

# Sri K Gangadhar vs Sri K Raghupathi on 23 March, 2022

**Author: Pradeep Singh Yerur**

**Bench: Pradeep Singh Yerur**

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF MARCH, 2022

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO.2398 OF 2020 (MV)

BETWEEN:

SRI K.GANGADHAR  
S/O.CHANNARAYAPPA  
AGED ABOUT 32 YEARS  
RESIDING AT:14-65  
ALAKUPPAM VILLAGE  
GANGAVARAM MANDAL  
CHITTOR DISTRICT  
ANDHRA PRADESH - 517 432 ... APPELLANT

(BY SRI JAGADISH G.KUMBAR FOR  
SRI GOPALKRISHNA N., ADVOCATES)

AND:

1. SRI K.RAGHUPATHI  
S/O.KRISHNAN  
MAJOR  
RESIDING AT  
VILLAGE & POST: MANESAR  
DISTRICT: GURGOAN  
HARYANA STATE - 122 051
2. THE NATIONAL INSURANCE  
COMPANY LIMITED  
REGIONAL OFFICE  
SHUBARAM COMPLEX  
M.G.ROAD  
BENGALURU - 560 001  
REP.BY ITS MANAGER ... RESPONDENTS

(BY SRI ASHOK N.PATIL, ADVOCATE FOR R-2;  
NOTICE TO R-1 IS DISPENSED WITH)

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THIS MISCELLANEOUS FIRST APPEAL IS FILED  
UNDER SECTION 173 (1) OF MOTOR VEHICLES ACT  
PRAYING TO MODIFY THE JUDGMENT AND AWARD DATED  
13.11.2018 PASSED IN MVC NO.7066/2016 BY XXI  
ADDITIONAL SCJ AND XIX ACMM, MEMBER-MACT,  
BENGALURU & ETC.

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

#### JUDGMENT

This appeal is preferred by the claimant challenging the judgment and award passed by XXI Additional Small Causes Judge and the Motor Accident Claims Tribunal, Bengaluru (for short 'the tribunal') in MVC.No.7066/2016 dated 13.11.2018. This appeal is founded on the premise of inadequacy of compensation.

2. Though this matter is listed for admission, with consent of learned counsel on both sides, 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 is as under:

On 21.02.2016 at about 7.30 p.m., while the claimant was standing on the side of the road near NH-69, Gangavaram Mandal, Chittoor District, Andhra Pradesh, a lorry bearing registration No.HR-55-G-3073 driven by its driver came with high speed in a rash and negligent manner so as endanger human life and safety, dashed against the claimant, due to the impact, the claimant fell down and sustained multiple injuries which are grievous in nature. Thereafter, the claimant was shifted to R.L.Jalappa Hospital, Kolar where he underwent surgery for fracture and injuries. Due to the accident, the Police have registered a criminal case against the driver of offending lorry as mentioned above.

5. As on the date of occurrence of accident, the claimant was aged 28 years and he was working as computer mechanic and earning monthly income of Rs.20,000/-. It is stated that due to the injuries sustained in the accident, the claimant is permanently disabled and he is unable to carry out work and profession as he was able to do prior to the occurrence of accident. It is further stated that due to this accident, he has sustained loss of future earning capacity which has diminished his ability to work for higher income.

6. On service of notice, respondent No.1-owner of the vehicle remained absent and he was placed ex parte. Respondent No.2-Insurance Company has filed his objection statement denying the claim made by the claimant and pleaded that the offending vehicle i.e. lorry has been falsely implicated in the case by the Police colluding with the claimant only with malafide intention to make wrongful gain by the claimant. On this basis, he has sought for dismissal of claim petition. Based on the pleadings, the tribunal has framed relevant issues for consideration.

7. In order to substantiate the issues and to establish the case, the claimant got himself examined as PW.1 and also examined the Doctor as PW.2 and got marked documents as Exs.P1 to P11, whereas, the contesting respondents examined its official as RW.1 and got marked documents as Exs.R1 and R2.

8. After considering the evidence both oral and documentary and after hearing the parties, the tribunal has awarded compensation of Rs.4,46,521/- with interest at 6% p.a. from the date of petition till deposit. The liability was fixed on respondent No.2-Insurer. Being dissatisfied with the compensation awarded, the appellant-claimant is before this Court seeking enhancement of compensation.

9. It is the vehement contention of learned counsel for appellant-claimant that the tribunal has not appreciated the material evidence both oral and documentary while passing the impugned judgment and award and has committed a serious error in awarding meager compensation there by causing miscarriage of justice to the claimant. It is further contended that the tribunal has not awarded any compensation for loss of income during laid up period, despite the fact that the claimant was inpatient for a period 32 days and suffered multiple fractures. It is further contended by the learned counsel for claimant that the tribunal has erred in not computing the proper income on the basis of avocation and the Legal Services Authority chart there by causing miscarriage of justice to the claimant. It is further contended that the tribunal has not considered the evidence of Doctor-PW.2 for assessment of disability which is opined by the Doctor at 21% and taken disability at 15% which is contrary to the medical evidence of the Doctor who is expert in his field. Therefore, it requires interference of this court. Learned counsel contends that even under other heads, the compensation awarded by the tribunal is on the lower side. On these grounds, he seeks to allow the appeal and for enhancement of compensation.

