

---

**(2002) 08 KAR CK 0077**

**In the Karnataka High Court**

**Case No :** Miscellaneous First Appeal No's. 3446 and 3767 of 1997 (MVC)

Ramesh Lal alias Ramesh

APPELLANT

Vs

National Insurance Company Limited and Another

RESPONDENT

---

**Date of Decision :** 13-08-2002

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 279, 304 A, 337

**Citation :** (2003) ACJ 134 : (2002) ILR (Kar) 5119 : (2002) 6 KarLJ 82 : (2002) 3 KCCR 2062

**Hon'ble Judges :** Tirath S. Thakur, J;D.V. Shylendra Kumar, J

**Bench :** Division Bench

**Advocate :** C.R. Goulay, in M.F.A. No. 3767 of 1997, O. Mahesh,-1 in M.F.A. No. 3446 of 1997 and Appellant-2 served in M.F.A. No. 3446 of 1997, for the Appellant; C.R. Goulay in M.F.A. No. 3446 of 1997, O. Mahesh, for Respondent-1 in M.F.A. No. 3767 of 1997 and Repondent-2 served in M.F.A. No. 3767 of 1997, for the Respondent

---

## **Judgement**

1. These two appeals arise out of an order passed by the Motor Accidents Claims Tribunal at Bangalore in M.V.C. No. 2081 of 1995 whereby a sum of Rs. 6,35,000/- with interest at 6% p.a. has been awarded as compensation for the injuries sustained by the claimant in a motor vehicle accident. While M.F.A. No. 3446 of 1997 filed by the National Insurance Company Limited seeks dismissal of the claim petition or reduction of the amount awarded to the claimant. M.F.A. No. 3767 of 1997 filed by the claimant seeks a suitable enhancement of the award amount.

2. The claimant was on 2-6-1995 travelling by an autorickshaw bearing registration No. CAA 774. When the autorickshaw reached near Bannerghatta Main Road, it collided with a motor-car bearing registration No. KA 04 M 4002 resulting in the death of the autorickshaw driver and serious injuries to the claimant. The claimant was shifted to Sanjay Gandhi Hospital for treatment, where X-rays confirmed fractures of left L-2 vertebra and 4th right rib. The spinal injury sustained by the claimant resulted in paraplegia i.e., loss of sensation

below the waist. Continuous treatment has not helped the claimant to regain sensation with the result that the claimant has to use a catheter for passing urine and bags for passing stool. A claim petition was in due course filed by the claimant claiming a sum of Rs. 10 lakhs towards compensation. The claim petition alleged that the accident in question had taken place entirely due to the rash and negligent driving of the autorickshaw by its driver. The claim was opposed by the owner of the autorickshaw and the insurance company with which the same was insured, giving rise to three issues which the Tribunal framed in the following words:

"(1) Whether the petitioner proves that the accident took place on 2-6-1995 at 2.45 p.m. was due to rash and negligent driving of autorickshaw No. CAA 774 by its driver by dashing to a moving car as alleged?

(2) Whether the petitioner is entitled to compensation? If so, what amount and from whom?

(3) To what order or award?"

3. By the impugned judgment, the Tribunal held issue (1) in favour of the claimant and recorded a specific finding that the accident in question had taken place on account of the rash and negligent driving of the autorickshaw by its driver. Insofar as issue (2) was concerned, the Tribunal found that the injury sustained by the claimant had resulted in 100% permanent disability. It assessed the future loss of earning at a sum of Rs. 2,52,000/- taking the income of the claimant at Rs. 50/- per day and Applying the multiple of 14. In addition, it awarded in favour of the claimant, a sum of Rs. 1,50,000/- towards pain and suffering resulting from injuries and a similar amount towards permanent loss of amenities in life. To that amount, it added a sum of Rs. 15,000/- towards medical expenses, Rs. 18,000/- towards loss of income for one year and Rs. 25,000/- towards purchase of catheter for passing urine and stool and a similar amount towards future medical expenses making a total of Rs. 6,35,000/- made recoverable from the owner of the autorickshaw and the insurance company jointly and severally. Aggrieved by the said judgment and award, the insurance company as also the claimants have filed the present appeals as already noticed earlier.

