

## M.P.Paramesh vs The Managing Director on 18 January, 2022

BEFORE THE COURT OF XXIV ADDITIONAL SMALL CAUSES  
JUDGE AND THE MOTOR ACCIDENT CLAIMS TRIBUNAL &  
A.C.M.M. (SCCH-26) AT BENGALURU

DATED THIS THE 18TH JANUARY 2022

PRESENT: SRI.R.MAHESHA. B.A.L.LLB.,  
XXIV ADDL. SCJ &  
ACMM & MEMBER – MACT  
BENGALURU.

M.V.C No.4301/2018

PETITIONER : M.P.Paramesh  
S/o Late Puttagangaiah,  
Hindu, aged 42 years  
r/of Madenahalli, Lakkur post  
Sompura hobli,  
Nelamangala Taluk  
Bengaluru-562 123.  
r/by his wife Smt.M.r.Latha  
as next friend/guardian  
(By Sri.T.C.S. – Adv.,)

V/s

RESPONDENT : The Managing Director  
KSRTC, Bangalore central division,  
Transport house,  
Shanthinagar,  
Bangalore-560 027  
(By Sri.J.S.-Advocate)

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:: JUDGMENT:

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The petition is filed by the Petitioner under Sec.166 of Motor Vehicles Act, 1989 seeking compensation for an amount of Rs.58,25,000/□for the grievous injuries sustained by him in road traffic accident.

2. The brief facts of the case of the Petitioner is as follows:

That on 27-11-2017 at about 6.30 p.m. when the petitioner was sitting on the motor cycle KA-52-J-581 near Someshwara hotel, at Dobbaspeta, at that time, driver of the KSRTC bus bearing No.KA-40-F-168 came from Koratagere side in a rash and negligent speed and dashed to his right side of motor cycle, consequently petitioner fell down and sustained grievous injuries to head, bilateral FTP comminuted fracture with hemorrhagic contusion, multiple fractures of left fronto temporo parietal bony calvarium including facio maxillary bones with surroundings of soft tissue edema and hemorrhage, right FTP SDH left fronto parietal EDH, wedge compression fracture of L3, fracture of MVC No.4301/2018 SCCH 26 right distal radius and left clavicle, undisplaced fracture of left sacrum, fracture of 2nd and 5th metatarsal bones with degloving of skin in left foot and on other parts of the body. That the injured was shifted to Dobbaspeta Government hospital and after first aid he was admitted at Sparsh hospital, Yeshwanthpur on 27-11-2017 and was subjected for series of surgeries like wound debridement and closed reduction bilateral FTP decompressive craniectomy, tracheostomy, L2-L4 stabilisation with implants and SSG on left foot and discharged on 27-12-2017. That the injured/petitioner was readmitted for further surgery at Sparsh hospital on 24-1-2018 to 27-1-2018 and spent more than Rs.18 lakhs towards treatment, conveyance, nourishment and attendant charges. That due to accidental injuries, petitioner sustained permanent disability and lost his earnings. Hence petitioner prays to award compensation of Rs.58,25,000/- from the respondent.

3. After service of summons, the respondent appeared through counsel and filed written statement.

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4. The respondent had stated in its objection statement that the bus in question was on its schedule trip from Pavagada to Bangalore and the bus was being driven by its driver slowly and cautiously on the left side of the road by observing all the traffic rules and regulations and while it was so proceeding near Dobbaspeta close to Someshwara Idli hotel, at about 6.30 p.m. a motor cycle rider who was stated to be one M.P.Paramesh chatting on mobile placed in between the ear and shoulder by sliding his neck towards his right without wearing helmet for safety rode the motor cycle without observing the plying vehicles on the road and came in contact with the KSRTC bus on the left side and hit to the left indicator light of the bus suddenly and unmindfully. That the driver of the bus applied break, even though the KSRTC bus has not hit to the motor cycle rider instead he fell down on the left side of the bus at a little distance. That there were about 58 passengers traveling in the said bus, none of them including the driver and conductor have suffered any injuries. That rider of the motor cycle is wholly and solely MVC No.4301/2018 SCCH 26 responsible for the alleged accident. That the driver of the bus has controlled the bus in a very cautious manner and avoided causing serious accident. That the compensation claimed by the petitioner is highly excessive, exorbitant, imaginary and have no relations to facts and circumstances of the case. Hence prays to dismiss the above claim petition.

