



IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 13TH DAY OF NOVEMBER 2020

PRESENT

THE HON'BLE MR. JUSTICE G.NARENDAR

AND

THE HON'BLE MR. JUSTICE M.I.ARUN

MFA No.102566 of 2018 (MV)

BETWEEN:

HUSSAIN BASHA
S/O.HONNUR SAB,
AGED ABOUT 29 YEARS,
OCC: EX-MECHANIC,
R/O.: BAGALVADA VILLAGE
IN MANVI TALUK,
NOW R/O.: VINAYAKANAGAR,
BALLARI-583 101.

... APPELLANT

(BY SHRI LAKSHMIKANT REDDY, ADVOCATE)

AND:

1. PANDURANGA
S/O.SHEKANNA,
AGED ABOUT 32 YEARS,
DRIVER OF THE TRACTOR-TRAILER

BEARING REG.NO.KA-35/T-2631-32,
R/O.: HOUSE NO.17, WARD NO.2,
UTTANUR POST, SIRUGUPPA TALUK,
BALLARI DISTRICT – 583101.

2. HARIJANA MARISWAMY
S/O.VADDEGATTI MAREPPA,
AGED ABOUT 32 YEARS,
OWNER OF THE TRACTOR-TRAILER
BEARING REG.NO.KA-35/T-2631-32
R/O: GONAL VILLAE,
SUGGENAHALLI POST,
HOSAPETE TALUKA
OF BALLARI DISTRICT – 583 101.
3. M/S. UNITED INDIA INSURANCE CO. LTD.,
BY ITS DIVISIONAL MANAGER,
BALLARI-583 101.

... RESPONDENTS

(BY SHRI SHASHANK HEGDE, ADVOCATE FOR R3;
NOTICE TO R1 & R2 – DISPENSED WITH)

THIS MFA IS FILED U/S. 173(1) OF THE MOTOR VEHICLES ACT, 1988, AGAINST THE JUDGMENT AND AWARD DATED 31.03.2018, PASSED IN MVC NO.1140/2016 ON THE FILE OF THE MEMBER MACT-XII, BALLARI, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS MFA HAVING BEEN HEARD AND RESERVED ON 10.11.2020 FOR JUDGMENT AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, M.I.ARUN, J., DELIVERED THE FOLLOWING:

JUDGMENT

Though the matter is listed for admission, with the consent of the learned counsel appearing for the parties, the matter is taken up for final disposal.

2. Aggrieved by the judgment and award 31.03.2018, passed in MVC No.1140/2016 on the file of the Member Motor Accident Clams Tribunal-XII, Ballari (for short "the tribunal"), the petitioner therein has preferred this appeal.

3. For the sake convenience, the parties would be referred to as per their ranking before the tribunal.

4. The brief facts of the case are that the petitioner herein sustained grievous injuries in a motor vehicle accident that occurred on 02.04.2016 at about 11:30 p.m. near Srigeri Cross on SH-19 road in Siruguppa Taluka of Ballari District, due to rash and negligent driving by the driver of the tractor and trailer bearing registration No.KA-35/T-2631-32, which dashed to the petitioner's trax

from opposite direction. As a result of the accident, the petitioner sustained grievous injuries and his hand has been amputated upto shoulder level. Hence, he filed a claim petition in MVC No.1140/2016 and sought for compensation of Rs.76,50,000/-.

5. Respondent No.3 is the insurer of the offending vehicle. The nature of accident and the liability of third respondent herein is not in dispute. The appeal is filed only in respect of enhancement of compensation.

6. Based on the averments made by the parties, the tribunal framed the issues and recorded the evidence of the witnesses and awarded the compensation in a sum of Rs.16,64,500/- with interest at the rate of 7% p.a. from the date of petition till its realization.

7. The petitioner in order to prove his case examined himself as PW1 and got marked 35 documents. On behalf of the respondents, one witness was examined and one document got marked.

8. Not satisfied by the award, the petitioner has filed this appeal seeking enhancement of compensation.

9. Admittedly, the accident took place in the year 2016. The petitioner was aged about 29 years at the time of accident. It is claimed that he was a mechanic and earning Rs.15,000/- per month. However, it is found that no evidence is adduced by the petitioner to prove his income. Hence, the tribunal has taken his earning at Rs.7,500/- per month. When there is no proof of income, the tribunal ought to have followed the guidelines laid down regarding the notional income by the Karnataka State Legal Services Authority. For the year 2016, the notional income is Rs.8,750/-. The right hand of the petitioner till shoulder has been amputated. He would not be in a position to do his job as a mechanic in future. The tribunal has taken his disability at 90% based on the facts. However, it erred in considering his monthly income as Rs.7,500/- per month instead of Rs.8,750/- per month. Further, the tribunal has

not granted any compensation under the head future prospects.