4. Mr. O. Mahesh, learned Counsel appearing for the insurance company in M.F.A. No. 3446 of 1997, argued that the Tribunal was in error in holding that the accident in question had occurred on account of the rash and negligent driving of the autorickshaw by its driver. He submitted that from the material placed on record before the Tribunal, it was evident that the accident had if not wholly at least partially occurred on account of the rash and negligent driving of the motor-car involved in the accident. The Tribunal had however erroneously overlooked that aspect and awarded the entire amount of compensation against the appellants in the aforementioned appeal. Alternatively, he submitted that there was no material before the Tribunal to show that the claimant was himself an

autorickshaw driver as alleged by him or that he was earning a sum of Rs. 50/- per day as held by the Tribunal. It was contended that the Tribunal was in error in placing reliance upon the statement made by the claimant and awarding compensation on that basis.

5. Mr. Goulay, Counsel appearing for the appellant in M.F.A. No. 3767 of 1997, on the other hand argued that the Tribunal had correctly concluded that the accident in question had taken place on account of the rash and negligent driving of the autorickshaw by its driver. He also submitted that the claimant was himself a licensed auto driver earning upto Rs. 120/- per day. The Tribunal had according to the learned Counsel committed an error in treating the daily income at Rs. 50/- only. It was urged that the amount of compensation awarded by the Tribunal towards pain and suffering and loss of amenities was on the lower side which required to be suitably enhanced having regard to the fact that the disability resulting from the injuries was total and permanent. The disability would make it necessary for the claimant to take assistance of an attendant for attending calls of nature and even for taking a bath. It was urged that the Supreme Court had in R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, , awarded a sum of Rs. 1,50,000/- towards pain and suffering and a similar amount towards loss of amenities to a 52 year old lawyer who had like the claimant in the present case suffered traumatic paraplegia on account of the injuries sustained in a motor vehicle accident. The Tribunal should have, it was submitted, awarded a higher amount having regard to the age of the claimant and the reduced purchasing power of the rupee. The award of compensation for loss of future income was also according to the learned Counsel on the lower side because of the use of a lower multiple.

6. We have given our anxious consideration to the submissions made by the learned Counsel at the Bar and perused the records. Three questions arise for consideration in these appeals, namely:

(1) Whether the accident in question had occurred on account of the rash and negligent driving of the autorickshaw by its driver as alleged by the claimant and in particular whether the motor-car involved in the accident was either wholly or partially responsible for causing the accident?

(2) Whether the amount of compensation awarded to the claimant towards pain and suffering and loss of amenities is inadequate? and

(3) Whether the amount of compensation awarded by the Tribunal towards loss of future earning requires any alteration?

7. Re: Question No. (1).--The Tribunal has relying upon the evidence placed on record returned a clear finding that the accident in question had taken place on account of the rash and negligent driving of the autorickshaw by its driver. Apart from the statement made by the claimant who was himself a passenger in the said vehicle, the Tribunal placed reliance upon the First Information Report registered against the autorickshaw driver in Crime No. 220 of 1995 for the

offence under Sections 279, 337 and 304-A of the Indian Penal Code. Documents prepared during the investigation of the said case and comprising spot panchanama, Ex. P. 3, I.M.V. Report, Ex. P. 4 and spot sketch, Ex. P. 2 were also relied upon by the Tribunal to conclude that the accident had taken place on account of the rash and negligent driving by the auto driver. We do not see any error or irrationality in the view taken by the Tribunal insofar as that part of the controversy is concerned. That is so especially when the insurance company or the owner had not let in any evidence to show that the accident had occurred not because of the rashness or negligence of the auto driver, but because of any other reason including the alleged rash and negligent driving of the car involved in the accident as was sought to be argued before us. The statement made by the claimant gives a graphic account of how the autorickshaw was being driven at a high speed by its driver unmindful of the safety of the occupant and how the said rash and negligent act resulted in the accident causing serious injuries to the claimant. That version has not been shattered in the cross-examination to render the same unworthy of credit. The documents referred to earlier give the details regarding the accident by reference to the place of occurrence and support the view that the accident had taken place only because of the rashness and negligence of the auto driver. We have therefore no hesitation in affirming the finding recorded by the Tribunal that the accident occurred because of the rash and negligent driving of the autorickshaw by its driver.

