R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF APRIL, 2022

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO.8801 OF 2018 (WC)
C/W
MISCELLANEOUS FIRST APPEAL NO.334 OF 2020 (ECA)

IN MFA NO.8801 OF 2018:

BETWEEN:

UNITED INDIA INSURANCE CO., LTD.,
DIVISIONAL OFFICE –I
BALLAL CIRCLE
CHAMARAJAPURAM
MYSURU – 570 005

REPRESENTED BY ITS
REGIONAL OFFICE
UNITED INDIA INSURANCE
COMPANY, 5TH FLOOR
HUDSON CIRCLE
BENGALURU – 560 001
REP.BY ITS MANAGER
SRI VENKATAKRISHNA ... APPELLANT

(BY SRI SEETHA RAMA RAO B.C., ADVOCATE)

AND:

1. SRI NAGENDRA

2. SRI A.C.MAHADEVAPPA

RESPONDENTS

(BY SMT.SUMA KEDILIYA FOR
SRI V.PADMANABHA KEDILAYA, ADVOCATES FOR R-1;
R-2 IS SERVED)

THIS MFA IS FILED UNDER SECTION 30(1) OF THE ECA ACT, PRAYING TO MODIFY THE JUDGMENT AND AWARD DATED 13.07.2018 PASSED IN ECA NO.11/2014 ON THE FILE OF THE SENIOR CIVIL JUDGE AMD JMFC, MACT, H.D.KOTE & ETC.

IN MFA NO.334 OF 2020:

BETWEEN:

SRI NAGENDRA

... APPELLANT

(BY SMT.SUMA KEDILAYA, ADVOCATE FOR
SRI PADMANABHA KEDALIYA, ADVOCATE)

AND:

1. A.C.MAHADEVAPPA

2. UNITED INDIA INSURANCE CO.LTD
DIVISIONAL OFFICE 1,
BALLAL CIRCLE

CHAMARAJAPURAM
MYSURU – 570 005 … RESPONDENTS

(BY B.C.SEETHA RAMA RAO, ADVOCATE FOR R-2;
NOTICE TO R-1 IS DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 30(1) OF THE ECA ACT PRAYING TO GRANT FURTHER COMPENSATION OF RS.7,11,577/- APART FROM RS.7,88,423/- GRANTED BY THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC AND MACT, H.D.KOTE ON 13.07.2018 IN ECA.NO.11/2014 WITHI INTEREST @ 12% FROM THE DATE OF ACCIDENT & ETC.

THESE APPEALS HAVING BEEN HEARD AND RESERVED ON 10.03.2022 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT MADE THE FOLLOWING:

JUDGMENT

MFA.No.8801/2018 is preferred by the Insurance Company whereas MFA.No.334/2020 is preferred by the petitioner challenging the judgment and award dated 13.07.2018 passed in ECA.No.11/2014 by the Senior Civil Judge and JMFC and Motor Accident Claims Tribunal, H.D.Kote (for short 'trial Court'). The appeal preferred by the Insurer is premised on the ground of perversity, arbitrariness and exorbitant amount of compensation awarded, whereas the appeal preferred by the petitioner is premised on the ground of wrong assessment of income and inadequacy of compensation.

2. Parties to the appeals shall be referred to as per their status before the trial Court.

3. Brief facts of the case is as under:

Petitioner was an employee under respondent No.1, wherein he was working as a driver of jeep bearing registration No.KA-12-M-4781. On 01.05.2011, at about 9.30 p.m. when petitioner was driving the jeep as mentioned above along with another person from hand post of H.D.Kote Taluk towards Antharasanthe Village on Mysuru-Manandawadi Road, near Anagatti gate, on the left side of the road, a vehicle came from the opposite direction and dashed against the petitioner's jeep. Pursuant to the accident, the said unknown vehicle without stopping the vehicle, absconded from the spot whereby it is a hit and run case. Due to the impact of the said accident, petitioner and another occupant namely, Devaraju @ Devaiah sustained injuries. Petitioner sustained injuries on his face, left eye and other parts of the body, whereas the other occupant namely, Devaraju succumbed to the injuries at the spot itself.

