

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF MAY, 2016

BEFORE

THE HON'BLE MR. JUSTICE B MANOHAR

MFA No.2837/2011 (MV)

BETWEEN

SMT. SWARNALATHA.S
W/O B. GANESH RAO
AGED:36 YEARS
SECOND MAIN ROAD
YADAVAGIRI
MYSORE

... APPELLANT

(BY SRI. PARIKSHIT.S.S., ADV.)

AND:

1. REVANNA
S/O LATE SHIVARUDRAPPA
AGED: 52 YEARS
K.S.R.T.C. BUS DRIVER
BADGE NO.1275, SECOND DEPOT
KUVEMPUNAGAR
MYSORE

2. MANAGING DIRECTOR
K.S.R.T.C., MYSORE DIVISION
BANNIMANTAPA
MYSORE

3. INTERNAL INSURANCE OF K.S.R.T.C
BANNIMANTAPA
MYSORE

... RESPONDENTS

(BY SRI. M.S. NARAYAN, ADV. FOR R2 & R3,
R1 - SERVED)

THIS MFA FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED: 29.12.2010 PASSED IN MVC NO. 1110/2010 ON THE FILE OF THE PRESIDING OFFICER, FAST TRACK COURT – III, MACT, MYSORE, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

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

JUDGMENT

Appellant is the claimant, being not satisfied with the quantum of compensation awarded in the judgment and award dated 29.12.2010 in MVC No.1110/2010 passed by the MACT, Mysuru (hereinafter referred to as 'Tribunal' for short) filed this appeal seeking for enhancement of compensation.

2. The appellant filed the claim petition contending that on 06.04.2009 at about 4.30 pm., she boarded the KSRTC bus route No.62 bearing registration No.KA-09-F-3098 from Shanthinagar Complex after finishing her fashion designing class. At K.G. Koppal, near under bridge the petitioner requested the conductor to stop the bus to alight. The conductor gave signal to the driver to stop the bus, while the

appellant getting down from the bus, the driver suddenly moved the bus. In view of the same, she fell down from the bus and sustained fracture of right leg and other injuries to all over the body. Immediately she was shifted to Apollo BGS hospital, Mysuru, after first aid she was shifted to B.M. Hospital. Thereafter, she was shifted to KR Hospital, Mysuru and taken treatment as an inpatient from 08.04.2009 to 29.07.2009 and under - gone surgery and skin grafting has been made. She claimed that she has spent huge sum of money for the treatment. The accident occurred due to the negligence on the part of the driver of the KSRTC bus and sought for compensation of Rs. 7,30,000/-.

3. In pursuance of the notice issued by the Tribunal, respondent No.2 entered appearance and filed written statement denying the entire averments made in the claim petition. It was specifically contended that the claimant tried to get down from the moving bus when the bus was moving very slowly near the under bridge, K.G. Koppal and the accident occurred due to the

negligence on the part of the claimant and the compensation claimed is exorbitant and sought for dismissal of the claim petition.

4. On the basis of the pleadings of the parties, the Tribunal framed necessary issues. The claimant in order to prove her case examined herself as PW-1 and got marked documents Ex.P1 to P10. The doctor who has treated the claimant has been examined as PW2. On behalf of the respondents, the first respondent driver of the bus was examined as RW-1.

5. The Tribunal after appreciating oral and documentary evidence let in by both the parties and taking into consideration the wound certificates, evidence of the witnesses held that claimant sustained injuries in the road traffic accident occurred on 6.04.2009. Hence, the claimant is entitled for compensation. With regard to quantum of compensation is concerned, in the road traffic accident, the claimant had sustained fracture of both superior inferior remi of pubic bone and for that she underwent surgery and skin grafting is done. She was an inpatient in the said

hospital from 08.04.2009 to 29.07.2009. Doctor who has treated her in his evidence had deposed that there is fracture of both superior inferior remi of pubic bone and assessed disability to an extent of 22% to the particular limb. Though the claimant claimed that she was earning Rs.10,000/- p.m., no documents has been produced in order to prove the same. In view of that, the Tribunal assessed the income of the claimant at Rs.125/- per day, i.e., Rs.3,750/- Per month. At the time of the accident, claimant was aged about 35 years, applying the multiplier as 15 and taking into consideration the disability of 7%, the tribunal has awarded a sum of Rs.47,250/- towards the future loss of income. Rs.25,000/- towards pain and sufferings. Rs.54,100/- towards medical expenses, Rs.10,000/- towards future medical expenses and in all compensation of Rs.1,36,350/- with 6% interest Per annum. Being not satisfied with the quantum of compensation awarded by the tribunal, the claimant has filed this appeal seeking enhancement of compensation.

