



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 25<sup>TH</sup> DAY OF MARCH, 2025**

**BEFORE**

**THE HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA**

**MISCELLANEOUS FIRST APPEAL NO.785 OF 2023 (MV-I)**

**BETWEEN:**

DIVISIONAL CONTROLLER,  
KARNATAKA STATE ROAD TRANSPORT  
CORPORATION, MANGALURU DIVISION,  
MANGALURU, D.K. DISTRICT.

REPRESENTED HEREIN BY ITS  
CHIEF LAW OFFICER, BANGALORE.

...APPELLANT

(BY SRI. G. LAKSHMEESH RAO, ADVOCATE)

**AND:**

MRS. SHYAMALA B.,  
AGED ABOUT 56 YEARS,  
W/O. JAYARAMA D.,  
R/AT SRI. RAKSHA,  
KARANTHA'S COMPOUND,  
SOMESHWARA, UCHILA,  
MANGALURU - 23, D.K.

...RESPONDENT

(BY SRI. SANDESH SHETTY T., ADVOCATE)

THIS MISCELLANEOUS FIRST APPEAL IS FILED  
U/S 173(1) OF MOTOR VEHICLES ACT, 1988 PRAYING TO SET  
ASIDE THE JUDGMENT AND AWARD BY THE HON'BLE COURT





OF THE MOTOR VEHICLE ACCIDENT CLAIMS TRIBUNAL-V AND IN THE COURT OF IV ADDITIONAL DISTRICT JUDGE, D.K., MANGALURU IN M.V.C.NO.1398/2017 DATED: 29.10.2022. THE APPELLANT-CORPORATION FURTHER PRAYS FOR AWARD OF SUCH OTHER JUST AND EQUITABLE RELIEF THAT THE HON'BLE COURT DEEMS FIT IN THE CIRCUMSTANCES OF THE CASE IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

### **ORAL JUDGMENT**

Challenge in this appeal is the order that is rendered by the Motor Accident Claims Tribunal-V, Dakshina Kannada, Mangaluru in M.V.C.No.1398/2017 dated 29.10.2022.

2. The respondent/claimant filed a petition claiming compensation of ₹20,00,000/- on the ground that she sustained grievous injury in a motor vehicle accident and that the said accident occurred due to the negligence on part of the driver of the appellant. The Tribunal through



the impugned order awarded a sum of ₹6,60,100/- as compensation.

3. Projecting that no amount is liable to be paid by it as compensation the present appeal is filed.

4. The matrix of the case as projected by the respondent/claimant before the Tribunal is that on 30.10.2016 while she was traveling in the appellant's bus by sitting at window side of the back seat, the driver of the bus drove the same negligently and in a rash manner on the road humps and due to repeated jump of the bus, the right elbow portion of the respondent rubbed to the glass and iron portion of the window thereby she sustained crush injury and comminuted fracture of lower end of humerus and upper end of ulna coupled with dislocation of elbow joint.

5. Learned counsel for the appellant argued at length that the version projected by the respondent is false and indeed the respondent was putting her elbow outside the bus through window opening negligently due



to which the elbow portion hit the opposite coming vehicle and thereby she sustained injuries. Learned counsel stated that though a definite plea in this regard was taken, without considering the same the Court ordered the appellant to pay compensation which is unjustifiable.

6. The submission that is made by learned counsel for the respondent Sri Sandesh Shetty T., is that the respondent sustained injuries only because of the rash and negligent driving of the driver of the appellant and the respondent established her version in clear terms before the Tribunal and therefore the Tribunal awarded compensation and directed the appellant to pay the same.

7. In reply to the submission thus made, Sri G.Lakshmeesh Rao, learned counsel for the appellant submitted that though the driver of the appellant was charge-sheeted for the offences punishable under Sections 279 and 338 of Indian Penal Code, he was acquitted by the competent Court.



8. The respondent who examined herself as PW.1 narrated manner of happening of accident before the Tribunal. In support of her contention she also produced Ex.P.2 – copy of complaint, Ex.P.1 – certified copy of FIR, Ex.P.4 – IMV report, Ex.P.5 – spot mahazar and Ex.P.8 – charge-sheet. But no material whatsoever was produced by the appellant which gives details of the vehicle which hit the elbow respondent. If two vehicles come so closure to each other which is impermissible under law, one of them would be at fault. If the driver of the other vehicle, as contended by the appellant, was at fault, the driver of the appellant, who was on wheels at the time of the accident or the conductor present therein ought to have complained the matter to the competent authority immediately after the accident or soon thereafter. However, no such complaint was given by any of the employees of the appellant including its officials. Taking a plea does not *ipso facto* mean that the said plea is required to be considered by the Court. Only when convincing material in the form of evidence is produced to establish the plea taken, the same



will be considered. In the case on hand, there is no material on record in proof of the version of the appellant regarding the manner in which the respondent sustained injuries.

9. On the other hand, by all the evidence produced the respondent succeeded in establishing her version. Therefore, this Court is of the view that the Tribunal did not err in fastening liability upon the appellant and ordering the appellant to pay the compensation as ordered.

10. Learned counsel for the appellant also raised a contention with regard to the contributory negligence on part of the respondent. Learned counsel contended that the respondent being a Teacher ought not to have stretched her hand outside the window thereby paving way for hitting the same by another vehicle. However, the version of the respondent is that as the driver of the appellant drove the bus in a rash and negligent manner even on humps of the road, her hand hit the glass and iron



portion of the window and thereby she sustained injuries. Hence, the aspect of contributory negligence cannot be considered.

11. Another plea that is taken by the appellant is in respect of the amount that is awarded as compensation. The Tribunal through the impugned order awarded a sum of ₹6,60,100/- as compensation divided under the following heads :-

A.	Pain and sufferings	₹1,00,000/-
B.	Medical and other incidental expenses	₹2,46,000/-
C.	Loss of earning during laid up period	₹38,000/-
D.	Loss of future income on account of physical disability	₹1,88,100/-
E.	Loss of amenities of life and disfigurement	₹40,000/-
F.	Attendant, food, nourishment and conveyance charges	₹23,000/-
G.	Future medical expenses	₹25,000/-
	<b>Total</b>	<b>₹6,60,100/-</b>

12. The respondent succeeded in establishing that she sustained bone deep injury over right lower arm, comminuted fracture of lower end of humerus and upper end of ulna, dislocation of elbow joint, dislocation of



superior radio ulna joint with loss of skin and soft tissue. The respondent also established that she underwent open reduction and internal fixation with 'K' wire and external fixator and that wound debridement and skin drafting was done.

13. Though the respondent projected before the Tribunal that she was earning ₹59,149/- per month as Teacher and succeeded in establishing her occupation and income, the Tribunal took the notional income of the appellant as ₹9,500/- and proceeded to award compensation with necessary calculation under the heads 'loss of future income on account of disability' and 'loss of earning during laid-up period'. The compensation that is granted under all heads is reasonable. The order of the Tribunal discloses discussion on each and every aspect of the case. This Court therefore is of the view that the compensation that is granted by the Tribunal is highly justifiable. Thus, there are no grounds to interfere with the well reasoned order of the Tribunal.



Resultantly, the appeal stands dismissed.

**Sd/-  
(DR.CHILLAKUR SUMALATHA)  
JUDGE**

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List No.: 19 SI No.: 2