3.1. Immediately after the accident, petitioner was shifted to Government Hospital, H.D.Kote and after obtaining first aid treatment, he was shifted to K.R.Hospital, Mysuru for better treatment, where he was admitted as an inpatient in the said Hospital. Petitioner sustained the following injuries:

a) Abrasion on left humerus;

b) Injuries on face and head;

c) Injury on left leg knee joint;

d) Injury on left eye;

3.2. Due to the injuries sustained by the petitioner in the accident, his left eye was severely damaged and pursuant to the surgery being to the left eye, he came to be discharged on 09.05.2011. Pursuant to discharge from the Hospital in view of post-operation complications, he took further treatment on OPD basis. In view of injuries sustained in the accident and severely on the left eye, the petitioner has lost his left eye vision completely and thereby sustained permanent visual disability resulting in his incapacity to do his avocation of driving employment. Thus, the petitioner suffered loss of future earning capacity in view of injuries sustained in the accident.

3.3. It is stated by the petitioner that prior to occurrence of accident, he was hale and healthy and aged 24 years as on date of occurrence of accident and was earning an income of Rs.200/- as daily wages and Rs.50/- as bata per day.

3.4. In view of the accident, petitioner lodged a complaint before H.D.Kote Police Station and consequently, the Police registered an FIR in Crime No.147/2011 on 02.05.2011 for the offences punishable under Sections 279, 337, 304(A) of IPC read with Section 134(A) and (B) of the IMV Act. It is stated by the petitioner that the accident occurred during the course of employment and arising out of employment with the employer namely, respondent No.1. It is further stated that since petitioner was in employment with respondent No.1, there exists relationship of employee and employer and that respondent No.1 employer of the said vehicle, involved in the accident, had insured the vehicle with respondent No.2-Insurance Company. Hence, respondent Nos.1 and 2 are jointly and severally liable to pay the compensation. Hence, petitioner filed the petition seeking compensation.

3.5. On service of notice, respondent No.1 remained absent and came to placed *ex parte*, whereas respondent No.2-Insurance Company filed detailed statement of objections *inter alia* denying the case of petitioner. However, admitted the existence of insurance policy as on date of occurrence of accident.

3.6. On the basis of pleadings, the trial Court framed following issues:

> *"1. Whether the petitioner proves that he was working under 1st respondent as an employee at the time of the alleged accident?*
> *2. Whether the petitioner proves that he sustained injuries at the alleged accident during the course of his employment with 1st respondent?*
> *3. Whether the petitioner is entitled for the compensation? If so, at what rate?*
> *4. What order or award?"*

3.7. In order to substantiate the issues and to establish his case, the petitioner got himself examined as PW.1 and also the Doctor as PW.2 and got marked documents as per Exs.P1 to P8 in support of his case

whereas respondents have not chosen to lead evidence and no documents have got marked on their behalf.

3.8. On the basis of material evidence both oral and documentary, the trial Court awarded compensation of Rs.7,88,423/- with interest @ 12% p.a. from the date of occurrence of alleged accident till deposit and further the trial Court held respondents to be jointly and severally liable respondent No.2 was directed to deposit compensation within two months from the date of order.

4. Being aggrieved by the impugned judgment and award, the Insurer as well as the petitioner are before this Court questioning the correctness and legality of the same.

5. It is the vehement contention of Sri B.C.Seetha Rama Rao, learned counsel for the Insurer that the judgment and award passed by the trial Court is perverse and arbitrary as it has ignored the statutory provisions of Schedule-I, Part-1, Item-26 of the Employees' Compensation Act while assessing the loss of earning capacity at 100% as against 30% assessed by the Medical Practitioner. It is further contended by the learned counsel that the trial Court has committed a serious error by acting

arbitrarily in over assessing the loss of earning capacity contrary to statute and medical evidence and has erred in not noticing that it is only the left eye that is affected, whereas the eye ball is not damaged and has ignored the aspect of the other eye being perfectly in order. It is further contended by learned counsel that the trial Court has grossly erred in awarding interest from the date of accident, whereas interest ought to have been awarded after one month from the date of accident as contemplated under law. He further contends that on an overall view, the learned trial Judge has mis-directed himself and grossly erred in not considering the provisions of law with regard to award of compensation and also with respect to award of interest from the date of one month after the date of occurrence of accident. On these grounds, learned counsel seeks to allow the appeal and consequently, set-aside the judgment and award passed by the trial Court.

