

IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH

DATED THIS THE 25<sup>TH</sup> DAY OF NOVEMBER, 2021

BEFORE

THE HON'BLE MR.JUSTICE RAVI V.HOSMANI

M.F.A.No.21187/2012  
C/W M.F.A. CR.OB.No.851/2012 (MV)

IN MFA No.21187/2012

BETWEEN:

THE DIVISIONAL CONTROLLER,  
NWKRTC, HOSUR, HUBBALLI.

... APPELLANT

(BY SRI P.G.CHIKKANARAGUND, ADVOCATE FOR  
SRI C.R.MENASINKAI, ADVOCATE)

AND

1. SRI RAVI,  
S/O GURUPUTRAPPA SHADAMBI,  
AGE: 28 YEARS,  
OCC: KIRANI BUSINESS,  
R/O SANTOSH NAGAR,  
KELAGERI ROAD,  
DHARWAD.
2. BASAYYA S/O RUDRAYYA HIREMATH,  
AGE: 34 YEARS, OCC: BUS DRIVER,  
R/O KANNUR, TQ: NAVALAGUND,  
DISTRICT: DHARWAD.

... RESPONDENTS

(BY SRI H.S.NAYAK, ADVOCATE FOR  
SRI R.H.ANGADI, ADVOCATE FOR R1;  
SRI RAGHAVENDRA A.PUROHIT, ADVOCATE FOR  
SRI DINESH M.KULKARNI, ADVOCATE FOR R2)

THIS MISC.FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT, 1988, AGAINST THE JUDGMENT AND AWARD DATED 02.12.2011 PASSED IN MVC NO.137/2009 ON THE FILE OF THE III ADDL. SENIOR CIVIL JUDGE AND ADDL.M.A.C.T., DHARWAD, AWARDED THE COMPENSATION OF RS.7,17,500/- WITH INTEREST AT THE RATE OF 6% PER ANNUM FROM THE DATE OF PETITION TILL ITS REALIZATION.

IN MFA CR.OB.No.851/2012

BETWEEN

RAVI S/O GURUPUTRAPPA SHADAMBI,  
AGE: 28 YEARS, OCC: KIRANI BUSINESS,  
R/O SANTOSH NAGAR, 3<sup>RD</sup> CROSS,  
KELAGERI ROAD, DHARWAD.

...CROSS OBJECTOR

(BY SRI H.S.NAYAK, ADVOCATE FOR  
SRI R.H.ANGADI, ADVOCATE)

AND

1. THE DIVISIONAL CONTROLLER,  
NWKRTC, HOSUR, HUBBALLI.
2. BASAYYA S/O RUDRAYYA HIREMATH,  
AGE: 34 YEARS, OCC: BUS DRIVER,  
R/O KANNUR, TQ: NAVALAGUND,  
DISTRICT: DHARWAD.

... RESPONDENTS

(BY SRI P.G.CHIKKANARAGUND, ADVOCATE FOR  
SRI C.R.MENASINKAI, ADVOCATE FOR R1;  
SRI RAGHAVENDRA A.PUROHIT, ADVOCATE FOR  
SRI DINESH M.KULKARNI, ADVOCATE FOR R2)

THIS CROSS OBJECTION IN MISC.FIRST APPEAL NO.21187/2012 IS FILED UNDER ORDER 41 RULE 22 C.P.C., AGAINST THE JUDGMENT AND AWARD DATED 02.12.2011 PASSED IN MVC NO.137/2009 ON THE FILE OF THE III ADDL. SENIOR CIVIL JUDGE AND ADDL.M.A.C.T., DHARWAD, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL AND CROSS OBJECTION COMING ON FOR HEARING ON I.A. THIS DAY, THE COURT, DELIVERED THE FOLLOWING:

JUDGMENT

Challenging the judgment and award dated 02.12.2011 passed by III Addl.Senior Civil Judge and Addl.M.A.C.T., Dharwad (for short, 'the Tribunal') in MVC No.137/2009, this appeal and cross objection are filed.

2. For the sake of convenience, parties will hereinafter be referred to as per their respective ranks before the tribunal. With consent of learned counsel for parties the appeal and cross objection are taken up for final disposal.

3. Brief facts as stated are that on 25.06.2008 at about 10.30 a.m. claimant-Ravi Shadambi was riding motorcycle bearing registration No.KA-29/L-1587 on Kundgol-Shirur road. Near Harkuni lake, a bus belonging to NWKRTC bearing registration No.KA-25/F-1610 came in a rash and negligent manner and dashed

against motorcycle. As a result of accident, Ravi Shadambi sustained grievous injuries and was admitted to KIMS Hospital, Hubballi. Thereafter he has taken treatment to Victoria Hospital, Bengaluru and other hospitals. Despite taking treatment, he sustained permanent partial physical disability. Claiming compensation for the same, he filed claim petition under Section 166 of Motor Vehicles Act, 1988 (for short, 'M.V.Act') against driver and owner of bus.

