

**IN THE COURT OF SENIOR CIVIL JUDGE AND MOTOR
ACCIDENT CLAIMS TRIBUNAL AT ARKALGUD**

Present :-

Sri Krishna Prasad Rao Kalmady, B.A., LL.B,
Senior Civil Judge & Member M.A.C.T, Arkalgud.

Dated this the 17th day of August, 2016

: M.V.C. No. 1429/2014 :

Petitioner :- Ravi S/o Kempegowda,
Aged about 28 years,
R/o Konnakoppalu Village
Belavadi Post,
Doddamagge Hobli,
Arkalgud Taluk.
Hassan District.

(By Sri N.V. Advocate)

-V/s-

Respondent:- The Divisional Controller,
K.S.R.T.C. ,
Hassan Depot,
Hassan.
(Owner of KA-13/F-1353
K.S.R.T.C. bus)

(By Sri H.R.J. Advocate)

: J U D G M E N T :

The petitioner has filed this petition under Section
166 of the Indian Motor Vehicles Act 1988, seeking
compensation of Rs.15,00,000/- with interest at the rate

of 18% per annum from the respondents from the date of accident till realization, on account of injuries sustained by him, in a road traffic accident in the interest of justice and equity.

2. The case of the petitioner in brief is that: on 19.07.2014 at 2.45. p.m., when he was pillion rider of Bajaj Discovery motor cycle bearing Registration No.KA-13/EB-8242 and Mohan Kumar was riding said vehicle and were proceeding from Holenarasipur to Menaganahally Village and on the same road i.e., Hassan-Mysuru road, the driver of the K.S.R.T.C. bus bearing Registration No.KA-13/F-1353 was proceeding from Holenarasipur to K.R.Nagar in a rash and negligent manner and near S.Ankanahally Village gate, in front of canal road, without giving any signal suddenly applied the brake of K.S.R.T.C. bus and rider of motor bike lost control and dashed against the hind portion of K.S.R.T.C. bus and Mohan Kumar succumbed to the injuries at the

spot. The petitioner sustained fracture of both hands and also his head and other parts of the body got bleeding injuries. Immediately he was removed to S.S.M. Hospital, where he was inpatient for many days and he spent more than Rs.2,20,000/- for his treatment. An operation was conducted on his both hands and also on his head. The petitioner is taking treatment as outpatient till now. The petitioner was hale and healthy prior to the accident and was working as J.C.B. operator and earning Rs.6,000/- per month and Rs.300/- per day as batta. From agriculture and business, he was earning more than Rs.1,00,000/- per year. On account of the accident, he is not in a position to attend his works now and he has lost his income. At the time of taking treatment in hospital, an assistant was appointed to look of the petitioner and Rs.100/- to Rs.150/- per day was spent towards him. The 1st respondent is the owner of K.S.R.T.C. bus. Hence the respondent is liable to pay the

compensation amount of Rs.15,00,000/- to the petitioner.

3. The respondent resisted the petition by filing the written statement. It has not admitted paras 1 to 4, 6, 8, 8(a), 11, 12 and 13 of the petition. The version set out in para 22 of the petition is denied. It is false to contend that the petitioner was working as J.C.B. driver and earning Rs.6,000/- per month and daily batta of Rs.300/- and from agriculture and business earning Rs.1,00,000/- per year. No accident had occurred on 19.07.2014 by K.S.R.T.C. bus. The petitioner colluding with police had filed false case. The petitioner has not sustained grievous injuries and he had not spent Rs.2,00,000/- for treatment. The petitioner has not sustained any permanent disability. According to respondent, when the driver of K.S.R.T.C. bus bearing Registration No.KA-13/F-1353 after alighting the passengers at Gulladapura Gate proceeded ahead 20

meters, a big sound was heard. When the driver of the K.S.R.T.C. bus stopped and went back, he came to know that motor bike had dashed the bus from behind. The accident occurred due to the rash and negligent riding of the motor bike by its rider. Police in collusion with the petitioner has registered the case against the K.S.R.T.C. bus driver. With it, it has prayed for dismissal of the petition with cost.

4. On the strength of the above pleadings, the following issues are framed by my learned predecessor in office:-

:ISSUES:

1. Whether the petitioner proves that he sustained severe injuries in an accident, occurred on 19-07-2014 at about 2.45 P.M. near S. Ankanahally Gate, on Hassan – Mysuru Road, due to rash and negligent driving of K.S.R.T.C. Bus bearing Registration No.KA-13/F-1353, by its driver?
2. Whether the petitioner is entitled for compensation? If so, at what quantum and from whom?
3. What order or decree?