6. *Per contra*, Smt.Suma Kedilaya, learned counsel for petitioner vehemently contends that judgment and award passed by the trial Court is not in accordance to the material evidence placed on record both oral and documentary and hence, it calls for interference at the hands of this Court. She further contends that the trial

Court has erred in assessing proper income for computation of compensation. She has further contended that the trial Court has erred in not appreciating the seriousness of the injury as stated by the petitioner and also corroborated by the Doctor-PW.2. It is her vehement contention that the petitioner sustained grievous injury on his left eye thereby losing his complete vision of his left eye. She contends that the trial Court ought to have taken income of petitioner to be at Rs.10,000/- p.m. In view of the fact that the petitioner can no longer continue his avocation of driving as he has lost complete vision of his left eye, thereby losing his future earning prospects which ought to have been favourably considered by the trial Court. The same having not been favourably considered, the trial Court has committed a serious error thereby causing miscarriage of justice to the petitioner.

6.1. Learned counsel further contends that petitioner claimed Rs.25,000/- towards medical expenses, Rs.3,000/- towards conveyance and Rs.2,000/- towards assistance in the Hospital, whereas the trial Court has erred in awarding only Rs.2,547/- towards medical expenses. She further contends that on an overall view, the trial Court has grossly

erred in not appreciating the evidence of petitioner with regard to his income and the evidence of Doctor-PW.2 with regard to physical disability leading to total loss of future earning capacity. Hence, she seeks to allow the appeal and consequently, enhance the compensation.

7. Having heard the submissions of learned counsel for Insurer and learned counsel for petitioner, the substantial questions of law that would arise for consideration in these appeals before this Court are:–

In MFA.No.8801/2018:

"*(i) Whether the learned trial Court erred in taking the loss of earning capacity at 100%?*

(ii) Whether the interest awarded by the learned Trial Court is in accordance with law?

In MFA.No.334/2020:

(iii) Whether the learned trial Court has committed an error in assessing the income of the appellant?

8. On careful perusal of entire material evidence placed before the Court and on perusal of the original records, some of the undisputed facts are that the accident occurred on 01.05.2011, at about 9.30 p.m. between the

jeep and an unknown vehicle, which came from the opposite direction. Petitioner sustained injuries on his face, left eye and other parts of the body. In order to establish this fact, the petitioner has produced Exs.P1 to P6 which are Police records for the offences punishable under Sections 279, 337, 304(A) of IPC read with Section 134(A) and (B) of the IMV Act.

9. Petitioner has got examined the Doctor as PW.2 who has deposed that the petitioner was admitted at K.R.Hospital, Mysuru where he took treatment on 02.05.2011 in the Department of Opthalmology, Mysuru Medical College with a history of Road Traffic Accident, where it was diagnosed that his left eye shows penetrating injury with Uveal issue prolapse and has undergone small incision cataract surgery with posterior chamber interocular lens implantation under guarded visual prognosis. On 16.05.2014, petitioner was re-admitted due to infection having been developed in his left eye as result of perforation injury with total loss of vision and evisceration of left eye and later discharged on 26.05.2014 with advice for follow-up treatment. It is also stated by the Doctor in his evidence that the petitioner had approached for issue of

handicap certificate which came to be issued on going through the previous records, the Doctor opined and issued a certificate of 30% disability due to complete loss of vision of left eye and this loss of vision is found to be permanent in nature.

