

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF FEBRUARY, 2015

BEFORE

THE HON'BLE MR. JUSTICE B.SREENIVASE GOWDA

M.F.A. NO.949/2014(MV)

C/W

M.F.A. Nos.950 & 4573/2014(MV)

IN MFA 949/2014

BETWEEN:

KRISHNEGOWDA,
S/O. LATE DEVEGOWDA,
AGED ABOUT 49 YEARS,
R/O. CHOLENAHALLI VILLAGE,
HALLYMYSORE HOBLI,
HOLENARASIPURA TALUK,
HASSAN DISTRICT.

... APPELLANT

(By SRI. SHRIPAD V. SHASTRI, ADV.)

AND:

1. M. NAGARAJ,
S/O. CHIKKAMADA,
AGED ABOUT 45 YEARS,
KSRTC DRIVER, BADGE NO. 2361,
RURAL 1ST DEPOT, MYSORE,
NOW R/AT. NEAR KRISHNA
BAKERY, HOOTAGALLI,
HUNSUR ROAD, MYSORE.

2. THE MANAGING DIRECTOR,
KSRTC, BENGALURU. ... RESPONDENTS

(By SRI. K. NAGARAJA, ADV. FOR R.2,
NOTICE TO R.1 IS DISPENSED WITH
V/O. DATED 21.10.2014)

THIS MFA IS FILED U/S 173(1) OF MV ACT
AGAINST THE JUDGMENT AND AWARD DATED
23.11.2013 PASSED IN MVC NO.227/2012 ON THE
FILE OF THE SENIOR CIVIL JUDGE, & JMFC, MACT,
HOLENARASIPUR, PARTLY ALLOWING THE CLAIM
PETITION FOR COMPENSATION AND SEEKING
ENHANCEMENT OF COMPENSATION.

IN MFA 950/2014

BETWEEN

KRISHNEGOWDA,
S/O. LATE DEVEGOWDA,
AGED ABOUT 49 YEARS,
R/O. CHOLENAHALLI VILLAGE,
HALLYMYSORE HOBLI,
HOLENARASIPURA TALUK,
HASSAN DISTRICT-573 201. ... APPELLANT

(By SRI. SHRIPAD V. SHASTRI, ADV.)

AND

1. M. NAGARAJ
S/O. CHIKKAMADA
AGED ABOUT 45 YEARS
KSRTC DRIVER, BADGE NO. 2361,
RURAL 1ST DEPOT, MYSORE.
NOW R/AT NEAR KRISHNA
BAKERY, HOOTAGALLI,
HUNSUR ROAD, MYSORE-570 001.

2. THE MANAGING DIRECTOR,
KSRTC, BENGALURU-27. ... RESPONDENTS

(By SRI. K. NAGARAJ, ADV. FOR R.2,
NOTICE TO R.1 IS DISPENSED WITH V/C/O
DATED 13.10.2014)

THIS MFA IS FILED U/S 173(1) OF MV ACT
AGAINST THE JUDGMENT AND AWARD DATED
23.11.2013 PASSED IN MVC NO.228/2012 ON THE
FILE OF THE SENIOR CIVIL JUDGE & JMFC, MACT,
HOLENARASIPUR, PARTLY ALLOWING THE CLAIM
PETITION FOR COMPENSATION AND SEEKING
ENHANCEMENT OF COMPENSATION.

IN MFA 4573/2014

BETWEEN:

THE MANAGING DIRECTOR
K.S.R.T.C,
BANGALORE.
OWNER OF THE KSRTC BUS
NO.KA-09-F-4754.

(REP. BY BEFORE TRIBUNAL
DIVISIONAL CONTROLLER,
KSRTC, RURAL DIVISION,
MYSORE.

NOW THROUGH CHIEF LAW OFFICER,
KSRTC, CENTRAL OFFICE,
BANGALORE.

... APPELLANT

(By SRI. K. NAGARAJA, ADV.)

AND:

1. SRI. KRISHNEGOWDA,
S/O. LATE DEVEGOWDA,
AGED ABOUT 49 YEARS,
R/AT. CHOLENAHALLI VILLAGE,
HALLYMYSORE HOBLI,
HOLENARASIPURA TALUK,
HASSAN DISTRICT
(OWNER OF BOLERO CAR
NO.KA-13-M-6229)
2. SRI. M. NAGARAJ,
S/O. CHIKKAMADA,
AGED ABOUT 47 YEARS,
KSRTC DRIVER, BADGE NO.2361,
RURAL 1ST DEPOT, MYSORE,

NOW R/AT. NEAR KRISHNA BAKERY,
HOOTAGALLI, HUNSUR ROAD,
MYSORE. ... RESPONDENTS

(By SRI. SHRIPAD V. SHASTRI, ADV. FOR R.1,
NOTICE TO R.2 IS DISPENSED WITH
V/C/O DATED 14.10.14)

THIS MFA IS FILED U/S 173(1) OF MV ACT
AGAINST THE JUDGMENT AND AWARD
DATED:23.11.2013 PASSED IN MVC NO.228/2012 ON
THE FILE OF THE SENIOR CIVIL JUDGE & J.M.F.C,
MACT, AT HOLENARASIPUR, AWARDED
COMPENSATION OF RS.2,98,900/- WITH INTEREST @
6% P.A FROM THE DATE OF PETITION TILL THE DATE
OF DEPOSIT.