10. Per contra, learned counsel for respondent No.2- Insurer vehemently contends that the impugned judgment and award passed by the tribunal is in accordance with material evidence both oral and documentary placed before the tribunal and same does not call for interference by this Court. He further contends that the tribunal has rightly awarded the compensation which is commensurate to the material placed before the tribunal and also taking notional income as there is no material document and also on the basis of medical bills. Reasonable compensation is awarded under loss of amenities which also does not warrant interference at the hands of this Court. He further contends that the loss of income during laid up period cannot be awarded more than what is awarded for the period of treatment which the claimant was inpatient in the Hospital for a period of 32 days in the present case. On the basis of these submissions, he seeks to dismiss the appeal and confirm the judgment and award passed by the tribunal.

11. Having heard the learned counsel for the appellant-claimant and learned counsel for respondent No.2-Insurer and on perusal of the material evidence placed before the Court, I am of the opinion that the claimant is entitled for marginal indulgence in the matter for enhancement of compensation for the reasons stated hereinbelow:

(a) It is not in dispute that on 21.02.2016 at 7.30 p.m., while the claimant was standing on the side of the road near NH-69, a lorry mentioned above came in a rash and negligent manner and dashed against the claimant who was just a bystander. In order to substantiate this aspect, the claimant has produced Exs.P1 to P5 which are the Police records. Admittedly, neither there is challenge to these Police records nor it is case of respondents that these records are fictitious or concocted. The respondent-Insurer has not produced any contra material before this Court to disprove criminal prosecution lodged against driver of the offending lorry and there is no challenge made to the charge sheet laid by the Police, pursuant to the investigation and enquiry. Hence, on the basis of there being no contra material and no challenge, it can be safely concluded that the driver of the offending vehicle was rash and negligent in driving the vehicle there by causing injuries to the claimant in accident.

(b) Now coming to the aspect of avocation and income of the claimant. Admittedly, no material documents has been placed before the tribunal or before this Court to show the proof of income of the claimant, though claimant has stated that he was working as a computer mechanic and earning income of Rs.20,000/-. As on the occurrence of accident, he was aged 28 years. The accident having occurred in the year 2016, the tribunal has assessed the income at Rs.9,000/- per month. I am in agreement with learned counsel for claimant that the income assessed by the tribunal is on the lower side and same calls for interference by this Court.

(c) In the absence of any material proof of income by the claimant, the Courts are left with no alternative but to make a guess work with regard to the income of claimant on the basis of his avocation and materials placed before the Court and the guess work should be a standard guess work, for which, the Legal Services Authority has prescribed the notional income chart to be taken where there is no proof of income. Hence, for the accident year 2016, the notional income chart prescribes Rs.9,500/- per month as income. Hence, I deem it appropriate that in the present case on hand, the income requires to be taken at Rs.9,500/- per month as against Rs.9,000/- taken by the tribunal.

(d) The claimant is aged about 28 years as on the date of occurrence of accident. The appropriate multiplier would be '17' as per the judgment of the Hon'ble Apex Court in the case of Sarla Verma (Smt) and others vs. Delhi Transport Corporation and another reported in (2009) 6 Supreme Court Cases 121 which has been rightly adopted by the tribunal. The claimant has got examined the Doctor as PW.2 who has treated the claimant, has stated on oath that the claimant has suffered open type III B

communited intra-articular inter condylar fracture of right femur, comminuted lateral condyle fracture right tibia and underwent surgeries by means of ORIF + Long LCP fixation for right distal 1/3rd femur fracture + ORIF with 2cc screw fixation for right proximal tibia. PW.2-Doctor has clearly stated in his evidence on oath that the claimant finds it difficult to stand continuously for a long time and he

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requires one more surgery for removal of implants and he also requires knee replacement of osteoarthritis.

(e) In the cross-examination of PW.2, it is stated that the right lower limb of the claimant is shortened by 2 cm. Therefore, the claimant cannot stand for a long duration and cannot walk continuously for long distance. The claimant has to walk with aid. Considering all these aspects, the Doctor-PW.2 has assessed the physical permanent disability due to fracture injuries to an extent of 63.79% to the right lower limb and 21% of the whole body. This assessment has been made by the Doctor on the basis of clinical analysis and medical treatment method. It is also necessary to note that the Doctor has opined that the right lower limb of the claimant is shortened by 2 cm. thereby there is limp in the walk, he needs help of others. Considering all these aspects, the tribunal has assessed the disability to an extent of 15% as functional disability. I am in agreement with learned counsel for claimant that when the Doctor who treated the claimant has clearly opined on the basis of clinical analysis with regard to functional disability, the Court should not put itself into the arm chair of expert and impose its own opinion on disability other

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than what is stated by the Doctor as the Courts are not expert in the field of medicine.

