

**(1989) 12 KAR CK 0024**

**In the Karnataka High Court**

**Case No : M.F.A. No's. 418 to 427 of 1984**

Karnataka State Road Transport Corporation

APPELLANT

Vs

Abdul Majeed

RESPONDENT

**Date of Decision :** 12-12-1989

**Acts Referred:**

Motor Vehicles Act, 1939 — Section 110 (1), 110 A

**Citation :** (1990) 2 ACC 455 : (1991) ACJ 453 : (1990) ILR (Kar) 1493

**Hon'ble Judges :** M. Ramakrishna, J;M. Rama Jois, J

**Bench :** Division Bench

**Advocate :** T.J. Chouta, for the Appellant; V.S. Ugrappa, for M.R. Janardana, S. Gurushanthappa and S. Gurushettappa for C.S. Shanthamallappa, M. Sowriraju, K.N. Subba Reddy, C.K. Kambeyanda, C. Krishna and S. Shivaprakash and G.S. Visweswara, for the Respondent

**Final Decision :** Dismissed

## Judgement

Rama Jois, J.—These ten appeals are presented by the Karnataka State Road Transport Corporation against the common Judgment and separate awards made on ten claim petitions presented u/s 110-A of the Indian Motor Vehicles Act, 1939 by the Motor Accidents Claims Tribunal, Mandya.

2. Brief facts of the case are these: On 23-2-1981 at about 5-30 P.M. Tourist bus belonging to Sonar Roadways, Cannanore was coming from Cannanore, to Bangalore and was plying near Channegowdanadoddi near Maddur, on Bangalore Mysore Road. A bus belonging to the appellant Corporation was proceeding towards Mysore from Bangalore. Accident occurred at about 5-30 P.M. near Channegowdanadoddi when there was head on collision between the red colour bus belonging to the Corporation and the green colour bus belonging to Sonar Roadways (hereinafter referred to as "the Red Bus" and "the Green Bus" respectively for convenience). There were as many "as 12 claim petitions presented by individuals either by the injured or the legal representative of the persons died as a result of the accident as also a petition by Sonar Roadways

claiming compensation in respect of the damages caused to the green bus by the accident. The first issue which arose in all the petitions and was common to all the claim petitions was, whether the accident occurred as a result of the rash and negligent driving of the red bus belonging to the Corporation.

Rejecting the plea of the Corporation that the accident occurred as a result of the rash and negligent driving of the green bus by its driver or that the accident occurred on account of the contributory negligence of both the drivers, the Tribunal recorded a finding that the accident occurred solely on account of the rash and negligent driving of the red bus by Its driver. After recording the said finding, the Tribunal proceeded to determine the quantum of compensation to be awarded in each of the claim petition and determined the compensation payable to the claimants in each of the petitions. Aggrieved by the Judgment and award made by the Tribunal, the Corporation has preferred these ten appeals. No appeal has been preferred in other two cases and that the learned Counsel for the Corporation explained that the compensation awarded in those two cases was small and therefore, the Corporation did not consider it appropriate to file appeals in those two cases also.

3. In these appeals, the learned Counsel for the appellant-Corporation has urged the following contentions:-

(1) The finding recorded by the Tribunal that the accident occurred on account of the rash and negligent driving of the vehicle belonging to the Corporation by its driver was erroneous.

(2) In M.V.C. 73 of 81 out of which M.F.A. 426/86 arises, the Tribunal had awarded compensation towards loss of income during the period when the green bus was under repair though the Tribunal had no jurisdiction to award compensation regarding loss of income and even if it had the jurisdiction to award compensation for loss of income, the compensation awarded at the rate Rs. 1,000/- per day for 180 days was excessive and arbitrary;

4. Elaborating the first contention the learned Counsel for the Corporation submitted as follows: From the evidence on record, it is clear that the collision between the two buses took place on the middle of the Road. When an accident takes place as a result of collision of two vehicles on the middle of the Road, the inference that should be drawn is that the accident, occurred as a result of the rash and negligent driving of both the vehicles.

