IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 7TH DAY OF APRIL, 2025

PRESENT

THE HON'BLE MR. JUSTICE K NATARAJAN

AND

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

MISC. FIRST APPEAL NO.201083 OF 2022 (MV-I)

BETWEEN:

SMT. KUSUM W/O ABHIMAN SURVASE,
AGE: 51 YEARS, OCC: NIL,
R/O. WADEDGAON,
NOW RESIDING AT NEAR SHASHTRI NAGAR,
ATHNI ROAD, VIJAYAPURA-586101.

...APPELLANT

(BY SRI. BASAVARAJ R. MATH, ADVOCATE)

AND:

1. DHEERAJ S/O SUDHIR PANDIT,
   AGED 45 YEARS, OCC: TRANSPORT BUSINESS,
   R/O. H.NO.36, BHATEWADI,
   TQ. NORTH SOLAPUR,
   DIST. SOLAPUR-413001
   (OWNER OF VEHICLE NO.MH-13/AX-4828)

2. THE BRANCH MANAGER,
   NEW INDIA ASSURANCE COMPANY LTD,
   GURUKUL ROAD,
   HANUMSHETTY BUILDING,
   VIJAYAPURA-586101.

...RESPONDENTS

(BY SRI. MANVENDRA REDDY, ADVOCATE FOR R-2;
V/O DATED 22.06.2022 NOTICE TO R-1
IS DISPENSED WITH)

Digitally signed by NIJAMUDDIN JAMKHANDI
Location: HIGH COURT OF KARNATAKA

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173 (1) OF M.V. ACT, PRAYING TO CALL FOR RECORDS AND MODIFY THE IMPUGNED JUDGMENT AND AWARD DATED 07.07.2020 PASSED BY THE PRL. SENIOR CIVIL JUDGE AND MOTOR ACCIDENT CLAIMS TRIBUNAL NO.V, VIJAYAPURA IN MVC.NO.1925/2016.

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

CORAM: HON'BLE MR. JUSTICE K NATARAJAN
AND
HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE K NATARAJAN)

This appeal is filed by the appellant – claimant against the judgment and award passed by the Prl. Senior Civil Judge and CJM and MACT-V, Vijayapura, in MVC.No.1925/2016 dated 07.07.2020 for enhancement of the compensation.

02. Heard the learned counsel for the appellant – claimant and the respondent No.2 – insurance company.

03. The case of the claimant before the Tribunal is that the claimant has filed a claim petition under Section 166 of M.V. Act, for claiming compensation of Rs.47,12,000/- with interest for the injuries sustained by the claimant in the road traffic accident. It is alleged that on 13.09.2016 at about 01.40 p.m. near Primary School, Wadedgaon, Tq: North Solapur Dist: Solapur, the driver of the Truck bearing Reg.No.MH-13-AX-4828 came from opposite direction and dashed to the claimant, the said vehicle was ran over on the legs of the claimant and she has sustained grievous injuries and her both legs were amputated. She stated the she has earning Rs.9,000/- per month. She has spent huge amount towards the medical expenditures. Hence, she has suffered 100% disability due to the amputation of both the legs. Hence, she prayed for compensation on the various heads.

04. The respondent No.1 placed ex-parte. The respondent No.2 – insurance company has filed the written statement by denying the rash and negligent driving of the driver of the Truck. It is further denied the age, income, occupation and disability of the claimant. Accordingly, prayed to dismiss the petition.

05. Based upon the above pleadings the Tribunal has framed the following issues:-

i) Whether the petitioner proves that she sustained injuries in road traffic accident which occurred on 13.09.2016 at about 01.40 p.m. near Primary School, Wadedgaon, Tq: North Solapur Dist: Solapur due to the negligent driving of the driver of Truck bearing Reg.No.MH-13-AX-4828.?

ii) Whether the petitioner proves that she is entitled for the compensation.? If so.? To what extent and from whom she is entitled.?

iii) *What order or award.?*

06. The claimant herself examined as PW.1 and doctor examined as PW.2 and got marked Ex.P.1 to 13 documents. On behalf of the respondents, the no evidence is led, but Ex.R.1 to Ex.R.5 documents were marked.

