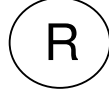




**IN THE HIGH COURT OF KARNATAKA,  
KALABURAGI BENCH**



**DATED THIS THE 4<sup>TH</sup> DAY OF FEBRUARY, 2025**

**BEFORE**

**THE HON'BLE MR. JUSTICE C M JOSHI**

**MISC. FIRST APPEAL NO.200552 OF 2020 (MV-I)**

**BETWEEN:**

THE BRANCH MANAGER,  
NEW INDIA ASSURANCE CO. LTD.,  
BRANCH OFFICE, BIDAR,  
(NOW BY DULY CONSTITUTED ATTORNEY,  
REGIONAL OFFICE, PINTO ROAD, HUBLI).

...APPELLANT

(BY SMT. PREETI PATIL MELKUNDI, ADVOCATE)

**AND:**

1. RAMESH S/O VISHWANATH DAVKATTE,  
AGE: 50 YEARS, OCC: SOCIAL WORKER AND  
AGRICULTURE,  
R/O: AURAD-B,  
TQ. AURAD-B, DIST. BIDAR-585 401.
2. SHIVAJI S/O GURUNATH BOGAR,  
AGE: MAJOR, OCC: BUSINESS AND AGRICULTURE,  
R/O: H.NO.5-75, AURAD-B, PROPER,  
DIST. BIDAR-585 401.

...RESPONDENTS

(BY SRI. SANDEEP V. PATIL, ADV. FOR R1;  
V/O DTD. 22.01.2025, NOTICE TO R2 IS DISPENSED WITH)





THIS MFA IS FILED UNDER SECTION 173 (1) OF THE MOTOR VEHICLES ACT, PRAYING TO ALLOW THE ABOVE APPEAL BY SETTING ASIDE THE IMPUGNED JUDGMENT AND AWARD DATED 16.09.2019 IN MVC.NO.157/2016 PASSED BY THE SENIOR CIVIL JUDGE AND JMFC AND MACT, AT AURAD-B.

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

CORAM: HON'BLE MR. JUSTICE C M JOSHI

**ORAL JUDGMENT**

(PER: HON'BLE MR. JUSTICE C M JOSHI)

Heard the learned counsel for the appellant and the learned counsel for the respondent No.1.

02. Being aggrieved by the judgment and award in MVC.No.157/2016 by the learned Senior Civil Judge and JMFC and MACT, Aurad-B, the insurance company is before this Court in appeal.



03. The factual matrix of the case are that on 27.11.2015 at 11:30 p.m. the driver of the Bolero Jeep bearing Reg.No.KA-38-M-2752 drove the said vehicle in high speed and negligent manner and lost control over the said vehicle and made it to fall into a ditch by the side of the road. The petitioner who was an inmate of Jeep, had suffered grievous injuries like fracture of femur, radius and ulna. He was shifted to Government Hospital, Aurad. Thereafter, to higher facilities at Bidar, then again he was sent to Hyderabad for further treatment at Max Cure, Hospital. The police registered a case in crime No.234/2015 and investigation was conducted. The petitioner contended that he was an agriculturist having landed properties and had a monthly income of Rs.25,000/-; due to the accidental injuries, he is unable to perform as before. Therefore, there is a functional disability to the petitioner and sought an appropriate compensation from the owner and insurer of the vehicle.



04. The petition was resisted by the respondent No.2 – insurance company alone. The respondent No.1 remained ex-parte. The respondent No.2 – insurance company contended that the Bolero Jeep was permitted for personal use, but the petitioner had boarded the same as a fare paying passenger. Therefore, there is violation of terms and conditions of the policy. Moreover, the effective and valid driving license was also not held by the driver of the Jeep. Inter-alia it also contended that the compensation claimed is exorbitant, imaginary and untenable in law. The age, income and occupation of the petitioner was also denied.

05. On the basis of the above contentions, the Tribunal framed the following issues:-

*I. Whether petitioner prove that on 27.11.2015 petitioner and Vinayak Jagadale were traveling in Bolero Jeep bearing No.KA-38-M-2752 from Gulbarga to Aurad, at about 11.30 p.m. on Aurad-Boral road, near bridge, driver of said jeep drove vehicle in rash and negligent manner, lost control over the vehicle,*



*in result the vehicle fell into a big ditch and in the accident, the petitioner has suffered grievous and fatal injures to both hands, legs, chest and forehead as stated in the petition.?*

*II. Whether the petitioner proves his age and income.?*

*III. Whether petitioner is entitled for compensation.?. If so what is the quantum and from whom.?*

*IV. Whether respondent No.2 proves that owner of the vehicle has violated policy condition and used the vehicle for commercial purpose.?*

*V. Whether respondent No.2 proves that owner of vehicle has violated Sec. 180, 149(C), 136(6) of IMV Act.?*

*VI. What order or award.?*

06. The petitioner was examined as PW.1 and one witness was examined as PW.2 and Ex.P.1 to Ex.P.36 were marked on behalf of the petitioner. No evidence was led by the respondents.



