

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 19TH DAY OF APRIL, 2012

BEFORE

THE HON'BLE MR. JUSTICE B.SREENIVASE GOWDA

M.F.A. NO. 9895 OF 2008 (MV)

C/W

M.F.A. NO. 5737 OF 2008 (MV)

IN MFA 9895/2008

BETWEEN

BANGALORE METROPOLITAN
TRANSPORT CORPORATION,
CENTRAL OFFICE,
K.H.DOUBLE ROAD,
SHANTHINAGAR,
BANGALORE.
BY ITS MANAGING DIRECTOR.

... APPELLANT

(By Sri. D. VIJAYAKUMAR, ADV.)

AND

1. SMT. SABAMMA,
W/O. HANUMANTHA BEELAGERI,
AGED ABOUT 30 YEARS,
OCC: COOLIE,
R/O. PASAPULA POST,
PASAPULA TALUK, YADAGIRI,
GULBARGA DISTRICT.
2. SRI. N. T. RAHAMATHULLA KHAN,
ASSOCIATES,
13/11, P. M. K. ROAD.

SHANKARAPURA.
BANGALORE – 560 004.

3. THE PROPRIETOR,
N. T. GARBARISING WORKS PVT. LTD.,
NO.143/B, BENNIRGHANAHALLI,
OLD MADRAS ROAD, DOORVANINAGAR,
BANGALORE.
4. THE ORIENTAL INSURANCE CO. LTD.,
D.O.6, SRINIVASA MANSION,
NO.364/110, 'B' MAIN,
3RD BLOCK, JAYANAGAR,
BANGALORE – 11.

... RESPONDENTS

(By Sri. SURESH M. LATUR, ADV. FOR R.1,
SRI. M. SOWRIRAJU, ADV. FOR R.4,
SRI. N. S. BHAT, ADV. FOR R.2,
R.3 NOTICE DISPENSED WITH)

THIS MFA IS FILED U/S 173(1) OF MV ACT, AGAINST
THE JUDGEMENT AND AWARD DATED 14.01.2008
PASSED IN MVC NO.8452/2005 ON THE FILE OF XIX
ADDITIONAL SCJ & MACT, BANGALORE, SCCH-17,
AWARDING A COMPENSATION OF RS.55,000/- WITH
INTEREST @ 6%P.A. FROM THE DATE OF PETITION TILL
DEPOSIT.

IN MFA 5737/2008

BETWEEN

SMT. SABAMMA
W/O HANUMANTHA BEELAGERI,
AGE : 29 YEARS, OCC: NIL,
R/O. PASAPULA POST,
PASAPUAL TALUK, YADAGIRI,
GULBARGA DISTRICT.

... APPELLANT

(By Sri. SURESH M. LATUR, ADV.)



AND

1. SRI. N. T. RAHAMATHULLA KHAN,
ASSOCIATES, 13/11, P.M.K.ROAD
SHANKARAPURA
BANGALORE - 4.
2. THE PROPRIETOR,
N. T. GARBARISING WORKS PVT. LTD.,
NO.143/8, BENNIRGHANAHALLI,
OLD MADRAS ROAD.
DOORAVANINAGAR,
BANGALORE.
3. THE DIVISIONAL MANAGER,
ORIENTAL INSURANCE CO. LTD.,
DO.NO.6, SRINIVASA MANSION,
NO.364/110, 10TH 'B' MAIN,
3RD BLOCK, JAYANAGAR,
BANGALORE - 11
4. THE MANAGING DIRECTOR,
B.M.T.C., K.H.ROAD,
SHANTHINAGAR,
BANGALORE - 27.

... RESPONDENTS

(By M/S. LAWYERS GUILD, ADVS. FOR R.1,
SRI. D. VIJAYA KUMAR, ADV. FOR R.4,
SRI. ASHOK N. PATIL, ADV. FOR R.3,
R.2 NOTICE DISPENSED WITH)

THIS MFA FILED U/S 173(1) OF MV ACT AGAINST
THE JUDGMENT AND AWARD DATED: 14.1.2008 PASSED
IN MVC NO. 8452/2005 ON THE FILE OF THE XIX ADDL.
JUDGE, COURT OF SMALL CAUSES, MEMBER, MACT,
METROPOLITAN AREA, BANGALORE, (SCCH.NO.17),
PARTLY ALLOWING THE CLAIM PETITION FOR
COMPENSATION AND SEEKING ENHANCEMENT OF
COMPENSATION WITH 12% INTEREST.

These appeals coming on for Hearing, this day,
the Court, delivered the following:

J U D G M E N T

As these appeals are arising out of a common judgment and award passed by the Tribunal they are taken up for consideration together.

