



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 24<sup>TH</sup> DAY OF AUGUST, 2023**

**PRESENT**

**THE HON'BLE MR JUSTICE K.SOMASHEKAR**

**AND**

**THE HON'BLE MR JUSTICE UMESH M ADIGA**

**MISCELLANEOUS FIRST APPEAL NO.3721 OF 2022 (MV-I)**

**C/W**

**MISCELLANEOUS FIRST APPEAL NO.3583 OF 2022 (MV-I)**

**In MFA No.3721/2022**

**BETWEEN:**

SMT. MEENAKUMARI K R

...APPELLANT

(BY SRI. S.N.ASHWATHANARAYANA, SR. COUNSEL FOR  
SRI S.A. SUDHINDRA, ADVOCATE)

**AND:**

1. THE MISSION DIRECTOR (N R L M )  
KARNATAKA STATE RURAL  
LIVELIHOOD PROMOTION SOCIETY,  
NO.145/1, INFANTRY ROAD,  
BANGALORE 560001.
2. KARNATAKA GOVERNMENT  
INSURANCE DEPARATMENT,  
MOTOR BRANCH,  
BENGALURU 560001.

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by D HEMA  
Location:  
HIGH COURT  
OF  
KARNATAKA



3. SRI CHETHAN KUMAR

...RESPONDENTS

(BY SRI. ARUNA G.S., HCGP FOR R2;  
R3 IS SERVED BUT UNREPRESENTED;  
V/O DT:19.09.22, NOTICE TO R1 IS DISPENSED WITH)

THIS MFA IS FILED U/S.173(1) OF MV ACT, AGAINST THE JUDGMENT AND AWARD DT.10.01.2022 PASSED IN MVC NO.4350/2019 ON THE FILE OF THE VIII ADDITIONAL SMALL CAUSE JUDGE AND THE MOTOR ACCIDENT CLAIMS TRIBUNAL (SCCH-5) AT BANGALORE PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

**In MFA No.3583/2022**

**BETWEEN:**

KARNATAKA GOVERNMENT INSURANCE  
DEPARTMENT,  
MOTOR BRANCH,  
BENGALURU-560 001.  
(POLICY NO.1228270  
VALID FROM 24.09.18 TO 23.09.19)

...APPELLANT

(BY SRI. ARUNA G.S., HCGP)

**AND:**

1. SMT. MEENAKUMARI K R



**NC: 2023:KHC:30381-DB  
MFA No. 3721 of 2022  
C/W MFA No. 3583 of 2022**

2. THE MISSION DIRECTOR (N R L M )  
KARNATAKA, STATE RURAL  
LIVELIHOOD PROMOTION SOCIETY,  
NO.145/1, INFANTRY ROAD,  
BANGALORE 560001.  
(R.C.OWNER OF MARUTI SX4 VXI  
BEARING REG. NO.KA004-ML-2599)
  
3. SRI CHETHAN KUMAR P,  
C/O SUDHINDRA

...RESPONDENTS

(BY SRI. S.N.ASHWATHANARAYANA, SR. COUNSEL FOR  
SRI S.A. SUDHINDRA, ADVOCATE R1)

THIS MFA IS FILED U/S.173(1) OF MV ACT, AGAINST THE  
JUDGMENT AND AWARD DT.10.01.2022 PASSED IN MVC  
NO.4350/2019 ON THE FILE OF THE VIII ADDITIONAL SMALL  
CAUSES JUDGE AND THE MOTOR ACCIDENT CLAIMS TRIBUNAL  
SCCH-5 AT BENGALURU, AWARDING COMPENSATION OF  
RS.15,78,350/- WITH INTEREST AT 9 PERCENT P.A. (EXCLUDING  
FUTURE MEDICAL EXPENSES OF RS.50,000) FROM THE DATE OF  
PETITION TILL REALIZATION.

