



JUDGMENT

Though this appeal is listed for admission, with the consent of both parties, heard for final disposal.

2. This appeal is filed by the claimant against the judgment and award in MVC No.1138/2019 dated 17.11.2022.

3. The petitioner/claimant has filed a petition under Section 166 of MV Act, claiming compensation for accidental injuries sustained in a road traffic accident that took place on 09.04.2019. It is stated that the claimant while proceeding by walk towards Vijayapura road from their land, a motorcycle bearing No.KA-32/X-7036 driving in a rash and negligent manner dashed to the petitioner, resulting in grievous injuries. It is stated that the petitioner is an advocate by profession aged 43 years and was earning 1,50,000/- per month.

4. On issuance of notice respondents No.1 to 3 failed to appear before the Tribunal and were placed ex-parte.



Respondent No.4 filed statement of objections denying the averments of the petition, age, avocation and income of the petitioner. He further disputed the accident and contended the delay in filing the complaint and also disputed the fact that rider of the motorcycle possessing valid and effective driving license.

5. The Tribunal on the basis of the material evidence on record held that the accident occurred due to rash and negligent driving of motorcycle bearing No.KA-32/X-7036 and confirmed the liability of the insurer. The Tribunal awarded a sum of Rs.6,96,704/- along with interest @ 6% under various heads as under:

Sl. No.	Different heads	Compensation Amount
1	Pain and sufferings	Rs.40,000/-
2	Medical expenses	Rs.2,09,523/-
3	Loss of earning during laid up period	Rs.40,126/-
4	Loss of future earning, Disability	Rs.3,37,055/-
5	Nutritious food and attendant charges	Rs.20,000/-
6	Loss of future amenities and loss of happiness	Rs.20,000/-
7	Future medical expenses	Rs.30,000/-
Total		Rs.6,96,704/-



6. The Tribunal while awarding the compensation, considered the disability at 5%, age of the claimant as 44 years, income at Rs.40,126/- per month and applied multiplier of 14.

7. Heard Smt.Chandrakala, learned counsel for the claimant and Smt.Preeti Patil Melkundi, learned counsel for the insurer.

8. Learned counsel for the claimant submits that the claimant has suffered disabilities as under:

Pain, right quadriceps weakness and restricted ROM of right knee is 35%.

Right lower limb PPI is 35%

Whole body PPI is 35%

Further contends that the disability assessed at 35% to the right lower limb is to be considered as whole body functional disability, considering the profession carried on by the claimant. It is further submitted that the disability suffered would deprive the claimant to continue her profession. Income tax returns are at Ex.P-31 to 33 for



the Assessment Years 2016-17, 2017-18 and 2018-19. She submits that the income of the claimant has to be assessed on the basis of Ex.P-33, income tax returns for the Assessment Year 2018-2019. It is further submitted that the compensation awarded under various heads by the Tribunal is on the lower side. Thus, prays to reassess the compensation.

9. Per contra, learned counsel for the insurer submits that as per Ex.P-29 disability certificate, the disability to the right lower limb is 35%. In the absence of the assessment of whole body disability by the doctor, the Tribunal is justified in assessing the disability of the whole body at 5%. It is further submitted that the date of the accident is 09.04.2019, but no income tax returns has been filed for the Assessment Year 2019-20. The income disclosed as per Ex.P-31 to 33 are income tax returns for the years 2016-17, 2017-18 and 2018-19. They cannot be considered in the absence of income tax returns for the Assessment Year 2019-20. She further submits that the



compensation awarded by the Tribunal is just and reasonable. Thus, prays to dismiss the appeal.

10. Having heard both the learned counsel and on perusal of the appeal papers, the points that would arise for our consideration are as under:

- a. Whether the Tribunal has erred in assessing the whole body disability at 5%?*
- b. Whether the compensation awarded by the Tribunal needs reconsideration?*

11. Our answer to both points are in the affirmative for the following reasons:

It is not in dispute that the claimant is engaged in the legal profession and practising as an advocate. As per Ex.P-29 and evidence of PW-2, the claimant has suffered the following injuries.

Pain, right quadriceps weakness and restricted ROM of right knee is 35%.

Right lower limb PPI is 35%

Whole body PPI is 35%



PW-2 doctor while issuing the disability certificate at Ex.P-29 has not assessed the whole body disability. It is a settled position of law that in the absence of assessment of whole body disability, 1/3rd of disability assessed to a particular part of the body is to be considered as whole body disability. In view of the settled position of law and also considering the nature of the injuries and disability suffered, we are of the view that it would be appropriate to assess the whole body disability at 12%.

