

# Shivakumar M vs The Managing Director, Bmtc on 14 February, 2017

**Bench: A.M. Khanwilkar, Kurian Joseph**

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2828 OF 2017  
[ARISING FROM SPECIAL LEAVE PETITION (C) NO.30976/2015]

SHIVAKUMAR M.

APPELLANT(S)

VERSUS

THE MANAGING DIRECTOR, BMTc

RESPONDENT(S)

J U D G M E N T

KURIAN, J.

Leave granted.

2. The appellant is aggrieved, since he has not been given adequate compensation for the injuries suffered by him in a motor accident. There is no dispute that by avocation he was a painter. The Doctor/PW2 has certified that the appellant suffered 81% disability to the limb though the whole body disability is 24.3%. It is the case of the appellant that he got himself examined on a subsequent date and whereby the doctor certified the whole body disability to 40%.

3. We find it difficult to go by that assessment, since, admittedly the said assessment has been made after the award has been passed. However, we are not happy with the way the income has been computed by the Tribunal and the High Court.

4. According to the Tribunal, though the appellant contended that he was earning around Rs.15,000/- to Rs.16,500/-, in the absence of any other evidence on record, it is difficult to accept the estimate made by the appellant. However, having regard to the age of the appellant as around 45 years and the “nature of his work”, as painter the Tribunal assessed his monthly income to Rs.5,500/-.

5. It is a case where the accident took place on 16.8.2013.
6. In the High Court, taking note of the fact that there is no dispute regarding his age and avocation, the income was assessed at Rs.6,500/-.
7. No doubt, there was no evidence available with regard to the income of the appellant but there is no dispute on the fact that he was a painter by profession. The accident happened in the year 2013 when he was living in Bangalore, Karnataka.
8. For a casual worker, who goes from house to house and place to place doing his painting work it is difficult to get any evidence, since there is no employer. He does his daily work, sometimes piece rated work as well. That is why he made a moderate self estimation of his income to Rs.15,000/- to Rs.16,500/-.
9. In the absence of any serious dispute on the part of the respondent on the avocation and income, we are of the view that the Tribunal and for that matter the High Court should have accepted the evidence of the appellant. Therefore, we assess his monthly income as Rs.15,000/- and after deducting one third towards his personal expenses, the income will be assessed for the purpose of computation of compensation as Rs.10,000/- per month. The income is substituted as Rs.10,000/- in the place of Rs.6,500/- , as assessed by the High Court. The compensation will carry interest at the rate of 9% per annum from the date of the claim petition before the Tribunal. Rest of the award is maintained.
10. The respondent is directed to work out the compensation in the light of this judgment and deposit the amount before the Tribunal within a period of three months from today and if not the appellant will be entitled to interest at the rate of 18% and the officers responsible for the delay shall be personally liable for the same.
11. The appeal is allowed, to the above extent.
12. Pending application(s), if any, shall stand disposed of.
13. There shall be no orders as to costs.

.....J. [KURIAN JOSEPH] .....J. [A.M. KHANWILKAR] NEW DELHI;

FEBRUARY 14, 2017.