07. After hearing the arguments, the Tribunal answered the issues No.1 and 2 in the affirmative and awarded the compensation under the following heads:-

Sl. No.	Heads	Compensation Awarded
1.	Towards pain and suffering	Rs.10,000/-
2.	Towards loss of amenities	Rs.30,000/-
3.	Towards attendants charges	Rs.6,000/-
4.	Towards medical expenses	Rs.2,37,495/-
5.	Towards loss of future income	Rs.3,02,400/-
	Total	Rs.6,15,895/-

08. Feeling aggrieved by the same, the claimant is before this Court in this appeal.

09. The learned counsel for the claimant has strenuously contended that the Tribunal committed an error in calculating the loss of future earning capacity by taking 30% disability, even though both the legs are amputated. The evidence of the doctor shows that the claimant has sustained 90% disability and lost the earning capacity at 100%, which was not properly considered by the Tribunal. It is also contended that the Tribunal taken the income of the claimant at Rs.6,000/- per month, which is not correct, even as per the Karnataka Legal Services Authority Rs.8,750/- should be considered for the accident of the year 2016. The Tribunal has not considered the future prospects. The claimant also needs the artificial limbs and the compensation towards the disfigurement of the claimant, was also not awarded. Hence, prayed for allowing the appeal by enhancing the compensation amount.

10. *Per contra*, the learned counsel for the respondent No.2 – insurance company supported the findings of the Tribunal and contended that by considering the evidence of the doctor, the Tribunal has rightly considered the income of the claimant. Even if 90% of disability, as stated by the doctor to both the limbs, it has to consider 1/3rd disability to the whole body and prays for enhancing the disability to the extent of 60% to 80%. Hence, prayed for dismissing the appeal.

11. Having heard the arguments and perused the records, the point that would arise for our consideration is as under:-

> *"Whether the claimant is entitled for the enhancement of compensation.? If so, to what extent.?*

12. On perusal of the records, it is not in dispute that the accident was occurred on 13.09.2016, due to the rash and negligent driving of the driver of the Truck, due to which the claimant has suffered crush injuries on both the legs and both legs were amputated. As per the

evidence of PW.2, the claimant is suffering from 90% disability to both the limbs. The Ex.P.11 – disability certificate issued by the doctor. The photographs of the claimant is also produced. As per Ex.P.4 – wound certificate, while discharging the claimant, the hospital authorities have clearly stated that on both legs there were crush injuries and amputated below the knee. The amputation below the knee of the claimant is not in dispute.

13. Coming to the disability, the doctor has opined that the 90% to the both the limbs. In normal case, the Courts are considered 90% disability to the limbs, while taking into consideration the whole body 1/3rd or 1/4th required to be considered as a disability of the claimant. However, in this case where the claimant sustained both the legs amputated below the knee. After perusing the records, we are of the opinion that the disability in respect of the earning capacity is considered as 100% instead of 30%. Therefore, we are of the opinion that the Tribunal has erred in considering 30% disability to the whole body

for the purpose of considering the loss of future earning capacity. Therefore, considering 100% of the loss of income or disability, the claimant has lost the 100% income due to amputation of both the legs.

