IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF DECEMBER, 2018

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

MFA.CROB.No.130/2011
C/W
MFA.No.5210/2009 (MV)

IN MFA.CROB.130/2011

BETWEEN:

SMT.B.MALIGAMMA
AGED ABOUT 51 YEARS,
W/O SRI K.H.SUBBEGOWDA,
NO.231/A, 8TH CROSS, 2ND PHASE,
MANJUNATH NAGAR,
BANGALORE. ... CROSS OBJECTOR

(BY SRI K.V.NARASIMHAN, ADV.,)

AND:

1. BANGALORE METROPOLITAN
   TRANSPORT CORPORATION
   CENTRAL OFFICE, K.H.DOUBLE ROAD,
   SHANTHINAGAR, BANGALORE,
   BY ITS MANAGING DIRECTOR.

2. SRI ABDUL AMEED
   S/O SRI GHOUSE MOHAMMED SAB,
   AGED ABOUT 55 YEARS,
   DRIVER, TOKEN NO.4953, I-DEPOT,

BMTC, K.H.ROAD,
BANGALORE. ... RESPONDENTS

(BY SRI D.VIJAYAKUMAR, ADV., FOR R1
VIDE COURT ORDER DATED 03.01.2018
R2 IS DELETED)

THIS MFA.CROB IS FILED UNDER ORDER 41 RULE 22 OF CPC, AGAINST THE JUDGMENT AND AWARD DATED:13.01.2009 PASSED IN MVC NO.2006/2000 ON THE FILE OF XII ADDITIONAL JUDGE AND MEMBER, MACT, BANGALORE, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

IN MFA.No.5210/2009

BETWEEN:

BANGALORE METROPOLITAN
TRANSPORT CORPORATION
CENTRAL OFICE, K.H.DOUBLE ROAD,
SHANTHINAGAR, BANGALORE
BY ITS MANAGING DIRECTOR. ... APPELLANT

(BY SRI D.VIJAYAKUMAR, ADV.,)

AND:

SMT.B.MALLIGAMMA
W/O SRI K.H.SUBBEGOWDA,
AGED ABOUT 58 YEARS,
R/O NO. 231/A, 8TH CROSS,
II PHASE, MANJUNATHANAGAR,
BANGALORE. ... RESPONDENT

(BY SRI K.V.NARASIMHAN, ADV.,)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED: 13.01.2009 PASSED IN MVC NO.2006/2000 ON THE FILE OF XII ADDITIONAL JUDGE & MEMBER, MACT, BANGALORE, AWARDING A COMPENSATION OF Rs.79,560/- WITH INTEREST @ 6% P.A. FROM THE DATE OF AWARD ONLY TILL REALISATION OF THE AWARD AMOUNT.

THIS MFA CROB AND MFA COMING ON FOR FINAL HEARING THIS DAY AND HAVING BEEN RESERVED FOR JUDGMENT, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

These miscellaneous first appeal and cross objections are directed against the impugned judgment and award dated 13.01.2009 passed by the XII Additional Judge and Member, MACT, Bengaluru, in MVC.No.2006/2000.

2. The facts of the case are that on 25.04.2000 the claimant along with her husband children were traveling in BTS bus bearing No.CAF-566. At about 2.45 p.m. the bus was stationed at Vanivilas Hospital and when the claimant was getting down from the bus, the driver of the said bus, moved the bus suddenly and as a

result the petitioner fell down from the bus and sustained injuries to the head and also there was heavy bleeding from the nose and mouth and she become unconscious. She was shifted to Victoria Hospital followed by NIMHANS and due to the injuries she became disabled and could not continue her work as a tailor and lost her income. As such, she filed the claim petition.

The first respondent was subsequently deleted from the proceedings. On service of notice, the second respondent appeared and filed written statement denying all the allegations made in the claim petition.

In order to prove her case, the claimant examined herself as P.W.1 and got marked Exs.P1 to P10. On behalf of respondent, one witness was examined as R.W.1 and got marked Ex.R1.

The Tribunal on appreciation of the oral and documentary evidence on record, awarded total compensation of Rs.79,560/- with interest at 6% per annum from the date of petition till the date of realisation and directed the second respondent-Corporation to deposit the compensation amount.