THESE APPEALS COMING ON FOR ORDERS, THIS
DAY, THE COURT DELIVERED THE FOLLOWING:

J U D G M E N T

As these appeals are arising out of a common road traffic accident, they are heard together and disposed of by this common Judgment.

2. For the sake of convenience the parties are referred to as per their ranking before the Tribunal.

3. As there is no dispute regarding certain injuries sustained by the claimant and damage caused to his Bolero Jeep in a road Traffic accident occurred on 04.08.2011 due to rash and negligent driving of a KSRTC bus by its driver and liability of the Corporation, the points that arise for my consideration in the appeal are:

“1. Whether compensation of Rs.7,41,444/- with interest at 6% p.a. awarded by the Tribunal to the injured claimant is just and proper or does it call for enhancement or reduction?

2. Whether compensation awarded towards damage caused to his Bolero Car is just and reasonable and does it call for reduction or enhancement?

4. MFA 949/14 arising out of MVC No.227/2012 is filed by the injured claimant-Krishnegowda aged about 47 years.

5. As per Ex.P2 wound certificate the claimant has sustained abrasion and laceration over forehead and also blunt abdomen injuries. Immediately after the accident, the claimant was taken to Channarayapatna Government Hospital and after having first aid, he was shifted to SSM Hospital at Hassan and was treated there for one day and from there he was brought to BGS Global Hospitals, Bengaluru and treated there as in-patient for 25 days. He was brought to BGS Global Hospital for second time and treated as inpatient for 8 days and surgery was conducted on abdomen.

6. The injuries sustained and treatment taken by the claimant are also evident from Ex.P9 & 10 two discharge summaries, Ex.P7-CT Scan report and corroborated by oral evidence of claimant and the Doctor who were examined as PW.1 and CW.1 (through Court Commissioner) respectively.

7. CW.1 Dr.Srikanth in his evidence has stated that he examined the claimant and observed a hole in sigmoid colon and the claimant has pain in left lower abdomen and there was tenderness. The claimant underwent emergency surgery of laproscopy and resection of perforated segment of sigmoid colon and closure of distal end and proximal colostomy and further with laproscopy. The doctor has further stated that the claimant is unable to perform strenuous and agricultural work and unable to do the regular work. He cannot work as a normal person and cannot lift heavy weight. Thus, the doctor has assessed 50% disability to the whole body.

8. The Tribunal in spite of noticing the nature of injuries sustained by the claimant and treatment undergone by him has committed an error in not awarding any amount towards pain and suffering. Considering the nature of injuries sustained by the claimant, Rs.50,000/- is awarded towards pain and suffering As Rs.5,56,144/- awarded by the Tribunal towards medical expenses is as per medical bills produced by the claimant, there is no scope for enhancement under this head. He was treated as in-

patient in the hospital for 33 days. Therefore, a sum of Rs.35,000/- is awarded towards incidental expenses such as conveyance, nourishing food and attendant charges as against Rs.5,000/- awarded by the Tribunal.

9. He claims to have been earning Rs.30,000/- per month by doing agriculture and ginger business and has produced RTC extract as per Ex.P12 and 13 standing in the name of his father and other members of the family. Thus, the RTC extracts would only show that the claimant was doing agriculture. Considering his age as 47 years, year of accident as 2011 and his avocation as agriculturist, his income is assessed at Rs.5,500/- per month. Nature of injuries suggest that the claimant must have taken rest and treatment for a period of five months. Thus, Rs.27,500/- is awarded towards loss of income during laid-up period.

10. Considering the nature of injuries sustained by the claimant, the disability stated by the Doctor and an amount of pain, agony and discomfort which the claimant

has to undergo in future, Rs.30,000/- is awarded towards loss of amenities.

