IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE R DEVDAS

AND

THE HON'BLE DR. JUSTICE K.MANMADHA RAO

MISCELLANEOUS FIRST APPEAL NO. 3500 OF 2025 (MV-I)

BETWEEN:

MOHANKUMAR S.
S/O LATE SHIVARAMAIAH
AGED ABOUT 51 YEARS
R/AT D. NO. 2318
4TH MAIN, 2ND STAGE
VINAYAKANAGARA
MYSURU – 570 012.

...APPELLANT

(BY SRI PATRICIA GONSALVES, ADVOCATE)

AND:

1. SHIVALINGU M.K.
S/O LATE KASAREGOWDA
AGED ABOUT 54 YEARS
R/AT MALLEGOWDANAKOPPALU VILLAGE
SRIRANGAPATNA TALUK
MANDYA DISTRICT – 571 401
(DRIVER CUM OWNER OF
HERO HONDA PASSION PRO
MOTORCYCLE BEARING
NO.KA-09/EQ-7261)

2. THE NEW INDIA ASSURANCE CO. LTD.
NO.876/C, 2ND FLOOR
JLB ROAD, OPP. LAKSHMIPURAM
POLICE STATION, LAKSHMIPURAM
MYSORE – 570 004
(INSURER OF MOTORCYCLE BEARING
NO.KA-09/EQ-7261)

REP. SATHYA PRAKASH P.N.
ASSISTANT MANAGER.

...RESPONDENTS

(BY SMT. MANULA N. TEJASWI, ADVOCATE FOR R2;
R1-SERVED AND UNREPRESENTED)

THIS MFA IS FILED U/S.173(1) OF MV ACT, AGAINST THE JUDGMENT AND AWARD DT.11.11.2024 PASSED IN MVC NO.970/2021 ON THE FILE OF THE PRINCIPAL SMALL CAUSES AND SENIOR CIVIL JUDGE, MACT, MYSURU, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 28.08.2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE R DEVDAS
and
HON'BLE DR. JUSTICE K.MANMADHA RAO

<u>CAV JUDGMENT</u>

(PER: HON'BLE DR. JUSTICE K.MANMADHA RAO)

This appeal is by the appellant/claimant seeking for modification and enhancement of compensation granted by the Principal Small Causes and Senior Civil Judge and MACT, Mysuru (hereinafter referred to as “the tribunal”), partly allowing the petition by judgment and award dated 11.11.2024 passed in MVC No.970/2021.

2. Though the matter is listed for orders, with the consent of learned counsel for both the parties, the matter is taken up for final hearing.

3. The parties are referred to as per their ranking before the Tribunal for easy reference.

The brief facts of the case are as under:

4. On 02.08.2021 at about 7.30 p.m., the petitioner was proceeding as pedestrian on the left side of the road, near R.K. Corner, High Tension Double road, Vijayanagara 2nd stage, Mysuru. The rider of the motorcycle bearing No. KA-09/EQ-7561 - Respondent No. 1 came in a rash or negligent manner and dashed against the petitioner from the hind side, due to the impact, petitioner sustained grievous injuries, i.e., communited fracture of radial head of right elbow and other simple injuires to right hand and knee and other parts of the body. He was admitted to Brindavan Hospital, Jayalakshmipuram, Mysuru and underwent treatment as inpatient from 02.08.2021 to 04.08.2021 and underwent a procedure for right eblow and taken follow up treatment. He was hale and healthy

before the accident and earning Rs.1,00,000/- p.m., working as Class-II Electrical Contractor and Electrical Wireman and maintaining his family. Due to accident, his earnings have been reduced and due to disability, he is unable to lead normal life and lost his contract work due to physical disability. A claim petition under Section 166 of M.V. Act, 1989 was filed seeking for compensation of Rs.44,95,000/-.

5. After issuance of notice, the respondents appeared through their respective counsel and filed written statements along with objections to main petition. In order to substantiate the case of the petitioner, the petitioner got himself examined as PW-1 and got marked documents Ex.P1 to P19 and petitioner examined Dr.Ravindranath K as PW-2 through whom Ex.P20 and P21 documents got exhibited. The respondent No.2/insurance company examined its Assistant Manager as RW.1 and got marked Ex. R1 and R2 documents. On the basis of the pleadings of the parties, the Tribunal framed the issues and answered. Further, the petition was partly allowed

awarding a total compensation of Rs.3,22,700/- to the petitioner with interest at the rate of 6% per annum from the date of petition till realization. The owner and the Insurance Company of the offending vehicle were jointly and severally held liable and the respondent No.2/insurance company was liable to indemnify the respondent No.1.