10. PW.2 was subjected to cross-examination by the counsel for Insurer who suggested that the loss of vision was not due to the injury sustained in accident whereas it was due to negligence on the part of treatment given by the Doctor. However, the same was denied by PW.2 and nothing useful has been elicited in favour of the Insurer to discard the evidence of Doctor-PW.2.

11. On the basis of evidence of PWs.1 and 2 and relying on documentary evidence placed on record, trial Court has assessed the disability of petitioner to an extent of 100% loss of earning capacity in view of permanent loss of left eye vision and that the petitioner being a driver in profession, would not be in a position to drive any vehicle permanently in the remaining part of his life. This aspect of assessment of the trial Court of arriving at disability at 100% of loss of earning capacity is vehemently challenged by the learned counsel for Insurer, whereas learned

counsel for the petitioner seeks to sustain the order passed by the trial Court on the ground permanent physical disability to an extent of 100% is rightly assessed in view of the petitioner being the driver by profession and having lost complete vision of the left eye would not be able to continue his profession of driving. I shall deal with the disability aspect in the succeeding paragraphs.

12. Now coming to the aspect of age, income and avocation of petitioner, it is not in dispute that petitioner was involved in driving profession and employed with respondent No.1, wherein he was driving a jeep. It is claimed by the petitioner that he was aged about 24 years as on the date of occurrence of accident. However, no material proof has been placed before the Court with regard to same. Ex.P5 is the wound certificate which is produced by the petitioner. In the said certificate the age of the petitioner is mentioned as 25 years. In view of there being contra material evidence placed by the petitioner the trial Court has assessed the age of the petitioner as 25 years, which is rightly adopted by the trial Court and the same does not call for interference by this Court. With regard to income of the petitioner, no doubt, the petitioner

has stated that he was earning Rs.200/- per day as daily wages and also getting bata of Rs.50/- per day. In view of there being no material placed by the petitioner with regard to proof of income the trial Court has assessed the income at Rs.6,000/- per month on the basis of the minimum wages fixed under the Minimum Wages Act.

13. Learned counsel for the petitioner has vehemently contended that the minimum wages fixed by the trial Court is on the lower side, which is contrary to the Central Government Gazette notification issued by the Ministry of Labour and Employment, wherein the monthly wages has been fixed at Rs.8,000/- per month from the date of publication of the notification in the Official Gazette which is dated 31.05.2010. Whereas the learned counsel for the Insurer vehemently opposes the said argument of the learned counsel for petitioner and contends that even according to the petitioner himself, he has claimed that he was earning Rs.4,800/- per month along with Rs.1,200/- as batta charges, whereby making it Rs.6,000/- per month which is admittedly statement made on oath by the petitioner. Hence no amount over and above Rs.6,000/- per month could be taken by the trial Court and

accordingly, the trial Court has rightly assessed the income of the petitioner to be at Rs.6,000/- per month.

14. On careful perusal of the Gazette notification dated 31.05.2010 issued by the Ministry of Labour and Employment, which states as under:

> *"S.O.1258(E)– In exercise of the powers Conferred by sub-section (1B) of Section 4 of the Employees Compensation Act, 1923 (8 of 1923), the Central Government hereby, specifies for the purpose of sub-section(1) of the said section, the following amount as monthly wages, with effect from the date of publication of this notification in the Official Gazette, namely:-*
>
> *"Eight thousand rupees"."*

On plain reading of the above Gazette notification and in exercise of its power conferred by sub-section (1B) of Section 4 of Employees Compensation Act, 1923, the Central Government has increased the monthly wages to Rs.8,000/-, which was earlier Rs.4,000/- per month and it is brought to the notice of this Court that by virtue of another Gazette notification dated 03.01.2020 the same has been increased to Rs.15,000/- per month.

15. A moot point for discussion and the substantial question of law framed by this Court in the appeal preferred by the petitioner is 'Whether there is an error committed by the trial Court in assessing the income of the petitioner?' It is not in dispute that the accident occurred on 01.07.2011 which is pursuant to the notification issued by the central Government through its Gazette notification dated 31.05.2010. Therefore, monthly wage of Rs.8,000/- requires to be adopted in the present case on hand. However, it is the vehement contention of the learned counsel for Insurer that the said amount of Rs.8,000/- cannot be taken as income in the present case for the reason that the petitioner himself has pleaded and claimed to be earning Rs.6,000/- per month inclusive of batta. When such being the case this Court cannot award something which is not in the pleading and evidence on oath.