Being aggrieved by the impugned judgment and award, the Corporation has filed MFA.No.5210/2009 questioning entire negligence fastened on the driver of the BMTC bus and the claimant has preferred cross objection in MFA.Crob.No.130/2011 seeking enhancement of compensation.

3. In MFA.No.5210/2009, in the grounds of appeal, the appellant-BMTC has contended that the Tribunal has erred in holding that the accident is mainly due to the rash and negligent driving of the driver of the BMTC bus alone. The Tribunal miserably failed to note that the accident occurred on 25.04.2000

and complaint was given on 1.5.2000. There are no reasons for the delay and erroneously held that the BMTC bus is involved in the accident, which is unjustifiable. Further contention is that if really the alleged accident has taken place near Vanivilas Hospital definitely the passenger in the bus or the general public at the place of accident would not have allowed the bus to move from the place of accident and moreover, at the time of the accident, the husband and children of the claimant were also present and then there was no chance for the driver to move from the place of accident and there could not have been any delay to give the compliant since the police station is also very near to the place of accident. All these factors have not been considered by the Tribunal. The Tribunal has miserably failed to note that in the cross-examination of P.Ws.1 and 2 both of them have clearly admitted that the bus is fully crowded and it was a last stop and other passengers were also behind them and they have not

noticed the registration number of the bus. This clearly shows that she has not sustained any injury by involvement of the BMTC bus. The other contention of the appellant's counsel is that there is no evidence of any eye witnesses to prove the involvement of the bus except the evidence of the claimant and her husband. The Tribunal also failed to note that as per Ex.P1- sketch, Ex.P2- the spot mahazar, there is no bus stop for the bus and hence, there cannot be any accident at all. The police have falsely created the documents only to help the claimants to get some compensation. The Tribunal has committed an error and material irregularity in not properly appreciating the evidence of R.W.1 –Sri.Abdul Ameed, the driver of the bus who has clearly stated in his evidence that there was no accident and the petitioner has not sustained any injury in the involvement of the bus in question and he has been acquitted in the criminal case and produced the certified copy of the acquittal order passed in

C.C.No.12223/2000 marked as Ex.R1 and the same has not been considered by the Tribunal in proper perspective. The Tribunal has miserably failed to take note that, as per Ex.P9- the wound certificate issued by NIMHANS there is no mention that the petitioner has sustained injury in the road traffic accident and the Tribunal has committed an error in coming to the conclusion that, the bus is involved in the accident. The other contention of the appellant is that the Tribunal has miserably failed to note that Ex.P9 the alleged wound certificate issued by NIMHANS, discloses the claimant has sustained only bleeding from right ear, and except the said injury there are no other injuries. Inspite of the same, the Tribunal has erroneously awarded compensation of Rs.79,560/- and the doctor who has been examined before the Tribunal is also not the doctor who treated the injured. She has only examined the claimant on 9.1.2008 i.e. nearly after eight years from the date of accident and she has given

false evidence and false disability certificate by exaggerating the injury and the disability. The Tribunal without appreciating this aspect has erroneously believed the evidence and awarded compensation which is unjustifiable in law. The other contention is that the evidence of PW.3 is also false and incorrect. Only in order to help the claimant, the same has been created. The other contention is that the Tribunal has committed an error in awarding an amount of Rs.20,000/- towards pain and suffering, Rs.5,000/- towards loss of amenities and discomfort which is excessive and baseless. Further, though the Tribunal has disbelieved the evidence of P.W.3 on the ground that she has not treated the claimant, still it has taken the disability and loss of future income at 20% and by taking the income of the claimant at Rs.1,200/- per month and adopting the multiplier of 12 has awarded compensation of Rs.34,560/- towards loss of future income which is very excessive. The amount awarded towards medical

expenses and towards conveyance and attendant charges is also very much excessive. Hence, the impugned judgment and award requires interference by this Court both in respect of involvement of the vehicle in the accident and also awarding of compensation.