THESE APPEALS, COMING ON FOR FINAL HEARING, THIS DAY,  
**UMESH M ADIGA, J.**, DELIVERED THE FOLLOWING:

### **JUDGMENT**

1. The claimants in MVC.No.4350/2019 on the file of  
VIII Additional Small Causes Judge and the Motor Accident  
Claims Tribunal, Bengaluru (for short 'Tribunal') has filed



MFA.No.3721/2022 claiming for enhancement of compensation. Similarly, insurer in the said case has filed appeal in MFA.No.3583/2022 challenging the quantum of compensation awarded to the claimants. Both the matters are taken up together for final disposal.

2. It is the case of the claimant that on 01.01.2019 at about 2.00 p.m. she met with an accident due to rash and negligent driving of car bearing registration No.KA-04-ML-2599 by its driver and due to the impact of the accident she had sustained severe injuries to the left lower limb, calf muscle of left leg and fracture of knee joint. She had taken treatment as in-patient in Bowring Hospital as well as other hospitals and had spent more than Rs.5,00,000/- towards medical expenses. She underwent surgery and implants were inserted.

3. It is further the case of the claimant that she was aged about 63 years at the time of accident and she has been practicing as an advocate and was earning



Rs.75,000/- per month. Due to the injuries sustained in the accident, she is unable to continue her profession as she was doing it earlier. With these reasons, she prayed for awarding compensation of rupees one crore.

4. Respondents Nos. 1 and 2 have filed written statement before the Tribunal denying the entire contentions of the claimant. They have contended that due to negligence of claimant, accident had taken place. With these reasons, prayed to reject the claim petition.

5. From the rival contentions of the parties, the Tribunal had framed necessary issues.

6. To prove her case, the claimant had examined PW-1 to PW-7 and got marked documents as Ex.P1 to P27 and closed her evidence. Respondents examined RW1 and got marked document as Ex.R1.

7. The Tribunal on hearing both the parties and appreciating the pleading and evidence on record,



awarded total amount of compensation of Rs.15,78,350/-  
as under:

SL.NO	PARTICULARS	AMOUNT IN (RS.)
1.	Loss of future income	7,05,600
2.	Pain and sufferings	1,00,000
3.	conveyance, nourishment and attendant charges	1,00,000
4.	Medical expenses	4,67,750
5.	Loss of amenities in life	1,00,000
6.	Loss of income during laid up period	5,000
7.	Future Medical expenses	1,00,000
	TOTAL	15,78,350

Respondent No.2 was directed to pay the said amount by judgment and award dated 10.01.2022. The same is challenged by both claimant and insurer in the above said appeals.

8. We have heard the arguments.

9. Learned Senior Counsel for the appellant Sri. S.N. Ashwatha Narayana submits that the Tribunal has awarded meager amount of compensation on all the heads. The claimant is an advocate practicing in High Court as well as District Courts. Due to the fracture and



disability, now she is not in a position to practice or attend the Court as she was attending the Court proceedings prior to the accident. Therefore, disability of the claimant is 100%. However, the Tribunal has taken the disability of the claimant only at 28%, which needs to be reconsidered.

10. Learned counsel relied on the judgment rendered by Hon'ble Apex Court in the case of *INDRA BAI VS. ORIENTAL INSURANCE COMPANY LTD., AND ANOTHER*<sup>1</sup> and submitted that in the above said case, the Hon'ble Apex Court has considered the disability at 100% and awarded the compensation. Principle of Law laid down in the above judgment is applicable to the facts of the present case.

11. Learned Senior Counsel has further submitted that the Tribunal has awarded compensation of Rs.5,000/- under the head 'loss of income during the laid up period'. The Tribunal has considered the income of the claimant as

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<sup>1</sup> AIR 2023 SC 3478



Rs.30,000/- per month. However, while awarding the compensation under the head loss of income during the laid up period, awarded meager amount of Rs.5,000/-, which needs to be enhanced. He has further submitted that the claimant has to undergo knee replacement surgery for which at least 4 to 5 lakhs rupees is required. However, the Tribunal has awarded meager amount of Rs.1,00,000/-. Considering the evidence on record, learned Senior Counsel submits that the amount of compensation awarded by the Tribunal is to be re-calculated and just and reasonable amount of compensation needs to be awarded by this Court.