16. On the first blush the arguments of the learned counsel for Insurer appears to be very attractive and appealing, but what has to be considered is whether any proof of income has been placed before the Court and if no such proof of income is placed what should be the income

for assessment by the Court considering even if the petitioner is pleaded a certain amount lesser than the amount prescribed under the Act.

17. In order to answer the above question it would be necessary to take into consideration Section 4(1) of the Act, which reads thus:

> *"4. Amount of compensation:- (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:-*
>
> | | | |
> |---|---|---|
> | *(a)* | *where death results from the injury* | *an amount equal to (fifty percent) of the monthly wages of the deceased [employee] multiplied by the relevant fact.* |
> | *(b)* | *Where permanent disablement results from the injury* | *an amount equal to [sixty percent], of the monthly wages of the deceased[employee] multiplied by the relevant factor.*
or
an amount of [one lakh and twenty thousand rupees], whichever is more; |

		or
		an amount of [one lakh and forty thousand rupees], whichever is more;

[Provided that the Central Government may, by notification in the Official Gazette , from time to time, enhance the amount of compensation mentioned on clauses (a) and (b)]

Explanation 1. – For the purposes of clause (a) and clause (b), 'relevant factor', in relation to [an employee] , means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the [employee] on his last birthday immediately, preceding the date on which the compensation fell due.

(c) where permanent partial disablement result form the injury	*(i) in the case of an injury specified in Part II of Schedule – I,*	*such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of*

the loss of earning capacity caused by that injury, and

ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) Permanently caused by the injury.

Explanation 1. – Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted had resulted from the injuries.

Explanation II – In assessing the loss of earning capacity for the purpose of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity to different injuries specified on Schedule 1.

1(A)…….

[1(B) The Central Government may by notification in the Official Gazette , specify for the purposes sub-section (1) , such monthly wages in relation to an employee as it may consider necessary]"

18. On a bare reading of the above provision it is apparently clear that when permanent total disablement results from the injury Section 4(1B) of the Act, an amount equal to 60% of the monthly wages of the injured (employee) is to be multiplied by the relevant factor. Thereafter a proviso is provided, which reads as under:

"Provided that the Central Government may, by notification in the Official Gazette , from time to time, enhance the amount of compensation mentioned on clauses (a) and (b)]

Explanation 1. – For the purposes of clause (a) and clause (b), 'relevant factor', in relation to [an employee] , means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the [employee] on his last birthday immediately, preceding the date on which the compensation fell due."

19. In view of the sub-section (1B) of Section 4 of the Act the Central Government has time and again by

Official Gazette notification increased the monthly wages and as per the Gazette notification dated 31.05.2010 vide S.O. 1258(E) the monthly wages has been increased to Rs.8,000/-. When this being the clear intent of the Legislature to increase the monthly wages time and again based on the increase in the cost of living and expenditure, it is to be seen as to what is the purpose of this Legislation by the Legislature. It cannot be lost sight of that the Act is a beneficial Legislation and the statement of objects and reasons clearly suggest that the amendment is brought into force with a clear intention by the Legislature to enhance the minimum rate of compensation from time to time so also the monthly wages and thereby fixing the specific monthly wages by way of amendment from time to time due to increase in the cost of living and increase in standard of living and price rise. As stated above, pursuant to the notification dated 31.05.2010 the Central Government once again enhanced the monthly wages from Rs.8,000/- to Rs.15,000/-. This itself is very clear and apparent at the intent of Legislature to bring about the amendment time and again based on the increase of standard of living and increase of the price of commodities

and growth of society leading to increase in the expenditure to be incurred by common man.