07. The Tribunal answering issue Nos.1 to 3 in the affirmative and issue Nos.4 and 5 in the negative, proceeded to award the compensation of Rs.10,11,000/- under the following heads :-

Sl. No.	Heads	Compensation Awarded
1.	Towards pain and sufferings	Rs.25,000/-
2.	Medical Expenses (as Global Medical Expenses in all)	Rs.50,000/-
3.	Loss of income Towards partial disablement of 20% Rs.72,000 multiplier by 13	Rs.9,36,000/-
	Total	Rs.10,11,000/-

08. Being aggrieved by the same judgment, the insurance company is before this Court in appeal.

09. The learned counsel appearing for the appellant would submit that the impugned judgment is illegal, incorrect, perverse, arbitrary and without application of judicious mind. It is submitted that the impugned judgment and award is mechanical. The Tribunal has confused itself as to whether there should be 1/3<sup>rd</sup> deduction towards personal expenses. Therefore, the



impugned judgment does not make a proper meaning. It is contended that the Tribunal though says that 1/3<sup>rd</sup> has to be deducted towards personal expenses, it multiplied the compensation by applying the multiplier of 13. Therefore, it is contended that the entire calculation of the compensation amount by the Tribunal is totally erroneous. The compensation under the relevant heads are also not assessed by it. Therefore, the learned counsel for the appellant sought for a re-assessment of the compensation amount.

10. Per contra, the learned counsel appearing for the petitioner has supported the impugned judgment and has tried to defend the quantum of the compensation awarded.

11. The perusal of the impugned judgment of the Tribunal would show that nowhere in the entire judgment, the nature of the injuries suffered by the petitioner is described. It is relevant to note that the impugned judgment refers to the injuries as grievous injuries, but it



nowhere mentioned what are those grievous injuries, which of them have contributed to the functional disability of the petitioner. Therefore, the basis on which the disability was assessed is not available in the judgment. Further, it is worth to note that the Tribunal reiterated the deposition of PW.1, but in Para No.20 it holds that the notional income is held to be Rs.9,000/- per month, which is Rs.1,08,000/- per annum. Then it deducts 1/3<sup>rd</sup> from the same and therefore yearly income is calculated at Rs.72,000/-. It is not known why this 1/3<sup>rd</sup> has been deducted. While considering Ex.P.34 - disability certificate issued by PW.2, it only narrates what has been stated by PW.2, but abruptly it comes to the conclusion that it has no hesitation to hold that the disability to the limb is 20%, even though PW.2 states that it is 31%. While considering the issue No.3 regarding calculation, the Tribunal awards a sum of Rs.25,000/- towards pain and suffering, Rs.50,000/- towards medical expenses and calculates the loss of income as Rs.72,000/- x 13, which comes to Rs,10,11,000/-. It is worth to note that the operative



portion of the order is also for Rs.10,11,000/-. In other words, it is not known how the calculation of Rs.10,11,000/- is arrived when Rs.72,000/- is multiplied by 13.

12. Thus, it is evident that the Tribunal has not applied its mind and I find considerable force in the argument of the learned counsel for the appellant.

13. A perusal of the deposition of PW.2 - medical officer coupled with the wound certificate produced at Ex.P.4 and the discharge summary at Exs.P.10 and 11 would show that the petitioner had sustained compound Grade-I comminuted intra articular fracture of radius, ulna lower 1/3<sup>rd</sup> fracture on the right forearm and he was treated with closed reduction internal fixation with wire fixation and conservative mode treatment for right ulna was adopted. The petitioner was discharged with POP slab applied and he was in patient for a period from 28.11.2015 to 01.12.2015. The second discharge summary at Ex.P.11 would show that there was deformity



in the right ulna and there was a non-union. Therefore, he was again admitted to the hospital and open reduction internal fixation was done with tubular plate. He was inpatient for one day.

14. It is pertinent to note that when the nature of the injuries suffered by the petitioner is considered in the light of the deposition of the PW.2, it can safely be said that there is a functional disability of 20%. The petitioner had sustained a non-union and as such the physical disability stated by PW. 2 at 31% can be held to translate into the functional disability of 20%.

