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**(2015) 01 KAR CK 0078**

**Karnataka High Court**

**Case No:** M.F.A. No. 4103/2011 (MV)

Ershad Pasha

APPELLANT

Vs

The Managing Director,  
K.S.R.T.C.

RESPONDENT

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**Date of Decision:** Jan. 20, 2015

**Acts Referred:**

Motor Vehicles Act, 1988 - Section 166

**Citation:** (2015) 01 KAR CK 0078

**Hon'ble Judges:** B. Sreenivas Gowda, J.

**Bench:** Single Bench

**Advocate:** Sunitha B.H. for Suresh M. Latur, Advocate, for the Appellant; D. Vijayakumar, Advocate, for the Respondent

**Final Decision:** Partly Allowed

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### **Judgement**

B. Sreenivas Gowda, J.

The appellant having sustained certain injuries in a road traffic accident filed claim petition before the MACT

Bangalore, seeking compensation under Section 166 of MV Act from the owner and the insurer of the offending vehicle.

2. The Tribunal by the impugned Judgment and Award has awarded a compensation of Rs. 2,31,200/- with interest at 6% p.a.

3. The appellant aggrieved by the sum awarded by the Tribunal has preferred this appeal seeking enhancement of compensation.

4. Heard the learned counsel for the appellant and respondent.

5. As there is no dispute regarding certain injuries sustained by the claimant in the road traffic accident that occurred on 20.02.2009 due to rash

and negligent driving of the offending KSRTC bearing No. KA-07-F-1139 by its driver and liability of the corporation, the only point that remains

for my consideration in the appeal is:

Whether the quantum of compensation of Rs. 2,31,200/- awarded by the Tribunal is just and proper or does it call for enhancement?

6. After hearing the learned Counsel for the parties and perusing the Judgment and award of the Tribunal, I am of the view that the compensation

awarded by the Tribunal is not just and proper, it is on the lower side and therefore it requires to be enhanced.

7. As per Ex. P3 wound certificate the claimant has sustained the following injuries:

a. Type III "B" compound fracture of lateral malleolus of right ankle.

b. Crush injury with skin loss exposing the ankle joint and other adjoining bones.

c. Wound over lateral aspect of right leg 3 x 2 cms.

8. The doctor has opined that the injuries sustained by the claimant are grievous in nature. The injuries sustained and treatment taken by the

claimant are also evident from Ex. P4 the discharge summary and Ex. P5 two photos with negatives X-ray films vide Ex. P11 and supported by

oral evidence of claimant and the Doctor examined as PWs 1 and 2 respectively.

9. The Doctor P.W. 2 in his evidence has stated that he examined the claimant and found that there is swelling and tenderness around right ankle,

foot and lower half of the leg, difficult to stand, walk and bear weight on right leg, difficulty to sit cross-legged, to squat, to use Indian toilet, to

climb up and down the stair case and an elevated grafted full thickness reconstructed flap on the lateral aspect of the right ankle is present and one

active sinus with serious discharge at the anterior end of the rafted area indicating the presence of active infection requiring frequent wound care

and dressing and addition of antibiotics to control infection. The doctor has opined that the claimant has suffered permanent physical disability to an

extent of 48.6% to the right lower limb and 23.3.% to the whole body.

10. Considering the nature of injuries sustained by the claimant, Rs. 50,000/- is awarded as against Rs. 30,000/- awarded by the Tribunal towards

pain and suffering The claimant has produced medical bills for Rs. 12,021/- and he was treated as in-patient for 47 days in Bowring and Lady

Curzon Hospital on two different occasions. Considering the duration of treatment, a sum of Rs. 25,000/- is awarded towards medical and

incidental expenses as against Rs. 17,000/- awarded by the Tribunal. He claims to have been earning Rs. 6,000/- p.m. by working as an auto

driver and has produced Driving Licence at Ex. P6. Considering the same, his income is assessed at Rs. 5,000/- per month. The nature of injuries

suggest that the claimant must been under rest and treatment for a period of four months. Therefore, a sum of Rs. 20,000/- is awarded towards

loss of income during laid up period. Considering the disability assessed by the Doctor and an amount of discomfort and unhappiness he has to

undergo in future life, a sum of Rs. 30,000/- is awarded towards loss of amenities as against Rs. 5,000/- awarded by the Tribunal.

11. His income is assessed at Rs. 5,000/- per month. As per the disability stated by the Doctor at 48% to the lower limb the disability caused to

the whole body comes to 16%. He is aged about 29 years and multiplier applicable to his age group is 17. Thus loss of future income would work

out to Rs. 1,63,200/- (Rs. 5,000/- x 16/100 x 12 x 17) same has been rightly awarded by the Tribunal.

12. Having regard to the nature of injuries, the claimant may have to undergo future treatment and he may have to spend some amount towards

future medical expenses. Thus, Rs. 15,000/- is awarded towards future medical expenses.

13. Thus the claimant is entitled for the compensation under the following heads:

14. Accordingly the appeal is allowed in part and the Judgment and award of the Tribunal is modified to the extent stated herein above. The

claimant is entitled for a total compensation of Rs. 3,03,200/- as against Rs. 2,31,200/- awarded by the Tribunal with interest at 6% p.a. on the

enhanced compensation of Rs. 72,000/- from the date of claim petition till the date of realization.

15. Respondent-KSRTC is directed to deposit the enhanced compensation amount with interest within two months from the date of receipt of a copy of this judgment.

Out of the enhanced compensation 75% with proportionate interest is ordered to be invested in F.D. in any nationalized or scheduled Bank in the

name of the claimant for a period of 3 years and the remaining 25% of the amount with proportionate interest is ordered to be released in his

favour.

The Tribunal while releasing 25% of the amount is also directed to issue FD slip in favour of the claimant, so that he can withdraw FD amount on

its maturity. The Bank or post office in which amount will be kept in FD is directed release the FD amount on its maturity without insisting for an

order from the Tribunal.

The Tribunal while releasing the amount is also directed to issue F.D. slip, so that the claimant can withdraw the same immediately after the F.D. is

matured without approaching the Tribunal once again.

No order as to costs.