IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF MARCH, 2020

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

M.F.A. NO.3065 OF 2013 (MV)

BETWEEN:

SRI. VENKATESH
S/O SIDDAIAH
AGED ABOUT 29 YEARS
R/AT NO.370/127, 18TH CROSS
MUTTURAYASWAMY LAYOUT
SUNKADAKATTE
BANGALURU ... APPELLANT

(BY SRI. D.S. SRIDHAR, ADVOCATE FOR
SRI. K.V. SHYAMAPRASADA, ADVOCATE)

AND:

1. MANIK NAIYA
   S/O ATUL KRISHNA NAYA
   MANAGER DESIGN (BOP)
   COMMERCIAL DEPARTMENT
   BHEL, EDN, MYSORE ROAD
   P.NO.2606
   BENGALURU-560039

2. THE NEW INDIA ASSURANCE CO. LTD
   CITY BRANCH, KENGERI
   NO.327/5, INDOCEM HOUSE
   NEXT TO BHEL FACTORY
   MYSORE ROAD
   BENGALURU-560039

3. SRI. MUNIRAJU H
   S/O HANUMANTHAIAH

R/AT HONNAGANA HATTI
MAGADI MAIN ROAD
BENGALURU-560089 ... RESPONDENTS

(BY SRI. K. POORNABODHA RAO, ADVOCATE FOR R2;
R1 & R3 – VIDE COURT ORDER DATED 16.2.2015
NOTICE TO R1 & R3 IS DISPENSED WITH)

THIS APPEAL IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 15.06.2012 PASSED IN MVC NO.875/2011 ON THE FILE OF THE II ADDITIONAL JUDGE, COURT OF SMALL CAUSES, BANGALORE, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL COMING ON FOR ADMISSION, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

1. The appellant is before this Court challenging the part of the judgment and award dated 15.06.2012 passed in MVC Nos.875 and 1064 of 2011 by the Motor Vehicles Accident Claims Tribunal, Bengaluru.

2. The appellant is only concerned with the judgment and award so far as passed in MVC No.875/2011. The case of the appellant is that on 31.12.2010 at about 5.45 p.m., when he and one Ravikumar

were proceeding in a motorcycle slowly and cautiously on Magadi-Bangalore Road, near Binayak Factory the driver of Maruthi 800 Car bearing No. KA-03/M-7926 came from Naganahalli Cross Road at high speed, in a rash and negligent manner so as to endanger human life and dashed against their bike, due to which both of them fell down and sustained grievous injuries. They were rushed to Jai Maruthi Hospital, Hegganahalli, Bengaluru, where they were treated as inpatients. The appellant had undergone surgery of closed reduction and internal fixation of IM Nail on account of fracture of the shaft of left femur. Thereafter, he was discharged and availed follow-up treatment. The appellant and Ravikumar filed claim petitions in MVC Nos.875/2011 and 1065/2011, respectively. Insofar as the appellant

is concerned, the MACT Bengaluru awarded the following amount:

Sl. No.	Heads on Compensation	Amount
1	Pain and Sufferings	Rs. 60,000/-
2	Medical Expenses	Rs. 85,000/-
3	Conveyance and Nourishment etc.	Rs. 10,000/-
4	Loss of Earning during laid up period	Rs. 15,000/-
5	Loss of Amenities and Future Happiness	Rs. 50,000/-
6	Future loss of Income due to disability	Rs.1,22,400/-
7	Future Medial Expenses	Rs. 20,000/-
Total		**Rs.3,62,400/-**

3. The appellant is before this Court aggrieved by the consideration of future loss of income due to disability. All other respects are agreeable to the appellant. The appellant submits that the doctor having certified that the physical disability was 20%, MACT ought to have also considered the functional disability of the appellant. Instead of so doing, MACT has reduced the physical disability

from 20% to 12% for the whole body and awarded a meager amount as compensation.

4. Learned counsel for the appellant submits that the appellant being a driver, the injury that has been caused, has made him completely incapacitated for the purpose of driving a car and since the appellant is facing functional disability at 100%, he would not be able to drive a car any longer. He submits that this aspect of the matter has not been considered by the MACT.

5. Per contra, learned counsel for the respondent-Insurance Company would submit that physical disability which has been taken into consideration by the MACT is more than sufficient and the calculation made by the MACT is proper and correct. There could be no infirmity in the said assessment and calculation. Therefore, there is no

need for this Court to interfere with the impugned judgment.

6. Heard the learned counsel for the appellant and the respondent. Perused the papers.

7. It is the case of the appellant that the appellant is a driver by profession and avocation. It would necessarily mean that the appellant has to have proper use of all the limbs more particularly his lower limbs. The serious and grievance fracture of the shaft of the femur which required a serious operation of closed reduction and internal fixation of implants would definitely interfere with the day to day working of a driver like the appellant and the ability of the appellant continuing as a driver is seriously affected. Therefore, the functional disability caused to the appellant has to be taken into consideration. MACT has erred in taking into

consideration only the physical disability without considering the functional disability.

8. The appellant not seriously contesting other heads of compensation awarded, hence, those heads of compensation not being adverted to and they are retained as ordered by the MACT.

9. The appellant being 27 years of age as on the date of accident and the accident having occurred on 31.12.2010 i.e., the last day of 2010, I am of the considered opinion that the notional income for the year 2011 would have to be considered. Hence, the notional income of Rs.6,500/- is taken into consideration. The relevant multiplier applicable is 17.

10. The learned counsel for the respondent would also contend that the evidence of PW-4-doctor has also not been believed by the MACT, Bangalore on

account of several discrepancies in his evidence more particularly as regards the ligament tear which is stated to have been assessed even prior to the MRI being carried out. On that account, MACT has rejected the physical disability insofar as the ligament tear is concerned.

11. Having gone through the judgment and evidence of PW-4 as also his cross-examination, it is clear that the aspect relating to the fracture of left femur is not in dispute. At the most dispute is only be as regards the ligament tear which is a very small portion of injury caused to the appellant. In the affidavit filed by the appellant is categorically stated that he cannot stand, sit, squat on the floor nor he can lift or carry any weight. The assessment as stated above by the doctor is only relating to the physical disability and not the functional disability. The assessment by the MACT

is also as regards physical disability and not functional disability. Any matters relating to the grant of compensation pertaining to accident where there is disability caused what this Court would have to look into is the functional disability which would be true test and the functional disability would continue to be suffered for a long period of time. The examination of the doctor, the affidavit which has been filed, wound certificate and avocation of the injured would have to be taken into consideration. The assessment of full body disability at 12% by the Tribunal is not justifiable. Hence, I hold that the functional disability in this case would be 50%. Consequently, the assessment of compensation is Rs.6,63,000/- (Rs.6500 x 12 x 17 x 50/100).

12. Hence, I pass the following:

ORDER

i) Appeal is allowed in part.

ii) The judgment of MACT, Bengaluru in MVC No.875/2011 dated 15.06.2012 is hereby modified.

iii) The compensation amount earlier awarded by the MACT, Bangalore towards loss of income due to disability being Rs.1,22,400/-, the same is enhanced by a sum of Rs.5,40,600/-. The terms and rest of compensation awarded on other heads of account remained unaltered.

Sd/-
JUDGE

SBS/Prs*