10. The Hon'ble Supreme Court in the case of ***Pappu Deo Yadav vs. Naresh Kumar and others*** reported in ***AIR 2020 SC 4424***, wherein at paragraph Nos.20 and 21, has held as under:

"20. Courts should not adopt a stereotypical or myopic approach, but instead, view the matter taking into account the realities of life, both in the assessment of the extent of disabilities, and compensation under various heads. In the present case, the loss of an arm, in the opinion of the court, resulted in severe income earning impairment upon the appellant. As a typist/data entry operator, full functioning of his hands was essential to his livelihood. The extent of his permanent disablement was assessed at 89%; however, the High Court halved it to 45% on an entirely wrong application of some 'proportionate' principle, which was illogical and is unsupportable in law. What is to be seen, as emphasized by decision after decision, is the impact of the injury upon the income generating capacity of the victim. The loss of a limb (a leg or arm) and its severity on that account is to be judged in relation to the profession, vocation or business of the victim; there cannot be a blind arithmetic formula for ready application. On an overview of the principles outlined in the previous decisions, it is apparent that the income generating capacity of the appellant was undoubtedly

severely affected. Maybe, it is not to the extent of 89%, given that he still has the use of one arm, is young and as yet, hopefully training (and rehabilitating) himself adequately for some other calling. Nevertheless, the assessment of disability cannot be 45%; it is assessed at 65% in the circumstances of this case.

21. This court is also of the opinion that the courts below needlessly discounted the evidence presented by the appellant in respect of the income earned by him. Working in the informal sector as he did, i.e. as a typist/data entry operator in court premises in Delhi, his assertion about earning Rs.12,000/- could not be discarded substantially, to the extent of bringing it down to 8,000/- per month. Such self employed professionals, it is noticeable, were not obliged to file income tax returns for AY 2011-2012, when no levy existed for anyone earning less than 1,60,000/- per annum. The advocate who deposed about the earnings of the appellant was believed to the extent that the tribunal fixed the appellant's monthly earnings at Rs.8,000/-. If one takes into account contemporary minimum wages for skilled workers (which was in the range of Rs.8,500/-) the realistic figure would be Rs.10,000/- per month. Adding future prospects at 40%, the income should be taken as Rs.14,000 for the purpose of calculation of compensation. Accordingly, this court finds that the compensation payable for the disability of loss of an arm (assessed at 65%) would be Rs.19,65,600/- (i.e., Rs.14,000/- x 12 x 65% x 18) or Rupees Nineteen lakhs sixty five thousand six hundred only."

Further, the Hon'ble Supreme Court in the case of **Jagdish v. Mohan and others** reported in **2018 ACJ 1011**, wherein at paragraph No.8 has held as under:

"8. In assessing the compensation payable the settled principles need to be borne in mind. A victim who suffers a permanent or temporary disability occasioned by an accident is entitled to the award of compensation. The award of compensation must cover among others, the following aspects:

- (i) Pain, suffering and trauma resulting from the accident;
- (ii) Loss of income including future income;
- (iii) The inability of the victim to lead a normal life together with its amenities;
- (iv) Medical expenses including those that the victim may be required to undertake in future; and
- (v) Loss of expectation of life."

11. Thus, an injured person can also be awarded future prospects. Thus, in all the petitioner is entitled to a sum of Rs.22,49,100/- (Rs.94,500/-, which is 90% of his annual income x 17 multiplier + 40% towards loss of future prospects) towards loss of future income.

12. Taking into consideration the nature of injuries sustained by the petitioner, time of treatment, period of

treatment and distance from hospital to his village, the tribunal has awarded a sum of Rs.50,000/- towards pain and suffering; Rs.17,500/- towards medical expenses, surgery and treatment; Rs.50,000/- towards food, nourishment, conveyance and attendant charges; Rs.45,000/- towards loss of income during the period of hospitalization and treatment, we do not find any ground to interfere with the same.

13. Further, the tribunal has also granted Rs.1,25,000/- towards "loss of pleasures of life and longevity and loss of beauty", we find the same being done without any basis and the same sum is deducted.

14. Thus, in all the petitioner is entitled to total compensation of Rs.24,11,600/- instead of Rs.16,64,500/- awarded by the tribunal. Thereby, the petitioner is entitled to the enhanced compensation of Rs.7,47,100/-. The said sum shall carry interest at the rate of 6% pa. from the date of petition till realization.

15. The sum shall be disbursed on the terms as determined by the tribunal.

16. For the aforementioned reason, the judgment and award of the tribunal is modified. Accordingly, the appeal is allowed in part.

The Registry to draw up the award accordingly.

Sd/-
JUDGE

Sd/-
JUDGE

Vnp*