4. On the other hand, the appellant-claimant in the cross-objections has contended that the compensation awarded by the Tribunal is opposed to probabilities of the case and material on record, the compensation awarded under various heads is inadequate. The Tribunal has committed an error in taking the income of the claimant as Rs.1,200/- per month as she was working in Venkateshwara Garments, Prakashagar and earning Rs.15,000/- and as such it is highly capricious and unwarranted. The Tribunal has failed to consider the pain and suffering, the appellant had to undergo and the evidence of P.W.3 makes it apparent that the claimant was and is still suffering

from difficulty in comprehension of test instructions, figure agnostics, deficit in attention, verbal fluency and mental speed, verbal working memory etc. Hence, the very compensation awarded by the Tribunal on the head of pain and suffering, loss of amenities and future happiness is highly inadequate. The Tribunal ought to have allowed the claim of the appellant in toto but the same has not been considered in a proper perspective. Hence, the impugned judgment and award requires modification by enhancing the compensation as claimed in the petition.

5. In MFA.No.5210/2009, the appellant-Corporation while reiterating the grounds urged in the appeal contended that the Tribunal has failed to appreciate both oral and documentary evidence and that there was no explanation on the part of the claimant regarding delay of 15 days in filing the complaint. The Tribunal has failed to take note of the

non-involvement of the vehicle in the accident though there was ample material before the Tribunal. Further, the Tribunal has failed to take note of the fact that the records reveal that except bleeding from the ear there were no other injuries sustained. Further the compensation awarded by the Tribunal is also on the higher side and is without any basis. Therefore, he has sought for setting aside the impugned judgment and award.

6. In MFA.Crob.No.130/2016, the appellant-claimant while reiterating the grounds urged in the cross-appeal contended that the claimant had sustained head injury. She was immediately shifted to Victoria Hospital followed by NIMHANS. The evidence of P.W.3-doctor has not been properly appreciated. The income taken at Rs.1,200/- is also on the lower side. Further, the compensation awarded under all the heads is very

meager and as such the impugned judgment and award requires to be modified.

7. After having heard the arguments of the appellant and also the cross-objector and on perusal of the impugned judgment and award, the points that arise for consideration are:-

> *"1. Whether the Tribunal has committed an error in answering issue No.1 that the bus was involved in the accident and the accident has occurred due to sole negligence on the part of the driver of the bus?*
>
> *2. Whether the Tribunal has committed an error in not awarding just and reasonable compensation and whether it requires enhancement or not?"*

8. With regard to point No.1 is concerned, the main contention of the appellant-Corporation is that the Tribunal has committed an error in coming to the conclusion that the bus was not involved in the alleged accident and also failed to appreciate both oral and

documentary evidence, if really the alleged accident has taken place near Vani Vilas Hospital at about 2.10 p.m., definitely the passengers in the bus or the general public at the place of accident will not allow the bus to move from the place of accident and more over, at the time of accident, if the husband and children of the claimant were also present, then there is no chance for the driver to move from the place of accident and there cannot be any delay in giving the complaint, since the police station is also near to the place of accident. The Tribunal has also committed an error in not considering all these facts and there was a delay of six days in lodging the complaint and only it is on the registration of the case against the driver of the bus comes to the conclusion that the bus was involved in the accident and the accident took place on account of negligence on the part of the driver of the bus.

9. It is further contended that the claimant except examining herself and her husband, there is no any individual eye witnesses to prove the involvement of the bus in the alleged accident. It is further contended that as per Exs.P.1 and P.2-sketch and spot mahazar, there is no bus stop, hence, there cannot be any accident at all. The police have created all these documents to help the claimant to get the compensation. Further the driver has been acquitted in the criminal case, which is marked as Ex.R1. All these facts were not taken into consideration by the Tribunal.

10. On the other hand, the counsel for the cross objector in his written statement contends that the Tribunal has considered the materials placed before the Court and also the evidence both oral and documentary and further contends that the accident register is maintained under the signature of the resident medical officer and the same also discloses that the accident

had taken place and it is mentioned as 'fall from bus'. The mahazar, panchanama and charge sheet, which are marked as Exs.P.1, P.2 and P.6 clearly discloses the fact that the accident has taken place and the order of acquittal will not come to the aid of the driver and only he was acquitted for want of material evidence to prove beyond reasonable doubt.