5. Heard arguments of learned petitioner counsel and respondent.

6. On the basis of the above pleadings, this tribunal has framed the following:

:: ISSUES ::

1. Whether Petitioner proves that, he has sustained injuries on account of road traffic accident due to involvement of KSRTC bus bearing No.KA40F1168 at Dobaspet Koratagere SH3 road, in front of Someshwara hotel, Dabaspet town, Bengaluru dated 27/1/2017 at about 6.30 p.m. as alleged in the petition?

2. Whether petitioner is entitled for compensation?

If so, to what extent and from whom?

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3. What order or award?

7. In order to prove the above said issues, Smt.Latha/wife of the Petitioner has been examined as PW1 and got marked Ex.P.1 to Ex.P.20 documents. One Vijay Kumar got examined as PW2 and got marked Ex.P21. one Nandakumar R got examined as PW3 and got marked Ex.P22 to 26. Dr.Kumaraswamy D.R. got examined as Ex.P22. Dr.Nagaraj B.N. got examined as PW5 and got marked Ex.P23. The respondent got examined one Ravishankar M.N. Conductor of KSRTC bus as RW1 and got marked Ex.R1 and 2.

8. My findings on the above issues are as under:

Issue No.1	: In the Affirmative
Issue No.2	: Partly in the affirmative
Issue No.3	: As per final order for the following:

#### REASONS

Issue No.1:

9. In order to prove the actionable negligence, the wife of the petitioner i.e., natural guardian examined as PW1 has MVC No.4301/2018 SCCH 26 entered into the witness box and filed her affidavit in lieu of examination in chief and document exhibited as Ex.P1 to 20. PW1 reiterates the averments and the allegations made in the claim petition and deposed that, the accident has occurred solely due to the rash and negligent driving of the KSRTC bus bearing reg.No.KA40F1168 by its driver. The petitioner is also relied upon various copies of police documents which are produced and got marked FIR, complaint, sketch, spot mahazar, IMV report, wound certificate and charge sheet. The FIR and charge sheet discloses that, registered a case against driver of the KSRTC

bus bearing reg.No.KA□40□F□168 U/s 279 and 338 of IPC. Further in order to prove the case of petitioner the complainant/informant and eye witness to the incident one Vijayakumar S/o Late.Hucchasiddaiah examined as PW□2, he produced his adhar card and it marked as Ex□P21. He clearly deposed incident and he seen the incident directly and was very much present at the time of occurring this alleged MVC No.4301/2018 SCCH 26 accident. The respondent disputed the claim of the petitioner on the ground he lodged this complaint after lapse of one day delay after the alleged accident and police have registered a case in its crime No.253/2017 u/s 279, 337 of IPC to get wrongful gain from this respondent. The concerned police by colluded with complainant and the petitioner filed a false charge sheet against the driver of the alleged KSRTC bus bearing reg.No.KA□40□F□168 without investigation. The alleged bus not at all involved in the accident, the police officer implicated above bus in the accident. In order to support petitioner to get compensation. In order to prove his defence the conductor cum driver one Ravishankar M.N. examined as RW□ and produced two documents which were Ex□R1 and R2. During course of cross examination PW□ and 2 deposed that admittedly PW□ was not an eye witness to this incident, she knew about this accident through somebody, after receipt of this information she immediately rushed to Dabaspeta primary health centre MVC No.4301/2018 SCCH 26 and seen her husband in hospital, he did not consciousness at the time of first seen by PW□, they took first aid treatment in Dabaspeta govt., hospital, then shifted for further treatment Sparsha hospital, Yashwanthapura, Bangalore. PW□2 was eye witness to this incident. During course of cross examination he deposed that there is no relation between injured and him. The injured was neighbour villager and acquainted with PW□2, PW□2 was working in Bharath gas office. He seen the bus within distance of 4 to 5 feet and he stated during course of cross examination the petitioner was sat on his motor cycle and he talking on the motor cycle. The offending bus came from Koratagere to Dabaspeta road and hit motor cycle which is parked in mud road in front of Someshwara hotel. He immediately shifted injured to Government hospital, Dabaspeta and he explained due to take care of petitioner they did not lodged complaint on same day,next day the PW□2 lodged complaint in Dabaspeta police station. The said motor cycle rider sit left side of road on motor cycle and KSRTC bus MVC No.4301/2018 SCCH 26 came and hit to right side of motor cycle and further he deposed about further investigation carried by police officers. Due to this reason, he lodged complaint next day of this accident. It is quite natural if anybody gets accidental injury, taking treatment is priority. On 28□1□2017 the investigation officer prepared spot mahazar and seized two vehicles from the spot and he gave requisition for conducting IMV on seized vehicles by the competent officer. In Ex□P3, the investigation officer clearly mentioned the damages occurred to motor cycle and KSRTC bus bearing reg.No.KA□40□F□168. The said highway road width of 75 feet, the place of accident near to Someshwara hotel 20 feet is there, the alleged accident occurred in the mud road i.e., outside of the highway. Before drawing Ex□P3 IO has collected information from public that due to KSRTC bus bearing reg.No.KA□40□F□168 driven from Koratagere side in rash and negligent speed and dashed to right side of motor cycle, thereby petitioner fell down and sustained severe injuries to his head MVC No.4301/2018 SCCH 26 and other parts of body. Immediately petitioner shifted to Govt., Hosmpital, Dabaspeta and he took first treatment and he referred higher treatment to Sparsha hospital, Yashwanthapura, Bangalore. From the police documents, it is seen that, the jurisdictional police have registered the criminal case against the driver of the KSRTC bus bearing reg.No.KA□40□F□168. Admittedly natural guardian/wife of the petitioner has produced FIR, complaint, sketch, spot mahazar, IMV report, before the Tribunal to know the occurrence of accident and to evaluate