20. It cannot be dispute that the Act itself is a beneficial Law. Hence, there has to be a liberal interpretation and construction of the same with an intent to bring into effect the specific Legislative intent in bringing about such amendments time and again. There is no ambiguity in Section 4 (1) of the Act as well as Section 4(1B) of the Act. So also, with regard to the amendment made in the Gazette notification dated 31.05.2010. When this being the situation the Courts will have to strictly go by the provisions of Law and keep in mind the Legislative intent behind enacting such a Law.

21. It is trite law that whenever beneficial Legislation is made it is with an intention to see that the aggrieved party is benefited by such Legislation, more so in the specific case of death or injury having been caused or occurred in the course and during the employment. This is also some what similar to the beneficial Legislation in the motor accident cases.

22. In view of the above discussions and keeping in mind the intent of the Legislature, I am of the opinion that the amount of monthly wages increased form time to time by way of amendment through Gazette notification by the Central Government, clearly prescribes the said amount to be a minimum wages amount. In a case where there is proof of wages / salary produced it is incumbent upon the Court to take the minimum wages for consideration for computing compensation despite the pleading by the petitioner of an amount being lesser than the minimum wages prescribed by the Act.

23. In the present case on hand, though the petitioner has pleaded and lead evidence to the effect that he was earning Rs.6,000/- per month, I deem it appropriate that in the facts and circumstances of the present case an amount of Rs.8,000/- per month requires to be taken as income for computation of compensation. Accordingly, Rs.8,000/- is taken as monthly income of the petitioner as against Rs.6,000/- adopted by the trial Court.

24. Petitioner has got examined doctor as PW2, Who has deposed before the Court that petitioner has admitted to KR Hospital, where he had taken treatment in

the Department of Ophthalmology, Mysuru Medical College with the history of road traffic accident resulting an injury to the left eye. On proper clinical assessment and analysis the doctor has opined that the petitioner has suffered permanent vision disability to his left eye to an extent of 30%. However, on careful assessment of the evidence of the doctor the trial Court has assessed the disability to an extent of 100% loss of earning capacity in view of complete loss of vision on the left eye as permanent physical disability. This assessment of the trial Court with regard to complete loss of left eye vision resulting in 100% loss of earning capacity is vehemently opposed by the learned counsel for Insurer. Learned counsel further contends that the injury suffered by the petitioner would not come within the list of injuries stipulated in Schedule I Part-1 of the Act, whereas he vehemently contends that the said injury would come within the list of injuries stipulated in Part-2 of Schedule I to be more precise falling at Sl. No.26 of the said Part-2 which reads as under:

Sl.No.	*Description of Injury*	*Percentage of loss of earning capacity*
26.	*"LOSS OF VISION of one eye, without complications or disfigurement of eye-ball, the*	*30%*

	other being normal."	

25. Learned counsel appearing for the petitioner to substantiate her contention and to controvert the arguments of the learned counsel for Insurer, relies on the judgment of the Hon'ble Supreme Court in the case of ***Sri Eregowda @ Vasu v. Divisional Manager*** reported in ***2017-IV-LLJ-107***, para-6 of the said judgment reads as under:

> *"6. We have perused the medical evidence on record. Having regard to the same and the nature and extent of the injuries suffered which have been extracted above we are of the view that the appellant would not be able to discharge the duties of driver any further. Though the physical disabilities in the present case has been assessed at 52%, the loss of earning capacity would be 100%. For the aforesaid reasons, we modify the award of the learned Workmen's Compensation Commissioner and Labour Officer, Dairy Circle, Bangalore and award compensation on the basis of 100% loss of earning of the appellant i.e Rs. 4,500/- per month. The compensation will now be recomputed on the aforesaid basis by the learned Commissioner and the balance compensation along with interest at the rate of*

6% per annum thereon be paid to the appellant by the Insurer forthwith."

26. Learned counsel for the petitioner has also relied on the judgment in the case of Civil Appeal No(s). ***5472 of 2017***, wherein para-3 of the said judgment reads as under:

"3. The injury suffered by the appellant-claimant is loss of one eye and the physical disability suffered though is to the extent of 30% , the same , in our considered view, has resulted in 100% loss of the earning capacity of the appellant. This is because the appellant was a professional driver and employed as such."