6. Learned counsel for the appellant submits that the appellant has sustained grievous injuries i.e., communited fracture of radial head of right elbow and other simple injuires to right hand and knee and other parts of the body. He was admitted to Brindavan Hospital, Jayalakshmipuram, Mysuru and underwent treatment as inpatient from 02.08.2021 to 04.08.2021 and underwent a procedure for right eblow and taken follow up treatment. Further, he has sustained 23.5% disability of the right upper limb as per P.W.2/Orthopaedic Surgeon, but the Tribunal has erroneously taken 18% disability to the right upper limb and for the whole body to be 6%, which is on very lower side.

7. It is further contended by learned counsel for the appellant that the GSTR marked as Ex.P16 and Income Tax Returns for Years 2018-19, 2019-2020, 2020-21 and 2021-22 marked as Ex.P17 submitted by appellant/petitioner shows annual income of Rs.4,41,234/-, Rs.4,48,676/-, Rs.4,16,600/- and Rs.4,86,500/- respectively. Therefore, for determination of annual income and loss of future income, an average of four years' income could have been considered. He has further contended that the compensation awarded under different heads are also on the lower side. Accordingly, sought to allow the appeal and enhance compensation by modifying the judgment and award passed by the Tribunal.

8. Refuting the submissions of learned counsel appearing for the appellant, learned counsel for the respondent No.2 – Insurance Company submits that the Tribunal after considering entire material placed before it, awarded appropriate compensation. It is further

contended that the appellant had produced ITR for four consecutive years and even after sustaining injuries in the accident, considering the annual income of appellant for the period 2021-22, which is shown as Rs.4,86,500/- as per ITR, which is more compared to the annual income for the year 2018-19 which is Rs.4,41,234/-, there is no loss of future income for the appellant. Therefore, the compensation awarded by the Tribunal towards loss of future income considering notional income, is just and proper and does not call for any interference by this Court. Further, compensation awarded towards different heads is also just and reasonable. Accordingly, the Insurance Company sought to dismiss the appeal.

9. Learned counsel for the Insurance Company has relied upon the case of ***Raj Kumar Vs. Ajay Kumar and another (Civil Appeal No.8981 of 2010). He has relied upon Para Nos.4, 8 and 13*** which is excerpted for reference:

> *"4. The provision of the Motor Vehicles Act, 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the*

extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. (See C. K. Subramonia Iyer vs. T. Kunhikuttan Nair-AIR 1970 SC 376, R. D. Hattangadi vs. Pest 4 Control (India) Ltd. - 1995 (1) SCC 551 and Baker vs. Willoughby - 1970 AC 467).

8. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of *permanent 8 disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this court in* ***Arvind Kumar Mishra v. New India Assurance Co.Ltd.*** *- 2010 (10) SCALE 298 and* ***Yadava Kumar v. D.M.. National Insurance Co. Ltd.*** *- 2010 (8) SCALE 567).*

13. We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."

10. The Tribunal has taken notional income of the claimant at Rs.15,000/- per month as per the chart prepared by the Karnataka State Legal Services Authority. Applying multiplier applicable is '13'. Hence, a sum of Rs.1,40,400/- (1,80,000 x 13 x 6/100) is awarded under

the head 'loss of future income'. The Tribunal has awarded a sum of Rs.30,000/- towards pain and suffering, a sum of Rs.62,300/- towards medical expenses as per the bills produced. Further, a sum of Rs.30,000/- towards diet food and nourishment, attendant and conveyance charges, Rs.15,000/- towards loss of amenities and a sum of Rs.45,000/- towards loss of income during laid up period has been awarded by the Tribunal. Thus, the Tribunal has awarded compensation as under:

1.	Pain and Sufferings	:	Rs.	30,000/-
2.	Medical Expenses	:	Rs.	62,300/-
3.	Diet, food, nourishment, attendant and conveyance charges	:	Rs.	30,000/-
4.	Loss of future earning capacity	:	Rs.	1,40,400/-
5.	Loss of income during laid up period	:	Rs.	45,000/-
6.	Loss of amenities	:	Rs.	15,000/-
	TOTAL	**:**	**Rs.**	**3,22,700/-**

