



IN THE HIGH COURT OF KARNATAKA,

DHARWAD BENCH

DATED THIS THE 21ST DAY OF SEPTEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE VIJAYKUMAR A.PATIL

MISCELLANEOUS FIRST APPEAL NO. 101667 OF 2015 (MV-I)

BETWEEN:

SHRI. RAJENDRA S/O. DATTU GAWADE,
AGE: 39 YEARS, OCC: COOLIE,
R/O. VADAGAON, BELAGAVI.

...APPELLANT

(BY SRI. B. M. PATIL, ADVOCATE)

AND:

1. THE GENERAL MANAGER,
MAHARASHTRA STATE ROAD TRANSPORT
CORPORATION, WAHATUK BHAVAN, MUMBAI.

2. SHRI. SHABBIR AKBAR BEPARI,
AGE: 39 YEARS, OCC: BUSINESS,
R/O. PEERANWADI, TQ & DIST: BELAGAVI.

3. NATIONAL INSURANCE CO. LTD.,
DIVISIONAL OFFICE, RAMDEV GALLI, BELAGAVI,
THROUGH ITS DIVISIONAL MANAGER.

...RESPONDENTS

(BY SRI. CHANDRASHEKHAR M. HOSAMANI, ADV. FOR R1;
SRI. M. Y. KATAGI, ADV. FOR R3;
NOTICE TO R1 DISPENSED WITH)

THIS MFA IS FILED U/S.173(1) OF MV ACT, 1988, PRAYING TO
ENHANCED THE COMPENSATION BY MODIFYING THE JUDGMENT
AND AWARD IN M.V.C NO.2596/2011 DATED 02.03.2015, PASSED
BY THE COURT OF II ADDITIONAL CIVIL JUDGE AND MACT,
BELAGAVI, AT: BELAGAVI IN THE INTEREST OF JUSTICE & EQUITY.

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





ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE VIJAYKUMAR A.PATIL)

Though this appeal is listed for admission, with the consent of learned counsel for the parties, it is taken up for final disposal.

2. This appeal is filed by the injured/claimant seeking enhancement of compensation being aggrieved by the judgment and award dated 02.03.2015 passed in MVC.No.2596/2011 by the II Additional Civil Judge & Additional MACT, Belagavi, (for short, 'Tribunal').

3. Heard Sri.B.M.Patil, learned counsel appearing for the appellant-injured and Sri.Chandrashekhar M.Hosamani, learned counsel appearing for respondent No.1 - MSRTC and Sri.M.Y.Katagi, learned counsel for respondent No.3-insurance company.

4. Learned counsel for the appellant submits that the Tribunal has committed grave error in assessing the disability of the injured at 10% which is contrary to the evidence of PW-4 Doctor, the disability certificate at Ex.P-8, which he seeks to re-assess the same appropriately. It is submitted that the Tribunal



has awarded meager compensation under the head of pain & suffering and no compensation is awarded under the head of loss of amenities. He seek to enhance compensation on other conventional heads. Hence, he seeks to re-assess the entire compensation by allowing the appeal.

5. Per contra, learned counsel for the respondent No.1 and learned counsel for respondent No.3, in chorus, supports the impugned judgment and award passed by the Tribunal and submits that PW-4 is not a treated doctor and the assessment of disability by the said doctor is on higher side. The Tribunal taking note of the fact that the appellant has sustained two fractures, has rightly assessed the disability and awarded just and fair compensation which does not call for interference in this appeal. Hence, they seek to dismiss the appeal.

6. I have heard the arguments of the learned counsel for the parties and perused the material available on record.

7. The pleading and evidence on record indicate that in a road accident dated 15.09.2011, the appellant sustained fracture of comminuted fracture distal end of right radius and fracture of right ulna, as is evident from the wound certificate



and other medical evidence on record. PW-4 Doctor, who has deposed in favour of the claimant before the Tribunal, is admittedly not a treated doctor. Considering the oral testimony of PW-4 and other medical evidence on record, I am of the considered view that interest of justice would be met if the disability is re-assessed at 12%. The Tribunal has rightly assessed the income of the appellant at Rs.6,000/- per month and applied appropriate multiplier of '15', which is unaltered. Thus, the appellant is entitled to compensation under the head of loss of earning capacity due to disability would be :

$$\text{Rs.6,000} \times 12 \times 15 \times 12\% = \text{Rs.1,29,600/-}.$$

8. Considering the age, avocation, nature of disability suffered by the appellant, the compensation under the other heads is re-assessed as under:

HEADS	AMOUNT (in Rs.)
Pain & suffering	50,000
Loss of earning capacity	1,29,600
Medical expenses	19,612
Loss of income during laid-up period (Rs.6000 X 3)	18,000
Loss of amenities	30,000
Miscellaneous expenses including conveyance, attendant charges, Food &	15,000



Nourishment	
Total	2,62,212

Thus, the appellant-claimant shall be entitled to total compensation of **Rs.2,62,212/-** as against Rs.1,38,412/- awarded by the Tribunal.

9. In the result, this Court proceeds to pass the following:

ORDER

- a) Appeal stands ***allowed in part.***
- b) The impugned judgment and award of the Tribunal is modified to an extent that the appellant-claimant would be entitled to total compensation of **Rs.2,62,212/-** as against Rs.1,38,412/- awarded by the Tribunal.
- c) The enhanced compensation amount shall carry interest at the rate of 6% per annum from the date of petition till the date of payment.
- d) The Respondent No.1-MSRTC shall deposit the enhanced compensation amount with accrued interest before the Tribunal within a period of eight weeks from the date of receipt of certified copy of this judgment.



- e) The enhanced compensation amount along with accrued interest shall be released in favour of the appellant, on proper identification.
- f) Draw modified award accordingly.

Sd/-
(VIJAYKUMAR A.PATIL)
JUDGE

BSR/ct-an
List No.: 1 SI No.: 1