

IN THE HIGH COURT OF KARNATAKA

CIRCUIT BENCH AT GULBARGA

DATED THIS THE 29<sup>TH</sup> DAY OF FEBRUARY 2012

BEFORE

THE HON'BLE MR. JUSTICE A.S. PACHHAPURE

MISCELLANEOUS FIRST APPEAL NO. 31338/2010 (MV)

C/w

MISCELLANEOUS FIRST APPEAL NO.31553/2010 (MV)

In MFA No. 31338/2010:

BETWEEN:

The Managing Director  
KSRTC, Shanti Nagar, Bangalore.  
After bifurcation of the corporation  
The appellant is called as  
The Managing Director NEKRTC  
Central office, Main Road,  
Gulbarga.  
Represented by its Chief Law officer  
Central office Gulbarga.

... APPELLANT

[By Sri.Subash Mallapur, Advocate]

AND:

Shashikala D/o Hiriyananna  
Nadahalli Age: 29 Years,  
Occ: Private Tutions,  
R/o Hippargi, Tq. B. Bagewadi

(Now Residing at Adarsh Nagar,  
Bijapur).

... RESPONDENT

(By Sri.Sanganagouda V. Biradar, Adv.,)

THIS APPEAL IS FILED U/S 173(1) OF M.V. ACT  
AGAINST THE JUDGEMENT AND AWARD DATED  
21-04-2010 PASSED IN MVC NO.175/2009 ON THE FILE OF  
THE MOTOR ACCIDENT CLAIMS TRIBUNAL NO.V, BIJAPUR.

In MFA No. 31553/2010:

BETWEEN:

Shashikala D/o Hiriyananna  
Nadahalli Age: 29 Years,  
Occ: Private Tutions,  
R/o Hippargi, Tq. B. Bagewadi  
(Now Residing at Adarsh Nagar,  
Bijapur).

... APPELLANT

[By Sri. Sanganagouda V. Biradar, Advocate]

AND:

The Managing Director,  
KSRTC, Shanti Nagar,  
Double Road Bangalore.  
Through The D.C.  
NWKRTC, Divisional office,  
Toravi Road, Bijapur.

... RESPONDENT

(By Sri. Subash Mallapur, Adv.,)

THIS APPEAL IS FILED U/S 173(1) OF M.V. ACT  
AGAINST THE JUDGEMENT AND AWARD DATED  
21-04-2010 PASSED IN MVC NO.175/2009 ON THE FILE OF  
THE MOTOR ACCIDENT CLAIMS TRIBUNAL NO.V, BIJAPUR.


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

**JUDGEMENT**

The appellant has challenged the finding of negligence and the quantum of compensation granted in the first appeal, whereas in other appeal the appellant has sought enhancement of the compensation.

2. The facts relevant for the purpose of these appeals are as under;

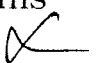
On 05-10-2008 the injured was an inmate of the bus bearing registration No. KA-28/F-1317 was travelling from Bijapur to Managuli. The bus driver is said to have driven the bus in rash and negligent manner on the road breakers and thereby the injured who was standing near the door suddenly thrown out of the bus and sustained severe injuries. She was treated in the hospital. She suffered disability and claimed compensation for pain, suffering, mental agony, medical expenses etc.

The owner of the bus appeared and contested the claim. During the course of enquiry the claimant was examined as PW 1 and Doctor PW 2. In their evidence Ex.P-1 to P-10 were marked. 

The Tribunal after hearing the counsel for the parties and on appreciation of material on record held actionable negligence on the part of driver of bus and granted compensation of ₹2,18,920/- with interest at 6%. KSRTC has preferred the appeal challenging the finding of negligence and quantum of compensation, whereas, the injured has sought for enhancement of compensation.

3. I have heard the learned counsel for both the parties.

4. So far as the question of negligence is concerned, though the learned counsel for the KSRTC contends that the injured wanted to alight from the vehicle and when the bus was slowly proceeding on the speed breakers, she tried to jump and sustained injuries. So far as this aspect of the matter is concerned, KSRTC has not taken any pain to examine their conductor or driver or any inmate of the bus about alleged efforts made by the injured. The evidence discloses that PW 1 and contents of complaint Ex.P-2 disclose that the bus was driven in high speed at the place where there were speed breakers. If the driver had driven the vehicle slowly there could not have been question of throwing out the injured who was standing near the door. So considering this



aspect and also material placed on record I am of the opinion that the Tribunal was justified in assessing the negligence on the part of driver of the bus.

5. So far quantum of compensation is concerned, Ex.P-4 is the injury certificate. Injury No.1 is bilateral nasal bleed (2)Right ear bleed, (3) Contusions in left temporal and frontal region (4)acute left fronto - parietal - temporo - subdural bleed and (5) Right petrous mastoid fracture. Though doctor states injury No.3 to 5 are grievous in nature, except fracture sustained, rest of the injuries are simple. Anyhow the Tribunal has awarded ₹35,000/- towards pain, suffering and mental agony. I think it is just and proper. On the basis of medical bills produced the Tribunal has granted compensation of ₹59,000/- towards medical expenses and the assessment is reasonable. The injured claimant stated that she was taking tuition and earning ₹6,000/-. Except the attested copy of teacher certificate she has not produced any documents to prove the income. The Tribunal considering the fact that accident was in the year 2009 has assessed income at ₹4,000/- and same is just and proper. So it is granted ₹12,000/- towards loss of earning during the period of treatment and ₹15,000/- towards loss of amenities and



future discomfort. The compensation on this head is also reasonable. Though the learned counsel contends that disability assessed by Tribunal is on lower side, it is relevant to note that the claimant has not examined the doctor who has treated her. PW 2 is not treated the doctor and he assessed only disability. He is not a neurologist. Anyhow giving margin to the possibility of exaggeration with a view to claim more compensation, the Tribunal has assessed disability at 12% of the whole body and I do not find any justifiable grounds to interfere with the amount of compensation awarded towards loss of future income on the basis of material placed on record. In all the Tribunal has awarded compensation of ₹2,18,920/- with interest at 6%. The amount of compensation awarded is just and proper. Therefore, I do not find any merit in these appeals.

In the result both the appeals are dismissed accordingly. The amount in deposit before this Court be transmitted to the Tribunal for disbursement.

Sd/-  
JUDGE

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