the things. From charge sheet, police documents it clearly depicts that, the accident occurred and police have registered a case U/s 279 and 338 of IPC. From Ex P4 wound certificate and Ex P15 discharge summary, it is clear that, the history of the injury mentioned and the alleged accident occurred on 27-1-2017 at 22 hours. From going through the police records, it is clear that the case was registered on the basis of complaint/FIS given by PW 2 on 28-1-2017 at about 10.30 a.m. case was MVC No.4301/2018 SCCH 26 registered against driver of KSRTC bus bearing reg.No.KA 40 F 168. In the complaint itself vehicle number mentioned. On careful perusal of entire police records, it is clear that KSRTC bus bearing reg.No.KA 40 F 168 and motor cycle bearing NO.KA 52 J 851 were involved in the accident. Therefore evidence of PW 1 and 2 is corroborated with documentary evidence Ex P1 to 21. Therefore on the basis of records available as stated, I came to conclusion that the accident occurred due to the negligence on the part of the offending KSRTC bus bearing reg.No.KA 40 F 168. Thus, the contents of the police documents and oral evidence of PW.1 and 2 establishes the rash and negligence on the part of the driver of the KSRTC bus bearing reg.No.KA 40 F 168. Under these circumstances, the evidence of P.W.1 and 2 coupled with charge sheet, IMV report, statement of witness establishes that the accident has caused solely due to rash and negligent driving of the KSRTC bus bearing reg.No.KA 40 F 168 by its driver and petitioner sustained injuries in the said MVC No.4301/2018 SCCH 26 accident. In addenda of this, in a claim for compensation U/S.166 of MV Act, 1988, the claimant is to prove the incident only on preponderance of probabilities and the standard of proof beyond reasonable doubt is not required as held by Hon'ble Apex Court in the decision reported in 2011 SAR (Civil) 319 (Kusum and others Vs. Satbir and others). Considering the above facts and circumstances of the case and on appreciation of evidence of Pw 1 and 2 coupled with contents of documents and for the above reason, I am of the opinion that, the petitioner has proved this issue by producing proper documents. Accordingly, I answer this issue in the affirmative.

#### 10. ISSUE No.2:

The petitioner states that he was aged about 42 years as on the date of accident, due to the accident, he has sustained bilateral FTP, communitated fracture with hemorrhagic contusion (2) multiple fractures of left fronto-temporo-MVC No.4301/2018 SCCH 26 parietal boni calvarium including facio maxillary bones with surroundings soft tissue edema and hemorrhage, right (3) FTP SDH left fronto parietal EDH, (4) wedge compression fracture of L3 (5) fracture of right distal radius and left clavicle (6) Undisplaced fracture of left sacrum (7) fractures of second and 5th metatarsal bones with degloving skin in left foot and on other parts of body. After this accident, immediately he took first aid in primary health centre, Dabaspet and referred to further treatment Sparsha hospital, Yashwanthpura, Bangalore and he admitted from 27-1-2017 to 27-1-2017 as inpatient No.11887, he treated conservatively and he was subjected for series of surgery like wound debridement, closed reduction, bilateral FTP D compressive, craniectomy, tracheostomy L2, L4, stabulation with implants and SSG on left foot. Again re admitted for further surgery at Sparsha hospital on 24-1-2018 and discharged on 27-1-2018 and he get continuous followup treatment with extra care under the guardianship of his wife.