12. Learned High Court Government Pleader submits that the Tribunal has taken the income of the claimant on higher side; And alleged disability of fracture of the knee joint may not affect the earning capacity of the claimant. She could practice as an advocate without any difficulty. Therefore, disability assessed by the Tribunal is on the higher side. He has further submitted that amount of





compensation awarded on other heads are also on the higher side. Therefore, prayed to re-calculate the same.

13. The Tribunal on appreciating the pleading and evidence on record, rightly held that accident had taken place due to rash and negligent driving of the car bearing registration No. KA-04-ML-2599 by its driver and due to the accident claimant had sustained grievous injuries. The said finding does not call for any interference by this Court.

14. The claimant produced Ex.P10 i.e., the Income Tax Assessment for the year 2016-2017, 2017-2018, 2018-2019. Considering the said income, the Tribunal has calculated earnings of the claimant as Rs.30,000/- per month. The said finding is based on the record. The respondents before the Tribunal has not made out any case to disagree with the findings of the Tribunal. Therefore, the submission of learned High Court



Government Pleader that the income taken by the Tribunal is on the higher side is not tenable.

15. The Tribunal assessed the evidence of PW1 & PW5 while assessing the disability. PW-5 in his evidence has narrated total disability of left lower limb at 56% and that of her whole body at 28%. The said finding is also based on the record and does not call for any interference. On the basis of said calculation, the Tribunal has awarded compensation of Rs.7,05,600/- under the head 'Future earning capacity due to permanent disability' and the said amount is just and reasonable.

16. The Tribunal has awarded compensation under the head 'Medical expenses' on the basis of the documents produced before the Tribunal i.e., medical records, receipts etc., and the same also does not call for interference.

17. The Tribunal has awarded compensation of Rs.1,00,000/- under the head 'Pain and suffering'. PW5 in



his evidence had stated that "claimant had sustained fracture, dislocation of left knee joint with artery injury (vascular injury); She underwent surgery in the form of left Knee external fixator application, Popliteal artery thrombectomy, end to end anastomosis, medial and lateral fasciotomy on 02.01.2019". PW.1 & 5 had stated that petitioner cannot walk properly, climb stairs and stand for long time. Considering the said evidence and medical records indicate the sufferance due to said injuries. Hence, the claimant is entitled for enhancement of the compensation under the head 'Pain and sufferings'. Similarly, the Tribunal though held that income of the claimant as Rs.30,000/- per month but awarded a sum of Rs.5,000/- towards 'Loss of income during the laid up period'. Looking to the nature of injuries, at least for a period of six months the claimant might not be in a position to do any work and thereby lost her income for a period of six months, which needs to be compensated. Looking to the disability stated by PW-5 and also difficulties stated by PW-1 - claimant in her evidence, it is



just necessary to enhance the compensation under the head 'loss of amenities'.

18. The claimant is an advocate. According to her evidence she has been practicing in High Court & trial Courts. To attend cases of her clients she has to attend the different Courts. Due to difficulty to walk, she cannot move fast to attend different Courts. Considering her difficulty of movements, clients may think of discontinue her service, which would affect her earnings and discharge her duties effectively and efficiently. Disability of lower limb of the claimant definitely affects her movements in attending different court halls. Considering these facts, the amount of compensation awarded by the Tribunal under the head 'Loss of amenities' needs to be enhanced.