11. In support of his argument, he relied upon the decision of the Apex Court in the case of ***N.K.V.Bros (P.) Ltd., Vs. M.Karumai Ammal land others*** reported in ***AIR 1980 SC 1354***, wherein it is held that the acquittal of the driver in a criminal proceedings have no bearing when the claim for compensation is to be dealt by the Tribunal. He further relied upon the decision in the case of ***Bimla Devi and others Vs. Himachal Road Transport Corporation and others*** reported in ***2009(13) SCC 530,*** wherein the Apex Court calls upon the Tribunal to take a holistic view of the matter and

decide the claims. Further relied upon the decision in the case of ***Bala and others Vs. Motichand Gupta and others*** reported in ***2005 ACJ 1918***, wherein the Court has made an observation that even assuming that the negligence of the vehicle is not proved and once it is proved that vehicle in question was involved in the accident, the Tribunal should have taken recourse of Section 163-A of the Motor Vehicles Act to grant relief to the appellant on the ground of no fault liability and also contend that a feeble attempt is also made by the appellant to contend that route number have not been stated in the complaint and also that the complaint lodged is also belated and said contention of the appellant is also not tenable. The document at Ex.P3 clearly reflects the factum of accident and the claimant having been admitted to the hospital, there is consistent flow of evidence, which reveals that the date of accident is 25.4.2000. The Apex Court in the case of ***Kusum Lata and others Vs. Satbir and others*** reported in

AIR 2011 SC 1234, wherein at paragraph No.7, it is held as under:

> *"7. Admittedly, the facts were that the brother of the deceased, Ashok Kumar while walking on the road heard some noise and then saw that a white colour tempo had hit his brother and sped away. Immediately, he found that his brother, being seriously injured, was in an urgent need of medical aid and he took him to the hospital. Under such circumstances it may be natural for him not to note the number of the offending vehicle. That may be perfectly consistent with normal human conduct. Therefore, that by itself cannot justify the findings reached by the Tribunal and which have been affirmed by the High Court".*

12. The counsel for the cross objector by relying upon the above judgments has contended that the Tribunal considering the materials on record and appreciating the evidence both oral and documentary, comes to the definite conclusion that the bus was involved in the alleged accident.

13. In keeping the contentions of both the counsels, this Court has to analyze the evidence

available on record. The claimant was examined herself as P.W.1 and in her evidence, she has reiterated the allegations made in the complaint that the accident has occurred due to negligence on the part of the driver of the BMTC bus, who suddenly moved the bus even at the time of alighting from the bus. During the course of cross- examination, though the appellant-Corporation disputed the fact of accident, it is suggested to the witnesses that in one breath they have not traveled in the said bus on that day, but the same has been denied by R.W.1 and further contended that she got down in Vani Villas Hospital bus stop and it is suggested that there was heavy crowd in the said bus stop and bus was also filled and P.W.1 admitted the same. In another breath, the suggestion was made that she was getting down at the last stop and there were passengers behind her, which discloses that there was heavy crowd in the said bus.

14. The other contention raised in the appeal is that the bus was not involved in the accident is nothing, but an attempt was made in taking the defence as hot and cold. In one breath, they contend that there is no explanation and they have not traveled in the bus at all. By making those allegations, it is clear that the accident has occurred when she was getting down from the bus. On the contrary, the appellant-Corporation also examined the driver of the bus as R.W.1. R.W.1 in his affidavit has contended that he took the bus on that day in the route of Kempegowda Swimming Pool Bus Stop to Shivajinagar and left Shivajinagar at 1.10 p.m., and reached Vani Villas Bus Stop at 2.05 p.m. However, he contends that no accident took place as alleged in the petition, but in order to implicate him false case has been registered. It is further contended that he was acquitted in the said case.