MVC No.4301/2018 SCCH 26 The petitioner still under continuous followup treatment. On perusal of medical records and Ex-P10 adhar card of petitioner and Ex-P12 DL of petitioner, it appears that age of the injured mentioned in Ex-P10 and 12 his date of birth mentioned as 21-07-1972. The alleged accident occurred in the year 2017, so as per Ex-P10 and 12, as on date of accident, the injured age is 45 years. The petitioner contended in the petition that he doing agriculture and real estate agent, before this accident, he was hale and healthy and petitioner was earning Rs.25,000/-p.m. Due to this accident, the routine work of the petitioner has been hampered and thrusting him to limit his livelihood under extra care. The petitioner is disabled to maintain the family out of the persisting disability in all walks of his life. In order to prove his income, he produced Ex-P13 to 14 mutation extracts and 16 RTC extracts. On careful perusal of revenue records, it appears that the petitioner have agricultural land in Madenahalli village, Nelamangala Tq, Sompura hobli, MVC No.4301/2018 SCCH 26 Bangalore rural dist., in his name and his mother name. The RTC itself sufficient he was doing agricultural work before this accident. Further petitioner in order to prove monthly income of Rs.25,000/-out of agriculture work and real estate agent, he did not produced any documents. So in the absence of material document regarding his avocation and income, it would proper to workout notional income. The present accident occurred in the year 2017. As per the recent decision of Hon'ble High Court of Karnataka in the case between MFA 4893/2016(MV) Smt.Yashodamma Vs M.D., BMTC disposed on 16-10-2020 (DB) held that in case no document produced by the petitioners to prove their avocation and income, in such a situation, court can refer or rely the guidelines issued by Karnataka State Legal Service Authority to assess notional income of injured. Hence, as per the chart prepared by Karnataka State Legal Service Authority, dt.13-08-2020, the notional income of the injured is taken as Rs.11,000/- Therefore Notional Income of MVC No.4301/2018 SCCH 26 Rs.11,000/-p.m. and age of the injured taken as 45 at the time of accident and appropriate multiplier 41 to 45 is 14 has to be considered for calculating the compensation.

11. In order to prove the disability the petitioner examined one Nanda Kumar as PW-3, he stated in his chief examination that he working as Medical Record Technician in Sparsha super speciality hospital at Tumkur road, Yashwanthapura, Bangalore and he produced Ex-P22 to 26, authorisation letter, certified copy of the MLC register extract, certified copy of the intimation letter, two case sheets of patient Paramesh. Further the petitioner examined one Dr.Kumaraswamy D.R. -neuro psychologist institute of neuro science at M.S.Ramaiah memorial hospital, Bangalore examined as PW-4, he deposed before this tribunal that one patient M.P.Paramesh was admitted at Sparsha super speciality hospital, Yashwanthapura, Bangalore from 27-11-2017 to 27-12-2017 under neuro surgical care. The said patient and his family members MVC No.4301/2018 SCCH 26 recently visited Dt.Abhinandan J.Gangannanavar consultant neuro surgeon with a complaint of memory problems and behavioural issues. The patient was referred by neuro surgeon to know Paramesh's current intellectual functions for medico legal purpose. Neuro psychological assessment was carried out in two separate sessions on 13-3-2020. After conducting tests like finger tapping test, digit symble substitution test, colour trial tests, digit vigilance tests, N back test, tower of London test,