5. Sri Chinnappa, the learned Counsel for the respondents submitted that the question as to whether, an accident occurred on account of the rash and negligent driving of any particular vehicle even in a case of collision between the two vehicles, always depends upon the evidence on record. He submitted that in the present case, the finding recorded by the Tribunal was-justified for the following reasons: At the earliest point of time, legal notice was issued both to the Driver and the Corporation in which there was a specific allegation to the effect that the accident occurred as a result of the rash and negligent driving of

the red bus by its driver. To this notice, there was no reply, from the driver. In the reply by the Corporation, all that was stated was that the matter should be agitated through a Claim Petition under the Act. There was no denial by the Corporation of the allegation that there was rash and negligent driving of the vehicle by the driver of the Corporation. Again in the Claim Petition, the driver was made a party and there was a specific allegation in the claim petition to the effect that the accident occurred only on account of the rash and negligent driving of the red bus by the driver of the Corporation. The Driver who alone was in a position to reply to this allegation did not file any reply. He being an employee of the Corporation, the admission of the Driver by way of not contradicting the plea in the Claim Petition must be deemed to be an admission by the Corporation also and therefore the Corporation cannot be permitted to take the plea that there was no rash and negligent driving of the red bus by its Driver. He also invited our attention to the evidence of P.W. 9, a passenger in the K.S.R.T.C. Bus, who has specifically stated that the Red Bus was going at a high speed at the time of the accident.

6. The learned Counsel also Invited our attention to the photographs, Ex.P-179. It shows that the green bus was on the mid way of the Road and red bus was resting on banian tree on the left side of the green bus. Relying on this evidence the learned Counsel submitted that even on the basis of the doctrine of *res ipsa loquitur* only the driver of the red bus was negligent, for the photograph establishes that the left side of the green bus was hit by the red bus, and it had moved further and hit the banian tree which establishes that it was the red bus which was being driven at a high speed and was also on the wrong side.

7. As stated earlier, the Tribunal has recorded a clear finding that there was negligent driving of the vehicle by the Driver of the red bus. In our opinion, the finding recorded is fully justified and based on evidence which Includes the evidence of some of the passengers, who were travelling in the red bus to the effect that the red bus was going In a high speed. Moreover, the location of the two vehicles immediately after the accident, as is discernible from the photographs gives no room for doubt that it was the red bus that was going in a high speed in the middle of the road and dashed against the green bus on its left side and went a little further and hit a banian tree. If really the red bus was on the left side, the right side of the bus would have hit the right side of the green bus and the red bus would have been on the right side of the green bus after the accident, but actually it was on the left side. In our opinion, in the case of head on collision between two vehicles the question as to whether an accident took place as a result of rash and negligent driving of any particular vehicle has to depend upon the evidence adduced. We are satisfied that the finding recorded by the Tribunal in this case is correct and there is no ground to interfere with the same. For the aforesaid reasons, we answer the first question against the appellants.

8. The next point for consideration is whether the Tribunal has got jurisdiction to

award compensation in respect of loss of income occasioned as a result of the damage to a property in a motor accident and in the present case to the green bus belonging to the respondent in M.F.A.426/1984. The learned Counsel for the Corporation submitted that u/s 110 of the Motor Vehicles Act, the Tribunal is given the jurisdiction to award compensation in respect of death or bodily injury or damage to the property and therefore it did not include the loss of income, subsequent to the date of the accident arising out of the damage to the property. In support of the above submission, the learned Counsel relied on the Judgment of the Madhya Pradesh High Court in Raj Kumar Vs. Mahendra Singh and Others, and of the Kerala High Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. K.P. Saradamma, . In both these decisions, the above question has been considered. The view taken is that when the Section expressly confers power on the Tribunal to award compensation only in respect of damages to property, in the guise of Interpretation, the jurisdiction cannot be enlarged so as to include even the loss of income arising out of or as a result of damage to property. The relevant portion of the Judgment of Madhya Pradesh High Court reads:-

