

**(2016) 04 KAR CK 0051**

**In the Karnataka High Court**

**Case No :** Misc. First Appeal No. 4540 of 2014 (MV)

Gowardhan Swamy

APPELLANT

Vs

Managing Director, VRL Logistic Ltd. and another

RESPONDENT

**Date of Decision :** 07-04-2016

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 168

**Citation :** (2016) AAC 1435

**Hon'ble Judges :** N.K. Patil and Mrs. Rathnakala, JJ.

**Bench :** Division Bench

**Advocate :** Sri P.B. Yatnal, Krishnamoorthy D., Advocate, for the Appellant; Sri Aravind M. Neglur, Advocate, Sri S.V. Hegde Mulkhand, Advocate, for the Respondent

**Final Decision :** Partly Allowed

## Judgement

Rathnakala, J.—The appellant is dissatisfied by the quantum of compensation awarded in his favour by IV Addl. District and Sessions Judge, and Member, MAC, (for short, Tribunal) D.K. Mangalore in MVC No. 423/2013 in respect of the accidental injuries suffered by him.

2. Succinctly stated, the appellant filed a claim petition under Section 166 of Motor Vehicles Act, before the Tribunal contending that on 2-12-2012 at 1.45 hrs., while travelling in the Bus bearing reg. No. KA-25-B-661 from Gulbarga towards Mangalore on NH-63 at Saralebail Village, Ankola Taluk. Uttara Kannada District, the driver of the Bus since drove the vehicle negligently, and lost control over the bus, due to which, the vehicle capsized, resulting in grievous injuries to him. He was treated as inpatient at Ullai General Hospital, with extensive debridment plastic surgery and fastronemus flap surgery and was discharged on 4-1-2013. He was hale and healthy prior to the accident and was running a Soft Drinks Company and earning a sum of Rs. 35,000/- per month. Due to the injuries sustained, he is bed ridden and cannot run his business and sought compensation of Rs. 40,00,000/-.

The petition was contested. The Tribunal on overall consideration of oral and documentary evidence allowed the petition in part awarding compensation of Rs. 7,53,000/- with interest at 6% per annum, jointly and severally against the owner and the insurer of the vehicle.

3. Sri. P.B. Yatnal, for Sri. Kirshnamoorthy, D., learned counsel for the appellant submits that the Tribunal has awarded only Rs. 20,000/- towards conventional costs of food, nourishment and attendant charges and Rs. 1,25,000/- awarded towards loss of amenities and discomforts are too inadequate. He further submits that the rate of interest awarded by the Tribunal at 6% is against the judgment of this Court and Apex Court. Hence, the judgment and award of the Tribunal may be modified by enhancing the compensation reasonably and also rate of interest may be increased.

4. Sri. Aravind M. Neglur, learned counsel for the Insurer submits that on the showing of the claimant himself subsequent to the treatment he is in a position to walk with the help of walking stick. The compensation of Rs. 3,78,000/- towards medicine and hospital charge is awarded as per documentary proof furnished by him, Rs. 20,000/- awarded towards conveyance, nourishment and attendant charges, Rs. 1,25,000/- towards loss of amenities and future happiness, Rs. 30,000/- towards future medical expenses and Rs. 1,00,000/- towards loss of income during treatment are awarded on the basis of evidence produced by him and the impugned award does not call for inference.

5. In the light of the above rival submissions, we have perused the impugned judgment and award with lower Court records.

6. The occurrence of the accident of 2-12-2012 at about 1.45 hours involving the Bus bearing registration No. KA-25-B-661 resulting in injuries to the appellant/claimant is an admitted fact. There is no much resistance to the fact that he suffered open fracture of left knee and left patella and loss of medical femoral condylar bone with extensive loss of 30 x 30cm anterior of the left knee exposing the bone and soft tissue with severe contamination with mud and glass pieces. He has been treated as inpatient from 2-12-2012 to 4-1-2013 and 19-1-2013 to 6-6-2013.

7. As per the evidence of P.W. 2/the Doctor, who had treated the claimant, he has suffered permanent physical disability on the left knee in Athrodesed at 15 degree of flexion, he cannot squat, climb the stairs, daily activities is restricted as he has a deformed knee which is now fused. He has suffered permanent physical disability of 50% to the particular limb and 34% in reference to the whole body. Considering these aspects, the Tribunal has awarded reasonable compensation in respect of pain and injury, medical expenses and future medical expenses. However, having regard to the nature of injuries suffered, in our considered opinion Rs. 1,25,000/- awarded towards loss of amenities and discomfort is inadequate which needs to be enhanced by another sum of Rs. 75,000/-. Towards conveyance charges, attendant and nourishing food Rs.

20,000/- is awarded, which calls for enhancement by another sum of Rs. 30,000/-, that would serve the ends of justice being met. Thereby, the appellant is entitled for total compensation of Rs. 8,58,000/- as against Rs. 7,53,000/- awarded by the Tribunal.

8. Though the accident is of the year 2012, the interest awarded at 6% per annum is not in conformity with the spirit of judgments of this Court and Apex Court in identical category of cases, hence, he is entitled for interest at 9% per annum on the enhanced compensation from the date of petition till realization.

9. Accordingly, there would be enhancement of Rs. 1,05,000/- with 9% interest on the enhanced compensation from the date of petition till realization.

10. The appeal is allowed in part.

11. The judgment and award dated 24-4-2014, passed in MVC No. 423/2013 on the tile of IV Addl. District & Sessions Judge and Member, MACT, D.K. Mangalore, is hereby modified to the extent that the appellant is entitled for additional compensation of Rs. 1,05,000/- along with interest @ 9% per annum from the date of petition till realization.

12. Respondent No. 2/insurer is directed to deposit the enhanced compensation of Rs. 1,05,000/- with accrued interest before the Tribunal within three weeks from the date of receipt of copy of this judgment.

13. On such deposit being made the Tribunal shall disburse the enhanced compensation amount with interest in favour of the appellant.

14. Draw the award, accordingly.

15. The Lower Court Records shall be transmitted to the concerned Tribunal forthwith.