stroop test, wbst, auditory verbal learning test, complex figure test, fluency test, logical memory test and intelligency test conducted to assess patient's cognitive and intellectual functions. On clinical behavioural observation, the patient was alert, attentive, oriented about place, person, time, not about date, month and year. He was cooperative, understood the nature and purpose of the evaluation. He understood the questions and answered few questions correctly, his speech was logical and appropriate to the questions, poor comprehension, obey simple commands, MVC No.4301/2018 SCCH 26 not complex commands, needed repeated instructions, mild slurred expressive speech. His motivation and cooperation were consistently low, he demonstrated no unusual frustration or anxiety, good eye contact, his attention was very poor, easily distracted to external stimuli, his general activity was subdued, slowness in his reaction times, he responded well to reinforcement and encouragement and finally he assessed his cognitive disability (1) behavior; mild behaviour personality changes evident (2) long term memory; intact (3) activity of daily living (ADL); patient is dependent on others (4) mini mental status examination; 16/30 the patient suffering severe memory problem due to encoding failures severe level bilateral fronto temporal lobe involvement and he assessed cognitive disability of 75% and he produced clinical examination report which marked as Ex-P22 (due to oversight two documents marked as Ex-P22). He has been subjected cross examination. During course of cross examination, he admitted that he was not a treated MVC No.4301/2018 SCCH 26 doctor to the petitioner. In his chief affidavit, he mentioned date of accident as 15-4-2017. He examined petitioner on 11-3-2020 and 13-3-2020. He did not furnish examination report pertaining to dt.11-3-2020. Further he clearly admitted that as per Ex-P7, he examined petitioner on 16-7-2018. He denied the suggestion of respondent. Ex-P7 and 22 (clinical examination report of patient Paramesh M.P. ) are one and the same. Ex-P22 issued after lapse of one year eight months from the date of issued Ex-P7. Further during course of cross examination, PW-4 deposed that the physical condition of the patient was improved, but cognitive condition of patient not yet improved . He admitted that on 13-3-2020 he did not conduct any examination regarding nerve related behaviour. He assessed physical disability i.e., cognitive disability on the basis of Ex-P22 (clinical examination report of patient Paramesh M.P. ). Further he admitted that he did not issue any separate physical disability certificate to the petitioner and he contended that before issuing Ex-P22 he consulted MVC No.4301/2018 SCCH 26 earlier treated doctor and he knew about avocation of petitioner, he was agriculturist, he is unable to do his routine work independently. He needs assistance to do his routine work. Further PW-4 clearly admitted during course of cross examination that he assessed disability pertaining to petitioner i.e., neuro psychological assessment or cognitive disability and in Ex-P5 clearly mentioned currently patient is obeying commands and during the course of hospital, the contents recorded in Ex-P6 are true and he denied other suggestions of respondent.

12. Further petitioner in order to prove his physical disability before this tribunal he examined one more doctor Nagaraju B.N. Orthopaedic surgeon and medico legal consultant at Sparsh hospital team as PW-5. He deposed before this tribunal that the present petitioner came to Sparsh hospital on 27-1-2017 with an alleged history of RTA, the patient MVC No.4301/2018 SCCH 26 was examined clinically, radiologically and investigated diagnosed to have the following injuries: (1) severe head injuries (2) bilateral FTP with hemorrhagic contusion with left FTP comminuted fracture (3) wedge compression fracture of L3 (4) fracture of right distal radius and left clavicle (5) fractures of second and 5 th metatarsal bones with degloving skin in left foot and on other parts of

body. The patient was conservatively treated and subjected some surgeries, wound debridement and closed reduction, pinning for the displaced 2nd and 5th metatarsal fracture, bilateral FTP D compressive craniotomy on 28-11-2017, tracheostomy on 30-11-2017, stabilisation of L3 compression fracture with stabilisation with implants on 20-12-2017 and SSG for the left foot on 3-12-2017. Subsequently patient was stable and fit for discharge, he was discharged on 27-12-2017 with an advice of OPD followup and over a time, the wounds healed and the K wire was removed from the metatarsal. The patient was reviewed on 6-1-2021 for assessment of disability, MVC No.4301/2018 SCCH 26 the patient complains of unable to lift things in the left shoulder and no normal work as before, unable grip objects in the right hand and he conducted arm component and hand component, assessment of loss of arm component, mobility component, stability component, coordination, activities and additional points and he assessed total disability 16% for wholebody. He produced medical examination report of Paramesh which were marked as Ex-P23 ( Due to oversight certified copy of the MLC register extract and this document marked as Ex-P23). He has been subjected cross examination he deposed during course of cross examination that he initially examined patient on 27-11-2017 and while discharge they have assurance that patient can do his works independently. The patient took regular followup treatment, but he did not produced followup treatment documents before this tribunal. He clearly admitted that no surgery carried to left hand of patient/injured and he contended that the patient sustained clavicle fracture to left hand at the time MVC No.4301/2018 SCCH 26 of accident. Further he admitted that he did not issued separate physical disability certificate and he did not produced x-ray films pertaining to left hand fracture and bone fracture of patient Further he contended during course of cross examination that he consulted treated doctor before assessing physical disability of the petitioner and other formal suggestions are clearly and categorically denied.

13. The learned counsel for respondent during course of argument took this tribunal attention decision of Hon'ble High Court of Karnataka (circuit bench Gulbarga) ILR 2012 KAR 4983 in case between Chandrashekar Vs Sri.Revanasiddappa Danadamani and other wherein held that the petitioner failed in producing disability certificate and failed to examine treated doctor, the conduct of the claimant creates doubt about genuineness of the certificate and or intention of the claimant. Therefore disability assessed by not treated doctor could not be consider. Therefore in present case, the doctors did not issued separate physical disability MVC No.4301/2018 SCCH 26 certificate and moreover both the doctors are not treated doctor to the petitioner. Therefore the counsel for respondent argues before this tribunal that the physical and cognitive disability assessed by both doctor shall not be consider and pray for discard evidence of PW-4 and 5.

