

IN THE HIGH COURT OF KARNATAKA

CIRCUIT BENCH AT DHARWAD

DATED THIS THE 13<sup>TH</sup> DAY OF APRIL 2009

PRESENT

THE HON'BLE MR.JUISTICE JAWAD RAHIM

AND

THE HON'BLE MR.JUSTICE S. N. SATYANARAYANA

MFA NO.11073/2005 (MV)

**BETWEEN**

NORTH WEST KARNATAKA  
ROAD TRANSPORT CORPORATION  
CENTRAL OFFICE,  
GOKUL ROAD HUBLI,  
BY ITS DIVISIONAL CONTROLLER  
REP. BY ITS CHIEF LAW OFFICER

... APPELLANT

(BY SRI H.R. BENTUR, ADV.,)

**AND**

SHRI SANGAPPA SHIVAPPA  
RON @ RONAD  
AGED 38 YRS  
R/AT AWARADI  
TQ RAMDURG,  
DIST BELGAUM.

... RESPONDENT

(BY SRI. RAJENDRA C DESAI, ADV.,)



MFA FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED:29/08/2005 PASSED IN MVC NO.294/2001 ON THE FILE OF THE CIVIL JUDGE (SR.DN.) & MEMBER, ADDL. MACT, SAUNDATTI, AT RAMDURG, AWARDED COMPENSATION OF RS.3,64,000/- WITH FUTURE INTEREST @ 8% P.A. FROM THE DATE OF PETITION TILL REALISATION.

THIS MFA COMING ON FOR HEARING, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

### JUDGMENT

The Road Transport Corporation whose vehicle was involved in the motor vehicle accident, has assailed the judgment and award in MVC.293/2001 dated 29.8.2005 on the file of the MACT, Saundatti, describing it as high, excessive and disproportionate to the loss suffered by the respondent-claimant.

2. Factual matrix manifesting from the case papers reveals genesis of this appeal is, a motor cycle accident on 3.10.2000 involving KSRTC passenger bus bearing No.KA 28 F.743 and motor cycle of the claimant. The claimant who is respondent herein, suffered fracture of left lower limb while he was riding



his motorcycle. The claim lodged by him was for pecuniary and non-pecuniary loss. The claim was resisted by the appellant on more than one ground.

3. The Tribunal considering the material propositions in the pleadings of the parties raised two issues and on the evidence tendered by the claimant answered both issues in the affirmative. The appellant-transport corporation is aggrieved by the order of the Tribunal.

4. The learned Counsel for the appellant assailing the impugned judgment would contend, that the accident in question was totally due to negligence of the claimant and not the negligence of the driver of the bus. He drew our attention to certain admissions in the cross-examination of claimant, wherein he is said to have stated he had switched off headlights of the vehicle to give passage to the oncoming two wheeler and that he



had not seen the traffic ahead. The driver of the KSRTC bus is described as important witness who in his testimony merely states he was not negligent. As we see from the report of the investigating officer on receipt of the complaint relating to the accident has inspected spot, the vehicles and filed final report in the form of charge sheet arraigning driver of the KSRTC bus as accused for rash and negligent driving. The said charge sheet filed against the driver of the appellant has not been brought in question till date. It is material to refer to provision of section 158(6) of the Motor Vehicles Act, which envisages that the police officer investigating the accident is required to submit a report of his finding to the jurisdictional motor vehicle tribunal. The said final report so filed by the Investigating Officer is required to be accepted by the Tribunal as the claim petition itself as postulated under the provision of section 4 of section 166 of the Motor Vehicles Act. Therefore, statutorily the credence is given to investigation report of the police



officer unless the same has been negated by the contra evidence. In the instant case, the Corporation for the first time has questioned lack of negligence in the driving of its driver before the Tribunal without questioning the finding of the Investigation Officer. Be that as it may. Even the evidence led by the appellant before the Tribunal is so feeble that it hardly establishes negligence on the claimant, and in no way absolves the driver of the KSRTC bus of the culpable negligence. Viewed from any angle, keeping in view the finding of the Investigating Officer it is to be noticed that the claimant was riding his motor vehicle ahead of the KSRTC bus. It is the KSRTC bus driver who is said to have, while negotiating the road, hit against the rider. Nothing is brought to the contrary to show the accident has occurred in the manner different from what is averred in the claim petition and charge sheet. We are therefore satisfied that the Tribunal has rightly held the driver of the appellant to be rash and negligent and

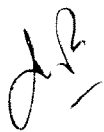


consequently the Corporation. No case is made out to interfere with the said finding.

5. As regards quantum is concerned, the claimant is Government employee and therefore, his contention that he had been earning from private practice as veterinary inspector was not conceivable. It was further contended, that since the claimant has failed to establish that he was in permanent Government service, there is no question of considering the loss of income. The learned Counsel for appellant has contended that even if it is to be held that the injury suffered by the claimant had caused any physical disability, being a Government Servant he will not lose any income and hence, no award is permissible. We have considered this ground, in this regard, evidence shows that the claimant has not only stated he was veterinary inspector working in a co-operative society in the village but he had also a regular earning of



Rs.8000/- from private practice. Despite cross-examination of the witness, Corporation has not been able to solvage anything in its favour to negate its claim. On the other hand, we find in fact situation that the claimant as veterinary inspector certainly had a regular earning from his private practice in rural area where he lives. His avocation as veterinary inspector in a co-operative society has not been questioned by KSRTC. What is questioned is, his claim of private practice. If that be so, then the regular earning of the claimant may be excluded while calculating future earning. But his private practice needs consideration because as per medical evidence, the fracture of lower limb bones has caused 45% disability which is hampering him from movement. There is rigidity due to damage to the bone of lower limb and he finds it difficult to walk in rural areas if he has to attend to his profession as Veterinary Inspector. Naturally, he may have to walk and live in the village which is said to be difficult process. The



doctor's assessment of 45% is supported from clinical finding as recorded in the wound certificate and other medical records. For the purpose of calculating loss of future income, the Tribunal has reduced it to 35%. We do not find such finding of the Tribunal liberal or unreasonable.

6. For computing loss of income, the Tribunal has not taken the income of the injured at Rs.10,000/- from the regular service and Rs.8000/- from his private practice as claimed. The Tribunal has fixed his income at Rs.3000/- which is normally the earning taken for unskilled labourer. The grievance of the Corporation certainly has been considered by the Tribunal and we are satisfied that any further reduction will result in unjust award. Therefore, fixation of Rs.3000/- as income of the injured and calculating loss of future earning at 35% is well founded and we find no reasons to interfere with the same.





7. In the result, the appeal fails and it is dismissed.

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Sd/-  
JUDGE

Sd-  
MEMBER

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