



NC: 2023:KHC-D:12041
MFA No. 24332 of 2012
C/W MFA No. 24333 of 2012

IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH

DATED THIS THE 05TH DAY OF OCTOBER, 2023

BEFORE

THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR

MISCELLANEOUS FIRST APPEAL NO.24332/2012 (MV)

C/W

MISCELLANEOUS FIRST APPEAL NO.24333/2012 (MV)

IN MFA.NO.24332/2012:

BETWEEN:

KUM. RANGANATH S.H. S/O. SHIVAKUMAR,
AGE: 12 YEARS, OCC: NIL,
SINCE MINOR REP. BY M/G MOTHER,
SMT. RENUKA W/O. SHIVKUMAR,
AGE: 46 YEARS, OCC: TAILORING,
R/O: MARUTHI NAGAR, RANEBENNUR
TQ: RANEBENNUR, DIST: HAVERI.

...APPELLANT

(BY SRI G.S.HULAMANI, ADVOCATE)

AND:

1. MR. SHIVAKUMAR H.R.
AGE: MAJOR, OCC: BUSINESS,
R/O: P.L. NO.60, 2ND MAIN,
MARUTHI NAGAR, RANEBENNUR,
DIST: HAVERI.
2. THE DIVISIONAL MANAGER,
NATIONAL INSURANCE CO. LTD.,
SUJATHA COMPLEX, OPP TO P.B. ROAD,
HUBBALLI.

...RESPONDENTS

(BY SMT. SHARMILA PATIL, ADVOCATE FOR R2;
R1 - NOTICE DISPENSED WITH.)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER
SECTION 173(1) OF MOTOR VEHICLES ACT, 1988, PRAYING TO





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MODIFY THE JUDGMENT AND AWARD DATED 22.03.2012, PASSED IN MVC NO.201/2008, ON THE FILE OF THE FAST TRACK JUDGE AND MACT, RANEBENNUR, AND ENHANCE THE COMPENSATION AS PRAYED FOR, ETC.,.

IN MFA.NO.24333/2012:

BETWEEN:

SMT. RENUKA W/O. SHIVKUMAR,
AGE: 46 YEARS, OCC: TAILORING,
R/O: MARUTHI NAGAR, RANEBENNUR,
TQ: RANEBENNUR, DIST: HAVERI.

...APPELLANT

(BY SRI G.S.HULAMANI, ADVOCATE)

AND:

1. MR. SHIVAKUMAR H.R.
AGE: MAJOR, OCC: BUSINESS,
R/O: P.L. NO.60, 2ND MAIN,
MARUTHI NAGAR, RANEBENNUR,
DIST: HAVERI.

2. THE DIVISIONAL MANAGER,
NATIONAL INSURANCE CO. LTD.,
SUJATHA COMPLEX,
OPP TO P.B. ROAD, HUBBALLI.

...RESPONDENTS

(BY SMT. SHARMILA M. PATIL, ADVOCATE FOR R2;
R1 – NOTICE DISPENSED WITH.)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT, 1988, PRAYING TO MODIFY THE JUDGMENT AND AWARD DATED 22.03.2012, PASSED IN MVC NO.200/2008, ON THE FILE OF THE FAST TRACK JUDGE AND MACT, RANEBENNUR, AND ENHANCE THE COMPENSATION AS PRAYED FOR, ETC.,.

THESE APPEALS COMING ON FOR FURTHER HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING:



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JUDGMENT

Both these appeals are filed by the claimants challenging the common judgment and award dated 22.03.2012, passed by the tribunal, in MVC No.200/2008 and 201/2008, seeking enhancement of compensation.

2. It is the case set out by the claimants that on 22.11.2007 at about 07.00 p.m., both claimants were travelling in the car No.KA-27/M-1506, from Ranebennur to Mysuru. The said driver of the car was driving the car in a high speed and in a rash and negligent manner and reached the place called near Kere Valagerehalli, Turuvekere taluk, the driver lost control over the vehicle and the vehicle was toppled down and caused the accident, due to which the claimants have sustained grievous injuries. The claimants are mother and son. Therefore filed claim petition under section 166 of the M.V.Act claiming compensation and the tribunal awarded compensation of Rs.11,02,000/- and Rs.95,500/-, respectively, with interest at the rate of 6% p.a. Being



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aggrieved by the inadequate compensation amount, the claimants filed these appeals.