14. Per contra, the counsel for petitioner argued this tribunal attention about recent decision of Hon'ble High Court of Karnataka MFA No.3054/2012 (MV) clubbed with 1857/2010, the Managing Director Vs Sayyed zabiulla DD on 29-4-2014 single bench, Karnataka High court, in this case, Hon'ble High Court of Karnataka clearly held tribunal is not justified in not assessing the permanent disability and not awarding reasonable compensation towards loss of future income. Mere non examination of the treated doctor cannot take away the legitimate entitlement of compensation by the injured claimant, when there is a substantive and credible material including oral and documentary evidence to believe that there is some percentage of disability the petitioner is MVC No.4301/2018 SCCH 26 entitle to get compensation even not examining treated doctor. The



decision relied by petitioner is recent one. Hon'ble High Court of karnataka clearly held even though non-examination of treated doctor if claimant placed some materials to believe there is some percentage of disability, tribunal believe such evidence and grant compensation to claimant legally entitlement by the claimant. So the argument advanced by respondent counsel, in view of the above principle of law holds no water. This tribunal guided by recent decision of Hon'ble High Court of Karnataka and meticulously perused oral and documentary evidence placed by petitioner and cross examination of respondent, admittedly petitioner did not personally examined before this tribunal here presented through his natural guardian i.e., his wife and she deposed some evidence on behalf of her husband. During course of cross examination, PW clearly admitted that MVC No.4301/2018 SCCH 26

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15. So from above clear admission from mouth of the petitioner is stable and improved his physical condition. Even though petitioner health condition improved, they did not examined before this tribunal. PW and 5 clearly deposed the petitioner physical health condition was improved but he had some cognitive disability as assessed by PW. In Ex P5 and 6 and very evidence deposed by PW, petitioner cognitive status was also improved, but he had some extent of memory problem due to encoding failures, PW himself stated in his chief affidavit, para 5 the patient was alert, attentive, oriented about place, person, time etc., he understood the questions and answered few questions correctly, his speech was logical and appropriate to the questions, obey simple commands, not complex commands, needed repeated MVC No.4301/2018 SCCH 26 instructions, good eye contact, he responded well to reinforcement and encouragement. So from this materials, it appears that the disability assessed by PW pertaining to behavioral or cognitive disability to the extent of 75% exorbitant and physical disability assessed by PW 16% to wholebody is also exorbitant. By considering the entire evidence, it is just and proper to take physical disability to the petitioner to the extent of 10% and cognitive disability to the petitioner taken 10%, it would meet ends of justice. Considering the nature of injuries, the total functional disability is considered at 20%. The loss of future earnings due to permanent disability is calculated as Rs.11,000/ x 12 x 14 x 20% = Rs.3,69,600/

16. Pain and sufferings : So far as the compensation under non pecuniary damages, considering the fact that the petitioner has suffered permanent disability to the extent of 20% (physical and cognitive disability) due to the accident which causes to him MVC No.4301/2018 SCCH 26 immeasurable mental agony and pain, I am opinion that an amount of Rs.30,000/ would be just and fair compensation under the head of pain and sufferings.

17. Loss of Amenities of Life : For loss of amenities of life, undoubtedly he has to lead his life ahead and he is sure to suffer on his day today activities. Hence petitioner is awarded Rs.25,000/ under loss of amenities of life.

18. Medical Expenses: Under the pecuniary damages, expenses relating to treatment, hospitalization and medicines Ex P9 (19 in numbers) medical bills Rs.12,46,897/ and Ex P16 Rs.42,000/ Ex P17 Rs.10,536/ On perusal of it shows that the petitioner was admitted to