"This Section empowers the State Government to constitute Claims Tribunals for the purpose of adjudicating upon claims for compensation in respect of accidents involving amongst others, "damages to any property" of a third party. In the proviso to Sub-section (1) of Section 110 of the Act, the words used are: "a claim for compensation in respect of damage to property". We are of the opinion that the word "damages" or "damage" used in Section 110 of the Act means injury to any property, involved in the accident, due to the use of the motor vehicle. The use of the word "damage" in plural in the body of Section 110(1) and that of singular in the proviso does not make any difference. The Claims Tribunal constituted u/s 110 of the Motor Vehicles Act is empowered only to adjudicate upon claims for compensation in respect of accidents involving "damages to any property" arising out of use of the motor vehicle. Therefore, at best, the claim which can be lodged and adjudicated upon by the Claims Tribunal contemplated by the Section is claim for compensation for damaged resulted to the vehicle due to the accident, Usually a claim of such nature is made to recover expenses which may be or might have been incurred for repairs or restoration of the vehicle to its original condition. The "loss of business" on account of vehicle remaining idle during repairs is not a "damage to the property" of the owner, but may be damage or loss to the owner. We do not think that the Claims Tribunal is empowered u/s 110 of the Motor Vehicles Act to entertain such a claim. Claims for compensation on account of the accident involving death or bodily injury to the person as also the damage to any property could always be laid down before a Civil Court being actions in tort. However, in order to provide speedy and cheap remedy to sufferers a special provision has been made empowering the State Government to constitute Claims Tribunal for adjudicating claims for compensation on account of death, bodily injury or damage to property arising from accidents. So far as, a reference to Section 110-F of the Act barring the

jurisdiction of the Civil Court is concerned, we find that it bars the Civil Court to entertain any question relating to "any claim for compensation which may be adjudicated upon by the Claims Tribunal". This section bars the jurisdiction of the Civil Court only in respect of such matters which can be adjudicated upon by the Claims Tribunals. The words "any claim for compensation" in this section mean any one of the classes of the claims specified in Section 110(1) of the Act, namely, (1) death, (2) bodily injury and (3) damage to the property. After the amendments made by the Amending Acts No. 56 of 1969 and No. 47 of 1978, as held above by us, there cannot be any doubt that a claim simpliciter for damage to the property can be made before Claims Tribunal. This also confirms our conclusions. A claim for compensation for "loss of business" on account of the damaged vehicle remaining idle during its repairs cannot be laid before the Claims Tribunal. A party aggrieved on this count will be free to file a civil suit and Section 110-F of the Act does not bar the jurisdiction of Civil Court."

The Kerala High Court has also taken a similar view in the case of Saradamma. Relevant portion of the Judgment reads:-

"The word damages means the pecuniary compensation recoverable by a person, who has sustained an injury through the wrongful act or omission of another. Often a distinction is drawn between damages and compensation. Damages is used for recovering the pecuniary recompense awarded in reparation for a loss or injury caused by a wrongful act or omission. The word "compensation" is used in relation to a wrongful act which caused the injury. The word compensation is not ordinarily used as equivalent for damages. [See *Cooper v. Firth Brown Ltd.* (1963) 2 All ER 31]. Damages are of two kinds, general and special. General damages are non-pecuniary losses which cannot be calculated in terms of money like pain and suffering, loss of amenities of life and loss of expectation of life. Special damages are damages which can be computed in terms of money or which can be specifically proved, like the expenses for medical treatment or loss of earnings, loss of income from a bus which was involved in an accident may come under the head "special damages" for the reason that the petitioner lost this income as a result of the accident. We think that in appropriate cases if the loss of income from the bus is the direct result of the accident, the owner of the bus may be entitled to claim such loss as special damages. But then the question is whether the forum for claiming such compensation is the Motor Accidents Claims Tribunal. The Tribunal is constituted u/s 110 of the Motor Vehicles Act with specified powers. It may also be noticed that by the proviso to Sub-section (1) of Section 110, liberty is given to the claimant to move the Civil Court for adjudication of any claim for compensation in respect of damage to property exceeding Rs. 2,000/-. Obviously the intention of the legislature was to provide" for quick disposal of motor accidents claims by the Tribunals. If large amounts are claimed as damages to property such claims may have to be tried in detail. Provision to refer such cases to Civil Courts is made for this reason. If this is the case in respect of claim for "damages to property" itself, it is only reasonable to hold that claim for damages which may result from the accident, even though it

