

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 24 DAY OF OCTOBER, 2007

PRESENT

THE HON'BLE MR JUSTICE V.G.SABHAHIT

AND

THE HON'BLE MR JUSTICE JAWAD RAHIM

MFA 5824/2001 C/W MFA CROB 129/2003

MFA 5825/2001 C/W MFA CROB 128/2003(MV)

IN MFA 5824/2001

BETWEEN:

THE DIVISIONAL CONTROLLER,
KSRTC DIVISIONAL OFFICE, BIJAPUR
REPRESENTED BY ITS NEWLY
CONSTITUTED NORTH WEST
KARNATAKA ROAD TRANSPORT CORPN.,
CENTRAL OFFICES, UBLI,
BY ITS CHIEF LAW OFFICER.

.. APPELLANT

(BY SRI F.S.DABALI, ADV.)

AND:

1. B.SATYAVATHI,
W/O LATE SATYABABU
@ SATYANARAYANA, 35 YEARS,
HOUSE IIOLD
R/O SEETANAGAR CAMP,
TQ. RAICHUR.

2. SMT SHEHSAMMA
W/O SATYANARAYANA,

63 YEARS, HOUSE HOLD,
R/O SEETANAGAR CAMP, TQ. RAICHUR.

3. RAVIKUMAR, S/O SATYABABU
@ SATYANARAYANA, AGE 15 YEARS, MINOR.

4. PAVAN KUMAR, S/O SATYABABU
13 YEARS, MINOR U/G OF CLAIMANT NO. 1

5. Y. SURESH BABU,
S/O SHASHIDHAR PATIL,
MAJOR, AGRICULTURIST,
R.O YERMARUS, RAICHUR,

6. C.H.VENKATESH,
S/O VENKAIAH, MAJOR, AGRIL.,
R/O SEETANAGAR CAMP,
TQ. RAICHUR.

RESPONDENTS 3 AND 4 ARE MINORS,
U/G OF RESPONDENT NO. 1.

.. RESPONDENTS

(BY SRI M.Y.SKINIVASA AND M.N.SHYAMA SUNDAR, ADVS.
FOR R1 TO 4. SRI MALLIKARJUNA C. BASAREDDY, ADV.
FOR R-1 TO 4 IN I.A.1/07. R-5 AND 6 SERVED.)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV
ACT AGAINST THE JUDGMENT AND AWARD DATED
10/08/2001 PASSED IN MVC NO.99/96 ON THE FILE OF
THE FRL. CIVIL JUDGE(SR.DN) AND ADDL. MACT,
RAICHUR, PARTLY ALLOWING THE CLAIM PETITION FOR
COMPENSATION

MFA CR.OB 129/2003 IN MFA 5824/2001

BETWEEN

1. B.SATYAVATHI,
W/O LATE SATYABABU
@ SATYANARAYANA, 37 YEARS,
HOUSEHOLD, R/O SEETANAGAR CAMP
TQ. RAICHUR.

2. SMT SHASHAMMA,
W/O SATYANARAYANAMMA,
AGED 65 YEARS, HOUSEHOLD,
R/O SEETANAGAR CAMP, RAICHUR.

3. RAVIKUMAR,
S/O SATYABABU SATYANARAYANA,
AGED 10 YEARS, MINOR.

4. PAVAN KUMAR,
S/O SATYABABU, ALIAS
SATYANARAYANA 8 YEARS,
MINOR UNDER GUARDIAN OF
CLAIMANT NO. 1

.. CROSS OBJECTORS

(BY SRI MALLIKARJUNA C. BASAREDDY, ADV.)

AND:

1. ASHWANIKUMAR, S/O VENKATESH,
28 YEARS, DRIVER OF KSRTC,
B.NO.2398 OF BIJAPUR DEPOT, BIJAPUR.

2. THE DIVISIONAL CONNTROLLER,
KSRTC, DIVISIONAL OFFICE, BIJAPUR.

3. Y.SURESH BABU,
S/O SHASHIDHAR PATIL,
MAJOR, AGRICULTURAL
R/O YARMANUS, RAICHUR.

4. C.H.VENKATESH,
S/O VENKAIAH MAJOR, AGRIL.,
R/O SEETANAGAR CAMP,
TQ. RAICHUR.

... RESPONDETNS

(BY SRI F.S.DABALI, ADV. FOR R-2)

THIS MFA CROB FILED UNDER ORDER 41 R 22 CPC
AGAINST THE JUDGMENT AND AWARD DATED
10/08/2001 PASSED IN MVC NO.99/96 ON THE FILE OF
THE PRL. CIVIL JUDGE(SR.DN) AND ADDL. MACT,

RAICHUR, PARTLY ALLOWING THE CLAIM PETITION FOR
COMPENSATION AND SEEKING ENHANCEMENT OF
COMPENSATION.

