



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF AUGUST, 2024

BEFORE

THE HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

MISCELLANEOUS FIRST APPEAL NO.5265 OF 2021(MV-I)

BETWEEN:

SANTHOSH K. S.,
S/O SHIVANNA,
AGED ABOUT 25 YEARS,
R/O BHOVI COLONY,
SUBHASH NAGARA,
KADUR, CHIKKAMAGALURU DISTRICT,
PIN COE - 577 548

...APPELLANT

(BY SRI. PRAKASHA H. C.,ADVOCATE)

AND:

1. DILIP KUMAR H.,
S/O HALAPPA,
AGED ABOUT 30 YEARS,
R/O ASANDI VILLAGE,
KADUR TALUK,
CHIKKAMAGALURU DISTRICT.
PIN CODE - 577 548.
2. HALAPPA,
S/O SIDDAPPA,
AGED ABOUT 68 YEARS
R/O ASANDI VILLAGE
KADUR TALUK,
CHIKKAMAGALURU DISTRICT,
PIN CODE - 577 548.

Digitally signed by
AASEEFA.PARVEEN
Location: HIGH
COURT OF
KARNATAKA



3. THE MANAGER
IFFCO TOKIA GENERAL INSURANCE CO. LTD.,
SHASHIKIRAN BUILDING, 1ST FLOOR,
SHANKAR MUTT ROAD,
SHIVAMOGGA - 577 201.

...RESPONDENTS

(BY SRI. D. VIJAYAKUMAR, ADVOCATE FOR R3 (VC);
V/O. DATED 08.08.2024,
NOTICE TO R1 AND R2 DISPENSED WITH)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 02.03.2021 PASSED IN MVC NO. 294/2018 ON THE FILE OF THE SENIOR CIVIL JUDGE AND MACT, CHIKKAMGALUR DISTRICT, KADUR, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL, COMING ON FOR ORDERS THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

ORAL JUDGMENT

Heard Sri.Prakasha.H.C. learned counsel for the appellant as well as Sri.D.VijayaKumar learned counsel who is representing respondent No.3.

2. Challenge in this appeal is the order that is passed by Motor Accident Claims Tribunal, Kadur, in MVC No.294/2018, dated 02.03.2021.



3. This is a claimant's appeal. As against the claim for Rs.25,00,000/- in total, the Tribunal through the impugned order awarded a sum of Rs.4,97,732/- as compensation and dissatisfied with the same, the claimant is before this Court. The nature of injuries sustained by the appellant is not in dispute. By the evidence brought on record more particularly through Ex.P5 wound certificate and through the evidence of CW1, the appellant succeeded in establishing that he sustained type B open fracture distal 3rd of right femur, and injury over right thumb. The said injuries are noted as laceration over right knee, exposure of right knee and fracture of right supra condyle femur in Ex.P5 wound certificate. Also it is not in dispute that the appellant was admitted at the hospital on 21.05.2017 and was discharged on 13.06.2017. CW1, who spoke about the nature of injuries sustained by the appellant and their impact, said that the disability in respect of right leg is 55% which is permanent in nature. However, the Tribunal assessing the evidence of CW1, came to a conclusion that the disability in respect of whole body would be 18%. Though learned counsel Sri.Prakasha.H.C. submits that the Tribunal has not assessed disability properly, yet, having considered the



nature of the injuries sustained, this Court is of the view that the disability as assessed by the Tribunal needs no interference.

4. Coming to the income of the appellant by the date of accident, as per his version, by doing coolie work he was earning Rs.15,000/- per month. However, no substantive proof is produced before the Tribunal in respect of his occupation and income. The Tribunal took the national income of the appellant therefore as Rs.9,000/- per month. Sri.Prakash.H.C. learned counsel submits that the said assessment is wrong. Learned counsel contends that even the Karnataka State Legal Services Authority is taking Notional income as Rs.11,000/- per month for the relevant period i.e., 2017. Learned counsel Sri.D.VijayaKumar did not raise any objection for taking the said figure into consideration for assessment of compensation under the head loss of future earnings due to permanent disability.

5. It is not in dispute that the appellant was aged about 22 years by the date of accident. Thus the appropriate



multiplier to be applied as per the decision of the Hon'ble Apex Court in *Sarala Verma's* case is '18'.

6. Coming to the aspect of adding future prospects, learned counsel Sri.D.Vijayakumar submits that as this is not a case of death or excessive permanent physical disability, future prospects need not be added. However, this Court is of the view that to the extent of disability, the appellant will not be in a position to perform his duties. When a hale and healthy person would be earning certain amount, the person with permanent disability would not be earning the same amount for the same work as his abilities to do that work would be reduced to the extent of permanent physical disability. This will apply even when there is a hike in payment of wages or salary. Therefore, this Court is of the view that future prospects are required to be added even in injury cases. This view of mine is based on the judgement of the Hon'ble Apex Court in case of *Md. Sabeer @ Shabir Hussain vs Regional Manager U.P. State Road Transport Corporation (Civil Appeal Nos.9070-9071 of 2022)*. Therefore, this Court is of the view that future prospects are required to be added even in injuries cases.



7. Taking notional income as Rs.11,000/- per month, adding 40% of the said income towards future prospects, applying appropriate multiplier '18' and taking the permanent physical disability as 18%, the loss of future earnings due to permanent physical disability, if calculated will be as under:

Description	Amount In Rs.
Notional Income per month	11,000-00
Annual Income (11,000X12)	1,32,000-00
Add 40% towards future prospects (1,32,000+40%)	1,84,800-00
Applying appropriate multiplier '18'	33,26,400-00
18% being permanent physical disability loss of earnings	5,98,752-00

8. Having considered the nature of injuries sustained, this Court is of the view that the appellant would not have been in a position to attend his normal pursuits atleast for a period of 5 months. Thus, the loss of earnings during laid up period comes to Rs.55,000/-. Also a sum of Rs.20,000/- is required to be awarded for loss of amenities in life. Thus, the compensation which the appellant is entitled to under different heads will be as under:



SI No.	Compensation	Amount in Rs.
1	Medical expenses	11,612-00
2	Loss of future income due to permanent physical disability	5,98,752-00
3	Loss of income during laid up period	55,000-00
4	Conveyance charges	30,000-00
5	Compensation for pain and suffering	70,000-00
6	Food, nourishment and attendant charges	20,000-00
7	Loss of amenities in life	20,000-00
	Total	8,05,364-00

In the light of foregoing discussion, the following:

ORDER

- (i) The appeal is ***allowed in part.***
- (ii) The compensation that is awarded by the Motor Accident Claims Tribunal, Bengaluru, through orders in MVC No.294/2018, dated 02.03.2021 is enhanced from Rs.4,97,732 to Rs.8,05,364/-.
- (iii) The enhanced sum shall carry interest at the rate of 6% per annum from the date of petition till the date of deposit.
- (iv) The third respondent is directed to deposit the enhanced sum within a period of eight weeks from the date of receipt of copy of this order.



- (v) On such deposit, the appellant is permitted to withdraw the entire amount.

Time for one week is granted to Sri.D.Vijayakumar to file vakalath.

**Sd/-
(DR.CHILLAKUR SUMALATHA)
JUDGE**

DS
List No.: 1 SI No.: 7