27. Learned counsel for the petitioner has also relied on the judgment of Bombay High Court in the case of ***Royal Sundaram Insurance Company Limited vs Shri Manoj Laxman Patil & Anr.*** (First Appeal No.164/2015, DD 01.03.2017) in relying on para-11 of the said judgment, which reads as under:

"11. Therefore, taking into consideration all these judgments, I am of the view that the appellant has suffered permanent total disablement as he is not capable of performing the same work as he was doing prior to the

accident. Compensation payable to him must therefore, be computed under Section 4(1)(b) of the Act. The submission of the learned Advocate for the Respondent that compensation has rightly been computed on the basis of Section 4(1)(c)(ii) is unsustainable as this provision is applicable only when there is partial disablement. The evidence on record clearly indicates that the injury suffered by the appellant rendered him totally disabled as defined under Section 2(1) of the Act. That being so, the Commissioner ought to have computed the compensation under Section 4(1) (b) and not 4(1) (c) (ii) as he has done."'

28. Having considered the above judgment relied on by the learned counsel for petitioner, it is not in dispute that the petitioner was employed as a Driver in the respondent No.1 – Company. It has to be necessarily kept in mind that the occupation of the petitioner being a driver involves specific skills and alertness to operate the motor vehicle. Both the eye sight requires to be perfectly in good condition to work as a driver in order to avoid any eventualities of accident or causing injuries to either himself of others. In the present case on hand, admittedly the petitioner has lost the complete vision on the left eye and entire eye ball has been removed and scooped, thereby

rendering him without any vision on the left eye. Petitioner being employed as a driver having skillful expertise in the said field is a relevant factor for consideration of disability. Even if we assume for the sake of argument as addressed by the learned counsel for Insurer that the vision on the right side of the eye of the petitioner being normal, he could do other activities with one of his eye, namely right eye, which is in normal condition, hence, the petitioner would come within the parameters of injuries in Sl. No.26 of Part-2 of Schedule-I of the Act, which would provide 30% of loss of earning capacity as against 100% awarded by the trial Court.

29. Having taken into consideration the erudite submissions made by the learned counsel for Insurer I am afraid it is hard to countenance such arguments and the same cannot be accepted. It is no doubt true that the petitioner may be able to do some kind of work using his only vision on the right eye, but the essential and crucial aspect of the matter for consideration would be whether the petitioner can earn his livelihood as a driver which he was doing as a sole occupation prior to the date of occurrence of accident. The answer to the said question

would be in the negative. Under the Act incapacity to do work has to be determined with reference to the sole occupation of the petitioner, being the driver as on the date of accident. Admittedly, in the present case on hand, it is not the case of any of the parties more specifically, the Insurer or Owner that the petitioner was employed for any other work other than being driver by profession. Therefore, I am of the considered view that the petitioner has suffered 100% loss of his earning capacity due to his functional disability of being a driver, which was the sole occupation to earn his livelihood prior to the date of accident. Hence, the trial Court has rightly come to the conclusion with regard to assessment of 100% disability of the petitioner towards loss of earning capacity.

30. The expression total disablement as defined in Section 2(1)(l) of the Act reads as under:

> *"(l) total disablement means such disablement, whether of a temporary or permanent nature, as incapables [an employee] for all work which he was capable of performing at the time of the accident resulting in such disablement;*
> *]Provided that permanent total disablement shall be deemed to result*

from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part ii there of where the aggregate percentage of the loss of earning capacity, as specified in the said Part ii against those injuries , amounts to one hundred percent, or more].

31. Considering the explanation provided in the above provision with regard to total disablement, it is apparently clear that in the present case on hand petitioner being a driver by profession has been incapacitated to work in the same profession which he was capable of performing at the time of accident due to such disablement. Whereby rendering him unfit to work as a driver. Hence, the assessment made by the trial Court with regard to 100% loss of earning capacity is correct and the same requires to be upheld. The substantial question of law in MFA.No.8801/2018, is answered in the negative and in favour of petitioner.