2. As there is no dispute regarding injuries sustained by the claimants in a road traffic accident occurred on 17.09.2005 due to involvement of BMTC bus bearing registration No. KA-01-F-1588 and a private bus bearing registration No. KA 05 4800 the only points that arise for consideration in these appeals are:

Whether the Tribunal is justified in holding that the accident was occurred due to contributory negligence on the part of the drivers of both the BMTC bus and private bus @ 50% each?

Whether quantum of compensation awarded by the Tribunal is just and reasonable or does it call for enhancement?

3. Learned Counsel for the BMTC submits that in MVC No. 3196/2006 arising out of the very same accident the Tribunal has held that the accident was occurred due to sole negligence on the part of the driver

of the private bus and the said finding has not been challenged either by the owner or by the insurer of the said bus and it has become final. Therefore appeal filed by the BMTC may be allowed by modifying the findings of the Tribunal on negligence and liability may be fastened on the insurer of the private bus.

4. Learned Counsel for the insurer of private bus submits that the said findings in MVC No. 13196/2006 was made on 04.01.2008 and this appeal was filed on 15.10.2008 after receiving notice in MFA No. 5737/2008 filed by the claimant for enhancement of compensation. Therefore he requests this Court to consider the question of negligence independently.

5. There is no dispute that out of the very same accident one more claim petition i.e. MVC No. 13196/2005 was filed and in that the Tribunal has held the accident was occurred due to sole negligent driving of private bus by its driver and the said finding has become final. That part, a criminal case was registered

against the driver of private bus and charge sheet has been filed against him. The Tribunal considering the same in MVC No. 13196/2005 has held that the accident was occurred due to sole negligence on the part of the driver of the private bus. Therefore the impugned judgment and award passed by the Tribunal in the instant case in so far its finding on negligence is liable to be modified and accordingly it is held that the accident was occurred due to sole negligent driving of private bus by its driver as has been held by the Tribunal in MVC No. 13196/2005 against which no appeal has been filed by the insurer of private bus.

6. Now, I have to see whether compensation awarded by the Tribunal is just and reasonable or does it call for enhancement?

7. As per wound certificate Ex. P 6, claimant had sustained crush injury to her right middle finger and later it was amputated. Injuries sustained by her are also evident from Medical Certificate Ex. P 5, OPD card

Ex. P 7, Photographs Ex. P 8, Negatives Ex. P 8(a) and supported by oral evidence of the claimant examined as PW 1. She has not examined the doctor regarding disability.

8. Considering amputation of right middle finger a sum of Rs.25,000/- is awarded towards pain and suffering as against Rs.15,000/- awarded by the Tribunal.

9. The claimant has not produced any medical bills regarding amount spent towards treatment and therefore Rs.5,000/- awarded by the Tribunal towards medical and incident expenses such as conveyance, nourishment and attendant charges is just and proper and there is no scope for enhancement.

10. Claimant claims to have been earning Rs.4,000/- per month by doing coolie, but the same is not established by producing documents. Considering his age and year of accident the Tribunal has rightly assessed her income at Rs.3,000/- p.m. Nature of

injuries suggests that she must have been under treatment and rest at least for a period 3months and therefore, a sum of Rs.9,000/- is awarded towards loss of income during laid up period as against Rs.6,000/- awarded by the Tribunal.

11. In the absence of evidence of doctor regarding disability the Tribunal considering amputation of middle finger of right hand and an amount of discomfort and unhappiness she has to undergo in her future life has rightly awarded a sum Rs.20,000/- towards loss of amenities, Rs.23,000/- towards disability and Rs.5,000/- under the head mental shock, agony and depression and there is no scope for enhancement under these heads.

12. Thus the claimant is entitled for the following compensation:

1)	Pain and suffering	Rs. 25,000/-
2)	Medical and incidental expenses	Rs. 5,000/-
3)	Towards loss of income during laid up period	Rs. 9,000/-
4)	Towards loss of amenities	Rs. 25,000/-

5)	Towards disability	Rs. 23,000/-
6)	Towards mental shock, Agony & depression	Rs. 5,000/-

	Total	Rs. 92,000/-
Less compensation awarded by The Tribunal		Rs. 55,000/-

**Additional compensation
Comes to** **Rs. 37,000/-**

13. Accordingly both the appeals are allowed in part. Judgment and award of the Tribunal both on negligence and quantum is modified and it is held that the accident was occurred due to sole rash and negligent driving of private bus by it's driver. The claimant is entitled for an additional compensation of Rs.37,000/- with interest at 6% per annum from the date of claim petition till the date of realisation.

14. The Insurance Company is directed to deposit the entire compensation awarded by the Tribunal as well as the additional compensation awarded by this Court together with interest within two months from the date of receipt of a copy of this judgment and the same is ordered to be released in favour of the claimant.



15. The amount, deposited by BMTC in their appeal is ordered to be refunded to it as liability is held against the insurer of the private bus.

No order as to costs.

Sd/-
JUDGE

Vb/-