cannot be termed as "damages to property". have to be decided only by a Civil Court and not by the Tribunal. Such an interpretation is in accordance with the general tenor of the provisions of the Motor Vehicles Act as well as the principle that the phrases and sentences in a statute are to be construed literally and in accordance with the rules of grammar. According to us, the language of the section is plain and admits of only one meaning namely that the power conferred on the Tribunal is restricted to deciding claims of damages "to" property. The meaning of the word "to" which is the preposition used, as per the Concise Oxford Dictionary is "in the direction of". Definition of a preposition is the following: "A preposition is a word placed before a noun or a pronoun to show in what relation the person or thing denoted by it stands in regard to something else." (English Grammar and Composition by Wren & Martin, 75th Edition, page 182). In this view also the interpretation placed by us namely that the direct damage to property alone is taken by the words "damages to property" seems to be justified. If there is any claim for damages suffered by the owner of motor vehicle which was involved in an accident, apart from the claim for damages to the vehicle itself, it will thus have to be preferred before a Civil Court since the Motor Accidents Claims Tribunal has no jurisdiction to consider such a claim."

Relying on the above decision, the learned Counsel submitted that the awarding of damages in respect of loss of income during the period of 189 days during which period the green bus was undergoing repair was totally without jurisdiction and in any event the quantum of compensation awarded was highly excessive.

9. Sri Chinnappa, the learned Counsel for the respondents, per contra, submitted as follows: The expression "damages to property" used in Section 110 of the Act includes not only the actual damage caused to the property, but also loss of income directly arising out of the damage to the property. Elaborating his submission, he submitted as follows: The expression damages to property is generally understood as not only the actual damage caused to the property but also the actual loss caused as a result of the damage to property from the date of damage till the date on which the property is restored to its original position. In support of the above submission, the learned Counsel relied on the Judgment of the Rajasthan High Court in UNION OF INDIA v. RATAN LAL 1988 ACJ 192 The relevant portion is at paragraph-13 at page 995. It reads:-

"The Claims Tribunal has awarded under this head a compensation to the extent of Rs. 1,700/-. In this connection Mr. Sisodia has invited my attention to Raj Kumar Vs. Mahendra Singh and Others, In this case the Division Bench of M.P. High Court has interpreted the provisions of Section 110(1) of the Motor Vehicles Act and held that the Tribunal is only entitled to grant compensation in respect of (i) death, (ii) bodily injury and (iii) damage to property. As such loss of the business cannot be compensated, therefore, this claim cannot be entertained, with great respect, I do not agree with the view taken by the M.P. High Court. It may not be lost sight of that legislature in its wisdom has thought it proper to draft Section 110 for purpose of giving benefit to the victims of the motor

accidents. It will not be proper to circumscribe the scope of Section 110 by narrow interpretation. It is a social legislation for the benefit of the public at large and it should be interpreted in a more wider and comprehensive manner so as to give relief to the victims and not to debar them. The expression damage to property is of very wide amplitude. Though the future earning cannot be said to be ascertained sum, but it is a property in future which the owner of the damaged vehicle would have earned out of this truck, if this vehicle has not been damaged. Thus his recurring income has been lost on account of this damage and how can this be deprived to owner of vehicle. In this connection, reference may be made to Section 110-F, Motor Vehicles Act which has barred the jurisdiction of the Civil Court, meaning thereby that all the claims arising out of the motor accidents should be disposed of by the Tribunal only. Therefore, the jurisdiction of the Civil Court has been barred. It would mean that part of the claim is to be raised before Tribunal and for remaining the Incumbent has to take recourse to the Civil Courts, then this will give rise to multiple of the proceedings. Thus, the scope of Section 110 is wide enough to include the future earning as a damage to the future property of the claimant."