32. In view of this Court taking the minimum monthly wage at Rs.8,000/- considering the disability at 100%, 60% of the income of the petitioner comes to Rs.4,800/- per month. As the petitioner was aged 25 years

as on the date of occurrence of accident, the relevant factor for consideration would be 216.91. Hence, loss of earning capacity would be **Rs.10,41,168/-** (Rs.4,800/- X 216.91) as against Rs.7,80,876/- awarded by the trial Court.

33. Though it is stated by the petitioner that due to the injuries suffered in the accident, he has spent Rs.25,000/- towards medical expenses and having spent Rs.2,000/- to the assistant in the hospital and Rs.3,000/- towards conveyance charges by placing reliance on Ex.P7 to P18, it is seen that no material placed with regard to expenditure of Rs.25,000/- as medical expenses, whereas medical bills show that petitioner had spent Rs.2,547/- in actual and he has stated that Rs.2,000/- towards assistant and Rs.3,000/- towards conveyance charges which has been accepted by the trial Court as there is no denial by the respondents. Hence, totally a sum of **Rs.7,547/-** is awarded. I do not find any cogent reason to interfere with the said compensation awarded.

34. In view of the above discussions in assessment of income for computation of compensation, the petitioner would be entitled to a total compensation in a sum of **Rs.10,48,715/-** with interest @ 12% per annum.

35. With regard to substantial question of law raised in MFA No.334/2020 - Whether the trial Court has committed an error in assessing the income of the appellant – petitioner?. The same is answered in the affirmative for the reasons stated above.

36. Though it is the vehement contention of learned counsel for the Insurer that the interest component awarded by the trial Court is erroneous as interest is awarded from the date of occurrence of accident whereas the interest should be applicable after a period of 30 days from the date of accident. Learned counsel for petitioner contends that the interest has to be awarded from the date of occurrence of accident not after the period of 30 days. I am afraid of the arguments of learned counsel for Insurer, which cannot be accepted and I am in agreement with the arguments of learned counsel for petitioner that the interest amount and compensation is required to be paid within a period of one month and if the same is not paid, the interest is required to be calculated from the date of accident. It is nowhere mentioned in the Act that the interest component is to be calculated after a period of 30 days from the date of accident. Therefore, the contention

of learned counsel for Insurer is hard to countenance and same is negatived as the interest on the compensation amount, in my opinion, is from the date of occurrence of accident and not after a period of 30 days from the date of occurrence of accident. This view is fortified by the judgments of the Hon'ble Apex Court in the case of ***Ajay Kumar Das & Anr. V. Divisional Manager & Anr. [Civil Appeal No.447/2022]*** and in the case of ***Shobha and Others v. Chairman, Vithalrao Shinde Sahakari Sakhar Karkhana Ltd.,*** reported in ***2022 SCC Online SC 308.***

37. With regard to substantial question of law in MFA No.8801/2018 – "Whether the interest awarded by the trial Court is in accordance with law", is answered in the affirmative for the reasons stated above.

38. For the aforesaid reasons, I pass the following:

ORDER

i) MFA.No.8801/2018 preferred by the Insurance Company is ***dismissed;***

ii) MFA.No.334/2020 preferred by the petitioner is ***allowed-in-part***;

iii) The judgment and award dated 13.07.2018 passed in ECA.No.11/2014 by the Senior Civil Judge and JMFC and Motor Accident Claims Tribunal, H.D.Kote, is modified.

iv) The petitioner is entitled for total compensation in a sum of **Rs.10,48,715/-** as against Rs.7,88,423/- awarded by the trial Court;

v) The petitioner is entitled to 12% interest per annum from the date of occurrence of accident;

vi) All other terms and conditions stipulated by the trial Court is not disturbed and is left intact;

vii) The insurer shall pay the enhanced compensation amount before the trial Court within a period of four weeks from the date of receipt of a copy of this judgment.

Sd/-
JUDGE

LB/VK