11. As observed by this Court, the date, time and place of the accident are not in dispute. Further, it is also not in dispute that appellant has taken treatment as

inpatient in a private hospital at Mysuru from 02.08.2021 to 04.08.2021 and underwent a procedure for right eblow and taken follow up treatment. It is also not in dispute that he sustained grievous injuries, i.e., communited fracture of radial head of right elbow and other simple injuries to right hand and knee and other parts of the body. It is submitted that he was hale and healthy before the accident and earning Rs.1,00,000/- p.m., working as Class-II Electrical Contractor and Electrical Wireman and maintaining his family. Due to accident, his earnings have been reduced and due to disability, he is unable to lead normal life and lost his contract work due to physical disability.

12. The appellant has examined the treated Doctor as PW-2, who has stated that petitioner has suffered disability to an extent of 23.5% to the right upper limb. The Tribunal has rightly assessed the disability of the appellant at 18% to the right upper limb and the disability of 6% to the whole body taken by the Tribunal is reasonable.

13. In so far as loss of future income is concerned, the learned counsel for respondent has not properly cross-examined P.W.1 to prove the income of the appellant/petitioner. Further, the Tribunal has erroneously taken notional income for the purpose of calculating loss of future income instead of considering average of income as per ITRs for four years, i.e., 2018-19 to 2021-22. As per ITRs marked as Ex.P16 for the years 2018-19, 2019-2020, 2020-21 and 2021-22 marked as Ex.P17 submitted by appellant, the average income of appellant works out to Rs.4,48,252/- (4,41,234 + 4,48,676 + 4,16,600 + 4,86,500 = Rs.17,93,010/- divided by 4) per annum and the income per month works out to Rs.37,354/- (Rs.4,48,252/- divided by 12). Therefore, this Court taking the monthly income as Rs.37,354, as appellant has sustained whole body disability at 6%, applying multiplier '13' for the age group of 46-50, deems it appropriate to awarded **Rs.3,49,633/-** towards loss of future income which is calculated as under:

Rs.37,354/- x 12 x 13 x 6% = 3,49,633/-

14. The Tribunal has awarded a sum of Rs.30,000/- under the head 'Pain and sufferings' and Rs.15,000/- towards loss of amenities, which are just and reasonable. The Tribunal has awarded a sum of Rs.62,300/- towards 'Medical Expenses' which is as per medical bills produced and requires no enhancement. The Tribunal has awarded a sum of Rs.30,000/- towards 'diet, food, nourishment, attendant and conveyance charges', which is just and reasonable.

15. In view of the accidental injuries, the claimant would have taken rest at least for a period of 3 months. Therefore, by taking income of appellant at Rs.37,354/- per month, considering the grievous injuries and fracture, the claimant is entitled for a sum of **Rs.1,12,062/-** (Rs.37,354/- x 3), under the head 'loss of income during laid up period'.

16. Thus, the total compensation is re-determined by this Court under various heads as under:

1.	Pain and Sufferings	:	Rs.	30,000/-

2.	Diet, food, nourishment, attendant and conveyance charges	:	Rs.	30,000/-
3.	Medical Expenses	:	Rs.	62,300/-
4.	Loss of amenities	:	Rs.	15,000/-
5.	Loss of income during laid up period	:	Rs.	1,12,062/-
6.	Loss of future income due to disability	:	Rs.	3,49,633/-
	TOTAL	:	**Rs.**	**5,98,995/-**

On re-determination, the appellant is entitled for total compensation of **Rs.5,98,995/-** as against Rs.3,22,700/- along with interest at the rate of 6% per annum from the date of petition till realization.

17. Accordingly, I proceed to pass the following:

ORDER

i) M.F.A is ***allowed-in-part.***

ii) The judgment and award dated 11.11.2024 in MVC No.970/2021 passed by the Principal Small Causes & Senior Civil Judge & MACT, Mysuru is hereby modified holding that the Appellant is entitled for total compensation of **Rs.5,98,995/-**

along with interest @ 6% p.a. from the date of petition till realization.

iii) The compensation amount along with accrued interest if any, shall be deposited by the Insurance Company within eight weeks from the date of filing of the petition till realization;

iv) Registry is directed to transmit the records along with copy of this judgment to the Tribunal forthwith.

Sd/-
(R DEVDAS)
JUDGE

Sd/-
(DR.K.MANMADHA RAO)
JUDGE

BNV