6. Sri Parikshit S.S, learned Advocate appearing for Sri. S.N. Bhat for the appellant contended that the judgment and award passed by the Tribunal is contrary to law. In the accident, the claimant has sustained fractures of both superior inferior remi of pubic bone, she under went surgery and skin grafting is also made. She was inpatient for 111 days. Though she submitted medical bills to an extent of Rs.60,000/- the tribunal has awarded only a sum of Rs.35,000/- which is on the lower side. Since the accident is of the year 2009, the income of the claimant taken at Rs.3,750/- per month, by the Tribunal is very meager. Even the income of daily wagers working in the Government Department would be considered as Rs.5,000/- per month, during the relevant point of time. In the instant case, the claimant is a fashion designer and income of Rs.3,750/- per month taken by the tribunal is contrary to law. Rs.25,000/- awarded towards pain and sufferings is also on the lower side. Due to the accident, she was out of employment for a period of 3 months. No compensation is awarded for the

loss of income during the laid up period and hence sought for enhancement of the compensation.

7. On the other hand, Sri. M.S. Narayan, learned counsel appearing for respondent No. 2 argued in support of the judgment and award passed by the Tribunal and contended that the tribunal has awarded just compensation and sought for dismissal of the appeal.

8. I have carefully considered the arguments addressed by the learned counsel for the parties and perused the judgment and award and the oral and documentary evidence.

9. The occurrence of the accident, injuries sustained by the claimant due to the rash and negligent driving of the bus driver is not in dispute. The records clearly disclose that in the road traffic accident occurred on 6.04.2009 the claimant had sustained fractures of both bones of pubic bone. She underwent surgery and also skin grafting is made. She was inpatient from 08.04.2009 to 29.07.2009 for about 111 days. Doctor

who has treated the claimant has assessed the disability to an extent of 22% to the particular limb. However, a sum of Rs.25,000/- awarded towards pain and sufferings is on the lower side. Accordingly, it would meet the ends of justice if the claimant is entitled for another sum of Rs.25,000/- towards pain and sufferings.

10. Further the income of the claimant at Rs.125/- per day, i.e.,Rs.3750/- per month on the ground that the claimant has not produced any document regarding income is contrary to law. Even the daily wage employees working in the various Government Departments getting the salary of Rs.5,000/- per month in the relevant year. Hence, tribunal ought to have taken the income of claimant as 5,000/- and award the compensation. Taking disability at 7% and applying multiplier 15, as at the time of accident she was aged about 35 years, the claimant is entitled to Rs.63,000/- ($\text{Rs.5,000} \times 12 \times 15 \times 7/100 = 63,000/-$) towards loss of future income as against Rs.47,250/- awarded by the Tribunal.

11. Further no compensation is awarded towards loss of income during laid up period. Hence Rs.15,000/- is awarded towards loss of income during laid up period.

12. Further a sum of Rs.3,000/- and Rs.5,000/- is awarded towards Special diet and conveyance is also on the lower side. Hence Rs.10,000/- is awarded under the said heads. In all, the claimant is entitled for the enhanced compensation amount of **Rs.65,750/- apart from Rs.1,36,350/-** awarded by the Tribunal with interest at 6% per annum.

Accordingly I pass the following:

ORDER

The appeal is allowed in part.

The judgment and award dated 29.12.2010 made in MVC No.1110/2009 passed by the MACT, Mysuru is modified. The claimant is entitled for enhanced compensation of **Rs.65,750/-** apart from the compensation awarded by the Tribunal with interest at

6% p.a. from the date of petition till the date of realization.

**Sd/-
JUDGE**

HR