8. The argument of Mr. Mahesh that the driver, owner and the insurance company of the car involved in the accident were necessary parties and that the Tribunal was under an obligation to determine whether the car was partially responsible for causing the accident has not appealed to us. The objections filed on behalf of the insurance company did not set up the defence that the accident in question had occurred on account of the rash and negligent driving of the car driver involved in the accident. In the absence of any such plea in the objections filed by the insurance company and the owner of the autorickshaw, there was no occasion for the Tribunal to record a finding regarding the same. The Tribunal was not required to make out a case for the owner of the autorickshaw or the insurance company if no such case was set up by them in their objections. Just because another vehicle was also involved in the accident did not necessarily give rise to the presumption that the accident had taken place on account of any contributory negligence of the driver of any such vehicle. A defence based on contributory negligence has to be pleaded by the party setting up the same and it is only when such a defence is set up that it may become necessary for the Tribunal to examine that aspect of the matter. Since no such defence was set up by the owner of the autorickshaw or the insurance company there was no necessity for the Tribunal to go into the same. Question No. (1) is accordingly answered in the affirmative and the finding recorded by the Tribunal that the accident had taken place on account of the rash and negligent driving of the autorickshaw driver is affirmed.

9. Re: Question No. (2),--The Tribunal has awarded a sum of Rs. 1,50,000/-

towards pain and suffering and a similar amount towards loss of amenities resulting from the disability arising out of the injuries sustained by the claimant. In doing so, the Tribunal has placed reliance upon the decision of the Supreme Court in Hattangadi's case, *supra*. That case also involved a similar disability resulting from an injury sustained in a motor vehicle accident. The injured was a 52 year old practising lawyer who had suffered paraplegia below the waist resulting in total permanent disability. The Court had in that background awarded a sum of Rs. 3 lakhs on the aforementioned counts. That amount in our opinion needs a suitable enhancement in the present case. We say so for two reasons. Firstly, because the injured in Hattangadi's case, *supra*, was aged about 52 years i.e., nearly 15 years elder to the claimant in the present case. The loss of amenities and the pain and suffering that the claimant has to undergo will therefore extend over a longer period. Secondly, because the award of Rs. 1,50,000/- towards compensation for pain and suffering and a similar amount towards loss of amenities related to an accident that had taken place in the year 1980. The said amount was made payable by the Supreme Court with interest at the rate of 6% p.a. in the year 1995. When the payment was actually made, the principal amount awarded to the claimant would be loaded with interest component also. That amount would over a period of 15 years between 1980 and 1995 be nearly doubled. In the circumstances, award of a sum of Rs. 1,50,000/- towards pain and suffering and an equal amount towards loss of amenities in the year 1995 may not be a measure to fully compensate the claimant in this appeal on the analogy of the award made in Hattangadi's case, *supra*. Taking into consideration all these circumstances, we deem it just and proper to enhance the amount of compensation payable to the claimant on account of pain and suffering by Rs. 25,000/- and a similar amount insofar as compensation for loss of amenities is concerned. The net effect therefore will be that as against 3 lakhs awarded by the Tribunal on both these counts, the claimant shall be entitled to a sum of Rs. 3,50,000/-.

10. That brings us to the question whether the amount of compensation towards future loss of income has been properly determined. The claimant was an auto driver by avocation. The statement made by him on oath to that effect has not been seriously disputed in the cross-examination. The Tribunal therefore rightly concluded that the loss of income on account of the disability shall have to be determined on the premise that the claimant was an auto driver. The argument of Mr. Mahesh that the driving licence was not produced by the claimant to support his claim of being an auto driver has not impressed us. In reply to a question in cross-examination, the claimant had stated that the driving licence had been seized by the police on account of his failure to wear a proper uniform while driving his vehicle. There was no challenge to that statement in the cross-examination of the witness. In the circumstances, we have no difficulty in holding that the claimant was a licensed auto driver.

