

IN THE HIGH COURT OF KARNATAKA  
KALABURAGI BENCH

DATED THIS THE 30<sup>TH</sup> DAY OF NOVEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

**MFA NO.200521/2018 (MV-I)**  
**C/W**  
**MFA CROB NO.200043 OF 2018**

**IN MFA NO.200521 OF 2018**

**BETWEEN:**

THE DIVISIONAL MANAGER  
RELIANCE GENERAL  
INSURANCE COMPANY LIMITED,  
8<sup>TH</sup> BLOCK, ASIAN PLAZA COMPLEX  
NEAR S.V.PATEL CHOWK  
KALABURAGI – 585 102  
REP.BY ITS AUTHORISED OFFICER

...APPELLANT  
(BY SRI SUBHASH MALLAPUR, ADVOCATE)

**AND:**

1. VENKATESH GOUD  
@ VENKATIAH GOUD  
@ VENKATAYYA  
S/O ANJALAYYA  
AGE: 26 YEARS,  
OCC: MINES LABOUR NOW NIL  
R/O KALLUR ROAD,  
TQ: CHINCHOLI  
DIST: KALABURAGI

NOW R/O DULAPPA KAMALAPUR HOUSE  
LAL HANUMAN MANDIR  
SHAHABAZAR, KALABURAGI – 585 102

2. GOPAL, S/O HARICHAND  
 AGE: 48 YEARS,  
 OCC: LORRY DRIVER  
 R/O FATHENAGAR, RR DIST  
 NOW AT UMLA NAIK THANDA,  
 PEDDEMUL MANDAL VILLAGE  
 DIST RR – 501 513
3. VEMULU VENKATALAXMI  
 W/O SITHARAMAIAH  
 AGE: MAJOR, OCC: OWNER OF LORRY,  
 R/O 4-3 -36/9, VVHS ROAD,  
 VALMIKINAGAR, TANDUR,  
 DIST: RANGAREDDY, A.P – 410 001
- ... RESPONDENTS  
 (BY SRI HARSHAVARDHAN R MALIPATIL, ADVOCATE  
 FOR C/R; NOTICE TO R-2 IS DISPENSED WITH V.O.D  
 06.12.2019, NOTICE TO R-3 IS SERVED)

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THIS MFA FILED U/S. 173(1) OF MV ACT, PRAYING TO ALLOW THE ABOVE APPEAL AND CONSEQUENTLY BE PLEASED TO SET ASIDE THE JUDGMENT AND AWARD DATED 02.11.2017 PASSED BY THE PRL.SENIOR CIVIL JUDGE & MACT, KALABURAGI IN MVC NO.158/2014 & ETC.

**IN MFA CROB NO.200043 OF 2018**

**BETWEEN:**

VENKATESH GOUD@ VENKATAIAH GOUD  
 @ VENKATAYYA S/O ANJALAYYA  
 AGE: 27 YEARS, OCC: MINES LABOUR  
 NOW NIL, R/O KALLUR ROAD  
 TQ:CHINCHOLI, DIST: KALABURAGI  
 ... CROSS OBJECTOR

(BY SRI HARSHAVARDHAN R MALIPATIL, ADVOCATE FOR CROSS OBJECTOR)

**AND**

1. THE DIVISIONAL MANAGER  
THE RELIANCE GEN.INSURANCE  
COMPANY LIMITED  
8<sup>TH</sup> BLOCK, ASIAN PLAZA COMPLEX  
NEAR S.V.PATEL CHOWK  
KALABURAGI – 585 102
2. GOPAL S/O HARICHAND  
AGE: 48 YEARS, OCC: LORRY DRIVER  
R/O FATHENAGAR, RR DIST, NOW  
R/O UMLA NAIK THANDA VILLAGE  
OF PEDDEMUL , MANDYA DIST  
RR – 501 142
3. VEMULU VENKATALAXMI  
W/O V.SITHARAMAIAH  
AGE:MAJOR, OCC: BUSINESS AND OWNER  
OF THE LORRY, R/O 43-36/9, VVHS ROAD  
VALMIKI NAGAR, TANDUR  
DIST: RANGAREDDY, AP – 501 141  
... RESPONDENTS

(BY SRI SUBHASH MALLAPUR, ADVOCATE FOR R-1  
NOTICE TO R-2 & R-3 ARE DISPENSED WITH V.O.D  
12.09.2022)

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THIS MFA FILED U/S. 173(1) OF MV ACT, PRAYING  
TO ALLOW THIS APPEAL AND AWARD COMPENSATION OF  
RS.9,03,760/- (EXCLUDING THE AMOUNT AWARDED BY  
THE PRL.SENIOR CIVIL JUDGE AND MACT KALABURAGI  
ALONG WITH INTEREST @ 12% P.A BY MODIFYING THE  
JUDGMENT AND AWARD OF THE PRL.SENIOR CIVIL JUDGE  
AND MACT KALABURAGI IN MVC NO.158 OF 2014 DATED  
02.11.2017 & ETC.