12. The claimant has filed income tax returns for the Assessment Years 2016-17, 2017-18, 2018-19 declaring income of Rs.4,95,318/-, Rs.5,35,411/- and Rs.5,84,747/- respectively. The average income declared is Rs.5,38,492/-. It is settled position of law that while assessing the income, if income tax returns are available, the same should be considered as best a piece of evidence. Further, while assessing the income of the claimant the consistent/established income is to be considered. When variations are found in the income tax



returns, considered for different assessment years, it would be appropriate to consider the average income of three assessment years to arrive at the annual stable income of the claimant.

13. The contention of the claimant that while considering the income tax returns for three assessment years the return of income having higher income is to be considered, is not acceptable and the contrary contention of the insurer that income on the lower side among three years is to be considered is equally not sustainable. The income of the person engaged in the profession or business would depend on various factors and cannot be stable year to year. When the income declared by a person engaged in a profession or business is not stable, in order to assess the income of the injured/deceased to arrive at established income, which would be the foundation for assessing the compensation, the average of the income of the years considered would be appropriate. Further the average income would be appropriate in the



interest of the claimant as well as the insurer. If average income is not considered, if an established income of the injured/deceased is reduced in the year of accident or due to windfall the income of the victim/deceased increased in the year of accident, the process of determining the established income would fail. Therefore, we are of the view that when the income of the victim/deceased is inconsistent in the income tax returns filed, it is the aggregate income declared in the income tax returns is to be considered.

14. Further contention of the insurer that the income tax returns cannot be considered, as the claimant has not produced his income tax returns for the Assessment Year 2019-2020 is also misplaced. The accident took place on 09.04.2019 and the due date for filing an income tax returns for the Assessment Year 2019-2020 was still available. Hence, the returns filed and available on record for the immediate previous Assessment Years to the date of the accident is to be considered.



15. The average income for the Assessment Years 2016-17, 2017-18 and 2018-19 comes to Rs.5,38,492/-. The claimant has paid Rs.30,690/- towards income tax. The income after tax is Rs.5,07,802/- per annum (Rs.42,317/- per month). Hence, we consider Rs.42,317/- per month as income of the claimant. The claimant is aged 44 years and the same is not in dispute. The applicable multiplier is 14. Thus loss of future earning is re-assessed as under :- $(Rs.42,317/- \times 12 \times 14 \times 12 / 100 = Rs.8,53,111/-)$.

16. The claimant has suffered 35% disability to the right lower limb and she was inpatient for a period of nine days. Considering the nature of grievous injuries and the treatment, the compensation towards loss of future amenities and loss of happiness at Rs.20,000/- is on the lower side. We deem it appropriate to award Rs.40,000/- as against Rs.20,000/- awarded by the Tribunal.



17. Considering the nature of injuries and treatment and also considering the nature of the profession, it is reasonable that the claimant would be away from her profession at least for a period of two months. Hence, we consider the loss of earning during a laid up period as two months and award a sum of Rs.84,634/- (Rs.42,317x2) as against Rs.40,126/- awarded by the Tribunal.

18. PW-2 doctor has stated that the claimant has to undergo surgery to remove the implant in the leg. The estimated cost of surgery is Rs.60,000/-. The Tribunal has awarded a sum of Rs.30,000/-. Considering the cost of surgery and also medical expenses that the claimant has incurred for treatment of injuries and surgery, we deem it appropriate to award a sum of Rs.45,000/- as against Rs.30,000/- awarded by the Tribunal towards future medical expenses.

19. The compensation awarded under other heads need no interference and the same is maintained. Thus, the total compensation is re-assessed as under:



Sl. No.	Different heads	Amount awarded by the Tribunal	Amount awarded by this Court
1	Pain and sufferings	Rs.40,000/-	Rs.40,000/-
2	Medical expenses	Rs.2,09,523/-	Rs.2,09,523/-
3	Loss of earning during laid up period	Rs.40,126/-	Rs.84,634/-
4	Loss of future earning, Disability	Rs.3,37,055/-	Rs.8,53,111/-
5	Nutritious food and attendant charges	Rs.20,000/-	Rs.20,000/-
6	Loss of future amenities and loss of happiness	Rs.20,000/-	Rs.40,000/-
7	Future medical expenses	Rs.30,000/-	Rs.45,000/-
Total		Rs.6,96,704/-	Rs.12,92,268/-
Enhancement		Rs.5,95,564/-	

20. As such, we pass the following:

ORDER

- a) The appeal is **allowed in part**.
- b) The judgment of the Claims Tribunal is modified.
- c) The claimant is entitled to a total compensation of Rs.12,92,268/- as against Rs.6,96,704/- awarded by the Tribunal.



d) The Insurance Company is directed to deposit the compensation amount along with interest @ 6% p.a. from the date of filing of the claim petition till the date of realization, within a period of six weeks from the date of receipt of copy of this judgment.

Sd/-
JUDGE

Sd/-
JUDGE

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List No.: 1 SI No.: 18
CT: BN