3. Heard the arguments and perused the records.

4. The learned counsel for claimant son submitted that the claimant namely Kumar Ranganath was aged 8 years old as on the date of accident who has suffered head injury with diffuse axonal injury and brain stem contusion, compound fracture of body and mandible right arch and post traumatic quadriplegia affecting the neuro psychological functions of the brain and mental capacity is diminished and as per the evidence of PW.2 who is a psychologist, claimant son has suffered 70% of neuro psychological impairment; the functions of the claimant are affected severely and upper limbs are not responding. Therefore, he has suffered severely amounting to 100% functional disability, but the tribunal has taken only 70% and awarded lesser amount of compensation. Therefore, prays for enhancement of compensation.



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5. In support of his arguments he places reliance on the judgment of the Hon'ble Supreme Court in ***Abhimanyu Partap Singh vs. Namita Sekhon Ors.***, reported in ***(2022) 8 SCC 489, Kajal vs. Jagdish Chand and Ors.***, reported in ***2020 ACJ 1042***, and ***the judgment of this Court (Bengaluru Bench) in Master Manoj vs. Muniraju and another, in MFA No.10507/2018, decided on 12.12.2022*** and in ***Priyanka Pradeep Gavade vs. The Divisional Managar, The New India Assurance Co. Ltd., reported in 2022(3) KCCR 2771***. Therefore, prays to hold the claimant son has suffered 100% functional disability and for enhancement of compensation.

6. On the other hand, learned counsel for respondent insurance company submitted that it is not a case of suffering 100% functional disability and the tribunal has held 70% as functional disability is correct and accordingly justified the judgment and award of the



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tribunal. Therefore, prays to confirm the same and dismiss the appeal.

7. In the other case also so far as the injuries sustained by the mother Smt.Renuka, prays for enhancement of compensation. The learned counsel for respondent justified the judgment and award passed by the tribunal and prays to dismiss the appeal.

MFA No.24332/2012 (MVC No.201/2008)

8. From the medical evidence on record particularly the wound certificate Ex.P.9, it is proved that the claimant has suffered the following injuries.

Abrasion present on the right side of the neck; fracture of right mandible. It is diagnosed with CT scan that the defuse axonal injury and diffuse cerebral edema.

9. Ex.P12 is the Neuropsychology Report from the Psychiatry Department of Abhay Hospital and upon referring the claimant to NIMHANS, Bengaluru, found the report and reads the report as follows:



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On the NIMHANS Battery the findings are as follows.

Frontal lobe functions

The child sustained attention was assessed by Color Cancellation test. His performance was inadequate, the child randomly cancelled the colors, took a lot of time to cancel with many omissions. His Expressive speech was adequate though effortful. His verbal fluency was assessed by Phonemic fluency test was impaired. Verbal working memory as assessed by the N-back test is impaired (below 5th percentile on both 1- back and 2 back tests).

Parietal lobe functions.

His visuo-constructive and visual perceptual abilities are inadequate. His reading and writing abilities are inadequate. The child has dysgraphia, constructional apraxia, his visuo-conceptual ability as assessed by Picture Completion test was inadequate (below 5th percentile). However his Somatosensory perception and Tactile form perception is adequate.

Temporal/occipital lobe functions.

His verbal comprehension as assessed by the token test is adequate. His verbal learning and memory as assessed by the Rey Auditory Verbal learning Test is impaired (below 5th percentile). There is minimum learning and retention of what is learnt. Visual learning and memory could not be assessed due to constructional apraxia.



10. PW.2 doctor who is a Neuro Surgeon, Bengaluru, who was examined through Court Commissioner has deposed that from two years since the accident the claimant has neurological deficits and are likely to be permanent and the same neurological deficits will continue throughout his life and he has stated that the neurological disability according to the guidelines for evaluation of various disabilities and procedure for certification 2008 and his examination as:

Intellectual impairment (moderate IQ) 75%

Speech – Moderate Dysarthria 25%

Neurological involvement

(Moderate Quadriparesis) 50%

Average disability of patient is around 70-75% to whole body. Patient needs physiotherapy, cognitive retraining, speech therapy through his life.

11. Upon cross-examination of PW.2, nothing is revealed that the claimant has not suffered neurological deficit to lesser extent. When the learned counsel for respondents have seriously disputed that the claimant has



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not suffered 100% functional, then the Court has summoned the claimant and both the claimants are present before the Court and the Court has noticed that the functions of the claimant is severely affected and found to be speech is not coherent and showing slow response and speech is impaired.