5. In support of his claim, petitioner got examined himself as PW-1 and got marked EX.P.1 to P.67. and also examined the Dr. Gangu Hiral as PW-2 and got marked EX.P.68 to P.71. In support of the defence raised, the driver and conductor of K.S.R.T.C. bus were examined the RW-1 and RW-2 and got marked EX.R.1. and EX.R.1(A).

6. I have heard the arguments of both sides, and perused the materials placed on record.

My answers to the above issues are as follows:-

Issue No.1 : In the Affirmative.

Issue No.2: Partly in the Affirmative holding that petitioner is entitled for compensation of Rs.4,84,780/- from the respondent.

Issue No.3: As per final order, for the following:-

: REASONS :

7. **Issue No.1** :- In order to establish his case, the petitioner has filed his affidavit in lieu of examination in chief as PW-1, wherein he had reiterated the

averments made in the petition. In his further examination in chief, he got marked EX.P.1 to P.67, and also examined the Dr. Gangu Hiral as PW-2 and got marked EX.P.68 to P.71. EX.P.1 is the certified copy of the F.I.R., EX.P.2 is the certified copy of complaint, EX.P.3 is the certified copy of Spot Mahazar, EX.P.4 is the certified copy of Sketch, EX.P.5 is the certified copy of I.M.V. Report, EX.P.6 is the certified copy of the Wound Certificate, EX.P.7 is the certified copy of the Charge Sheet, EX.P.8 is 46 prescriptions, EX.P.9 to P.55 are the 47 medical bills, EX.P.56 is the C.T. Scan report, EX.P.57 and P.58 are 2 discharge cards, EX.P.59 is the photo, EX.P.59(a) is the C.D. EX.P. 60 to P.63 are 4 photos, EX.P.63(a) is the C.D. EX.P.64 is the photo receipt, EX.P.65 to P.67 are 3 R.T.Cs. Doctor Gangu Hiral was examined as PW-2 and got marked EX.P.68 to P.71. EX.P.68 is the MLC Extract, EX.P.69 is the Case Sheet, EX.P.70 is the C.T. Scan film, EX.P. 71 is 10 X-rays.

8. In support of the defence raised the driver and conductor of K.S.R.T.C. bus was examined R.W.1 and R.W.2 and got marked EX.R.1 and EX.P.1(a) on their behalf. EX.R.1 is the photo, EX.R.1(a) is the C.D.

9. Though the learned counsel for the respondent had cross-examined P.W.1 at length and tried to elicit that the said accident occurred due to negligent riding of the motor cycle by its rider, except denial, nothing is elicited to disbelieve the oral testimony of this PW.1. The learned counsel for respondent argued that the said accident had occurred 20 metres ahead of the bus stop, after the passengers were alighted from the bus and as such the said bus was not fast and there is no fault on the part of driver of K.S.R.T.C. bus. However, on perusal of entire , documentary evidence placed by the petitioner, based on the complaint given by one of the eye-witness, the jurisdictional police have registered a case, further investigated and filed charge sheet at EX.P7, against the

driver of this offending KSRTC bus. Admittedly, the respondent has not challenged the final report of the police. On perusal of spot mahazar also, there is no contributory negligence on the part of rider of Motor cycle. Therefore, the oral evidence of petitioner is corroborated with these police records, prove that the said accident occurred due to rash and negligent driving of the driver of K.S.R.T.C. bus.

10. On the other hand, the respondent in order to prove his defence, got examined its driver as RW.1 and conductor as RW-2. During the course of the evidence, RW.1 and RW-2 have deposed to the effect that the said accident occurred due to rash and negligent riding of the motor cycle by its rider. But except their oral evidence, they have not produced any documentary evidence. Admittedly, even after the said accident, the driver of this bus has not initiated any F.I.R. The contention of the learned counsel of respondent that the police have not

received the complaint given by driver of K.S.R.T.C. bus cannot be accepted because there is no material in support of the same is produced before the Court. On the other hand, based on the complaint given by one of the eye-witness, the FIR was initiated against this RW.1. Even after registering this criminal case, this RW.1 who is the driver of this bus, has not challenged the final report of the police. Hence, the oral evidence of RW.1 and RW-2 is not corroborated with any documentary evidence. But the oral evidence of this petitioner is corroborated with documentary evidence have succeeded to prove that, the said accident occurred due to rash and negligent driving of the K.S.R.T.C. bus by its driver RW-1. In view of the above reasons, I answer issue No.1 in the Affirmative.