4. On service of notice, respondents filed objections denying negligence in causing accident and alleging contributory negligence on the part of claimant himself. Age, occupation, income, disability sustained and loss of earning capacity were also disputed apart from opposing claim petition as being exhaustive.

5. Based on pleadings, Tribunal framed following issues:

1. ಅರ್ಜಿದಾರನು ತಾವು ಹೇಳುವಂತೆ ದಿನಾಂಕ: 25.06.2008 ರಂದು ಬೆಳಗಿನ ಹಿರೋಹೊಂಡಾ ಮೋಟಾರ್ ಸೈಕಲ್

ನೋಂದಣಿ ಸಂಖ್ಯೆ ಕೆಎ-29 ಎಲ್-1587 ರಲ್ಲಿ ಸಹಸವಾರರಾಲಿ ತಮ್ಮ ಭಾವಮೈದ ಹನುಮಂತಗೌಡ ಬಸನಗೌಡ ಹರಕುಣಿರೊಂದಿಗೆ ಕುಂದಗೋಳ-ಶಿರೂರ ರಸ್ತೆಯಲ್ಲಿ ಕಮಡೊಟ್ಟ ಕಡೆಗೆ ಹೋಗುತ್ತಿದ್ದಾಗ ಹರಕುಣಿ ಕೆರೆ ಹತ್ತಿರ ಸರ್ಕಾಲಿ ಬಸ್ ನೋಂದಣಿ ಸಂಖ್ಯೆ: ಕೆಎ-25 ಎಫ್-1610 ರ ಜಾಲಕ ಅದನ್ನು ಅತಿವೇಗ ಹಾಗೂ ಅಜಾಗರೂಕತೆಯಿಂದ ಜಲಾಯಿಸಿ ಅರ್ಜಿದಾರನು ಹೋಗುತ್ತಿದ್ದ ಮೋಟಾರ್ ಸೈಕಲಿಗೆ ಟಿಕ್ರಿ ಹೊಡೆಯಿಸಿದ ಪರಿಣಾಮ ಅಪಘಾತ ಸಂಭವಿಸಿದ್ದು, ಅದರಲ್ಲಿ ಅವರಿಗೆ ಗಾಯಗಲಾಗಿವೆಯೆಂದು ರುಜುವಾತು ಪಡಿಸಿರುತ್ತಾರೆಯೇ?

2. ಎಲ್ಲಿ ೧ ರವರು ತಾವು ಹೇಳುವಂತೆ ಪ್ರಸ್ತುತ ಅಪಘಾತ ಮೋಟಾರ್ ಸೈಕಲ್ ಸವಾರನ ತಪ್ಪಿನಿಂದ ಸಂಭವಿಸಿದೆಯೆಂದು ರುಜುವಾತು ಪಡಿಸುತ್ತಾರೆಯೇ?
3. ಎಲ್ಲಿ ೧ ರವರು ಮುಂದುವರಿದು ತಾವು ಹೇಳುವಂತೆ ಈ ಅರ್ಜಿಗೆ ಮೋಟಾರ್ ಸೈಕಲ್ ಸವಾರರನ್ನು ಮತ್ತು ಮಾಲೀಕರನ್ನು ಪಕ್ಷಗಾರರನ್ನಾಗಿ ಮಾಡದೇ ಇರುವುದರಿಂದ ಈ ಅರ್ಜಿಯು ಅಗತ್ಯ ಪಕ್ಷಗಾರರನ್ನಾಗಿ ಕೊರತೆಯಿಂದ ಕೂಡಿದೆಯೆಂದು ರುಜುವಾತು ಪಡಿಸಿರುತ್ತಾರೆಯೇ?
4. ಅರ್ಜಿದಾರರು ಪರಿಹಾರಕ್ಕೆ ಅರ್ಹರೇ? ಹಾಗಿದ್ದಲ್ಲಿ, ಪರಿಹಾರದ ಮೊತ್ತ ಎಷ್ಟು? ಮತ್ತು ಯಾಲಿಂದ?
5. ಏನು ಆದೇಶ?

6. In order to establish case, claimant examined himself as PW1. He also examined Dr.Suryakant Kalluraya as PW2. Exhibits P1 to P19 were marked. On behalf of respondents, driver of bus was examined as RW1. No documents were marked.

