

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 1ST DAY OF JUNE, 2026

PRESENT

THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

MISCELLANEOUS FIRST APPEAL NO.102422 OF 2016

BETWEEN:

THE DIVISIONAL MANAGER
N.W.K.R.T.C. GADAG DEPOT., GADAG.
REP. BY CHIEF LAW OFFICER,
N.W.K.R.T.C., CENTRAL OFFICE, HUBBALLI.

...APPELLANT

(BY SRI M.K. SOUDAGAR, ADVOCATE)

AND:

AJAYA PARASHRAM NALAVADE
AGE: 24 YEARS, OCC: CAR DRIVER,
R/O: PW QUARTER NO.7,
BEHIND OF MARKET POLICE STATION,
BELAGAVI.

...RESPONDENT

(BY SRI SANJAY S. KATAGERI, ADVOCATE)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173 (1) OF THE MOTOR VEHICLES ACT, PRAYING TO SET ASIDE THE JUDGMENT AND AWARD DATED 08.06.2016 PASSED IN MVC NO.544/2014 ON THE FILE OF THE VI-ADDITIONAL DISTRICT AND SESSIONS JUDGE AND MEMBER, ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL, BELAGAVI, BY ALLOWING THIS APPEAL WITH COST AND GRANT SUCH OTHER AND/OR FURTHER RELIEF'S, AS THIS COURT DEEMS FIT TO GRANT IN THE FACTS AND CIRCUMSTANCES OF THE CASE IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL IS COMING ON PRONOUNCEMENT AND THE SAME HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 17.03.2026, THIS DAY, DELIVERED THE FOLLOWING:

CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI)

The Divisional Manager, NWKRTC, Gadag Depot (in short, 'the Corporation'), who is the respondent in MVC No.544/2014 has directed this appeal against the judgment and award dated 08.06.2016 passed by learned VI Additional District and Sessions Judge and Additional MACT, Belagavi (hereinafter referred as 'the Tribunal').

2. The claimant namely Sri Ajay Parasharam Nalavade maintained the petition in MVC No.544/2014 under Section 166 of Motor Vehicles Act seeking compensation of Rs.5,00,000/- from the Corporation on the ground that on 25.02.2014 at about 1.45 a.m., he met with an accident near Central Bus Stand Main Gate, Belagavi due to actionable negligence on the part of the driver of NWKRTC Bus bearing No.KA-42-F-1559 and sustained injuries in the said incident.

3. On service of notice, the Corporation appeared before the Tribunal through its counsel, filed their objection to the claim petition and contested the petition. Based on the pleadings of the parties, the Tribunal framed relevant issues, held enquiry in the matter and disposed of the claim petition on

merits of the case. In the impugned judgment, the Tribunal held that the accident in question occurred due to sole negligence of the driver of the bus and proceeded to allow the claim petition in part holding that the claimant is entitled to compensation of Rs.7,60,000/- together with interest at the rate of 9% per annum on Rs.7,45,000/- from the date of petition till its realization. Feeling aggrieved, the Corporation has preferred this appeal.

4. Sri M.K.Soudagar, learned Counsel for the Corporation, vehemently submitted that the Tribunal has grossly erred in holding that the driver of the bus was solely responsible for the accident ignoring the charge sheet filed against the claimant. He submitted that based on such charge sheet, the Tribunal ought to have held the claimant contributed for the accident and held him liable to an extent of 75%. He further submitted that the Tribunal has erred in assessing monthly income of the claimant at Rs.7,500/- in the absence of documentary evidence. He also contended that the Tribunal has grossly erred in assessing disability of the claimant at 30% and that the compensation awarded by the Tribunal is on higher side and exorbitant.

5. Per contra, Sri Sanjay S. Katageri, learned Counsel appearing for the Claimant, vigorously submitted that the Corporation is not entitled to raise plea of contributory negligence in the appeal as they have failed to raise such a contention in their pleading. He submitted that the claimant has adduced sufficient evidence on record to prove the negligence exclusively on the part of the driver of the bus and as such, the Tribunal rightly answered the question of negligence against the Corporation. He further supported the findings recorded by the Tribunal in connection with determination of the compensation and prayed to maintain the award passed by the Tribunal.

6. Having heard the arguments of the counsel appearing for both sides and considered the case papers, the following points arise for the consideration of this Court:

- i) Whether the Tribunal is justified in holding that the driver of the bus was solely responsible for the accident?
- ii) Whether the Corporation has made out valid grounds to modify or reduce the compensation awarded by the Tribunal?