15. It is important to note that it is the case of the claimant that the accident has occurred on 25.4.2000 at 2.10 pm., at Vani Vilas Bus Stop and suggestion was made that the driver of the bus drove the same in a rash and negligent manner and caused the accident and the same was denied in the chief evidence stating that he reached the Vani Vilas Bus Stop at 2.05 p.m., but also stated that no accident has occurred. However, the case was registered against him. Ex.P.1 is the sketch, which discloses the place of the accident and Ex.P.2 is the panchanama and Ex.P.3 is the accident register extract issued by the hospital and Ex.P.3-accident register extract mentions that it is a fall from the bus and police intimation is marked as Ex.P.4. All these documents are not rebutted in the cross examination of P.W.1 except making the suggestion that she was getting down from the last bus stop and there were passengers behind her. The very contention of the appellant-Corporation is that if an accident has taken

place, the passengers and public ought not to have allowed the driver to move from the stop. It is the case of the claimant that the bus driver did not stop the bus after the accident. The husband and children mainly concentrated to shift the injured to hospital and not rushed to the driver and in a city like Bengaluru, the passengers also try to take care of the injured and not the driver. When such being the case, the argument of the counsel for the appellant-Corporation is not probable.

16. In the cross examination of P.W.1 at one breath she has stated that she traveled in the said bus and in another breath, it is stated that she was getting down in the last bus stop and also there is no dispute that Vani Vilas Stop is the last bus stop and also it is contended that the sketch, which is marked as Ex.P.1 does not mention the bus stop. R.W.1 in his evidence has categorically deposed that he reached Vani Vilas

Bus Stop at 2.05 p.m., and relieved from the duty. Hence, it is clear that it is the last bus stop and hence, the contention of the appellant's counsel that there was no bus stop as per the sketch cannot be accepted.

17. It is further important to note that the claimant also examined her husband as P.W.2 and in his affidavit he also reiterated the evidence of PW.1 and in the cross examination of P.W.2, it is suggested that as on the date of the accident, there was heavy rush in the bus and his wife was at the front portion of the bus and he himself and children were also in the bus. It is further elicited that due to rush, he could not make out what happened at the front portion and further suggestion was made that there were other passengers to get down behind his wife. When these suggestions are made in the cross examination of PW.2, now, appellant cannot contend that they have not traveled in the bus and the bus was not met with the accident.

18. The other contention of the appellant's counsel that no independent witnesses have been examined cannot be accepted. The very injured herself was examined as P.W.1 and her husband is examined as P.W.2. Hence, it is clear from the evidence of P.Ws.1 and 2 that the bus was involved in the accident and the driver of the bus moved away before alighting from the bus, due to which, she fallen from the bus and sustained injury. The accident register extract also discloses that she fallen from the bus. All these materials disclose that the claimant fallen from the bus when she was alighting from the last bus stop and the driver did not stop the bus.

19. The other contention is with regard to delay in lodging the complaint. It is natural that the husband who was along with the injured wife taken the injured to the hospital, since she suffered head injury and she was also unconscious. Instead of taking the injured to the

hospital, nobody takes the vehicle number and rush to the police station as held by the Apex Court in the decision referred supra and the delay of six days will not take away the case of the claimant. Hence, I am of the opinion that the Tribunal has rightly considered the materials on record and observed while answering issue No.1 in paragraph No.8 of the judgment considering Exs.P.1 to P.3 and also the accident register extract issued by the hospital and mere acquittal in the criminal case is not a ground and while considering the criminal case, the prosecution has to prove the case beyond reasonable doubt.

20. In a motor accident claims, the case rests on the preponderance of probabilities and only the claimants have to probabalize their case and the Tribunal also referred the Bala's case, wherein by referring to Section 158(6) it was held that "charge sheet submitted by police officer to the Tribunal is to be

treated as a claim application and Tribunal is not required to direct the claimants to still prove the involvement of vehicle in accident. –Whether on the basis of documents on record, it can be held that accident was caused due to rash and negligent driving of three wheeler-Held-Yes: even assuming that negligence of driver is not proved, the tribunal should have taken recourse to Section 163(A) to grant relief to the claimants".