11. ISSUE No.2:- It is also in the evidence of P.W.1 that in the accident he had suffered fracture of

both hands and bleeding injuries on other parts of the body. In that behalf he has relied upon EX.P.6 which is the certified copy of the Wound Certificate issued. It points that the petitioner had suffered above injuries. The said evidence is not disputed and thus the petitioner has proved that in the accident he had suffered those injuries. In view of this and finding recorded on issue no.1, it is needless to say that the petitioner is entitled for compensation. This would take me to the consideration of next question as to the quantum of compensation and from whom it is recoverable.

12. As per the opinion recorded in EX.P.6 certified copy of the Wound Certificate and Discharge cards EX.P.57 and P.58, the injuries 1, 2 and 3 are grievous in nature. As the petitioner was inpatient for 7 days for the 1st time and 2 days for the 2nd time, it could be said that the pain and agony had lasted beyond 9 days. Hence

just and reasonable compensation awardable in that behalf is Rs.50,000/- and is awarded accordingly.

13. P.W.1 has also claimed that for his treatment he has spent Rs.2,20,000/-. In that respect, he has relied upon EX.P.9 to P.55 which are 47 medical bills and EX.P.8 which are 46 prescriptions. The sum covered by them comes to Rs.96,965/-. Hence, it cannot be said that the petitioner had spent Rs.2,20,000/- for his treatment. On the other hand it has to be said that he had spent Rs.96,965/- only. But I find it just and necessary to round it off Rs.97,000/- and award the same towards the medical expenses and is awarded accordingly.

14. EX.P.57 and P.58 pointed that the petitioner was inpatient for 9 days. Hence a compensation amount of Rs.2,500/- towards the attendant and food charges is awarded.

15. It is also in the evidence of P.W.1 that after discharge as per the advise of the Doctor he obtained treatment as outpatient. Of course the same is not supported by any proof. But in the light of number and nature of the injuries suffered by the petitioner and necessity of visiting of the Hospital by a car in the beginning from the Hospital to his house, and vice versa, I think it is just and necessary to award him the compensation amount Rs.2,500/-towards conveyance.

16. The learned counsel for the claimant has requested the Court to assess the loss of income of the petitioner on the basis of the disability spoken by PW-2 Dr. Gangu Hiral and to grant the same. However no Disability Certificate is issued by the said Dr. Gangu Hiral. According to PW-2, claimant is stated to have sustained 64% permanent disability from both upper limbs. PW.2 has not spoken about the actual tests

conducted by him to assess the disability. He has simply deposed that as per his evaluation and ministry of Social justice and empowerment 2001 guidelines, the petitioner has got 64% permanent disability from both upper limbs. He had assessed disability at 64% and washed his hands. Assessment of disability is a scientific analysis. Doctor has not stated anything as to the authority on which he has placed reliance on the assessment of disability. Therefore it is stated that evidence of a Doctor has to be assessed as that of any other evidence. There is no presumption that the evidence of doctor is a gospel of truth as held on P. Shaws case 1982 Criminal Law Journal P-1972 SC. Hence much credence cannot be given to the disability spoken by PW-2. Anyhow it cannot be said that the claimant has not all sustained any disability. Even if the tribunal were to accept that the claimant has disability, the total percentage of the disability of the body as a whole would be 21% .

17. As per the petition and medical records, the age of petitioner is 28 years. There is no dispute regarding the age of the petitioner.

18. The petitioner is claiming that he was working as an agriculturist and also doing business and J.C.B. operator and used to earn more than Rs.30,000/- per month. The petitioner has relied upon EX.P.65 to P.67 which are 3 certified copy of Record of Rights standing in the name of his father Kempegowda. The petitioner has not placed any materials to show that he was working as J.C.B. operator and also doing business. The petitioner has not placed any materials to show that he was earning Rs.30,000/- per month from the said works. However, it cannot be said that the petitioner was not doing any work and earning any income. However the income of the petitioner is considered as Rs.4,500/- per month. Since the petitioner has sustained permanent disability,

it has caused loss of future income to him. Hence, he is entitled for compensation under the head of loss of future income due to the disability.