Sparsha hospital on 27-1-2017 to 27-2-2017 as inpatient No.11887, he produced inpatient bill for sum of Rs.8,29,000/- and he produced consolidated sales S/S pharma from 27-1-2017 to 27-2-2017 a sum of Rs.14,000/- the petitioner readmitted on 24-2-2018 to 27-2-2018 as inpatient No.12790 and he produced inpatient total bill paid MVC No.4301/2018 SCCH 26 receipt a sum of Rs.2,48,500/- The counsel for respondent mainly objected medical bills produced by the petitioner and contends that the above medical bills created for the purpose of this case to claim compensation from respondent on the ground the patient name mentioned in medical bills Paramaesh, but petitioner stated his name in the petition M.P.Paramesh. So initial of the petitioner not mentioned in medical records. Therefore the counsel for respondent vehemently submitted this medical records were belongs to somebody, it is not belongs to petitioner. On perusal of inpatient bills, the hospital authorities while admitting patients, they gave inpatient number, it belongs to petitioner, they produced original case sheet records from hospital authority, inpatient number mentioned in medical bills and case sheet one are the same. Therefore it is just and proper to take inpatient details for considering genuineness of the bills. Considering medical bills produced by petitioner, he definitely incurred medical expense for treatment in Sparsha MVC No.4301/2018 SCCH 26 hospital, Yashwanthpur and he incurred followup treatment. Therefore he is entitle a total sum of Rs.12,46,134=67. Therefore he is entitle reimbursement of medical bills under this head. This tribunal awarded compensation of Rs.12,46,134=67 under the medical expense.

19. Food and nourishment, Conveyance and Attendant charges: The petitioner natural guardian i.e., wife of petitioner in her evidence affidavit and in petition stated that after the accident, he immediately took first aid treatment in PHC, Dabaspur, then he shifted to higher treatment, Sparsh hospital, Yashwanthpur, Bangalore, petitioner took treatment as inpatient in Sparsh hospital more than 35 days and he get regular followup treatment Therefore it is just and reasonable to award compensation of Rs.30,000/- under the head of Food and nourishment, Conveyance and Attendant charges.

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20. Loss of income during the period of treatment: With regard to loss of earnings during treatment, considering 35 days admitted in the hospital as inpatient and around 90 days for rest is considered and loss of earning during treatment calculated for 90 days, notional monthly income of the petitioner is already considered as Rs.11,000/- p.m. and hence loss of earning during treatment would be Rs.33,000/- under the head Loss of income during the period of treatment.

21. In view of the above reasoning, petitioner is entitled for the compensation under the following Heads:

SL. NO.	HEAD	COMPENSATION AWARDED
1	Loss of future earnings due to permanent disability	Rs. 3,69,600=00
2.	Pain and sufferings	Rs. 30,000=00
3.	Loss of amenities of life	Rs. 25,000=00
4.	Medical expenses	Rs. 12,46,134=67

5	Food, nourishment, Rs. conveyance and attender	30,000=00
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6	charges Loss of income during the Rs. period of treatment	33,000=00
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TOTAL COMPENSATION Rs.17,33,734=67  
AWARDED

The said total sum of Rs.17,33,734=67 is rounded off to Rs.17,33,800/□ Thus, the petitioner is entitled for the total compensation of Rs.17,33,800/□

22. As far as awarding of interest on the compensation amount is concerned, in a recent decision reported in 2018 ACJ 1300 between Mangla Ram V/s. Oriental Insurance Co., Ltd., and others (in CA Nos.2499 of 2018 arising out of SLP(C) Nos.28141□42 of 2017 decided on 06.04.2018) wherein the Hon'ble Supreme Court with regard to interest at the rate of 9% p.a. on the compensation amount, in para No.28 of the judgment held that, "The appellant would also be entitled to interest on the total amount of compensation at the rate of 9 per cent per annum on the compensation MVC No.4301/2018 SCCH 26 from the date of filing of the claim petition till date of realization" and also by following the principles laid down in (2018) ACJ 1020 in between ICICI Lombard General Insurance Co., Ltd., V/s. Ajay Kumar Mohanty and another decided on 6.3.2018 (in CA Nos.7181 of 2015 and 1879 of 2016) at para No.1 and 12 Hon'ble Supreme Court held that: "Quantum□Interest□ Tribunal allowed interest at the rate of 7.5 per cent which was reduced by High Court to 7 per cent□ Apex Court allowed interest at 9 per cent per annum from the date of filing of claim application". In view of the above judgments with regard to the rate of interest and also it is settled principles of law that, while awarding interest on the compensation amount, the Court has to take into account the rate of interest on the Nationalized Bank and the rate of interest at the rate of 9% p.a. cannot said to be on the higher side. Accordingly, the Petitioner is entitled to interest at the rate of 9% p.a. MVC No.4301/2018 SCCH 26

23. Coming to the question of fixing the liability to pay the compensation to the petitioner, the respondent being the RC Owner of the bus is liable to pay compensation to the petitioner. Accordingly, Issue No.2 is answered in partly affirmative.

