

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 30th DAY OF AUGUST 2019

BEFORE

THE HON'BLE MR.JUSTICE K. NATARAJAN

MISCELLANEOUS FIRST APPEAL NO.25595 of 2011
C/W MISCELLANEOUS FIRST APPAL No.23631 OF 2013 (MV)

IN MFA NO.25595 OF 2011

BETWEEN:

THE DIVISIONAL CONTROLLER
KSRTC, DIVISIONAL DEPOT,
SHIRUGUPPA ROAD, BELLARY
BY ITS REPRESENTATIVE
CHIEF LAW OFFICER
NEKRTC CENTRAL OFFICE
SAEGE SADAN, GULBARGA.

... APPELLANT

(By Sri. CHANDRASHEKHAR B.PATIL, ADVOCATE)

AND:

SRI, SHANMUKHA REDDY ALIAS
SHANMUKHA
S/O GAVISIDDAPPA
AGE: 18 YEARS, OCC:STUDENT,
R/O: MADURE VILLAGE
TQ & DIST: BELLARY

... RESPONDENT

(By Sri. Y. LAKSHMIKANTH REDDY, ADVOCATE)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV
ACT, 1989, AGAINST THE JUDGMENT AND AWARD
DTD:28-07-2011 PASSED IN MVC.NO.410/2010 ON THE
FILE OF THE MEMBER, MACT-XII, BELLARY, AWARDING

COMPENSATION OF RS.3,60,113/- WITH INTEREST AT THE RATE OF 6% P.A., FROM THE DATE OF PETITION TILL ITS DEPOSIT.

IN MFA NO 23631 OF 2013

BETWEEN:

SHANMUKHA REDDY ALIAS SHANMUKHA
S/O GAVISIDDAPPA
AGED ABOUT 19 YEARS,
RESIDING AT MADURE VILLAGE,
BELLARY TALUK & DIST.

... APPELLANT

(By Sri. Y. LAKSHMIKANT REDDY, ADVOCATE)

AND:

1. SHANKAR S/O BHEEMAPPA
MAJOR,
DRIVER OF KSRTC BUS BEARING
REG. NO.KA-34/F-542,
HADAGALI DEPOT, BELLARY DIST.

2. THE DIVISIONAL MANAGER
KSRTC DEPOT,
SIRUGUPPA ROAD,
BELLARY.

... RESPONDENTS

(By Sri. I.C. PATIL, ADVOCATE FOR R2)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED:28-07-2011 PASSED IN MVC NO.410/2010 ON THE FILE OF MEMBER, MACT-XII, BELLARY, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THESE MISCELLANEOUS FIRST APPEALS COMING ON FOR ADMISSION THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

1. Though these appeals came up for admission, with the consent of learned counsel for both the parties, they are heard finally.

2. Miscellaneous First Appeal No.25595 of 2011 is filed by the NEKRTC whereas Miscellaneous First Appeal No.23631 of 2013 is filed by the claimant, both assailing the judgment and award dated 28th July 2011 passed by the Motor Accident Claims Tribunal XII, Bellary (hereinafter referred to as the 'Tribunal' for short), in MVC No.410 of 2010.

3. Heard the arguments of the learned counsel appearing for the parties.

4. Ranks of the parties before the Tribunal are retained for the convenience.

5. The claimant filed a petition under Section 166 of the Motor Vehicles Act, 1988, (hereinafter referred to as the 'Act', for short) claiming compensation of Rs.10,00,000/- inter alia contending that on

24.02.2010 at about 9.55 am when the claimant was proceeding in the NEKRTC bus bearing registration No.KA-34/F-542 from his village to Kurugodu to attend school along with other school children of Kolur, Madhure and other villages, at that time, due to the rash and negligent driving by the driver of the bus, he met with an accident and sustained grievous injuries. He was admitted to VIMS Hospital, Bellary, as an inpatient and later has taken treatment in private hospitals. He has spent more than Rs.2,00,000/- towards medical expenses. He has lost his future educational career and the dream of the parents. Therefore, claimed compensation on various heads.

6. In pursuance to the notice issued by the Tribunal, first and second respondent-driver and the Divisional Manager of the NEKRTC appeared and filed statement of objections contending that claim of the petitioner was unjustifiable, excessive and exorbitant and contended that the claimant was standing on the footboard at the entrance of the bus and as the foot

board journey is dangerous, on various occasions, the passengers were requested not to stand at the entrance and to get into the bus. On the other hand, the driver of the bus was driving the vehicle in slow and proper manner. There was no fault on the part of the driver of the bus. The accident had occurred due to the negligence on the part of the claimant himself. Therefore, the respondent is not liable to pay any compensation. Hence, prayed for dismissal of the petition.