15. The petitioner claims that he was an agriculturist, but he has not produced any documentary evidence to prove his income. Therefore, the notional income has to be considered.

16. The guidelines issued by the KSLSA for settlement of disputes before Lok-Adalath prescribe a notional income of Rs.8,000/- per month for the year 2015. In umpteen number of judgments, this Court has



held that the guidelines issued by the KSLSA are in general conformity with the wages fixed under the Minimum Wages Act. Therefore, they are acceptable. Hence, the notional income of the petitioner is considered at Rs.8,000/-.

17. Therefore, the compensation under the head of loss of future earning is calculated as Rs.8,000/- x 12 x 20% x 14 = Rs.2,68,800/- by applying the multiplier 14 for the age of 44 years.

18. The petitioner having suffered the above fractures, he is entitled for compensation of Rs.25,000/- under the head of pain and suffering.

19. The petitioner has produced medical bills at Ex.P.12 for Rs.58,000/-, Ex.P.13 for Rs.38,512/-, Ex.P.16 for Rs.440/-, total for worth of Rs.96,952/-. The bills at Ex.p.14, 15, and 17 are advance bills and as such they are excluded. Hence, the petitioner is entitled for Rs.97,000/- under the head of medical expenses.



20. In the light of the nature of the injuries, it can be safely said that he was unable to resume his work for 03 months. Hence, loss of income during laid up period, is calculated Rs.8,000/- x 3 = 24,000/-.

21. The petitioner is also entitled for a sum of Rs.25,000/- under the head of loss of amenities in life.

22. The petitioner is also entitled for a sum of Rs.15,000/- under the head of conveyance, nourishment, attendant charges etc.,

23. Therefore, the petitioner is entitled for total compensation of Rs.4,54,800/- under the following heads:-

Sl. No.	Heads	Compensation Awarded by this Court
1.	Loss of future income	Rs.2,68,800/-
2.	Pain and suffering	Rs.25,000/-
3.	Medical expenses	Rs.97,000/-
4.	Loss of income during the laid up period.	Rs.24,000/-
5.	Loss of amenities	Rs.25,000/-
6.	Towards conveyance, nourishment attendant charges etc.,	Rs.15,000/-
	Total	Rs.4,54,800 /-



24. Before parting with this judgment, it is necessary to note that, the nature of the injuries suffered by the petitioner has not been properly considered by the Tribunal in the impugned judgment. In umpteen numbers of judgments of the Tribunals, this Court observes that the nature of the injuries and the manner how it would translate into functional disability are seldom discussed. The Tribunals are jumping to the conclusion on the basis of the disability stated by a medical officer. A non mentioning of the nature of the injuries suffered; or describing them simply as grievous or simple; would not reflect that the Tribunals had applied their mind to the nature of the injuries. Therefore, it is expected from the Tribunals that the nature of the injuries suffered and the manner how it will translate into functional disability is to be stated, in the facts and circumstances, especially with reference to the avocation of the petitioner. It is also obvious that the medical officers would give their opinion in respect of the physical disability, but they are not



capable of giving the functional disability as the avocation of the injured is not brought before them. These aspects have been elaborately discussed by the Honb'le Apex court in the case of ***Raj Kumar vs. Ajay Kumar and another***<sup>1</sup>. In a recent judgment in the case of ***Sidram vs. Divisional Manager, United India Insurance Company***<sup>2</sup>, the Apex Court of the Country has again reiterated and discussed these requirements. Therefore, it is necessary that the officers who are manning the Tribunals are to be sensitized with the requirement of mentioning the nature of the injuries suffered by the injured in the judgments. Without the description of injuries and co-relating it to the disability, it is not possible to infer that the Tribunals had applied their mind to assess the functional disability.

25. Hence, appeal deserves to be allowed in part.

Therefore, the following;

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<sup>1</sup> (2011) 1 SCC 343

<sup>2</sup> 2023 (3) SCC 439



**ORDER**

- I. The appeal is allowed in part.
- II. The appellant is entitled for a sum of Rs.4,54,800/- instead of Rs.10,11,000/- for the total compensation along with interest at the rate of 6% p.a. from date of petition till the date of deposit.
- III. Rest of the order passed by the Tribunal regarding deposit etc., remain unaltered.

Registry to send a copy of this judgment to the Karnataka Judicial Academy for information in devising training programmes.

Sd/-  
**(C M JOSHI)**  
**JUDGE**

KJJ  
List No.: 1 Sl No.: 74  
CT: AK