21. The counsel for the appellant contends that such judgment is not applicable to the case on hand. In the case on hand, ample material is placed before the Court that the case was registered against the driver of the bus and he did not challenge filing of the charge sheet against him and the immediate record of the accident register, which is marked as Ex.P.3 clearly discloses that the history is mentioned as fallen from BMTC bus. When all these materials considered by the

Tribunal, I am of the opinion that the Tribunal has not committed any error in coming to the conclusion that the accident was occurred on 25.4.2000 at about 2.10 in front of Vani Vilas Hospital and rightly found that the accident was on account of rash and negligent driving on the part of the driver of the bus. Hence, I answer point No.1 in negative.

22. Regarding point No.2 is concerned, the counsel has contended that the Tribunal has committed an error in awarding compensation of Rs.79,560/- and further contended that the Tribunal has failed to consider the wound certificate-Ex.P.9, which discloses that blood was coming from ear and except that, there was no injuries and in spite of that, the Tribunal has erroneously awarded compensation of Rs.79,560/- and further contended that the doctor who is examined before the Court as PW.3 has not treated the claimant, but she has only examined the claimant on 9.1.2008

that is merely after eight years from the date of the accident and she has given false evidence and false disability certificate.

23. On the other hand, the counsel for the claimant contends that the doctor who was examined as P.W.3 has stated that at the time when the claimant was taken to the hospital, she was unconscious and she had difficulty in breathing and CT scan was conducted, which disclosed that spot of blood was found in the brain and she was subjected to surgery and thereafter, she was discharged and referred to the general hospital and there is no reason to disbelieve the evidence of P.W.3 and now, the claimant has produced the additional documents i.e., out patient slip dated 05.05.2000, discharge summary issued by NIMHANS, specialist doctor check-up slip dated 08.06.2000 issued by ESI hospital and all these documents discloses that she was admitted to ESI hospital on 26.04.2000 and

discharged on 05.05.2000. Document No.2-discharge summary issued by NIMHANS hospital clearly discloses that she was admitted on 25.4.2000 and discharged on 26.04.2000 and she was subjected to surgery of right parietal craniotomy and evaluation of EDH. The document Nos.3 to 9 are the specialists doctors who checked her. Document No.5 is the certificate issued by NIMHANS hospital and all these documents clearly discloses that she was subjected to surgery and contends that the Tribunal has committed an error in taking the income at Rs.1,200/- which is on the lower side, which should have been taken at Rs.3,000/- by taking the income as Rs.100/- per day and further contends that P.W.3 who gave the evidence specifically referring to the document at Ex.P.10 with regard to the difficulties, which she is having even after eight years and the Tribunal ought to have awarded more compensation.

24. Now, let me appreciate both oral and documentary evidence and also finding of the Tribunal with regard to taking of the income and assessing the future loss of income and awarding compensation under all heads. The Tribunal while answering issue No.2 considering the evidence of P.Ws.1 and 2 in page 10 it is stated by the claimant that she was working as a tailor and earning Rs.3,000/- per month and she being a lady of 49 years might not have earned Rs.100/- per day and she did not produce any document to show that she was earning Rs.3,000/- per month and so considering the age, notional income as Rs.1,200/- per month, considering the disability at 20% to the whole body and applying the relevant multiplier as 12, awarded Rs.34,560/- under the head loss of income.

25. The counsel for the Insurance Company has contended that the Tribunal has taken the disability at 20% and the income at Rs.1,200/- per month, which is

excessive. The Tribunal also awarded Rs.20,000/- towards pain and suffering and Rs.5,000/- towards future unhappiness and discomfort, which are on the higher side.

26. Now, let me consider the evidence available on record regarding disability is concerned. The claimant has examined the doctor as P.W.3 before the Tribunal through the Court Commissioner and in her evidence, she deposed that that she has examined the claimant on 9.1.2008 and on examination, it was found that neurophyshological assessment reveals difficulty in comprehension of test instructions, figure agnostics, deficit in attention, verbal fluency, mental speed, verbal working memory, set shifting ability and verbal learning and memory indicating the involvement of bilateral franto temporal lobes and mild involvement of parietal region.