Point Nos.(i) :

7. The case of the claimant is that on 25.02.2014 at about 1.45 a.m., while he was going on a motorcycle bearing No.KA-22-EG-8286 from Killa towards Belagavi Central Bus Stand, near Central Bus Stand Main Gate, all of a sudden the driver of bus bearing No.KA-42-F-1559 came out of the bus stand in a rash and negligent manner and dashed the bus against his vehicle. As a result, he fell down and sustained injuries. On appreciating the pleadings of the parties and the materials available on record, the Tribunal upheld the contention of the claimant and attributed entire negligence to driver of the bus.

8. During the course of argument, learned Counsel for the Corporation drew the attention of the Court to the police papers marked as Ex.R1 to R6 along with the testimony of the bus driver, and contended that primarily the claimant was responsible for the accident. The documents produced at Ex.R1 to R6 go to show that initially the jurisdictional police had registered a case against the claimant in connection with the accident based on a complaint lodged by driver of the bus. On completion of the investigation, they filed a charge sheet against the claimant accusing him of being responsible for the

accident. At the same time, the documents produced by the claimant at Ex.P1 to P6 point out that even the claimant had lodged a complaint against bus driver in connection with the same incident, in which the jurisdictional police registered another case, conducted an investigation and filed a charge sheet against driver of the bus, stating that he was responsible for the accident. Thereby, it is clear that the jurisdictional police did not conduct a proper investigation. Otherwise, they could not have filed two charge sheets in respect of one incident - one against the claimant and another against the bus driver. In view of the foregoing, this Court holds that the above referred police papers cannot be considered to decide the question of negligence or contributory negligence.

9. The Corporation examined the bus driver to place on record his version regarding the cause of the accident. The said witness, i.e., RW-1, stated that the claimant, who was riding the motorcycle in rash and negligent manner, suddenly applied the brakes on observing the bus coming out of the bus stand, as a result his motorcycle skidded and he fell on the road. However, in their objection apart from generally denying the averments of the petition, the Corporation did not plead any defense including the version narrated by RW-1. As such,

no weight can be attached to RW-1's statements without necessary pleading.

10. Whereas, in his evidence, the claimant reiterated the averments of the claim petition and stated that when he reached near Central Bus Stand on his motorcycle, the bus driver suddenly came out of the bus stand, driving in a rash and negligent manner, dashed into him and caused the accident. In the facts and circumstances narrated above, this Court finds no reason to disbelieve the claimant's version attributing negligence to the bus driver. Hence, Point No.(i) is answered in the affirmative.

Point No.(ii) :

11. The Corporation has also challenged the impugned judgment and award on the ground that the compensation awarded by the Tribunal is exorbitant and excessive. According to them the Tribunal grossly erred in assessing claimant's monthly income at Rs.7,500/- per month and his physical disability at 30%. They submitted that the amounts awarded under conventional heads are on higher side.

12. The Tribunal awarded compensation of Rs.7,60,000/- to the claimant under the following heads:

Sl.No.	Head	Amount (in Rs.)
1.	Pain and sufferings	50,000.00
2.	Loss of future happiness and amenities	1,00,000.00
3.	Loss of income during the treatment period	30,000.00
4.	Incidental charges	28,000.00
5.	Medical Bills	51,000.00
6.	Loss of future income	4,86,000.00
7.	Future medical expenses	15,000.00
	Total	7,60,000.00

13. The case of the claimant is that he was aged 21 years at the time of the accident and he was earning more than Rs.12,000/- per month as a car driver. The Claimant adduced no evidence to corroborative his claim regarding his avocation or his income at the relevant period. In such circumstances, the Tribunal relying on the ruling in Smt. Narasamma Vs Baburao and Others (2015 Kant. MAC 20 (Kant) took claimant's notional income as Rs.7,500/- per month. Even the KSLSA Chart for Lok-Adalath settlements suggests notional monthly income of Rs.7,500/- for the year 2014. Further, in the wound certificate (Ex.P5) and the discharge card (Ex.P7) the claimant's age was shown as 21 years. The Corporation has not seriously disputed claimant's age. In view of the above, it is held that the Tribunal correctly took the claimant's income as Rs.7,500/- per month and adopted a multiplier of 18.

14. The discharge summary produced at Ex.P-7 indicates that the claimant suffered fracture of shaft upper 3rd femur displaced on right side with soft tissue injury on right elbow. As per the said document the claimant was treated with CRIM with IMIL nailing. The Tribunal, taking into consideration nature of injuries sustained by the claimant, awarded a sum of Rs.50,000/- to the claimant under the head of pain and suffering. This Court finds no error in that order.