MFA 5825/2001

BETWEEN:

THE DIVISIONAL CONTROLLER,
KSRTC, DIVISIONAL OFFICE, BIJAPUR.

REPRESENTED BY ITS NEWLY
CONSTITUTED NORTH WEST
KARNATAKA ROAD TRANSPORT CORPN.,
CENTRAL OFFICE, HUBLI, BY ITS
CHIEF LAW OFFICER.

.. APPELLANT

(BY SRI F.S.DABALI, ADV.)

AND:

1. C.H.SRINIVAS, S/O SURYA RAO,
AGE 27 YEARS, OCC: AGRIL.,
R/O VIJAYANAGAR CAMP, TAQ. RAICHUR.

2. Y.SURESH BABU, S/O SHASHIDHAR PATIL,
MAJOR, AGRICULTURIST,
R/O YERMARUS RAICHUR.

3. C.H. VENKATESH, S/O VENKAIAH, MAJOR,
AGRIL., R/O SEETANAGAR CAMP,
TQ. RAICHUR.

.. RESPONDENTS

(BY SRI MALLIKARJUNA C.BASAREDDY, ADV FOR R-1 AND
SRI HANUMANATHA REDDY SAHUKAR, ADV. FOR R2. R3
SERVED)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV
ACT AGAINST THE JUDGMENT AND AWARD DATED
10/08/2001 PASSED IN MVC NO.100/96 ON THE FILE OF
THE PRL. CIVIL JUDGE(SR.DN) AND ADDL. MACT II,

**RAICHUR, PARTLY ALLOWING THE CLAIM PETITION FOR
COMPENSATION.**

MFA CR.OB 128/2003 IN MFA NO. 5825/2001

**C.H.SRINIVAS, S/O SURYA RAO,
AGED 29 YEARS, OCC AGRICULTURIST,
R/O VIJAYANAGAR CAMP,
RAICHIUR.**

.. CROSS OBJECTOR

(BY SRI MALLIKARJUNA C.BASAREDDY, ADV.)

AND:

**1. ASHWANIKUMAR, S/O VENKATESH,
AGED 35 YEARS, DRIVER OF KSRTC.
B.NO.2398, BIJAFUR DEPOT, BIJAPUR**

**2. THE DIVISIONAL CONTROLLER,
KSRTC DIVISIONAL OFFICE, BIJAPUR.**

**3. Y.SURESH BABU,
S/O SHASHIDHAR PATIL,
MAJOR, AGRICULTURIST,
R/O YERMARUS RAICHUR.**

**4. C.H.VENKATESH
S/O VENKATESH, MAJOR,
AGRICULTURIST, R/O SEETANAGAR CAMP,
RAICHUR TQ.**

.. RESPONDENTS

(BY SRI F.S.DABALI, ADV. FOR R-2)

**THIS MFA CROB IS FILED UNDER 41 RULE 22 OF
CPC AGAISNT THE JUDGMENT AND AWARD DATED
10/08/2001 PASSED IN MVC NO.100/96 ON THE FILE OF
THE PRL., CIVIL JUDGE(SR.DN) AND ADDL. MACT, II**

RAICHUR, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THESE MISCELLANEOUS FIRST APPEALS AND CROSS OBJECTIONS ARE COMING ON FOR FINAL HEARING THIS DAY, SABHAHIT J., DELIVERED THE FOLLOWING:

JUDGMENT

These appeals and cross objections arise out of the Judgment and award passed by the Additional MACT-II, Raichur dated 10/08/2001 in MVC Nos.99/96 and 100/96.

2. The essential facts of the case leading up to these appeals and cross objections with reference to the rank of the parties before the Tribunal are as follows:

On 20/11/1995 at about 3.45 p.m., Satyababu was riding Bajaj chetak Scooter from Seetanagar camp to Raichur and C.H. Srinivas was a pillion rider on the said scooter. While the scooter was proceeding near the 6th KM stone from Raichur at Micro Wave Station, a KSRTC bus bearing registration No. KA 13/F 242 came in the opposite direction in a rash and negligent manner and dashed to the

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scooter and due to the said impact, the rider of the scooter and the pillion rider sustained injuries . The rider of the scooter Satyababu succumbed to the injuries at about 6.30 p.m. on the same day i.e. 20/11/1995 and the pillion rider, who took treatment in the hospital, also sustained fracture to his left leg and injury to his shoulder and head.