The learned Counsel also pointed out that the Rajasthan High Court had considered the Judgment of the Madhya Pradesh High Court and expressed its disagreement.

In the light of the above discussion we proceed to analyse the scope of the jurisdiction conferred on the Tribunal u/s 110 of the Act. Section 110 as it originally stood empowered the Tribunal to award compensation only in respect of death or bodily injury to any person. The Section was amended by the Amending Act 56/1967, which came into force with effect from 2-3-1970. By this amendment the jurisdiction to award compensation in respect of damages to property was also included. Thus, the Section confers jurisdiction on the Tribunal to award compensation both for personal Injury as well as damages to property of a third party, arising out of an accident. It is not disputed that the jurisdiction of the Tribunal to award compensation for personal injury also includes compensation which could be awarded towards loss of income to the person "injured as a result, of the injury i.e., the period during which the person injured is unable to earn income" and that the Courts have been awarding compensation not only for the actual. personal Injury but also towards future loss of income to the person injured. To this extent the scope of Section 110 is well settled and this position is not controverted by the learned Counsel for the appellant. When this is the position regarding personal Injury, It would be incongruous to say that in respect of damages to the property the jurisdiction of the Tribunal is confined to the award of compensation only in so far it relates to the actual damage to the property and does not include the loss of Income directly arising out of the damage to the property. It is also well settled position in law that the concept of damages to property includes compensation for loss of use or loss of income directly resulting from damage. On this aspect of the matter, we refer to WINFIELD AND JOLOWICZ on TORT, 11th Edition at page 623, wherein it is

stated thus:

"In large majority of cases the plaintiff will not only have incurred the cost of repairing his chattel, he will also have been deprived of its use for a period of time and for this loss, he is entitled to damages whether he has used the damaged chattel in a profit earning capacity and whether he has suffered actual pecuniary loss or not.

XXX XXX XXX There is no reason, therefore, why a person whose Motor Car is damaged by the negligence of the respondent should not recover damages for loss of use, even though he only uses his car for pleasure purposes and has a second car in his garage."

As far as the present case is concerned, the damages claimed is not in respect of mere loss of use of the green bus, but it is in respect of actual loss of income occasioned by its becoming incapable of being used for a period. In our opinion, by amending Section 110 of the Act, the Legislature intended to give relief to persons who had suffered loss as a result of damages to their property as a result of a motor accident and in the absence of any express or implied indication to the contrary, the expression "damages to property" must be given the same meaning which they have been assigned in the law of damages which takes in not merely actual damage to the property but also loss on account of its non-availability for use. If the construction suggested for the appellant is accepted, then on the same reasoning, it would have to be held that the jurisdiction of the Tribunal to award compensation for personal injury is limited to the awarding of compensation in respect of bodily injury suffered by the individual and as far as the loss of income during the period when the injured person was unable to earn on account of the injury, the Tribunal has no jurisdiction and the party has to resort to file a civil suit for such a relief. It is also pertinent to take note of the fact that u/s 110 the pecuniary jurisdiction of the Tribunal is made unlimited regarding awarding of compensation for damages to property, as is discernible from the proviso therein, which states that in respect of property when its value is more than Rs. 2,000/- at the option of the claimant he may seek a reference to the Civil Court and when the matter is so referred the Claims Tribunal would have no jurisdiction to entertain any question relating to such claim. This means if a claimant desires that irrespective of the amount of compensation claimed it should be decided by the Tribunal itself, he has the choice of filing the claim petition before the Tribunal and it has the jurisdiction to decide the petition and make an award and in such a case the Civil Court would have no jurisdiction in view of Section 110F of the Act. If the contention of the Legislature was that the words "damages to property" used in Section 110, should be given a restricted meaning confining them only to actual damage to the property and not to loss of Income arising directly therefrom, the Legislature would have so expressed. It has not done so, is itself, in our opinion, an indication of the absence of such intention. This is consistent with the object of the Legislation which is a social security measure, intended to provide full compensation to the victims of an