24. ISSUE NO.3: In view of above discussion on issue Nos.1 & 2, I proceed to pass the following;□□  
O R D E R :□The claim petition filed by the petitioner U/S 166 of MV Act is hereby partly allowed with cost.

The petitioner is entitled for compensation of Rs.17,33,800/□with interest @ 9% p.a. from the date of petition till the date of deposit from the respondent.

The respondent is liable to pay compensation to the petitioner and it is directed to deposit the above compensation amount in this tribunal within two months from the date of this order.

MVC No.4301/2018 SCCH 26 On deposit of compensation amount, 75% shall be released in favour of Smt.Latha/wife of the Petitioner through E-payment directly to the Petitioner's Account by obtaining the bank account details on proper identification and remaining 25% shall be kept in FD in any nationalised bank in the name of petitioner account at the choice of petitioner for a period of three years .

Fee of counsel for Petitioners is fixed at Rs.1,000/- Draw award accordingly.

(Dictated to the stenographer, directly on the computer, typed by her, thereof is corrected and then pronounced by me in the Open Court on this the 18 th day of January 2022) (R.MAHESHA) XXIV ADDL. SMALL CAUSES JUDGE & A.C.M.M. BENGALURU.

::A N N E X U R E::

LIST OF WITNESSES EXAMINED ON BEHALF OF THE PETITIONER: PW 1 : Smt.Latha PW 2 : Vijay Kumar PW 3 : Nandakumar R. PW 4 : Dr.Kumaraswamy D.R. PW 5 : Dr.Nagaraj B.N. MVC No.4301/2018 SCCH 26 LIST OF DOCUMENTS MARKED ON BEHALF OF THE PETITIONER: Ex.P.1 : Certified copy of FIR with complaint Ex.P.2 : Certified copy of charge sheet Ex.P.3 : Certified copy of mahazar Ex.P.4 : Certified copy of wound certificate Ex.P.5 & 6 : Discharge summaries Ex.P.7 : Neuro psychological evaluation report Ex.P.8 : Lab reports (2) Ex.P.9 : Medical bills (19) Rs.12,46,897/- Ex.P.10 : Notarised copy of aadhar card Ex.P.11 : Notarised copy of RC Ex.P.12 : Notarised copy of DL Ex.P.13 : Mutation register Ex.P.14 : RTC (12 in Nos) Ex.P.15 Discharge summary Ex.P.16 Inpatient bill Rs.42,000/- Ex.P.17 Medical bill Rs.10,536/- Ex.P.18 Lab report Ex.P.19 & 20 CT scan of brain along with report Ex.P.21 Notarised copy of aadhar card Ex.P.22 Authorisation letter Ex.P.23 Certified copy of MLC register extract Ex.P.24 Certified copy of intimation letter Ex.P.25 and 2 case sheets 26 Ex.P.22 Clinical examination report Ex.P.23 Medical examination report LIST OF WITNESSES EXAMINED ON BEHALF OF THE RESPONDENTS: RW 1 : Ravishankar M.N. MVC No.4301/2018 SCCH 26 LIST OF DOCUMENTS MARKED ON BEHALF OF THE RESPONDENTS: Ex.R1 : Notarised copy of identity card Ex.R2 : Authorisation letter (R.MAHESHA.) XXIV ADDL. SCJ & ACMM, MEMBER, MACT, BENGALURU.

39 MVC No.4301/2018 SCCH 26 MVC No.4301/2018 SCCH 26 Dt 18.1.2022 (Judgment pronounced in the Open Court vide separate) ::ORDER::

The claim petition filed by the petitioner U/S 166 of MV Act is hereby partly allowed with cost.

The petitioner is entitled for compensation of Rs.17,33,800/□with interest @ 9% p.a. from the date of petition till the date of deposit from the respondent.

MVC No.4301/2018 SCCH 26 The respondent is liable to pay compensation to the petitioner and it is directed to deposit the above compensation amount in this tribunal within two months from the date of this order.

On deposit of compensation amount, 75% shall be released in favour of Smt.Latha/wife of the Petitioner through E□payment directly to the Petitioner's Account by obtaining the bank account details on proper identification and remaining 25% shall be kept in FD in any nationalised bank in the name of petitioner account at the choice of petitioner for a period of three years .

Fee of counsel for Petitioners is fixed at Rs.1,000/□ Draw award accordingly.

(R.MAHESHA) XXIV ADDL. SCJ & ACMM, MEMBER, MACT, BENGALURU.

42 MVC No.4301/2018 SCCH 26