

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 30TH DAY OF JUNE 2014

BEFORE

THE HON'BLE MR.JUSTICE N.ANANDA

M.F.A.No.2028/2012 C/W M.F.A.No.6669/2012 (MV)

MFA.No.2028/2012

BETWEEN:

SRI SATISH M N
S/O NAGARAJPPA, 39 YEARS
PROPRIETOR OF MAGERI TRADERS
OIL MERCHANT BAZAAR ROAD
BANGARPET TALUK
KOLAR DISTRICT - 563 114.

... APPELLANT

(BY SRI MUSHTAQ AHMED, ADV.)

AND:

THE MANAGING DIRECTOR
KSRTC, SHANTHINAGAR
K H ROAD, BANGALORE - 27
(R C OWNER OF K.S.R.T.C
BUS BEARING REG. No.KA-07-F-1272).

... RESPONDENT

(BY SRI B PALAKSHAIAH, ADV.)

THIS APPEAL IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 29.12.2011 PASSED IN MVC NO.4551/2010 ON THE FILE OF THE XVII ADDITIONAL JUDGE, COURT OF SMALL CAUSES, MACT, MAYO HALL UNIT, BANGALORE, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

MFA.No.6669/2012

BETWEEN:

THE MANAGING DIRECTOR
KSRTC, K H ROAD
SHANTHINAGARA
BANGALORE, NOW REP. BY
THE CHIEF LAW OFFICER.

... APPELLANT

(BY SRI B PALAKSHAIAH, ADV.)

AND:

SRI SATISH M N
S/O NAGARAJAPPA, 41 YEARS
PROP: MAGERI TRADERS
OIL MERCHANT, BAZAR ROAD
BANGARPET TALUK
KOLAR DISTRICT.

... RESPONDENT

(BY SRI MUSHTAQ AHMED, ADV.)

THIS APPEAL IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 29.12.2011 PASSED IN MVC NO.4551/2010 ON THE FILE OF THE XVII ADDITIONAL JUDGE, MACT, COURT OF SMALL CAUSES, MAYO HALL UNIT, BANGALORE, AWARDED COMPENSATION WITH INTEREST & ETC.

THESE APPEALS COMING ON FOR HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

MFA 2028/2012 is filed by the claimant for enhancement of compensation.

MFA 6669/2012 is filed by KSRTC for reduction of compensation.

2. I have heard learned counsel for parties.

3. The finding of the tribunal that accident took place due to rash and negligent driving of KSRTC bus bearing No.KA-07/F-1272 is supported by acceptable reasons and the same has not been disputed in the appeal filed by KSRTC. In the circumstances, the only question that would arise for determination is: whether the tribunal has awarded just and reasonable compensation ?

4. At the first instance, claimant was treated in R.L.Jalappa Hospital at Kolar and late in Panacea Hospital at Bangalore. As per medical records and medical evidence, claimant had suffered following injuries:

- i) Fracture shaft of right femur
- ii) Fracture of 5th Metacarpal bone
- iii) Diaphragmatic tear with stomach herniation.

He was operated for reduction of fracture and also repair of tear of Diaphragm in Panacea Hospital. Even after complete treatment, he has following permanent physical disabilities:

- i) Restricted movement of right knee joint
- ii) Reduction in the power of muscle of right knee.

The Medical Officer has assessed permanent physical disability at 10%.

5. The tribunal has awarded compensation of Rs.4,68,000/- under the following heads:

Pain and suffering	-	Rs. 40,000
Medical Expenses	-	Rs.2,00,000
Conveyance, food, attendance and Nourishment	-	Rs. 3,000
Loss of future earning capacity on account of permanent disability	-	Rs.1,62,000
Loss of earning during treatment period	-	Rs. 18,000
Loss of amenities and future unhappiness	-	Rs. 30,000
Future medical expenses	-	<u>Rs. 15,000</u>
Total	-	Rs.4,68,000

6. The claimant was before this court on 27.06.2014. This court has observed the claimant. The claimant was an oil merchant. The tribunal has awarded compensation under the aforestated heads. The assessment of disability and compensation awarded under the head 'loss of future earning capacity' cannot be termed as excessive. The tribunal on careful consideration of medical records has awarded compensation of Rs.2,00,000/- towards 'medical

expenses'. On reconsideration, I do not find any reasons to interfere with the compensation awarded under this head. The tribunal has awarded compensation of Rs.15,000/- towards 'future medical expenditure'. The claimant has to undergo one more operation for removal of implants fixed to the femur. The claimant was operated for repair of tear of Diaphragm. He may develop certain complications in future. In the circumstances, I award additional compensation of Rs.20,000/- towards 'future medical expenditure'. Thus, claimant is entitled to total compensation of Rs.4,88,000/-.

7. In the result, I pass the following:

ORDER

MFA 6669/2012 filed by KSRTC is dismissed.

MFA 2028/2012 filed by claimant for enhancement of compensation is accepted in part.

The impugned award is modified by enhancing compensation of Rs.4,68,000/- to Rs.4,88,000/-.

The interest awarded on future medical expenditure of Rs.40,000/- is disallowed. The rest of the impugned award is confirmed.

Sri.Palakshaiah, learned counsel is permitted to file power for KSRTC within four weeks from today.

Sd/-
JUDGE

Np/-