7. Based on the rival pleadings, the Tribunal framed the following issues:

1. Whether the guardian of the petitioner proves that on 24.2.2010 at about 9.55 am on Kurugodu-Kolur cross road near Katte Basappa culvert when the petitioner was traveling in a bus bearing Reg.No.KA-34/F-542 sustained personal injuries due to the rash and negligent driving of the 1st respondent?
2. Does he entitle for compensation as prayed for?

3. What order or an award?

8. To substantiate the contention, father of the minor claimant was examined as PW-1 and also examined the Doctor as PW-2 and got marked 17 documents as per Exs.P-1 to P-17. On the other hand, first respondent himself examined as RW-1 but no documents were marked.

9. After considering the evidence on record, the Tribunal answered issue No.1 in the affirmative and awarded compensation of Rs.3,60,133/- together with interest at the rate of 6% per annum as under:

		Rs.
1	For injuries, pain and sufferings	50,000/-
2	Towards medical expenditure	1,70,113/-
3	Towards attendant charges, conveyance extra nourishment, attendant charges and miscellaneous expenses	19,500/-
4	For the loss of school days, loss of academic career and for the loss of future amenities of life	53,000/-
5	For the 30% disability	67,500/-
Total		3,60,113/-

10. Assailing the judgment and award passed by the Tribunal, the Corporation has preferred MFA No.25595 of 2011 on the ground of liability as well as the quantum of compensation whereas the claimant has filed MFA No.23631 of 2013 seeking enhancement of compensation.

11. Sri. Y. Lakshmikant Reddy, learned counsel appearing for the Corporation contended that the accident in question occurred due to the negligence of the minor claimant himself, as he was traveling on the footboard of the bus and thereby he has contributed negligence to the accident. Therefore, the finding of the Tribunal in fastening the liability on the Corporation is not correct and further contended that though the claimant suffered only one fracture injury, the Tribunal has awarded a sum of Rs.50,000/- towards pain and suffering. Further contended that though medical bills amounts to a sum of Rs.1,41,888/-, the Tribunal has awarded a sum of Rs.1,70,113/- over and above the medical bills and without any reasons and the same

requires to be reduced. Further it is contended that the award of Rs.19,500 towards conveyance, nourishment, attendant charges is on the higher side. He further contended that the Tribunal has erred in awarding a sum of Rs.53,000/- towards loss of academic career and amenities. Apart from that, considering the evidence of the doctor and the disability certificate which mentions 45% as the disability to the particular limb, the Tribunal has considered 30% disability to the whole body which is incorrect, as normally 1/3rd of the disability is considered as the disability towards whole body. Therefore, prayed for reduction of the compensation.

12. Per contra, Sri. Chandrashekhar B. Patil, learned counsel for respondent strenuously argued and supported the finding of the Tribunal on fastening of the liability on the respondent-Corporation and the driver of the bus and contended that the Tribunal has rightly awarded Rs.1,70,113/- towards medical expenses and a sum Rs.19,500/- awarded towards attendant charges,

conveyance, nourishment is meager, even though the claimant was admitted in the hospital for more than 65 days. The claimant was studying in 10th standard and could not attend the examination and has discontinued his education, therefore, awarding Rs.53,000/- towards loss of academic career and amenities of life is very meager. Therefore, it requires to be enhanced and further contended that though disability was taken at 30% but the multiplier applied by the Tribunal is incorrect, as the appropriate multiplier is 18. Therefore, prayed for allowing claimant's appeal and to dismiss the appeal filed by the Corporation.

13. Upon hearing the arguments of the learned counsel and on perusal of the records, the points that arise for consideration are:

- (i) Whether the Tribunal is justified in fastening the liability on the NEKRTC?
- (ii) Whether the award of compensation requires any modification?

(iii) What order?

14. The case of the claimant is that he was aged 15 years as on the date of the accident when he was going to school on 24.02.2010 along with other children, the driver of the bus drove the bus in a rash and negligent manner due to which he fell down and sustained crush injuries. The police have registered a case against the driver of the bus as per Ex.P.1-FIR and panchanama was also prepared by the police. The police also filed charge sheet against the driver of the bus. Though respondent No.1-driver of the bus appeared before the court and adduced evidence stating that the claimant was traveling on the footboard of the bus and due to his negligence, the accident has occurred, it is pertinent to note that the accident had occurred at 9.55 a.m. During the peak hours, many children had also traveled along with the claimant. Though the driver has been examined before the Court by the Corporation, but has not chosen to examine the conductor of the bus to show that the claimant was

actually traveling on the footboard of the bus. Therefore, in the absence of any cogent evidence on behalf of the respondent, by taking into consideration, the Tribunal has rightly held that the accident had occurred due to rash and negligent driving by the driver of the bus. Therefore, the finding in respect of negligence and fastening liability by the Tribunal cannot be interfered with. Hence, I answer point No.1 in favour of the claimant and against the corporation.