accident. To Illustrate take for instance a case in which a person, who is a driver of a vehicle on a salary of Rs. 1,000/- suffers personal injury as a result of a motor accident and is hospitalised for a period of six months, it is not disputed by the learned Counsel for the appellants that not only he is entitled to get a proper compensation for the injury suffered, but he is also entitled to an award towards loss of income In a sum of Rs. 6,000/- for the period of six months during which period he was unable to earn the Income. However, according to the learned Counsel for the appellants If in a given case a person who was running a taxi or an autorickshaw by driving himself and was earning a sum of Rs. 1,000/- per month, if Instead of suffering personal injury as a result of a motor accident the vehicle belonging to him is damaged and the same Could not be used for about 6 months, the Tribunal has jurisdiction to award compensation only for the actual damage caused i.e., only charges for the repair of the vehicle and no compensation could be awarded towards loss of income during the period for which the vehicle was Incapable of being used for earning the income and for that relief he has to file a civil suit, though the cause of action as well as the evidence to be adduced would be the same for the claim petition and the civil suit. In our opinion a construction of a statutory provision which brings about such a result should be rejected.

10. For the aforesaid reasons, we respectfully agree with the view taken by the Rajasthan High Court and respectfully disagree with the Madhya Pradesh and Kerala High Courts and we answer the second point also against the appellants.

11. Now coming to the last question, the learned Counsel for the appellants strenuously contended that the compensation awarded was excessive. In support of his submission, the learned Counsel submitted as follows: The loss of net income claimed by the respondent in MFA 426/84 was Rs. 1,000/- per day. The total number of days spent for the repair of the vehicle was stated to be 189 days. As regards daily income except the bald statement of the owner who was examined as P.W.10 that he was earning an income of Rs. 1,000/- per day, there was no other piece of evidence In support of the same. Further, according to the evidence of the Deputy Manager of the Corporation the repair of the vehicle could have been got done within 10 days, whereas the period occupied for repairing of the said vehicle was 189 days which was unreasonably long and for that the Corporation could not be made liable even on the basis that the vehicle could not have been got repaired in ten days, as stated by the Deputy General Manager, in view of the extensive damage caused to the vehicle it could not have taken as long as 189 days as is stated to have happened. He pointed out that it was in evidence that while the accident occurred on 23-2-1981, it was only after about two months, the spare parts were supplied by the owner of the vehicle, as is evident from EXs.P-193 to 203, and therefore, the awarding of compensation at the rate of Rs. 1,000/-per day and for 189 days was highly excessive and unsupported by evidence.

12. The learned Counsel for the respondents, in reply, as regards the time

occupied for repair submitted as follows: The green bus was Mercedes Benz vehicle and M/s. Webbs Sales and Services were the authorised representatives of the Manufacturers and therefore the vehicle which was a brand new vehicle i.e., only four months old on the road at the time of the accident its repairs had been entrusted to M/s. Webbs Sales and Services. The extent of damage the vehicle had suffered, did require considerable time for repairs and the statement of the Deputy General Manager of the Corporation that the vehicle could have been repaired within 10 days was unrealistic and fanciful. The body as well as the Engine and other parts of the vehicle had been damaged extensively and that the repair of the body had to be entrusted to some other person, and in fact it was got done by Morzari and that itself occupied a couple of months. The learned Counsel submitted that at the relevant point of time, the spare parts of the vehicle in question were not available and that was the reason it took sometime for the owner of the vehicle to supply the spare parts which he did in the last week of May 1981 and the 1st week of June 1981. The very fact that after the owner supplied the spare parts, considerable time was taken by M/s Webbs Sales and Services to repair the vehicle established that the time occupied by them was quite reasonable having regard to the extent of damage which the vehicle had suffered.