19. In order to calculate the loss of future income due to disability, his monthly income of Rs.4,500/- is to be multiplied with 12 months, which comes to Rs.54,000/-. If this annual income of Rs.54,000/- is multiplied with 21% disability, it comes to Rs.11,340/-. As per the guidelines of Hon'ble Supreme Court of India in Sarala Varma and others –Vs- Delhi Corporation and another reported in 2009. ACJ 1298, for the age group of 28 years, the appropriate multiplier is 17. Accordingly if the annual income of Rs.11,340/- is multiplied with 17 multiplier, it comes to Rs.1,92,780/-. Accordingly the petitioner is entitled for Rs.1,92,780/- towards loss of future income due to disability.

20. The petitioner is also entitled for Rs.5,000/- towards loss of income during laid up period. He is also entitled for Rs.20,000/- towards loss of future amenities.

21. P.W.-2 Doctor has deposed that the a sum of Rs.25,000/- is required, Rs.15,000/- is required for removal of (L) radius implant and Rs.1,00,000/- is required for Wrist fusion-Arthrodesis surgery in future and awarded accordingly.

22. Thus the petitioner is entitled to a total compensation amount of Rs.4,84,780/- as detailed here below;

Pain and agony	Rs. 50,000-00
Medical expenses	Rs. 97,000-00
Food Conveyance and attendant charges	Rs. 5,000-00
Loss of future amenities	Rs. 20,000-00
Loss of future income due to disability (Rs.4,500X12X21X17)	Rs. 1,92,780-00
Future operation	Rs. 1,15,000-00
Loss of income during laid up period	Rs. 5,000-00
Total	Rs. 4,84,780-00

23. There is no dispute that the respondent is the owner of K.S.R.T.C. bus. In view of this and finding recorded on Issue No.1 and 2, respondent is liable to pay compensation awarded. Accordingly this issue is found.

24. Issue No.3:- In view of the finding recorded on issue No.1 and 2, it is needless to say that the petitioner is entitled to succeed with costs but in part. In the result, I proceed to pass the following:-

:ORDER:

The petition is allowed with costs but in part. A compensation of Rs.4,84,780/- (Rupees Four lakh eighty four thousand and seven hundred eighty only) is awarded to the petitioner.

The respondent is liable to pay the compensation awarded. The respondent is directed to deposit with interest at 6% per annum from the date of the petition to that of deposit within 2 months from

this day and on failure to do so, it shall carry interest at 9% per annum. Out of the compensation with accrued interest, 50% is ordered to be deposited in the name of the petitioner in Fixed Deposit of any Nationalised Bank to be chosen and suggested by the petitioner for a period of 3 years.

Advocate's fee is fixed at Rs.1,000/-.

Draw award accordingly.

(Dictated to the stenographer, transcribed by him, revised by me and after corrections pronounced in the open Court on this the 17th day of August, 2016.)

(KRISHNA PRASAD RAO KALMADY)
M.A.C.T., Arakalgud.

: ANNEXURE :

1. LIST OF WITNESSES EXAMINED FOR THE PETITIONER:-

P.W1 : Ravi.
P.W2 : Dr. Gangu Hiral.

2. LIST OF EXHIBITS MARKED FOR THE PETITIONER:-

Ex.P1 : Certified copy of F.I.R.
Ex.P2 : Certified copy of Complaint.
Ex.P3 : Certified copy of Spot Mahazar.
Ex.P4 : Certified copy of Sketch.
Ex.P5 : Certified copy of I.M.V. Report.

Ex.P6	:	Certified copy of Wound Certificate.
Ex.P7	:	Certified copy of Charge sheet.
Ex.P8	:	46 Prescriptions.
Ex.P9 to P.55	:	47 Medical Bills.
Ex.P56	:	C.T. Scan Report.
Ex.P57 & P.58	:	2 Discharge Cards.
Ex.P59	:	Photo.
Ex.P59(a)	:	C.D.
Ex.P60 to 63	:	4 Photos.
Ex.P64	:	Photo receipt.
Ex.P65 to 67	:	R.T.Cs.
Ex.P68	:	Certified copy of M.L.C. Register.
Ex.P69	:	Certified copy of Case sheet.
Ex.P70	:	C.T. Scan Film.
Ex.P71	:	10 X-rays.

3. LIST OF WITNESSES EXAMINED FOR THE
RESPONDENT:-

RW-1	:	Honnaveerappa.
RW-2	:	C. Somashekar.

4. LIST OF EXHIBITS MARKED FOR THE
RESPONDENT:-

EX.R.1	:	Photo.
EX.R.1(a)	:	C.D.

(KRISHNA PRASAD RAO KALMADY)
M.A.C.T., Arakalgud.