12. Further, the claimant has produced discharge summary and other medical records to prove that the claimant has taken to various hospitals including NIMHANS at Bengaluru. Therefore from the medical evidence on record as discussed above, the claimant has suffered 100% functional disability where the brain is severely affected. The major functions, speech, intelligent capacity are severely affected. Due to this the claimant is constrained to give up his school education and now confined to home virtually becoming living dead person. Therefore, it is proved that the claimant has suffered 100% functional disability. The tribunal has committed error in taking 70% only as neuro psychological disability



where it is positive evidence of the doctor that the claimant has suffered 70-75% of neurological deficit, then certainly such neurological deficit due to the brain injury affects the whole functioning of the body including affecting the intellectual capacity and motor functions.

13. The learned counsel for respondent insurance company places reliance on the case of ***Master Mallikarjun vs. Divisional Manager, the National Insurance Company Limited and another, reported in AIR 2014 SC 736*** and prays to grant maximum Rs.6,00,000/- where the disability is above 90%. As held by the Hon'ble Supreme Court in ***Kajal case (supra)*** and in ***Abhimanyu Partap Singh case (supra)***, where the minor has sustained injuries resulting into 100% disability affecting psychological function and intellectual capacity diminished, this Court follows principle of law laid down in the said decisions.

14. Therefore, as per the principle of law laid down by the Hon'ble Supreme Court in the case of ***Raj Kumar***



vs. Ajay Kumar and another reported in **(2011) 1 SCC 343** and in **Kajal case (supra)**, **Abhimanyu Partap Singh case (supra)**, it is held that the claimant son suffered 100% functional disability towards whole body.

15. In the case of injuries suffered by the minor child, the Hon'ble Supreme Court in **Kajal case (supra)**, were pleased to observe as follows:

5. The principles with regard to determination of just compensation contemplated under the Act are well settled. Injuries cause deprivation to the body which entitles the claimant to claim damages. The damages may vary according to the gravity of the injuries sustained by the claimant in an accident. On account of the injuries, the claimant may suffer consequential losses such as (i) loss of earning; (ii) expenses on treatment which may include medical expenses, transportation, special diet, attendant charges etc., (iii) loss or diminution to the pleasures of life by loss of a particular part of the body, and (iv) loss of future earning capacity. Damages can be pecuniary as well as non-pecuniary, but all have to be assessed in rupees and paise.

6. It is impossible to equate human suffering and personal deprivation with money. However, this is what the Act enjoins upon the courts to do. The court has to make a judicious attempt to award damages, so as to



compensate the claimant for the loss suffered by the victim. On the other hand, the compensation should not be assessed very conservatively, but on the other hand, compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the claimant. The court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. Such compensation is what is termed as just compensation. The compensation or damages assessed for personal injuries should be substantial to compensate the injured for the deprivation suffered by the injured throughout his her/his life. They should not be just token damages.

16. In ***Kajal case (supra)***, the Hon'ble Supreme Court by referring various authorities of the Hon'ble Supreme Court has awarded compensation by holding an income of Rs.4,846/- per month. If the child attains the age of earning, then at least by doing a skillful work is able to earn Rs.4,846/- per month and accordingly by applying the multiplier 18 and by adding 40% of income towards loss of future prospects in life has awarded a sum of Rs.14,66,000/- towards loss of earning. The present case is also found to be not having different from the



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above stated case, therefore, the compensation of Rs.14,66,000/- is awarded under the head loss of earning due to disability (para 20 of the judgment).

17. From the medical evidence on record it is proved that that the claimant was unconscious for a period of three months after the accident and totally five months as in patient in the hospital. The claimant has taken treatment at NIMHANS Hospital, Bengaluru and other various hospitals. Therefore a sum of Rs.500/- per day is considered towards incidental expenses, then it would be Rs.75,000/- for five months.

18. Now the claimant is completely dependent upon his mother. The mother is constrained to give her attention in a major part of the day to the claimant. Therefore she would be constrained to lose income for earning to the family. Therefore even if an attendant is provided to the claimant, at least by giving a sum of Rs.3,000/- per month or if mother works full day at least she would have earned income of Rs.3,000/- per month in



addition to the regular work. Therefore the attendant charges per month of Rs.3,000/- is to be taken into consideration. Then it works out to Rs.36,000/- per annum and using the multiplier 18, it works out to Rs.6,48,000/- (Rs.3,000 x 12 x 18) and the same is awarded under the head attendant charges in future life.

19. Further considering the age of the claimant, he is suffering pain, mental agony, discomfort, inconveniency in life, loss of enjoyment in life and becoming mentally and physically impaired at the age of 8 years, accordingly a compensation of Rs.10,00,000/- is awarded under the head injuries, pain and suffering and loss of amenities.