13. As regards the quantum of damages awarded, the learned Counsel submitted that the owner was running the said vehicle as a Tourist Vehicle covered by All India Permit regularly from Cannanore to Bangalore and the seating capacity of the Bus was 35 and the fare from Cannanore to Bangalore was Rs. 65/- for single journey, therefore even the daily collections would be more than Rs. 3,000/- and that being the position even taking 2/3rd of it as towards expenses or maintenance including taxes, salary of employees, the estimation of loss of Rs. 1,000/- per day was correct and therefore the Tribunal had rightly awarded the compensation of Rs. 1,89,000/-.

14. On consideration of the submission made by the learned Counsel and the evidence on record it appears to us that the period 189 days was a little longer than it should have occupied for the repairs if it was got done very promptly. However, no evidence was adduced by the appellants to show that the vehicle could have been got repaired within a shorter period. If the Chief Mechanical Engineer or any other person incharge of the Workshop of the KSRTC, had been examined as a witness and he had stated as to the nature and extent of the damage suffered by the green bus and had also stated what would have been the period the Workshop of the K.S.R.T.C. would have taken for repairing the same it would have furnished the basis to decide as to whether the period of 189 days occupied for repairing of the green bus was actually unnecessary and consequently the owner of the claimant could not claim damages towards loss of income during that period. Except the bald assertion of a Deputy General Manager of KSRTC, in his evidence to the effect that the damage caused could have been repaired within 10 days no other reliable evidence was adduced. The photographs of the green bus indicate that the bus had suffered extensive

damage. Therefore, we are unable to agree with the submission made by the learned Counsel for the appellants that the period occupied for the repair of the vehicle was unreasonably longer and therefore the owner of the bus was not entitled to the compensation on the count of loss of income, for all these days viz., for 189 days.

15. However, regarding the quantum of damages awarded by the Tribunal, we see substance in the point made out by the learned Counsel for the appellants. It may be that the seating capacity of the vehicle was 35 and it was being run as a Tourist Bus from Cannanore to Bangalore and the individual fare was Rs. 65/- per passenger. But it is difficult to agree that the bus would have carried passengers to its full seating capacity on all the days and further it would have run on all the days in a month. In the nature of things, the bus could not have travelled on all the days in a month, particularly being a Tourist Bus. Further the number of passengers would always be depending upon the tourist season or otherwise. While it is natural that during tourist season there might be passengers to its full capacity it cannot be said that during other periods the bus would have had passengers to its full capacity. Therefore, it is difficult to uphold the finding that from February 1981 to 31-8-1981 the owner of the bus had suffered loss of income of Rs. 1,000/- per day.

16. Therefore, for all the reasons stated above, we have to re-compute the compensation payable towards loss of income on some rational basis. Even according to the statement of the owner of the bus, he had invested a sum of Rs. 3,50,000/- on the bus and he had also invested some extra amount on additional fittings on the bus such as Video, Tape Recorder etc. Therefore, the total investment made on the bus could be taken at Rs. 4,00,000/- (rupees four lakhs). The learned Counsel for the respondents submitted that the amount had been taken on loan from the Bank though no such evidence is on record before the Court below. However, there is a statement relating to income of the owner which had been produced before the Court, but which had not been marked in the case and that statement shows that the owner of the bus had taken a loan from the Bank. In view of the heavy investment of Rs. 4,00,000/- on the bus, if we proceed on the basis that the entire amount of Rs. 4,00,000/- had been invested after borrowing the same from the Bank or financial institutions, and therefore the owner of the bus was liable to pay interest at the rate of 20% per annum on the amount borrowed by him and also take into account over and above the interest repayable to the Financial Institutions he would be earning 20% above the amount of interest payable the income comes Rs. 1,60,000/- per annum which roughly works out to about Rs. 14,000/- per month. Even taking it as Rs. 15,000/- per month, the daily net income would be regarded as Rs. 500/-. This estimation, in our opinion, would be fair and just. On that basis the compensation awarded by the Tribunal should be re-computed and reduced. If so done for 139 days, it comes Rs. 94,500/- and we round it off to Rs. 95,000/-.