THIS APPEAL IS COMING ON FOR ADMISSION THIS  
DAY, THE COURT PASSED THE FOLLOWING:

**JUDGMENT**

This appeal is preferred by the Insurance Company challenging the judgment and award dated 02.11.2017 passed by the Principal Senior Civil Judge and MACT at Kalaburagi (hereinafter referred to as the 'Tribunal' for brevity) in MVC No.158/2014. This appeal is founded on the premise of reduction of compensation.

2. Though these matters are listed for Admission, with consent of both the learned counsel, matter is taken up for final disposal.

3. Parties to the appeal shall be referred to as per their status before the Tribunal.

4. Brief facts of the case are as under :

On 08.07.2013 at about 08.30pm the claimant and his friends were returning to their Kollur village from Tandur on motor cycle bearing Registration No. KA-32/TW-4471 as a pillion rider and one Narasimha was riding the motor cycle and when they reached near Malkapur Gate a lorry bearing Registration No. AP-28 Y-

8919 came from opposite direction at high speed and in a rash and negligent manner suddenly dashed to the motor cycle and due to which claimant and his friend fell down and sustained injuries, but his friend who was riding the motor cycle died on the spot.

5. Immediately after the accident the claimant was shifted to District Hospital, Tandur and on the same day he was shifted to Nizam's Institute of Medical Sciences, Hyderabad, wherein he was treated as an inpatient. He suffered injuries to head, fracture of shaft of right femur, grievous injury to the right knee, injury to the mouth, jaw and teeth were lost and also sustained injury to the left leg and on other parts of the body. He spent huge money for his treatment and medicine. He pleaded that accident was solely due to rash and negligent manner of driving by the driver of the lorry. A Criminal case came to be registered against the driver of the offending vehicle – lorry in Cr. No.119/2013 by the Karankote Police Station of Rangareddy District.

6. It is stated that the claimant was aged 23 years at the time of accident. He was hale and healthy

prior to accident and being a mines labour worker was earning Rs.9,000/- per month. The claimant used to look after the entire family. Due to permanent disability he cannot do work as he is doing earlier and even he is not in a position to walk properly. Hence, he filed a claim petition before the Tribunal seeking compensation.

7. On service of notice, respondents No.1 and 2 remained absent and were placed ex parte. Respondent No.3 - Insurance Company filed a detailed objections contending that though there insurance policy of the offending vehicle was valid from 04.09.2012 to 03.09.2013, the liability is subject to the terms and conditions and the provisions of MV Act. It further pleaded that respondent No.2 - Owner has violated the policy conditions in entrusting the vehicle to driver - respondent No.1, who had no valid and effective driving licence at the time of accident and not intimating about the accident to it, as such it has no liability to answer the claim of the claimant. It also denied the age, avocation and income including the injuries as alleged in the claim petition. It further pleaded that the Insurance Company is not liable

not liable to pay compensation. Hence, On the basis of this, sought for dismissal of claim petition.

8. On the basis of pleadings, the Tribunal framed relevant issues for consideration.

9. In order to substantiate the issues and to establish the case, claimant examined himself as PW1 and Doctors as PW2 & PW3 and got marked documents as Exs.P1 to P18, whereas the respondents have not opted to examine any witness or mark the documents in support of their case.

10. On the basis of material evidence both oral and documentary, the Tribunal awarded the compensation of Rs.5,96,240/- with interest at the rate of 6% per annum from the date of petition till its realisation and directed the respondent No.4 – Insurance Company to pay the compensation.

11. Being aggrieved by the judgment and award passed by the Tribunal and compensation awarded, the appellant – Insurance Company is before this Court seeking to set aside the same in MFA No.200521/2018.

Aggrieved by the same judgment and award passed by the Tribunal the claimant has filed MFA CROB No. 200043/2018 seeking enhancement of compensation.

12. It is vehement contention of the learned Counsel for Insurance Company that the Tribunal has committed gross error and has awarded exorbitant compensation without taking into consideration material evidence both oral and documentary. Under other heads the Tribunal awarded higher compensation same requires to be reduced to the large extent. Therefore, judgment and award is passed without application of mind and in a mechanical manner and the same requires to be set aside.