Wife, mother and minor children of Satyababu filed MVC No.99/96 seeking compensation of Rs.5,40,000/- from the respondents being the driver of the bus, Divisional controller KSRTC, owner and respondent NO.3 registered owner of the Scooter bearing registration No. KA 36/3 6242 and respondent NO.4 purchaser of the said scooter. MVC No.100/96 was filed by the pillion rider C.H.Srinivas, who sustained injuries and suffered disability in the said accident, seeking compensation of Rs.4,60,000/- from the above said respondents.

Second respondent filed objections and contended that the accident occurred due to the rash and negligent riding of the scooter by Satyababu and not due to the driving of the KSRTC Bus by its driver and the quantum of compensation claimed is excessive, exorbitant, unreasonable and speculative.

Both the claim petitions were clubbed together and common evidence was recorded. The first claimant in MVC NO.99/96 was examined as Pw-1 and the claimant in MVC No.100/96 is examined as PW-2 and also examined PW-3, the Doctor who treated PW-2 and got marked Exs.P-1 to 179.

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On behalf of the respondents driver of the KSRTC was examined as RW-1 and Exs.R-1 and 2 certified copy of FIR with complaint and certified copy of FIR PME were got marked. The Tribunal by its Judgment and award dated 10/08/2001 held that the accident occurred solely due to the rash and negligent by the driver of the KSRTC bus-first respondent and that the claimants in MVC No.99/96 are entitled to compensation of Rs.3,08,000/- with interest at 6% per annum from the date of petition to till of realisation. Being aggrieved by the said Judgment and award in MVC No.Nos.99/96 and 100/96, KSRTC has preferred MFA nos. 5824/2001 and 5825/2001.

Claimants in MVC no.99/96 have filed cross objections in MFA no.5824/2001 and the delay in filing the cross objections is condoned today as per the order and the claimants have sought for enhancement compensation contending that the compensation of Rs.3,08,000/- awarded by the Tribunal is on the lower side and the Tribunal ought to have awarded compensation as claimed by the claimants and the claimant in MVC NO.100/96 has filed cross objection in MFA No.5825/2001 seeking enhancement of compensation.

3. We have heard the learned counsel appearing for the KSRTC and the learned counsel appearing for the claimants in both the appeals.

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4. Having regard to the contentions urged, the point that arise for determination in these appeals are:

1. Whether the finding of the Tribunal that accident occurred solely due to the rash and negligent driving of the KSRTC Bus by its driver and not due to the rash and negligent riding of the scooter by Satyababu, is justified or calls for interference in the appeals filed by the KSRTC?

2. Whether the quantum of compensation awarded to the claimants in MVC No.99/1996 required to be reduced or enhanced as sought for in the appeal and the cross objection?

3. Whether the quantum of compensation awarded to the claimant in MVC No.100/906 is excessive and liable to be reduced as sought for in the appeal and the cross objection? And

4. What order?

and we answer the above points as follows:

1. The finding of the Tribunal that the accident occurred solely due to the rash and negligent driving of the KSRTC Bus, is justified and does not call for interference.

Yes

2. the compensation awarded to the claimant in MVC No.99/96 is in adequate and the same is entitled to be enhanced to Rs.3,55,000/-.

3. the quantum of compensation awarded by the Tribunal in MVC No.100/96 is just and reasonable and the same does not call for interference; and

4. as per the final order for the following reasons:

5. Point NO.1: It is the case of the petitioners that the accident occurred due to the rash and negligent driving of the KSRTC bus by the first respondent. ON the other hand, it is contended by the KSRTC that the accident occurred solely due to the rash and negligent driving of the scooter by Satyababu. On behalf of the claimant, PW-2, who was the pillion rider and also the injured-the claimant in MVC No.100/96 was examined and he has stated in his evidence that the accident occurred due to the rash and negligent driving of the KSRTC Bus. On behalf of the KSRTC, driver of the bus has been examined as RW-1.

6. We have perused the evidence of RW-1 and it is clear from the evidence of RW-1 that according to him he was driving the bus on the left side and a tractor was coming

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from the opposite direction. The scooter was overtaking the tractor and ~~he was~~ he took his bus to the left side of the road. The scooter suddenly came on the left side of the bus and dashed to the left side bumper of the bus. It is elicited in his cross-examination that he has not personally filed objections on his behalf. He has denied the suggestion that no tractor was coming in opposite direction and he has also denied the suggestion that the accident occurred solely due to his negligence. He has also denied the suggestion that registration number of the bus is not visible in the photos. It is clear from the evidence of RW-1 and the evidence of Pw-2 that there is no merit in the contention of the learned counsel appearing for the KSRTC that the accident occurred solely due to the rash and negligent riding of the scooter by Satyababu. The photograph clearly shows that the scooter is to the left side of the bus and the evidence of RW-1 does not explain under what circumstances, the scooter came to the left side if it was coming from the opposite direction. The evidence of PW-2, who is also injured in the accident, has stated that the accident occurred due to the rash and negligent driving of the bus. Sketch of the scene of the offence or the panchanama regarding scene of offence is not

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produced. Under the circumstances, it is clear that the finding of the Tribunal that the accident occurred solely due to the rash and negligent driving of the KSRTC Bus by its driver and not due to the riding of the scooter by deceased Satyababu, is justified and does not call for interference in the appeal. Accordingly, we answer point NO. 1.

