentions, and indeed the law would be that when a third party is injured in an accident, the Insurer of the offending vehicle will have to pay the injured and recover the compensation from the owner of the offending vehicle. There must be interference in this regard with suitable directions to the Insurer and with liberty to recover the same from the owner.

4. Sri Narendra Reddy, as regards enhancement in compensation, submits that the Tribunal is very conservative in assessing the disability at 27% though the doctor who treated the appellant has assessed permanent disability at 75% with an addition of 5% towards loss of sensation. Sri Narendra Reddy also submits that the appellant has placed evidence on record to demonstrate that he was a Licensed Electrical Contractor whose licence was in force as on the date of the accident and despite the same, the Tribunal has taken the income of the appellant, for the purposes of loss of future income at Rs.13,250/- and



therefore, there must be appropriate enhancement under loss of future income with this Court re-assessing the permanent functional disability and income.

5. The appellant, who has examined himself as P.W.1, has stated in his evidence that he was a Licenced Electrical Contractor and earning Rs.3,00,000/- per annum and because of the disability suffered he is unable to work as an Electrical Contractor. The appellant has marked his Electrical Contractor Supervisor (General) Grade-I Permit and Class-I Electrical Contractors Licence as Exs.P9 and 10, and it is seen that his licence is renewed for the period up-to 30th April 2020 with due remittance in the month of August 2018 which is before the date of the accident. This Court must opine that the Tribunal in the light of this evidence could not have inferred that the appellant was an unskilled worker and taken his income based on the notified minimum wages. Further, on a careful consideration of the circumstances as aforesaid, and the appellant's failure to establish actual income, this Court is of the considered view



that it would be reasonable to take a sum of Rs.16,000/- per month as the income for the purposes of deciding loss of future income and for computing the loss of income during laid up period.

6. The appellant has examined Dr. Raju Kulkarni, who has issued the Disability Assessment Certificate as per Ex.P.14. The doctor has stated that the appellant has suffered loss of sensation of right-hand opining that the appellant suffers from complete monoplegia of the right hand with no active movement. The doctor has assessed the disability of the right hand of the appellant at 75% with an addition of 5% towards loss of sensation. The Tribunal has taken the disability at 27% applying yardstick of taking 1/3rd of the disability assessed as the functional disability. However, in this case with the evidence that the appellant was a Licensed Electrical Contractor and that he has completely lost of the use of the right hand, a mathematical calculation of functional disability would not be appropriate and there must be just assessment because the appellant will not be able to work as an Electrician and to that extent



there is functional disability. This Court is of the considered opinion that the appellant's permanent functional disability must be taken at 35%.

7. It cannot be gainsaid that there must be addition towards future prospects and because the appellant was aged between 48 years, the appropriate addition towards future prospects will be 25%. If the loss of future income is re-computed with these parameters retaining the multiplier of '13', the appellant will be entitled for a sum of Rs.10,92,000/- towards loss of future income which is computed as follows:

Notional monthly income	Rs.16,000/-
25% addition towards future prospects	Rs.4,000/-
Notional monthly income with addition of future prospects at 25%	Rs.20,000/-
Annual income	Rs.2,40,000/-
Multiplier	13
Total income and multiplier	Rs.31,20,000/-
Functional disability	35%
Loss of future income because of permanent disability	Rs.10,92,000/-

8. The loss of income during laid up period must be enhanced to Rs.32,000/- as against Rs.26,500/- awarded by



the Tribunal. Further, this Court opines that there must be enhancement towards others heads and accordingly, compensation of Rs.50,000/- as against Rs.30,000/- towards pain and suffering, Rs.30,000/- as against Rs.15,000/- towards loss of amenities and Rs.15,000/- as against Rs.6,500/- towards attendant charges and nutrition are awarded. The compensation granted under medical expenses remains unaltered. The appellant will be entitled for enhancement in a sum of Rs.5,82,900/-. The enhancement is computed as shown in the following comparative table of the compensation awarded by the Tribunal and by this Court.

Description	By Tribunal	By this Court
Pain and suffering	Rs.30,000/-	Rs.50,000/-
Attendant Charges, Food and Conveyance Charges	Rs.6,500/-	Rs.15,000/-
Loss of future income	Rs.5,58,100/-	Rs.10,92,000/-
Medical expenses	Rs.4,11,100/-	Rs.4,11,100/-
Loss of income during treatment	Rs.26,500/-	Rs.32,000/-



Loss of amenities and nutrition and food.	Rs.15,000/-	Rs.30,000/-
Total	Rs.10,47,200/-	Rs.16,30,100/-
Enhancement	Rs.5,82,900/-	

Hence, the following:

ORDER

- [i] The appeal is allowed in part modifying the Tribunal's impugned judgment and award dated 08.03.2021 and granting an enhanced compensation of **Rs.5,82,900/-** along with interest at the rate of 6% per annum from the date of petition with the Tribunal till the date of deposit.
- [ii] The second respondent – the Insurer shall deposit the enhanced compensation within a period of eight [8] weeks from the date of receipt of a certified copy of this judgment.
- [iii] The disbursement and deposit of enhanced amount shall be as per the order of the Tribunal.



[iv] The registry is directed transmit the trial
Court records to the Tribunal.

Sd/-
JUDGE

Sd/-
JUDGE

BL
List No.: 1 Sl No.: 6
Ct;Vk