CNR: KAHC010425312019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF OCTOBER, 2026

BEFORE

HON'BLE MS. JUSTICE TARA VITASTA GANJU

MISCELLANEOUS FIRST APPEAL NO. 7450 OF 2019 (MV-I)

BETWEEN:

SRI. SHIVA PRASAD
@ SHIVA PRASAD GOND,
S/O HARPRASAD GOND,
AGED 37 YEARS,
OCC:LORRY DRIVER,
R/O BAVATHARAHA VILLAGE,
BHARRI POST, BEOHARI TALUK,
SHAHDOL DISTRICT,
MADHYA PRADESH STATE-484 774.

...APPELLANT

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

AND:

1. SRI. PANDIT NIVRATHI JAID,
A/P CHIMBLI,
TAL-KHED DISTRICT, PUNE,
MAHARASTRA-410 501.

2. THE MANAGER,
RELIANCE GENERAL INSURANCE COMPANY LIMITED,
NO.28/5, CENTENARY BUILDING,
EAST WING, M.G.ROAD,
BANGALORE-560 001.

...RESPONDENTS

(BY SRI. RAVI.S.SAMPRATHI., ADVOCATE FOR R2;
NOTICE TO R1-DISPENSED WITH V/O DTD:22.08.2024)

Digitally signed by JAI JYOTHI J
Location: HIGH COURT OF KARNATAKA

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 29/06/2019, PASSED IN MVC NO.4921/2018, ON THE FILE OF THE XXI ADDITIONAL SMALL CAUSES JUDGE & XIX ACMM., MEMBER, MACT, BENGALURU (SCCH-23), 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 MS. JUSTICE TARA VITASTA GANJU**

ORAL JUDGMENT

1. The present appeal seeks to challenge an Award dated 29.06.2019, passed by the learned XXI Additional Small Causes Judge and Motor Accident Claims Tribunal, (SCCH-23) at Bengaluru, in MVC No.4921/2018 [hereinafter referred to as the "Impugned Award]. By the Impugned Award, a sum of Rs.5,24,600/- has been granted along with interest at the rate of 6% per annum from the date of petition till the date of deposit.

2. Although the present appeal is posted for Admission, given the pendency of the matter since seven years and with the consent of the parties, it is taken up for hearing and disposal.

3. The challenge in the present appeal is by the appellant/injured claimant.

4. The facts are not in dispute. The accident took place on 31.01.2018, when the appellant who was driving a Lorry collided with another Lorry which was coming from the opposite direction, due to which, the appellant sustained grievous injuries.

5. A claim petition was filed by the appellant/claimant under Section 166 of the Motor Vehicles Act, 1988 [hereinafter referred to as the "MV Act"].

6. The respondent No.1/owner of the vehicle, despite service, did not appear before the learned Tribunal and hence, he was proceeded with *ex-parte*. The respondent No.2/Insurance Company appeared and contested the

matter by filing a Written Statement, seeking dismissal of the claim petition.

7. Based on the pleadings between the parties, the following issues were framed by the learned Tribunal:

> *"1) Whether the petitioner proves that, on 31.01.2018 at about 2:30 a.m, near Gururaj Kalyana Mantapa, Muthur, Doddaballapur from Marasandra towards Thondebavi, he was sustained injuries in the RTA caused by the driver of the Lorry bearing No.MH-14-EM-9773 on his rash and negligent driving?*
>
> *2) Whether the petitioner is entitled for compensation? If so, to what amount and from whom?*
>
> *3) What order or Award?"*

8. In order to prove his case, the appellant/claimant examined himself as PW-1 and examined his treating Doctor as PW-2 and a Casualty Medical Officer as PW-3 and got marked twenty documents from Exs.P-1 to P-20, which included FIR (Ex.P-1), Complaint (Ex.P-2), charge sheet (Ex.P-3), spot mahazar (Ex.P-4), IMV Report (Ex. P-6), discharge summary (Exs.P-8 & 9), medical records (Exs.P-10, P-14 to P-19). However, the respondent No.2/ Insurance Company did not examine any witness nor produced any documents.

9. An examination of the record reflects that the learned Tribunal having found that the negligence was proved, further found that based on the criminal records as well as the medical records, in addition, had found that since the appellant/claimant had suffered injury of fracture of his right femur, clavicle and given the age, vocation and nature of injuries, amounts were to be awarded for pain and suffering, etc.

9.1 So far as loss of future earning was concerned, the learned Tribunal found that the permanent physical disability of the appellant was 18% of the whole body and since it would affect the earnings of the appellant, the disability to the extent of 18% was awarded under loss of future earnings. Thus, the amount was awarded towards loss of future earnings in the following manner:

Rs.9,000/- x 12 x 15 x 18/100 = Rs.2,91,600/-

9.2 In addition, amounts were also awarded towards pain and suffering, conveyance, nourishment and nutritious

food, medical expenses and future medical expenses in the following manner:

Sl. No.	Particulars	Amount (Rs.)
1	Pain and suffering	40,000/-
2	Loss of future earnings	2,91,600/-
3	Medical expenses	1,48,000/-
4	Conveyance, nourishment and nutritious food	25,000/-
5	Future medical expenses	20,000/-
	TOTAL	**5,24,600/-**

10. The challenge in the present appeal is only by the appellant/claimant. No challenge to the Impugned Award has been made by the respondent No.2/Insurance Company or the respondent No.1/Owner.