14. In respect of the income at Rs.6,000/- per month, as considered by the Tribunal, there is no reason given by the Tribunal. If there is no documents produced by the claimant, the Court requires to consider the Karnataka Legal Services Authority Chart, at Rs.8,750/- per month as notional income of the injured – claimant. If Rs.8,750/- per month considered, it is well settled principle of law that when the disability is more than 50%, the Court requires to consider the future prospects. The age of the claimant was 45 years. The functional disability is 100% and 100% loss of income. Such being the case, we are propose to consider 25% towards the future prospectus. If Rs.8,750/- x 25% (Rs.2,187/-) = Rs.10,937/- x 12 x 14 / 100% = Rs.18,37,416/-. Hence, the claimant is entitled for ***Rs.18,37,416/-*** towards ***loss of future income.***

15. The Tribunal has awarded only Rs.40,000/- towards pain and suffering. The claimant has suffered crush injuries on both the legs. She was admitted to the Hospital and surgery was conducted, both the legs were amputated. Such being the case, awarding Rs.40,000/- towards pain and suffering is very meager. Hence, we propose to enhance the same to Rs.60,000/-. Therefore, the claimant is entitled for ***Rs.1,00,000/-*** towards the ***pain and suffering***.

16. As regards to the loss of amenities, the Tribunal has awarded Rs.30,000/-. This Court has considered additional 25% of the income towards future prospectus. Considering the loss of income at 100%, the question of granting loss of amenities does not arise at all. Hence, the amount to which loss of amenities is set-aside.

17. As regards to the attendant charges, the Tribunal has awarded only Rs.6,000/- and the medical expenses Rs.2,37,495/-. The same are not required for any enhancement.

18. However, the Tribunal has not awarded towards disfigurement of the claimant. The claimant is a woman and aged about 45 years and her both the legs were amputated. Definitely, she has to suffer stigma in the society in any of the function in the society. Such being the case, this Court required compensating under this head. Hence, we propose to award ***Rs.1,00,000/-*** towards ***loss of disfigurement***.

19. The Tribunal has not awarded any amount towards the purchase of artificial limbs. There is no positive evidence adduced by the claimant before the Tribunal that there is requirement of artificial limbs. Therefore, in the absence of the evidence, we propose to award ***Rs.1,00,000/-*** towards purchase of ***artificial limbs***. Accordingly, this Court re-assess the compensation as under:-

Sl. No.	Heads	Compensation Awarded by the Tribunal	Compensation awarded by this Court
1.	Towards pain and suffering	Rs.10,000/-	Rs.1,00,000/-
2.	Towards attendants charges	Rs.6,000/-	Rs.00,06,000/-
3.	Towards medical expenses	Rs.2,37,495/-	Rs.02,37,495/-
4.	Towards loss of future income	Rs.3,02,400/-	Rs.18,37,416/-
5.	Towards disfigurement	_	Rs.01,00,000/-
6.	Towards artificial limbs	_	Rs.01,00,000/-
	Total Rounded of to	Rs.5,55,895/- _	Rs.23,80,911/- Rs.23,81,000/-

20. Therefore, the claimant is entitled for enhancement of compensation at Rs.18,25,105/-, the same is rounded of to Rs.18,25,100/- (Rs.23,81,000/- minus Rs.5,55,895/-).

21. For the aforesaid reasons, we proceed to pass the following;

O R D E R

i) The appeal is allowed in part.

ii) The judgment and award dated 07.07.2020 passed in MVC.No.1925/2016 by the Principal Senior Civil Judge and CMJ and MACT-V, at Vijayapura, is modified.

iii) The claimant is entitled for an enhanced compensation of Rs.18,25,100/- over and above the compensation awarded by the Tribunal which shall carry interest at the rate of 6% per annum from the date of petition till the date of realization.

iv) The respondent No.2 – insurance company shall deposit the enhanced compensation amount within a period of 08 weeks from the date of receipt of copy of this judgment, before the Tribunal.

v) Out of the compensation, 50% of the amount is directed to be deposited in Fixed Deposit in any nationalized bank for a period of ten years in the name of the claimant and remaining 50% of the amount shall be released to the claimant, on proper identification.

The Registry is directed to send the Trial Court records along with copy of this judgment forthwith.

Sd/-
(K NATARAJAN)
JUDGE

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

KJJ
List No.: 1 Sl No.: 41
CT:SI