15. The claimant contends that due to injury sustained in the accident, he suffered permanent physical disability and now he is unable to work as before. In support of this contention, the claimant examined a doctor as PW-2. In his evidence, PW-2, Dr.Annasaheb stated that on subjecting the claimant for X-ray examination, he found that fracture is mal-united. He further stated that he had observed functional disabilities in the claimant such as pain, restriction in right hip movement, muscle wasting and shortening of right lower limb. He opined that the claimant has a permanent physical disability amounting to 35% to the right lower limb. While appreciating PW-2's testimony the Tribunal noted that he did not give proper reasons or calculations to support his assessment of the claimant's percentage of disability. Even then, the Tribunal

having regard to the claimant's avocation as coolie and the physical disabilities stated by PW-2, assumed the claimant's functional disability to be 30%.

16. Undisputedly, the claimant suffered only one fracture i.e., fracture of upper 1/3rd shaft of right femur. PW-2 made it clear that he was not a treating doctor. He examined the claimant on 26.07.2015 only for the purpose of assessing claimant's permanent physical disability. Further, according to PW-2 the claimant's total permanent physical disability is about 35% to his right lower limb. Normally, for a weight-bearing limb, one-third of the permanent disability to that limb is taken as the percentage of permanent disability to the whole body. Applying this formula, the claimant would have only 12% permanent physical disability of the whole body. Hence, the same should be taken as the percentage of permanent disability for the purpose of calculating loss of future income. Thus, on recalculation, the loss of future income comes to Rs.1,94,400/- (Rs.7,500 x 12 x 18 x 12%). Accordingly, the compensation awarded under the head of loss of future income is reduced to Rs.1,94,400/-.

17. The Tribunal awarded a sum of Rs.1,00,000/- to the claimant under the head of loss of future happiness and

amenities. In the considered view of this Court, the compensation awarded under this head is certainly on higher side and disproportionate to nature of injury sustained by the claimant and the permanent physical disability suffered on account of the injury. Hence, the compensation awarded under this head is reduced to a sum of Rs.25,000/-.

18. The Tribunal awarded a sum of Rs.15,000/- under the head of future medical expenses. Having regard to the implants in situ, this Court holds that the compensation awarded under this head is proper.

19. The Tribunal awarded a sum of Rs.30,000/- under the head of loss of income during the period of treatment and Rs.28,000/- under the head of incidental charges. The materials on record indicate that the claimant was an inpatient for 27 days. Further, having suffered fracture of shaft of right femur, the claimant required about four months for healing and recovery. As such, this Court finds no reason to disturb the compensation awarded for loss of income during the period of treatment. However, this Court of the view that the Tribunal's award for incidental charges is excessive. Accordingly, it is reduced to Rs.20,000/-.

20. The Tribunal awarded a sum of Rs.51,000/- towards medical expenses which is based on documentary evidence produced at Exs.P8 to P10. Hence, same is retained. Accordingly, Point No.(ii) is answered partly in the affirmative and held that the claimant is entitled to total compensation of Rs.3,85,400/- in place of Rs.7,60,000/- awarded by the Tribunal under the following heads:

Sl.No.	Head	Amount (in Rs.)
1.	Pain and sufferings	50,000.00
2.	Loss of amenities	25,000.00
3.	Loss of income during the treatment period	30,000.00
4.	Incidental charges	20,000.00
5.	Medical Bills	51,000.00
6.	Loss of future income	1,94,400.00
7.	Future medical expenses	15,000.00
	Total :	3,85,400.00

21. Learned Counsel for the Corporation vehemently submitted that the rate of interest awarded by the Tribunal at 9% per annum is on higher side. This claim pertains to the accident occurred on 25.02.2014 and the claim petition was filed on 19.03.2014. Still the claim is not finally settled. Thus, taking into consideration the delay in disposal of the claim, this Court finds no reason to reduce the rate of interest awarded by the Tribunal.

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

ORDER

- (i) Appeal is partly allowed.
- (ii) The judgment and award dated 08.06.2016 passed in MVC No.544/2014 by learned VI Additional District and Sessions Judge and Additional MACT, Belagavi is modified.
- (iii) The claimant is entitled to total compensation of Rs.3,85,400/- in place of Rs.7,60,000/- awarded by the Tribunal together with interest thereon at the rate of 9% per annum from the date of petition till its realization.
- (iv) Draw modified award accordingly.
- (v) The registry is directed to transmit the amount, if any, deposited in this appeal to concerned Tribunal along with trial court record at the earliest.

**Sd/-
(B. MURALIDHARA PAI)
JUDGE**

RKM,YAN
CT: CMU