11. The learned counsel for the appellant/claimant submits that the challenge in the present appeal is on one ground, seeking enhancement. He submits that the appellant was a Lorry driver, prior to the accident and that since his injuries were in his right lower limb, the permanent disability could not have been taken at 18% and it should have been taken atleast at 50%. He further submits,

relying on the evidence produced by the Doctor that the patient's physical disability of the right lower limb was 54% and 27% to the whole body, that the appellant was unable to continue his vocation thereafter. Therefore, higher functional disability should have been awarded.

12. The learned counsel for the respondent No.2/ Insurance Company, on the other hand, contends that there is nothing on record to prove that, after the injuries of the appellant, he did not go back to his work. He submits that the nature of injuries are not such that would require enhanced compensation.

13. An examination of the record shows that the hospitalization of the appellant took place for nearly 21 days on three occasions, from 30.01.2018 to 07.02.2018, 06.12.2018 to 11.12.2018 and from 07.01.2019 to 13.01.2019. Although the duration of hospitalization, cumulatively was for less than a month, however, it was three separate times. Thus, pain and suffering and

conveyance, nourishing food and attendant charges would also require enhancement. In addition, it shows that the amount awarded towards medical expenses was as per the actuals. The amount awarded for future medical expenses also would require to be slightly enhanced.

14. So far as concerns the loss of future earnings, this Court has examined the evidence before it. PW-1, who is the appellant, has stated in his evidence that he has other injuries all over his body. He has also stated that he has lost his vocation due to his accidental injuries and now he is dependent on friends and relatives for his livelihood. The relevant extract of the evidence of PW-1 is set out below:

> *"3) It is humbly submitted that on 31-01-2018 at about 02-30 a.m. I was Driving Lorry bearing Reg.No.KA-02-AG-0448 from Marasandra Thondebhavi, when we reached near Gururaja Kalyana Mantapa, Muthur, Doddaballapura. At that time a Lorry bearing Reg. No.MH-14-EM-9773 came from opposite direction in wrong side in one way road with* ***high speed in a rash and negligent manner and dashed against our Lorry. Due to which I sustained the following grievous injuries. Such as:***
>
> ***A) Fracture of right femur,***
> ***B) Fracture of Right Knee and***
> ***C) Other injuries all over the body.***
>
> xxx xxx xxx

*8) I humbly further submit that at the time of accident, I was aged about **28 years and I was hale and healthy. I was earning a sum of Rs.20,000/- per month by working as a Lorry driver and I was contributing all my earnings to the maintenance of my family**. Now I am **unable to do my earlier work or any other manual work due to the disabilities caused by the accidental injuries. Now it is very difficult for me to maintain my wife, 2 children and my parents without any source of income as I lost my avocation due to accidental injuries. Now all my family members are depending upon my friends and relatives for our livelihood**. Hence, my life has become dark and miserable."*

[Emphasis Supplied]

15. So far as concerns the evidence of PW-2, who is the treating Doctor and an Orthopedic Surgeon at the Victoria Hospital, the Doctor has examined the appellant and in addition to setting out the various hospitalizations, has also found that his right femur is not united. After calculating the disability and the mobility, the Doctor has also found that the patient always limps while walking and can only walk with the support of a walker frame. Based on the guidelines and the Gazette Notification, the Doctor states the permanent physical disability of the right lower limb is 54%, which is about 27% of the whole body. The relevant extract of the evidence of Doctor (PW-2) is set out below:

EVIDENCE BY WAY OF AFFIDAVIT PW-2

1. Dr. S. Ramachandra, S/o. Sri. Subba Setty, Age: 59 years, working as Orthopaedic Surgeon at Victoria Hospital, Bangalore, R/o. in Bangalore, do hereby solemnly affirm and make this affidavit as follows:

xxx xxx xxx

Diagnosis: *FRACTURE SHAFT OF RIGHT FEMUR.*
Operation *of application of EXTERNAL FIXATOR done on 02-02-2018 in view of FAT EMBOLISM and discharged on 07-02-2018.*

SECOND ADMISSION AT KHANDUJA ORTHOCARE AND ACCIDENT HOSPITAL ON 06-12-2018.
DIAGNOSIS: OLD OPERATED FRACTURE, RIGHT REMUR WITH INFECTION. Operation of removal of implants done and discharged on 11-12-2018.
THIRD ADMISSION AT KHANDUJA ORTHOCARE AND ACCIDENT HOSPITAL ON 07-01-2019.

xxx xxx xxx

DIAGNOSIS: NON UNION OF FRACTURE OF RIGHT FEMUR
OPERATION of External fixator application with BONE GRAFTING done *on 11-01-2019 and discharged on 13-01-2019.*

xxx xxx xxx

10% has to be given for complications like (i) infection (ii) Deformity (iii) Loss of sensation if they are present). Patient always limps while walking and walks with the support of a walker frame. Plate external fixator is visible on the lateral surface of right Thigh and is outside.