20. A sum of Rs.3,00,000/- is awarded for loss of marriage prospects. For future medical expenses, keeping in view that the claimant would live another 50 years and require amount for future medical expenses, a compensation of Rs.5,00,000/- is awarded towards future medical expenses.



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21. The mother of the claimant was constrained to make expenditure of Rs.8,24,331/- as medical expenses and hospitalization charges and accordingly the same is awarded towards medical expenses and hospitalization charges.

22. Thus, by following the principle of law laid down in **Kajal case (supra)** and in **Abhimanyu Partap Singh case (supra)**, this Court determined the compensation under various heads as discussed above and it is extracted below:

Sl. No.	Heads.	Amount in (Rs.)
1.	Loss of earning due to disability.	14,66,000
2.	Incidental charges like food, nourishment, attendant charges, conveyance, etc.,.	75,000
3.	Attendant charges in future life.	6,48,000
4.	Injuries, pain and suffering and loss of amenities	10,00,000
5.	Loss of marriage prospects.	3,00,000
6.	Future medical expenses.	5,00,000
7.	Medical expenses and hospitalization charges.	8,24,331
	Total:	48,13,331



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23. Therefore, the claimant in MFA No.24332/2012 (MVC No.201/2008) is entitled for total compensation of Rs.48,13,331/- along with interest at the rate of 6% p.a. from the date of filing of the petition till realization, as against Rs.11,02,000/- awarded by the Tribunal. The Insurance Company is directed to deposit the compensation within eight weeks from the date of receipt of a certified copy of this judgment.

IN MFA No.24333/2012 (MVC No.200/2008)

24. In the present case, the mother Renuka has suffered compression of L5 Vertebra of lower end of Right radius and other grievous all over the body, Doctor has assessed that the claimant has sustained 35% of physical disability towards right hand but Tribunal has taken 12% disability is found to be correct. Accident is of the year 2007. Notional income is Rs.4,000/- per month. Claimant was aged 42 years. Hence, appropriate multiplier is 14. Therefore, loss of future income due to disability is re-assessed and quantified as under:



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Rs.4,000/- X 12/100 X 14 X 12 = Rs.80,640/-

25. The tribunal has awarded inadequate compensation on other conventional heads. Accordingly, same are modified as below:

Sl. No.	Heads	Amount(Rs.)
1	Loss of income due to disability.	80,640
2	Injuries, pain and suffering.	30,000
3	Medical expenses and incidental expenses.	15,000
4	Loss of income during laid up period Rs.4000/- X 4.	16,000
5	Loss of amenities.	30,000
	Total:	1,71,640

26. Therefore, the claimant is entitled for compensation of **Rs.1,71,640-00** as against **Rs.95,500-00** awarded by the tribunal, along with interest at the rate of 6% p.a. from the date of filing of the petition till realization. The Insurance Company is directed to deposit the compensation amount within eight weeks from the date of receipt of a certified copy of this judgment.



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27. In the result, I proceed to pass the following:

ORDER

- i) Both the appeals are allowed in part.
- ii) The common judgment and award dated 22.03.2012, passed by the Fast Track Judge and MACT, Ranebennur, in MVC No.200/2008 and MVC No.201/2008 stands modified.
- iii) The claimant in MFA No.24332/2012 (MVC No.201/2008) is entitled for compensation of **Rs.48,13,331/-** along with interest at the rate of 6% p.a. from the date of petition till its realization, as against compensation of **Rs.11,02,000/-** awarded by the Tribunal.
- iv) The claimant in MFA No.24333/2012 (MVC No.200/2008) is entitled for compensation of **Rs.1,71,640-00** along with interest at the rate of 6% p.a. from the date of petition till its



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realization, as against compensation of
Rs.**95,500-00** awarded by the Tribunal.

v) The claimants in MFA No.24332/2012
and MFA No.24333/2012 are not entitled for
interest for delayed period of 84 days in filing
the appeals, respectively.

vi) The insurance company shall deposit
the amount within a period of eight weeks from
the date of receipt of a copy of this judgment.

vii) The amount in deposit, shall be
transmitted to the tribunal forthwith.

viii) Send back the trial Court records
along with a copy of this judgment.

ix) No order as to costs.

x) Draw award accordingly.

SD/-
JUDGE

MRK-para 1 to 23.
HMB-para 24 to end.
List No.: 2 SI No.: 37
CT-ASC