19. The Tribunal has awarded Rs.1,00,000/- towards 'Future Medical Expenses'. The submission of learned Senior counsel for the claimant that she has to undergo



knee replacement surgery for which she has to spend lot of money, cannot be ruled out. Therefore, amount of compensation awarded towards 'Medical expenses' needs to be enhanced. In the judgment rendered by the Hon'ble Supreme Court in the case of *Indra Bai Vs. Oriental Insurance Company Ltd., and another*. The Medical Board had issued certificate indicating permanent disability to an extent of 50% with a declaration that she is unfit for labour work". Considering the said medical evidence, it was held by the Commissioner that the permanent disability of that case was 100% towards her earning capacity. In this case, according to PW5, the disability of claimant is 28% to the whole body and the same was accepted by the Tribunal. Therefore, the principle of law laid down in the above case is not applicable to the case in hand. In the judgment rendered by Hon'ble Apex Court in the case of *M.R.KRISHNA MURTHI Vs. NEW INDIA*



*ASSURANCE CO., LTD AND OTHERS*<sup>2</sup> it is held that(we quote):

"Victim belongs to a family of lawyers as both his parents were senior lawyers practicing in the Supreme Court. Because of his family background. Victim also wanted to join legal profession, even though at the time of accident, he was studying in school. Having regard to affluent family background, victim at the time of accident was studying in prestigious School in New Delhi. All these circumstances clearly indicated that the victim had a bright future and therefore, his future earnings could not be considered without keeping in view the aforesaid factors. The victim also produced evidence in respect of his disability. This disability does not indicate much loss of prospects in earning. Of course, his movements are restricted and he needs a driver as he is not in a position to drive the car himself. This would hinder the earning capacity to some extent, though not significant extent. In case of the victim, loss of future earning can be fixed at Rs.5,000/- per month i.e. Rs.60,000/- per annum on which multiplier of 18 is to be applied. Calculated in this manner, the loss of future earning comes to Rs.10,80,000/-. The appellant, thus, would be paid another sum of Rs.6,54,000/- under this head along with interest @ 7% p.a".

20. In the above case, the Hon'ble Apex Court dwelling in to the question of assessing Income of a law student, held the notional income as Rs.5,000/- per month or Rs.60,000/- per annum. The Hon'ble Apex Court considered the future prospects of the claimant in the said case and awarded just compensation. The principle of law

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<sup>2</sup> AIR 2019 SC 5625



laid down in the said judgment can be made applicable to the facts of the present case.

21. The submission of learned High Court Government Pleader that the amount of compensation awarded by the Tribunal is on the higher side or disability assessed by the Tribunal is also on the higher side is not tenable. The Tribunal on the basis of material available on record assessed the compensation, which needs to be enhanced to award just and reasonable amount of compensation. Therefore, the contention of the insurer is not tenable.

22. From the aforesaid discussions, the claimant is entitled for following amount of compensation:

SL.NO	PARTICULARS	AMOUNT IN (RS.)
1.	Loss of future income	7,05,600
2.	Pain and sufferings	2,00,000
3.	conveyance, nourishment and attendant charges	2,00,000
4.	Medical expenses	4,67,750
5.	Loss of amenities in life	2,50,000
6.	Loss of income during laid up period	1,80,000
7.	Future Medical expenses	1,75,000
	TOTAL	21,78,350



23. The claimant is entitled for enhancement of Rs.6,00,000/-.

24. Though the Tribunal has awarded interest @ 9% per annum, we are inclined to award the interest @ 6% per annum on the enhanced amount of compensation from the date of the petition till its payment.

25. For the aforesaid discussion, we answer the issue 'Partly in the affirmative' and pass the following:

**ORDER**

i. MFA.No.3583/2022 filed by the insurer is dismissed and the MFA.No.3721/2022 filed by the claimant is allowed in part.

ii. The impugned judgment and award passed by the Tribunal in MVC.No.4350/2019 dated 10.01.2022 is modified as under:





- a. The claimant is entitled for compensation of Rs.21,78,350/- as against Rs.15,78,350/- awarded by the Tribunal and claimant is entitled for enhanced compensation of Rs.6,00,000/- along with interest @ 6% per annum on the enhanced compensation from the date of petition till its payment.
- b. Respondent No.2 is directed to pay the said amount of compensation within a period of eight weeks from the date of receipt of copy of this award.
- c. Deposit and release of the amount is as ordered by the Tribunal.
- d. Amount-in-deposit, if any, shall be transferred to the Tribunal for payment of amount to the claimant.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**