[Emphasis Supplied]

15.1 The Doctor also found that the patient was advised to undergo another operation for the correction of his injury as

well as to try other measures. Paragraphs 6 and 7 of the evidence of PW-2, in this regard, is set out below:

> *"6. Based on findings and GUIDELINES and GAZETTE notification (EXTRAORDINARY) PART II, SEC.3-Sub Sec. (ii) No.61, NEW DELHI, FRIDAY, JAN. 5th 2018 ISSUED BY MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT, GOI.* ***The petitioner suffers the PERMANENT RESIDUAL PHYSICAL DISABILITY of Right lower limb is about 54% which is about 27% of whole body.*** *In view of the above said disabilities, it is difficult for the patient to work as a Lorry driver and also difficult for him to do any other manual or physical work.*
>
> ***The patient is advised to undergo another operation for correction of NON UNION,*** *if all other measures fail, finally ILIZAROV external fixator should be given a try.*
>
> *7) I am hereby producing the following documents:*
>
> *1) Out patient book*
> *2) X-ray film"*
>
> [Emphasis Supplied]

16. The Casualty Medical Officer (PW-3), who was also examined, has produced the case sheet (Ex.P-19) and MLC extract (P-20). The other evidence including the photographs that have been placed on record.

17. The learned counsel for the respondent No.2/ Insurance Company has emphasised on the fact that there is no evidence to show that the appellant is not working as a Lorry driver at present.

18. As stated above, so far as concerns the amounts awarded for pain and suffering given the fact that three hospitalisation took place, this Court deems it apposite to enhance the same to Rs.65,000/-. Medical expenses remains the same at Rs.1,48,000/-. Compensation towards conveyance, nourishment and future medical expenses are also being enhanced to Rs.40,000/- and Rs.50,000/- respectively, considering the nature and duration of treatment undergone.

19. So far as concerns the amount which is payable for loss of future earnings, it is not disputed that the notional income for the year of the accident [2018] was a sum of Rs.12,500/- per month. Thus, a sum of Rs.12,500/- has to be taken while calculating loss of future earnings. In addition, since future prospects has not been granted and the injured was 36 years old, 40% towards future prospects is required to be granted as per the judgment of the Supreme Court in the case of ***National Insurance***

Company Limited Vs. Pranay Sethi and others[1]. From the evidence on record, it is not disputed that the appellant was a Lorry driver and that his right leg has been fractured and the fracture as on the date of giving evidence was not united. Given these circumstances, the functional disability of the appellant in terms of the judgment of the Supreme Court in the case of ***Raj Kumar v. Ajay Kumar***[2], could not be taken as 18% but would be higher. However and since the appellant has not undertaken further steps to correct the fracture or try other methods, it cannot be stated that the disability is 50% on the basis that the appellant cannot drive at all. Accordingly, given these circumstances, this Court deems it apposite to award future loss of earnings by assessing the functional disability at 35%. Since the appellant was aged about 36 years, the appropriate multiplier applicable is '15'. Thus, the loss of future earning

[1] (2017) 16 SCC 680

[2] (2011) 1 SCC 343

on account of permanent disability would be re-calculated as follows:

Rs.12,500/- + 40% [5,000/-]= 17,500/- 17,500/-x12x'15' x35% =**11,02,500/-**

20. Accordingly, and in view of the aforesaid, the compensation awarded by the learned Tribunal is enhanced and re-calculated in the following manner:

Sl. No.	**Particulars**	**Amount (Rs.)**
1	pain and suffering	65,000/-
2	Loss of future earnings	11,02,500/-
3	Medical expenses	1,48,000/-
4	Conveyance, nourishment and nutritious food	40,000/-
5	Future medical expenses	50,000/-
	TOTAL	**14,05,500/-**
	Less: Awarded by Tribunal	**5,24,600/-**
	Enhanced Compensation	**8,80,900/-**

21. Thus, the appellant/claimant is entitled to an enhanced compensation in a sum of **Rs.8,80,900/-** along with interest as awarded by the learned Tribunal, from the date of petition till realisation.

22. Accordingly, this Court proceeds to pass the following:

ORDER

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

(ii) The impugned Judgment and Award dated 29.06.2019, passed by the learned XXI Additional Small Causes Judge and Motor Accident Claims Tribunal, (SCCH-23) at Bengaluru, in MVC No.4921/2018, is modified, enhancing the compensation by **Rs.8,80,900/-** along with interest at the rate of 6% per annum as awarded by the learned Tribunal.

(iii) The respondent No.2/Insurance Company is directed to pay the enhanced compensation with interest as awarded by the learned Tribunal within eight weeks from today.

(iv) The remaining portion of the Impugned Award of the Tribunal remains undisturbed.

(v) All pending applications stand closed.

(vi) No order as to costs.

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

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

Digitally signed by TARA VITASTA GANJU
Location: HIGH COURT OF KARNATAKA

(TARA VITASTA GANJU)
JUDGE

BMV*
List No.: 1 Sl No.: 38