13. It is also vehemently contended by the learned Counsel for Insurance Company that the Tribunal while dealing with the aspect of negligence has not considered the fact that the rider of the motor cycle is also negligent in riding the motor cycle, involved in occurrence of accident and has not fastened contributory negligence on the part of the rider of the motor cycle.

14. Learned Counsel for Insurance Company further contended that that the Tribunal has committed gross error in calculating the disability which is opined by PW2-Doctor, which is erroneous and contrary to the material evidence and injuries sustained by the claimant. Therefore, same deserves to be set aside.

15. Having heard the learned counsel for appellant – Insurance Company and the learned Counsel for claimant – Cross Objector, the points that would arise for consideration before this Court are:

- i) Whether the appellant – Insurance Company has made out a ground for interference for reducing the compensation awarded by the Tribunal?
- ii) Whether the claimant – Cross Objector is entitled for enhancement of compensation?
- iii) What order ?

16. On perusal of the entire material evidence both oral and documentary adduced by the parties and particularly, the evidence of the PW2 and PW3 – Doctors, I

am of the opinion that the Insurance Company has not made out a case for interference of the judgment and award of the Tribunal for reduction of the compensation. I am inclined to entertain the Cross Objections filed by the claimant for enhancement of compensation for the reasons stated hereinbelow.

17. Admittedly, involvement of the offending vehicle, occurrence of accident, charge sheet having been filed against the driver of the offending vehicle - lorry, injuries sustained by the claimant are not in dispute. It is also not in dispute about the injuries and criminal case foisted against the driver of the lorry.

18. Now coming to the age, avocation and income of the claimant, admittedly he was aged 23 years and doing mines labour work by earning Rs.9,000/- per month, but nothing material has been placed before the Court to substantiate the statement in proof of income. In the absence of any cogent material proof of income, the Tribunal as well as this Court would have to do a guess work to assess the income. In order to arrive at standard guess work, the Legal Services Authority has prescribed

notional income chart, which prescribes Rs.7,000/- as income for accident of the year 2013. Accordingly, income requires to be assessed at Rs.7,000/- per month in the present case and so it is.

19. In the present case on hand, it is the case that the claimant has suffered injuries to head, fracture of shaft of right femur, grievous injury to the right knee, injury to the mouth, jaw and teeth were lost and also sustained injury to the left leg and on other parts of the body. He examined PW2 & 3 - Doctors, who are Orthopedic and General Surgeon, after clinical assessment and verification of the medical records of the treatment of the claimant, have assessed disability at 35% to 40% as per their disability certificate issued and produced at Ex.P16 and P17. The medical records of discharge is produced at Ex.P8. Wound certificate is also produced at Ex.P9. All these documents clearly discloses similar injuries as described in the disability certificate issued by PW2 and 3 - Doctors, with regard to fracture and head injuries sustained by the claimant in the road traffic accident.

20. The two doctors, who adduced evidence as PW2 and 3 are not the doctors who treated the claimant, but however, they are experts in their field and given opinion on the basis of the available documents with regard to disability sustained by the claimant at 35% to 40%. If the Insurance Company wants to disbelieve the experts opinion provided by the doctors – PW2 and 3, they ought to have been examined their own Panel doctor specifically to prove that the assessment made by PW2 and 3, which is wrong or in the alternative place the said medical records before the Panel of doctors and according to their opinion or secure second opinion on the disability certificates - Ex.P16 & P17 issued by doctors PW2 and 3 and thereafter, place all the relevant material before the Court for assessment. The Courts are not experts in the field of assessment of disability and Courts will have to depend upon the opinion of the doctors who treat the claimant.

21. In the present case on hand, the Insurance Company has not provided any material with regard to disability of the claimant by obtaining second opinion or

any opinion of the Panel doctors of the Insurance Company. When that being the case it would be improper to rely on the assessment or judgment made by the Tribunal by reducing the disability to the extent of 12% on the basis of taking 12% + 12%, which is without any medical knowledge and logical conclusion.

22. Even if 70% is taken and the same is divided into three parts, it would be 23%, but in the present case the said mathematical calculation is made on a straight jacket formula to assess the medical disability of a person. Both the doctors – PW2 and 3 have stated that there could be disability of 35% to whole body. Therefore, it would be safe for this Court to take disability at 35% to the whole body, on the evidence of both doctors examined as PW2 and 3, despite having not treated the claimant.