(f) In the present case on hand, PW.2 being the Doctor who treated the claimant on the basis of clinical analysis has stated that the disability is arisen at 21%. Hence, I do not find any legal infirmity or infraction in the opinion expressed by the Doctor. The tribunal ought to have taken 21% as physical permanent disability of the claimant for future earning capacity. Therefore, the disability arrived at by the tribunal is not sustainable and the same has to be taken at 21% as opined by the Doctor. In view of the above discussions, the claimant is entitled for the loss of future earning capacity of Rs.4,06,980/- (Rs.9,500/- x 12 x 17 x 21%) as against Rs.2,75,400/- awarded by the tribunal.

(g) The claimant has produced 34 medical bills worth Rs.56,121/- as per Ex.P7. On the basis of the same, the tribunal has awarded Rs.56,121/- which is on the actual basis. Hence, I do not find any reason to interfere with the same as it is based on documents produced by the claimant.

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(h) Admittedly, the claimant was inpatient for a period of 32 days in the Hospital where he had taken treatment and it is apparent on record as stated in the above paragraphs that he has suffered comminuted fractures of two types namely, right femur and right tibia. Therefore, he has undergone multiple fractures to his leg. Since he was inpatient for 32 days, he would not immediately get back to his work after discharge from the hospital and to take rest atleast 3 months pursuant to the discharge of the claimant to recuperate and gain required energy to get back to work in the normal course of his employment as he was prior to the occurrence of accident. Accordingly, three months + one month is to be taken as laid up period and in view of increase in the income as stated above, the claimant is entitled for Rs.38,000/- (Rs.9,500/- x 4) under the head of loss of income during laid up period.

(i) Under the head of future medical expenses, no material has been placed by the claimant or by the Doctor as what would be the estimated cost for future medical expenses and the tribunal has awarded Rs.25,000/- towards future medical expenses. It is however seen that

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in the evidence of Doctor, he has stated that there would be two more surgeries required for removal of implants and total knee replacement which is not disputed. Hence, I deem it appropriate to award Rs.35,000/- under the head of future medical expenses as against Rs.25,000/-.

(j) Towards conveyance, nourishment and nutritious food, the tribunal has awarded Rs.25,000/-. Admittedly, the claimant was inpatient for 32 days on a calculation of Rs.1,000/- per day. Rs.32,000/- would be reasonable to award under this head as against Rs.25,000/- awarded by the tribunal.

(k) Under the head pain and suffering, the tribunal has awarded Rs.40,000/-, it is seen that the claimant has undergone multiple fractures and severe traumatic experience within four walls of the Hospital, which cannot be compensated with money. However, the same will have to be reasonable enough to satisfy the claimant as a solace. Hence, under this head, I deem it appropriate to award Rs.60,000/- as against Rs.40,000/- awarded by the tribunal.

(l) Under the head of loss of amenities of life, the tribunal has awarded Rs.25,000/-. I deem it appropriate to

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award Rs.35,000/- as against Rs.25,000/- awarded by the tribunal.

(m) In view of the discussions made above and on the basis of the submissions of learned counsel, the claimant deserves enhancement of compensation as stated in the table below:

Heads	As awarded by the tribunal (in Rs.)	As awarded by this Court (in Rs.)
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Pain and Suffering	40,000-00	60,000-00
Loss of future earnings	2,75,400-00	4,06,980-00
Loss of earning during laid up period	Nil	38,000-00
Future medical expenses	25,000-00	35,000-00
Medical expenses	56,121-00	56,121-00
Conveyance, nourishment and nutritious food	25,000-00	32,000-00
Loss of amenities of life	25,000-00	35,000-00
TOTAL	4,46,521-00	6,63,101-00

For the aforesaid reasons, I pass the following:

#### ORDER

i) The appeal is allowed-in-part;

ii) The judgment and award passed by XXI Additional Small Causes Judge and the Motor Accident Claims Tribunal, Bengaluru in

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MVC.No.7066/2016 dated 13.11.2018, is modified;

iii) The claimant is entitled for total compensation of Rs.6,63,101/- as against Rs.4,46,521/- awarded by the tribunal;

iv) All other terms and conditions stipulated by the tribunal shall stand intact;

v) The insurer shall pay the enhanced compensation amount within a period of six weeks before the tribunal from the date of receipt of a copy of this judgment, failing which the interest would accrue at 9% for the said amount;

vi) The claimant shall not be entitled for interest for future medical expenses of Rs.35,000/-;

vii) The claimant shall not be entitled for interest for the delayed period of 315 days as per the order dated 08.03.2022.

Sd/-

**JUDGE LB**