15. As regards the quantum of compensation, the claimant has sustained injuries both on upper arm and lower arm, fracture of tibia and fibula 1/3rd and has also sustained crush injury to leg. He is stated to be admitted in the hospital for 65 days as an inpatient and has undergone surgeries and in situ were also found. He has suffered a lot of pain and agony. Therefore, considering all these facts, the Tribunal has awarded Rs.50,000/- towards pain and suffering. In my view the same is sufficient and requires no modification. As regards medical expenses, the claimant has produced

the documents Exs.P-14 to 17 and other documents which were calculated by the Tribunal at Rs.1,41,888/- but there is no reason to award Rs.1,70,113. Therefore, I propose to reduce it to Rs.1,41,888/- as against Rs.1,70,113/- awarded by the Tribunal. With respect to compensation awarded towards attendant charges and food and nourishment, the Tribunal has considered Rs.300/- and calculated for 65 days. In my view the said award is very meager. Therefore, I propose to enhance it to Rs.500/- per day which comes to Rs.32,500/-(500x65). The Tribunal has awarded a sum of Rs.53,000/- towards loss of academic year and loss of future amenities. By looking to the facts and circumstances of the case, the claimant was due to write his SSLC examination during the time when he met with an accident. He was admitted in the hospital for more than 65 days and has lost one academic year and did not appear for SSLC examination. The certificate issued by the school authorities show that from the date of the accident, he has discontinued the

studies. Such being the case, award of Rs.53,000/- is very meager. Therefore, I propose to award Rs.50,000/- towards loss of academic year. The Tribunal has not awarded any amount towards loss of amenities. Looking to the injuries sustained by the claimant i.e., fracture of tibia and fibula and other injuries and in situ are fixed and through out his life he has to use walker, I propose to award Rs.30,000/- towards loss of amenities. As regards loss of earning capacity, the doctor has assessed the disability at 45% but the Tribunal assessed 30% towards the whole body, in my opinion, it is on the higher side. Normally, the disability to the whole body is always $1/3^{\text{rd}}$ of the disability to the particular limb. Therefore, I propose to consider 15% i.e. $1/3^{\text{rd}}$ of 45% as disability to the whole body. As per the decision of the Hon'ble Apex Court in the case of **Sarla Verma and another v. Delhi Transport Corporation and others** reported in **ACJ 2009 1298** which has been upheld by the Hon'ble Apex Court in the **National Insurance Company vs. Pranay Sethi** at

para 42 that the multiplier for the age group 15-25, multiplier 18 would be applicable and not 15 as applied by the Tribunal. Therefore, 15% of Rs.15,000/- per annum would be $\text{Rs.}2,250 \times 18 = 40,500/-$. Counsel for the claimant also contended that the Tribunal has also not awarded any compensation towards future medical expenses. On perusal of the injuries and the surgeries underwent by the claimant and in situ are also found as per the x-ray film, definitely, he is required to undergo one more surgery for removal of in situ. Therefore, the claimant requires some amount towards future medical expenses. Hence, in the absence of any documents being produced, I propose to award a sum of Rs.10,000/- towards future medical expenses. Further considering the facts and circumstances of the case, I propose to award a sum of Rs.20,000/- towards loss of marriage prospects. Accordingly, the claimant is entitled to reassessed compensation as under:

		Rs.
1	Towards pain and suffering	50,000/-
2	Towards medical expenditure	1,41,888/-
3	Towards food nourishment and other incidental expenses	32,500/-
4	Loss of future prospects	50,000/-
5	Loss of education and loss of amenities	30,000/-
6	Loss of earning capacity	40,500/-
7	Future medical expenses	10,000/-
8	Loss of marriage prospects	20,000/-
Total		3,74,888/-

16. Consequently, the Corporation though succeeded in reducing the compensation under the heads disability and under medical expenses, but due to enhancement of compensation and the finding on point No.(i), the appeal in MFA No.25595 of 2011 filed by the Corporation is liable to be dismissed and the appeal filed by the claimant is liable to be allowed in part.

17. Accordingly, MFA No.23631 of 2013 filed by the claimant is allowed in part. The judgment and

award dated 28th July 2011 passed by the Motor Accident Claims Tribunal XII, Bellary, in MVC No.410 of 2010, is modified. The claimant is entitled to reassessed compensation of Rs.3,74,888/- as against Rs.3,60,113/- awarded by the Tribunal with interest at the rate of 6% per annum from the date of petition till realization. The respondent-corporation is directed to deposit the award amount within four weeks from the date of receipt of a copy of this judgment.

Amount in deposit shall be transmitted to the Tribunal forthwith.

**Sd/-
JUDGE**

kmv