7. Point NO.2: The claimants in MVC No.99/96, who are the wife, mother and minor children of deceased Satyababu have claimed compensation of Rs.5,70,000/- and they have been awarded Rs.3,08,000/- with interest at 6% per annum. The Tribunal has taken the income of Satyababu at Rs.2,400/- per month and after deducting 1/3rd towards living and personal expenses, has applied the multiplier of 15 and has arrived at Rs.2,88,000/- towards loss of dependency. The compensation awarded by the Tribunal under other heads are as follows:

	Rs.
Towards loss of estate	5,000/-
Towards loss of consortium	5,000/-
Towards loss of love and affection	5,000/-
Towards funeral obsequies etc.	<u>5,000/-</u>
	<u>Rs.20,000/-</u>

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8. It is clear from the evidence of Pw-1 as also the evidence of Pw-2 that deceased Satyababu was an agriculturist and having regard to the date of the accident 20/11/1995, the income of Rs.2,400/- per month taken by the Tribunal is on the lower side. According, to the claimants, Satyababu was earning Rs.2,500/- per month and having regard to the income from the agriculture and also having regard to the fact that his income would have increased in due course of time, it would be just and reasonable to take Rs.2,500/- per month which would come to Rs.30,000/- per annum and after deducting 1/3rd towards living and personal expenses loss of dependency per month constituting the multiplicand of Rs.20,000/- and appropriate multiplier would be 15 having regard to the deceased, who was aged 22 years, the claimants would be entitled to compensation of Rs.3,00,000/- towards loss of dependency. The compensation awarded by the Tribunal towards loss to the estate, towards consortium and towards loss of love and affection is on the lower side and it would be just and reasonable to enhance the compensation towards

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loss of the estate at Rs.10,000/-, Rs.10,000/- towards loss of consortium to the wife and Rs.15,000/- towards loss of love and affection to minor children and Rs.5,000/- awarded towards funeral expenses and obsequies by the Tribunal is entitled to be confirmed. Wherefore, the just and reasonable compensation to which the claimants would be entitled to is Rs.3,55,000/- and to that extent, the compensation awarded by the Tribunal has to be enhanced and the order of the Tribunal in all other respects is confirmed.

9. Point NO.3: Claimant in MVC No.100/96 has been awarded compensation of Rs.1,70,000/- on the basis of the decision of this Court reported in ILR 2000 KARNATAKA 4123 in the case of NABISAHEB DASTAGIR SAHEB MULLA @ KIRANGI v. DEELIP BABAN GHODAKE AND ANOTHER. The tribunal has awarded compensation of Rs.80,000/- towards pain and suffering and loss of enjoyment and amenities in life, Rs.60,000/- towards pecuniary loss, Rs.15,000/- towards medical expenses and Rs.15,000/- towards incidental expenses and awarded total compensation of Rs.1,70,000/-. Though the method

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adopted by the Tribunal in awarding compensation may not be proper and ~~wherefore~~^{therefore} it is clear having regard to the evidence of Pw-2 and the evidence of the Doctor who treated him and the disability certificate issued by the Doctor that the total compensation of Rs.1,70,000/- awarded to the claimant in MVC NO.100/96 is just and reasonable and cannot be said to be excessive as or on the lower side as contended by the learned counsel for the KSRTC and the claimant in MFA 5825/2001 and in Cross objection 128/2003 respectively. Accordingly, we answer point NO.3 and pass the following order:

10. MFA 5825/2001 is dismissed. The Judgment and award passed by the Additional MACT-II, Raichur in MVC NO.100/96 is confirmed. MFA Cross Objection No.128/2003 is dismissed. MFA NO.5824/2001 is dismissed. MFA Cross Objection No.129/2003 is allowed in part and the compensation awarded to the claimants in MVC NO.99/96 is enhanced from Rs.3,08,000/- to Rs.3,55,000/-. The order of the Tribunal remains unaltered in all other respects including the rate of interest. The order regarding deposit in the name of the minor child ^{shall} stand modified in

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proportion to the enhancement made in the appeal. The amount deposited by the KSRTC at the time of preferring the appeal shall be transmitted to the Tribunal for disbursement to the claimant as per the terms of the award.

Sd/-
Judge

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Sd/-
Judge