23. In the present case on hand, the learned Counsel for claimant contended that with regard to awarding of loss of future prospectus and relying on the judgment of the Hon'ble Apex Court in the case of ERUDHAYA PRIYA vs STATE EXPRESS TRANSPORT

CORPORATION LIMITED reported in 2020 SCC ONLINE SC 601.

24. In view of the judgment of the Hon'ble Apex Court, wherein it is held that future prospects would be awarded under the facts and circumstances of each case and considering the facts and circumstances of a particular case, where the injuries are 100% as mentioned in the case of the Apex Court. I am not inclined to agree with the argument of the learned Counsel for the claimant because in the present case the claimant suffered disability at 35% to the whole body. Further, it is not the case of the claimant that he is in such a precarious condition or in a vegetative state, cannot do any work in future and the disability is more than 80% to the whole body. Of course, if the claimant is bed ridden and depending upon the third person for his day to day activities and he is in a vegetative state, definitely he is entitled to future prospects, which requires to be awarded. But in the present case no such facts are pleaded and no such material produced by the claimant by way of doctors evidence or medical records. I am not inclined to accept

the said contention and I agree with the arguments of the learned Counsel for Insurance Company.

25. Accordingly, the claimant would be entitled to compensation under the head loss of future earning capacity in a sum of **Rs.5,29,200/-** (Rs.7,000/- X12X18X35%) as against a sum of Rs.3,11,040/- awarded by the Tribunal.

26. Towards pain and suffering the Tribunal has awarded a sum of **Rs.1,20,000/-**, which is just and reasonable and the same is retained and not interfered.

27. Under the head loss of amenities and enjoyment in life, the Tribunal has awarded a sum of Rs.10,000/-, which is on the lower side. I deem it proper to award a sum of **Rs.50,000/-** under this head.

28. With regard to medical and other expenses Tribunal has awarded **Rs.1,16,200/-** based on the material documents placed before Court at Ex.P11. Hence, the same does not call for interference and it is retained.

29. The Tribunal awarded a sum of **Rs.15,000/-** towards attendant charges, food, nourishment and

conveyance expenses, which is just and reasonable and the same does not call for interference and it is retained.

30. Towards loss of income during period of treatment the Tribunal awarded a sum of **Rs.24,000/-**, which is also just and reasonable and hence, the same is retained.

31. The Tribunal has not awarded any compensation under the head future medical expenses. The doctor has stated that for removal of implants Rs.50,000/- is required. I deem it proper to award a sum of **Rs.50,000/-** under this head.

32. In view of the above discussions, the claimant would be entitled for enhancement of compensation in a sum of **Rs.9,04,400=00** as against Rs.5,96,240/- awarded by the Tribunal, as mentioned in the table below:

SL. NO.	HEAD	AMOUNT (in Rs.)
01.	TOWARDS PAIN AND SUFFERING	1,20,000=00
02.	TOWARDS MEDICAL EXPENSES	1,16,200=00
03.	TOWARDS ATTENDANT CHARGES, FOOD, NOURISHMENT AND CONFERNACE EXPENSES	15,000=00

04.	TOWARDS LOSS OF FUTURE EARNING CAPACITY (Rs.7,000/-x12x18x35%)	5,29,200=00
05.	TOWARDS LOSS OF AMENITIES AND ENJOYMENT IN LIFE	50,000=00
06.	TOWARDS LOSS OF INCOME DURING LAID OFF PERIOD	24,000=00
07.	TOWARDS FUTURE MEDICAL EXENSES	50,000=00
	<b>TOTAL</b>	<b>9,04,400=00</b>

33. Accordingly, I pass the following :

**ORDER**

- i) The Appeal preferred by the Insurance Company in MFA No. 200521/2018, is dismissed.
- ii) The appeal filed by the claimant in MFA CROB NO.200043/2018, is allowed-in-part;
- iii) The judgment and award dated 02.11.2017 passed by the Principal Senior Civil Judge and MACT at Kalaburagi in MVC No.158/2014, is modified;
- iv) The claimant is entitled for total compensation of **Rs.9,04,400=00** as

against Rs.5,96,240/- awarded by the Tribunal;

- v) The amount of compensation shall be paid by the Appellant – Insurance Company along with 6% interest within a period of SIX weeks from the date of receipt of a certified copy of the order before the Tribunal;
- vi) All other terms and conditions with regard to apportionment and deposit as directed by the Tribunal shall stand intact;
- vii) Registry to transmit the amount in deposit and the trial Court records to the concerned jurisdictional Tribunal forthwith.

**Sd/-  
JUDGE**

VK