11. The income of the claimant is assessed at Rs.5,500/- per month. Multiplier applicable to his age group is '13'. Regarding awarding compensation towards loss of future income, the learned counsel for the claimant submits, C.W.1 Dr. has stated that claimant has suffered disability to the extent of 50% to whole body and the Tribunal has committed an error in taking the same at 15% to determine loss of future income. Therefore, he prays for awarding loss of future income by considering the disability caused to whole body at 50% as stated by the doctor. As against this, learned counsel for KSRTC submits that C.W.1 doctor has not stated as to what is the disability caused to limb and to the whole body separately and has stated the disability caused to the whole body only therefore, the Tribunal was justified in considering the disability caused to whole body at 15%. Considering the nature of injuries sustained by the

claimant and disability stated by the Doctor, justice would be met if the functional disability is taken at 25%.

If so, the loss of future income would work out to Rs.2,14,500/-(Rs.5,500 x 25/100 x 12 x 13) and it is awarded. As Rs.50,000/- awarded by the Tribunal towards future medical expenses is as per evidence of Doctor, it does not call for interference. Thus, the claimant is entitled for the compensation under the following heads:

1. Towards pain and suffering	Rs. 50,000/-
2. Towards medical expenses	Rs. 5,56,144/-
3. Conveyance, nourishing food And attendant charges.	Rs. 35,000/-
4. Loss of income during Treatment/laid-up period	Rs. 27,500/-
5. Loss of amenities	Rs. 30,000/-
6. Towards loss of future income due to disability	Rs. 2,14,500/-
7. Towards future medical expenses	Rs. 50,000/-
	Rs. 9,63,144/-

Less: Compensation awarded
by the Tribunal

Rs. 7,26,444/-

Addl. Compensation :

Rs. 2,36,700/-

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12. The total amount of compensation awarded by the Tribunal under various heads is Rs.7,26,444/- and it is wrongly mentioned in the Judgment and Award passed by the Tribunal as Rs.7,41,444/- and therefore it is taken as Rs.7,26,444/-.

13. 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.9,63,144/- as against Rs. 7,26,444/- awarded by the Tribunal with interest at 6% p.a. on the enhanced compensation of Rs.2,36,700/- from the date of claim petition till the date of realization.

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

15. Out of the enhanced compensation Rs.1,50,000/-with proportionate interest is ordered to be invested in F.D. in any Nationalized/Scheduled/Grameen Bank in the name of the claimant for a period of 3 years

and the remaining amount with proportionate interest is ordered to be released in his favour.

Re: Point No.2:

16. MFA 950/2014 C/W MFA 4573/2014 of 228/2012 arising out MVC 228/2012, MFA 950/2014 is filed by the claimant seeking enhancement of compensation awarded towards damage caused to his Bolero Jeep whereas MFA 4573/2014 is filed by the KSRTC seeking reduction of compensation awarded in the said case.

17. As already stated, there is no dispute regarding damage caused to the Bolero jeep belonging to the claimant in a road traffic accident occurred on 04-08-2011 due to rash and negligent driving of the offending KSRTC bus by its driver and liability of the Corporation.

18. Claimant in support of his contention that his Bolero jeep was badly damaged and he has spent Rs,3,36,470/- towards repairs and spare parts, has

examined himself as P.W.1 and has produced photos of his damaged jeep and quotation regarding repairs at Exs.P.15 to 17 respectively, labour and service charges at Exs. P.18 and P.19 and jeep repair bills at Exs. P.20 and 21. Neither the author of Exs.P.15 to 21, nor the person who repaired the jeep, nor the owner of the work shop where the claimant has got his jeep repaired is examined.

19. The fact that the Bolero Jeep is of June 2005 model, certain damage caused to it in the accident, the claimant has got it repaired and the Jeep was kept idle from the date of accident till it was repaired and delivered to the claimant are not in dispute. The dispute is whether the claimant has spent Rs.3,36,470/- as mentioned in Ex.P.15 to 21 towards spare parts and costs of repair or not. The claimant except examining himself as PW1 and producing ExP 15 to 21 has not examined the person who repaired the Jeep or the owner of the works shop. Photos produced would show that the jeep was damaged badly and claimant must have spent substantial amount for its repair to make it usable on road. Taking all these aspects

into consideration, justice would be met if a sum of Rs.2,00,000/- is awarded towards damages for the damage caused to the jeep as against Rs.2,98,900/- awarded by the Tribunal.

20. Accordingly, MFA No.4573/2014 filed by the KSRTC is allowed and compensation of Rs.2,98,900/- awarded by the Tribunal is reduced to Rs.2,00,000/-.

21. In view of allowing the appeal filed by the KSRTC and reducing the compensation, MFA No.950/2014 filed by the claimant for enhancement of compensation for damage caused to Bolero Jeep, does not survive and it is dismissed.

22. Amount deposited by the KSRTC in their appeal is directed to be transmitted to the Tribunal for disbursement in terms of the award of the Tribunal.

No order as to costs.

**SD/-
JUDGE**

Sk/-
Mgn/-