7. On consideration, Tribunal answered issue no.1 in the affirmative, issues no.2 and 3 in the negative, issue no.4 partly in the affirmative and issue no.5 by allowing claim petition in part and awarding compensation of Rs.7,17,420/- rounded off to Rs.7,17,500/- with interest at 6% per annum and directed No.1 to pay the same. Aggrieved by the award, NWKRTC is in appeal in MFA No.21187/2012. Not satisfied with quantum of compensation and seeking for enhancement, claimant has filed Cross Objection No.851/2012.

8. Sri P.G.Chikkanaragund, Advocate appearing for Sri C.R.Mensinkai, learned counsel for appellant-NWKRTC submitted that though claimant himself was rash and negligent in causing accident, tribunal fastened entire negligence against bus driver, which was unsustainable. On quantum, it was submitted that though claimant sustained two fractures, tribunal awarded excessive compensation of Rs.1,50,000/-

towards pain and suffering apart from Rs.50,000/- towards mental agony. Even awarded a sum of Rs.1,00,000/- towards medical expenses and Rs.2,00,000/- towards marriage prospects was excessive and called for reduction.

9. On the other hand, Sri H.S.Nayak, Advocate appearing for Sri R.H.Angadi, learned counsel for respondent no.1-claimant submitted that claimant was a 25 year old graduate who was working in his grocery shop and was a job aspirant, who sustained fracture of pelvis, fracture of hip joint, middle and index fingers. As a result of injury, claimant was required to pass urine through a fistula and not through a fistula region. Consequently, claimant was virtually rendered totally disabled. It was submitted that claimant had taken inpatient treatment for a period of four months and ten days. Claimant had also lost marriage prospects and no compensation was granted under said head. On the

ground of income and extent of disability, learned counsel sought for enhancement of compensation.

10. From above submission, occurrence of accident and claimant sustaining injuries therein is not in dispute. Tribunal assessed compensation and after holding that accident occurred due to rash and negligent by its driver and awarded compensation against NWKRTC. Insofar as finding on negligence as well as quantum of compensation, NWKRTC is in appeal. While claimant is seeking for enhancement of compensation by filing cross objection. Therefore, points arise for consideration are:

1. Whether finding of tribunal regarding negligence is sustainable?
2. Whether compensation awarded by tribunal calls for modification as sought for?

11. In order to establish that the accident occurred due to rash and negligent driving of bus,



claimant produced FIR, complaint, spot panchanama, Motor Vehicle Inspector's report and charge sheet marked as Exs.P1 to P4 and P6 respectively. Claimant also deposed about manner in which accident occurred. Claimant stated that accident occurred at a curve on the road. Admittedly Ex.P6-charge sheet is filed by police after due investigation against bus driver. A perusal of spot panchanama-Ex.P3 reveals that absolutely no particulars about width of road and accident spot are mentioned. Ex.P4-Motor Vehicle Inspector's report indicates damages to the rear right side portion of body of bus. Contents of said documents are not helpful in deciding issue of negligence. Though corporation have examined bus driver as RW1, he has not deposed about manner of occurrence of accident. No negligence is alleged against claimant. In view of above, finding of tribunal regarding negligence by relying upon charge sheet cannot be held to be either unjustified or without any

basis. There are no grounds to interfere with the same. Point no.1 is answered in the affirmative.

12. Insofar as quantum of compensation, claimant has admittedly sustained fracture of pelvic, fracture of hip joint, middle and index fingers. In order to establish his age, occupation and income, claimant has produced his SSLC marks card and BA marks cards as Ex.P15, P19 and P20 respectively. Marks cards reveal that claimant had very good academic career. He has also produced an intimation letter issued by Railway Department calling him for physical test after he had cleared written examinations. Though claimant has stated that his earning was Rs.10,000/- per month, no records are produced to substantiate the same. In the absence of specific evidence, tribunal would be justified in taking notional income. Notional income for the year 2008 is Rs.4,250/- for an ordinary coolie, but claimant was a first class graduate and was a job aspirant. For the purposes of assessment of

compensation, claimant cannot be expected to establish each and every aspect of claim to the hilt. Some reasonable guesswork is inherent. Considering the excellent academic qualification of claimant, it would be reasonable for this Court to take his monthly income at Rs.8,000/-. In order to establish the extent of disability, claimant has produced wound certificate as Ex.P5, prescriptions, treatment records and medical bills. He has also examined Dr.Suryakant Kalluraya as PW2. PW2 is an orthopedic surgeon, in his deposition he has categorically stated that he examined claimant for assessment of disability on 06.07.2011. Observations made at the time of examination are