17. As far as the compensation awarded towards repair is concerned, there is no

dispute. The actual damage to the vehicle was proved to be Rs. 1,72,843-66 paise and the amount recovered from the Insurance Company was Rs.1,40,000/-. Deducting the said amount received from the Insurance Company towards the damage of the vehicle, the Tribunal awarded a sum of Rs. 30,000/- Therefore, the award to that extent has to remain unaffected.

18. In M.F.A. No.426 of 1984 there is a Cross-objection by the owner of the green bus. The ground urged in the cross objection is that actually the vehicle was out of use for 240 days and not only for 189 days, as held by the Tribunal. This ground is untenable. Even according to the evidence adduced by the owner of the vehicle, it was out of use for 189 days. It is no doubt true that in the course of his oral evidence, the owner had stated that the vehicle was out of use for about 240 days, but even in the claim petition, the claim made was only for 189 days. Therefore, we find no substance in the cross-objection.

19. We shall now proceed to deal with the other connected appeals.

(I) In M.V.C. 59/1981 (out of which M.F.A. 418/84 arises) in respect of personal injury suffered by the claimant, a compensation of Rs. 12,000/- has been awarded,

(ii) In M.V.C. No. 60/31 (out of which MFA 419/84 arises) the claimant had suffered fracture of 3, 9 and 10th rib and there was no permanent disability. The compensation awarded was Rs. 13,000/-.

(iii) In M.V.C. No. 61/81 (out of which M.F.A. No. 424/84 arises) in respect of the injury suffered to the left fore arm of the claimant, and injury over the forehead, without any permanent disability, a compensation of Rs. 11,500/- was awarded.

(iv) In M.V.C. 62/81 (out Of which M.F.A. 423/84 arises) in respect of the death of the deceased, a compensation of Rs. 34,560/- was awarded.

(v) In M.V.C. No. 66/81 (out of which M.F.A. 420/84 arises) in respect of injury by way of fracture of left femur suffered by the claimant and medical expenses incurred, a compensation of Rs. 17,500/- was awarded.

(vi) In M.V.C, 67/81 (out of which M.F.A. 422/84 arises) In respect of fracture of inter condylar eminence of left knee joint, a compensation of Rs.3,000/- was awarded.

(vii) In M.V.C. No. 68/81 (out of which M.F.A. No. 421/84 arises) in respect of the deceased-Puttallngaiah aged about 43 years, who was a Coolie and was doing Petty business, at Guthal, Mandya District, a total compensation of Rs. 36,800/- was awarded.

(viii) In M.V.C. No. 69/81 (out of which MFA 425/84 arises) in respect of the personal injury suffered by the claimant by way of the fracture of left clavicle a compensation of Rs. 3,000/- has been awarded by the Tribunal.

(ix) In M.V.C. 71/81 (out of which M.F.A. 427/84 arises) In respect of the

deceased K. Srinivasa Rao, aged 59 years, Manager of Savitha Seva Samaj, Bangalore, a total compensation of Rs. 28,500/- was awarded.

After hearing the learned Counsel on both sides, we are of the view that the compensation awarded in each of these cases is just and proper and there is no ground to interfere with the same.

20. In the result, we make the following order:

(i) In M.F.A. 426 of 1984

(a) The appeal is allowed.

(b) The compensation for loss of income awarded at Rs.1,80,000/- is reduced to Rs.95,000/-.

(c) In all other respects the award shall remain undisturbed.

(d) The Cross-Objection is dismissed.

(ii) In M.F.As.Nos.418 to 425 of 1984 and M.F.A, 427/1984

The appeals are dismissed.