27. In the cross-examination, P.W.3 admits that she did not give treatment when the patient came to the hospital and she was treated in the emergency section by doctors Praveen and Sridhar and thereafter, surgery was conducted by Dr.Bushan and Ravisuman. P.W.3 also says that an injured came to the hospital and at that time, she has not given any treatment and Dr.Chandramouli has treated her and further admits that physiological report was given by the physiological branch. The Tribunal while considering the disability of the claimant considering the evidence of the doctor who was examined as P.W.3 and observed that for physical disability or functional disability, there is no specific evidence by the Medical Officer and after remanding the matter, steps were taken for appointment of Court Commissioner to examine Dr.Suman. The Court Commissioner in spite of examining the said doctor examined some other doctor who did not treated her for accidental injuries, so the actual disability cannot be

assessed as the doctor who actually treated the petitioner has not examined before the Court. Based on the evidence of P.W.3, it is deposed that petitioner has suffered head injury and now she has difficulty in verbal fluency figure agnostics, deficit in attention, metal speed, memory etc., and in the cross-examination of P.W.3 except stating that she has not treated the patient, no questions are put to difficulties, which the injured is suffering and only in the cross-examination, it is elicited that P.W.3 is not a treated doctor, but she states that she examined the injured on 09.01.2008 and no such report is placed before the Court with regard to difficulties and only evidence remaining is oral evidence of PW.3 and on perusal of wound certificate –Ex.P.9, it is mentioned that clinically injuries are grievous. Ex.P.10 which is marked with regard to date of testing, it is mentioned as 09.01.2008 and P.W.3 in her evidence, she claims that she has examined her on 09.01.2008 and given the report regarding difficulties is

concerned and analyzed the behaviour, executive functions planning, set shifting ability, parietal focal signs, verbal comprehension and given the summary, which have been explained in her affidavit.

28. It is also pointed out that in the examination nothing is disputed with regard to Ex.P.10 and no doubt, P.W.3 is not a treated doctor, but she categorically stated that injured was examined on 09.01.2008 and no doubt, she was examined almost after eight years of the accident and during the course of examination, the doctor P.W.3 found the difficulties, since she has suffered the head injury. Hence, I do not find any error committed by the Tribunal taking the disability at 20% when the claimant has suffered head injury.

29. Now with regard to income is concerned, the Tribunal has taken the income at Rs.1,200/- and the accident was occurred on 25.4.2000 and the income

taken appears to be on the lower side and having considered the accident is of the year 2000, the Tribunal ought to have taken the notional income at Rs.2,000/- and having taken the income as Rs.2,000/- and considering the relevant multiplier as 12, it comes to Rs.2,000/- x 12 x 12 x 20/100 = **Rs.57,600/-.**

30. The Tribunal has awarded an amount of Rs.20,000/- under the head pain and suffering considering the fracture of injures suffered by the claimant i.e., head injury and also she was subjected to surgery and compensation of **Rs.20,000/-** awarded by the Tribunal under the said head is just and reasonable taking note of the year of the accident.

31. The Tribunal has also awarded an amount of **Rs.15,000/-** under the head medical expenses, since the injured was subjected to surgery and hence, I do not find any reasons to interfere with the order of the Tribunal and no separate bills are produced. The

Tribunal has also awarded compensation of Rs.5,000/- under the head future unhappiness and discomfort and it appears to be on the lower side and the Tribunal ought to have awarded **Rs.15,000/-** taking note of the year of the accident as 2000 and the same is awarded under the said head. Rs.5,000/- is awarded by the Tribunal under the head loss of amenities conveyance attendant charges, which is just and reasonable and there is no ground to interfere with the same.

32. In view of the above discussion and re-appreciating the evidence, this Court awarded compensation of Rs.1,12,600/- as against Rs.79,560/- awarded by the Tribunal. Hence, I pass the following

ORDER

MFA.No.5210/2009 filed by the appellant-Corporation is dismissed. MFA.Crob.130/2011 filed by the claimant is partly allowed. The judgment and award passed by the Tribunal is modified granting

compensation of Rs.1,12,600/- with interest at 6% p.a., as against Rs.79,560/- awarded by the Tribunal.

The Insurance Company is directed to pay the award amount with interest at 6% p.a., to the claimant.

Sd/-
JUDGE

*alb/PB