1. Pain in pelvis while walking, sitting and changing position while sleeping.
2. Difficulty in squatting and sitting cross - legged.
3. Unable to pass urine through pelvis. The petitioner passes urine through ureterocutaneous fistula.
4. I state that, on clinical examination-
  1. Tenderness at pubic bones bilaterally

2. Pelvic compression is painful.
3. Both hip movements are painful.
4. Right lower is short by 2 cms.
5. Ureterocutaneous fistula seen at perineal area.
6. Multiple operated scars over pelvis and perineum.
7. x-ray of pelvis with both hips (x-ray no.9450 dated 2011) shows mal-united fractures of pubic revui bilateral proximal nuigration of right hemi pelvis.

Based on above observation, he assessed physical disability of 25% to affected part. Nothing worthwhile is elicited from PW2 during cross-examination except the fact that doctor had not issued any disability certificate to claimant and that he was not an urologist. Firstly PW2 has made a categorical observation that claimant was unable to pass urine through pelvis, but was passing urine through ureterocutaneous fistula and does not have control over same. In view of said disability, claimant would not be able to do job as a normal person. He would be required to either use adult diapers or carry a drain pouch all the while i.e. virtually organize his life around a washroom. Infact, PW1 has stated that he

requires assistance even to attend nature's call. Under such circumstances, it would be reasonable to consider loss of earning capacity of 20%. Multiplier applicable to age of claimant at 25 years would be '18'. Thus, future loss of income would be  $\text{Rs.}8,000 \times 20\% \times 12 \times 18 = \text{Rs.}3,45,600/-$  as against  $\text{Rs.}69,120/-$  awarded by tribunal.

13. Considering number of fractures and nature of injuries sustained by claimant, he would undergo pain and suffering throughout his life. Though award of  $\text{Rs.}50,000/-$  towards mental agony separately would not be justified. However award of  $\text{Rs.}1,50,000/-$  towards pain and suffering in the facts and circumstances of this case would also be inadequate. If award towards pain and suffering and mental agony is taken as  $\text{Rs.}2,00,000/-$ , it would be just and proper. Therefore, no interference is called for insofar as award towards pain and suffering and  $\text{Rs.}50,000/-$  towards mental agony. Tribunal has awarded

compensation of Rs.83,550/- towards complete reimbursement of amount spent towards medical expenses. Claimant has produced prescriptions and medical bills to substantiate the same. There is no scope either for reduction or for enhancement. Tribunal has awarded a sum of Rs.1,00,000/- towards future medical expenses. PW1 and PW2 have stated that claimant is required to pass urine through fistula; tribunal has stated that which would not provide control over urine. Due to which claimant would require to use adult diapers or drain bag. Therefore, award of Rs.1,00,000/- towards future medical expenses cannot be said to be either unjustified or excessive. Therefore, no interference is called for.

14. Though claimant has taken prolonged treatment spread over more than two years, tribunal awarded a sum of Rs.20,000/- towards loss of income during period of treatment, Rs.14,000/- towards attendant and Rs.750/- for conveyance. It has also

awarded a further sum of Rs.20,000/- towards loss of income during period of recuperation. Considering duration of treatment and place of treatment namely at KIMS Hospital, Hubballi and Victoria Hospital, Bengaluru, claimant awarded a lump sum of Rs.1,00,000/- towards loss of income during period of treatment and recuperation and for food, nourishment, conveyance, attendant and other incidental charges as against Rs.64,750/- awarded by tribunal. It has also awarded Rs.10,000/- towards nutritious food. Due to injuries sustained and nature of disability, claimant has lost marriage prospects and lost enjoyment of marital life. Therefore, award of Rs.2,00,000/- towards loss of amenities, loss of marital life etc., cannot be said to be either unjustified or excessive. Same is sustained. Thus, claimant would be entitled to a total compensation of Rs.10,29,150/- as against Rs.7,17,500/-. Point no.2 is answered accordingly.

15. In the result, I pass the following:

ORDER

- i. MFA No.21187/2012 is dismissed. Amount in deposit is ordered to be transmitted to the Tribunal.
- ii. MFA Cross Objection No.851/2012 is allowed in part. The compensation of Rs.10,29,150/- is enhanced as against Rs.7,17,500/- awarded by the Tribunal. The enhanced compensation shall carry interest at the rate of 6% per annum.
- iii. The directions issued by Tribunal regarding proportionate of deposit and release shall apply to the enhanced compensation also.
- iv. Insurer is directed to deposit enhanced compensation within three months from date of receipt of certified copy of this order.

Sd/-  
JUDGE

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