**(2017) 01 KAR CK 0135**

**In the Karnataka High Court**

**Case No :** M.F.A No. 200690 of 2016(MV)

Dhulappa APPELLANT

Vs

Sanjeevakumar RESPONDENT

**Date of Decision :** 24-01-2017

**Acts Referred:**
Motor Vehicles Act, 1988 — Section 168

**Citation :** (2017) AAC 800

**Hon'ble Judges :** Mr. B.A. Patil, J.

**Bench :** Single Bench

**Advocate :** Sri Sanjeev Patil, Advocate, for the Appellant; Smt. Anuradha M. Desai, Advocate, for the Respondent; Notice to R1 dispensed v/o dated 7/9/16, for the Respondent No. 1

**Final Decision :** Partly Allowed

## Judgement

1. This appeal is filed by the claimant seeking enhancement of the amount awarded by the MACT, Kaiaburagi through its judgment and award dated 11.8.2015 passed in MVC. No. 238/2014.

2. Appeal is admitted. With the consent of the learned counsel appearing for both parties, the appeal is heard finally and disposed of by this judgment.

3. Learned counsel for the appellant-claimant. submits that the compensation awarded by the Tribunal under various heads is on the lower side. He has further contended that the income of the appellant-claimant taken by the Tribunal is meager and thereby the compensation awarded towards loss of future income is on the lower side. Hence, he prays for allowing the appeal by enhancing the compensation awarded by the Tribunal.

4. Per contra, the learned counsel appearing on behalf of the second respondent-Insurance Company supports the impugned award and therefore she seeks for dismissal of the appeal.

 

5. The occurrence of accident in question and the insurance of the offending vehicle with the second respondent-Insurance Company is not in dispute. As could be seen from the impugned judgment and award, the Tribunal after taking into consideration the fracture of shaft of femur right and other injuries sustained by the claimant, has awarded an amount of Rs. 30,000/- towards pain and suffering; Rs. 10,000/-to wards loss of amenities and enjoyment in the life. Since the appellant-claimant has not produced any documents to show that he was running a Provision Store and was earning Rs. 15,000/- per month, by taking the notional income at the rate of Rs. 6,000/- per month, by assessing the disability at 10%, and applying proper multiplier of ''18'', the Tribunal has awarded Rs. 1,29,600/- towards loss of future income; an amount 56,241/- towards medical expenses and incidental charges; Rs. 5,000/- towards attendant, food, nourishment and conveyance expenses and an amount of Rs. 18,000/- towards loss of income during the laid up period. Thus, in all the Tribunal has award Rs. 2,48,841/- with interest at the rate of 6% per annum.

6. In the normal course, the method adopted by the Tribunal would be justified. But, in the absence of documentary evidence with regard to the income of the appellant, disability and other aspects, the Tribunal ought to have awarded Rs. 1,51,200/- towards loss of future income by taking the notional income at Rs. 7,000/- per month which would be the yardstic to be adopted in Lok Adalat settlements. The multiplier applied by the Tribunal and the disability assessed is just and proper. Hence, the appellant-claimant is entitled to additional compensation of Rs. 21,600/- under the head of loss of future income.

7. Even though the appellant-claimant has examined the doctor-PW.2, who has issued the disability certificate at Ex.P8 stating that the appellant-claimant has suffered 30% disability to the whole body, taking into consideration the injuries sustained by the appellant-claimant, the disability assessed by the doctor without any guidelines or norms, appears to be on the higher side.

8. As the appellant has sustained the fracture of shaft right femur he might have suffered disability to certain extent. Taking into consideration the avocation, the appellant-claimant is entitled to an additional amount of Rs. 30,000/- towards pain and suffering; additional amount of Rs. 25,000/- towards loss of amenities and enjoyment in the life; additional amount of Rs. 15,000/- towards attendant and other incidental charges and additional amount of Rs. 3,000/- towards loss of income during the laid up period.

9. Even though the doctor-PW.2 in his evidence has deposed that a rod has been inserted in the right femur and in order to remove the same, an amount of Rs. 35,000/- is required, the Tribunal has not considered the said aspect and not awarded any amount towards future medical expenses. Keeping in view the aforesaid facts and circumstances of the case and in the absence of the appropriate disability, I feel it appropriate to award an amount of Rs. 35,000/- towards future medical expenses, which would meet the ends of justice.

 

10. Thus, in all the appellant-claimant is entitled to additional compensation of Rs. 1,29,600/- (Rupees one lakh twenty-nine thousand six hundred) with interest at the rate of 6% per annum.

11. Accordingly, the appeal is partly allowed modifying the impugned judgment and award to the extent as indicated above.

12. The Insurance Company shall deposit the additional amount of compensation awarded by this Court within six weeks from the date of receipt of a copy of this judgment. The fixed deposits are to be made as per the award of the Tribunal.