11. The real question is whether the Tribunal was justified in taking the claimant's income to be Rs. 50/- per day and in determining the loss of future

earning by applying a multiple of 14. Insofar as the monthly income of the claimant is concerned, the claim petition alleged that he was earning Rs. 100/- per day or Rs. 3,000/- per month. Before the Tribunal, the claimant asserted that his income was Rs. 120/- per day. Neither of these two statements are supported by any material or corroborative evidence. Even when the claimant was according to the statement made by him working for one Sri Mehboob in City Market, Bangalore, no oral or documentary evidence in support of his monthly income was adduced. It was in these circumstances that the Tribunal took a sum of Rs. 50/- as the daily income of the claimant. We do not find any reason to take a different view. It was for the claimant to adduce cogent evidence in support of his claim that he was earning a sum of Rs. 100/- or Rs. 120/- per day. By adducing no evidence except his own statement, the claimant took a calculated risk of his version being rejected or held to be exaggerated. Suffice it to say that in the absence of any material before us to show that the claimant was earning anything more than Rs. 1,500/- per month from his employment as an auto driver, we cannot alter the said amount.

12. The next question then is whether the multiple chosen by the Tribunal was appropriate. The multiple applied for determination of compensation depends upon the age of the victim. The Tribunal has held that the claimant was at the time of the accident 39 years old. That finding has been seriously assailed by the claimant. In our view also the challenge to that finding is well-founded. The claimant has in the claim petition and his deposition before the Court shown his age to be 35 years at the time of the accident. That version finds support from the wound certificate marked Ex. P. 5 issued by Gandhi Institute of Accident Rehabilitation and Physical. Medicine, Bangalore. The said certificate was issued shortly after the accident i.e., on 1-7-1995. The claim petition was filed after the issue of the said certificate. There is therefore little chance of the age having been wrongly declared with a view to claiming higher compensation. A reference can also be made to the Concession Certificate, Ex. P. 53 issued on 21-8-1996 in which the age of the claimant was shown to be 38 years. This means that at the time of the accident, the claimant was around 37 years old. In the admission card issued by the J.J. Group of Hospitals, Bombay, also his age was shown to be 36 years old. There is no material from which the Tribunal could have concluded that the age of the claimant was at the relevant time between 38 to 39 years old. In the circumstances, we are inclined to hold that the claimant was at the time of the accident between 35 to 37 years old.

13. In V.S. Gowdar Vs. The Oriental Insurance Company Limited and Another, , the Full Bench of this Court has held that the multiple applicable to the claims made by victims between the age group of 33 to 37 years would be 15. Applying the said multiple, the amount payable to the claimant would come to Rs. 2,70,000/- (1500 x 12 x 15). Insofar as the amount awarded by the Tribunal under the other heads are concerned, we do not see any reason to make any modification.

14. To sum up, the claimant shall be entitled to the following amounts towards compensation:

(1)

Towards pain and suffering ...

Rs. 1,75,000

(2)

Towards loss of amenities ...

Rs. 1,75,000

(3)

Towards medical expenses ...

Rs. 15,000

(4)

Towards purchase of catheters ...

Rs. 25,000

(5)

Towards future medical expenses...

Rs. 25,000

(6)

Towards loss of income for one year

Rs. 18,000

(7)

Towards loss of future income ...

Rs. 2,70,000

Total

Rs. 7,03,000

15. The above amount shall be payable to the claimant with interest at 8% p.a. from the date of the claim petition till actual deposit.

16. M.F.A. No. 3446 of 1997 accordingly fails and is hereby dismissed, whereas M.F.A. No. 3767 of 1997 succeeds in part and is allowed in the manner and to the extent indicated above. The parties are left to bear their own costs.