

Sri V. Santhosh Kumar vs The Divisional Manager on 19 January, 2016

**Before the Motor Accident Claims Tribunal at Bangalore
(SCCH-8)**

Present: Shri P.J. Somashekar B.A., LL.B.,
XII Additional Small Causes Judge
and Member, M.A.C.T., Bangalore.

Dated this the 19th day of January 2016

M.V.C. No.7867/2010

Petitioner Sri V. Santhosh Kumar,
S/o M. Venugoplan,
Aged about 26 years,
Residing at No.169,
Cable Ravi Building,
T.V.S. Road, Attibele Town,
Anekal Taluk, Bangalore.
(Sri Guru Ganesh Associates Advocates)

V/s

2. Sri Kamalesh Reddy,
S/o Prakash Reddy,
Aged about 43 years,
BMTC Driver,
Badge No.14072, 32nd Depo,
Suryanagar, Chandapura,
Neralur Village, Attibele Hobali,
Anekal Taluk,
Bangalore Rural District.
(Sri O.D. Byresha, Advocate)

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(SCCH-8) M.V.C. No.7867/2010

3. United India Insurance Company
Ltd., No.40, 1st Floor,
Lakshmi Complex,
Opposite Vanivilasa Hospital,
K.R. Road, Bangalore - 560 002.
Policy No.18009.
(Sri Udaya Krishna, Advocate)

4. Reliance General Insurance Co. Ltd.,
No.4/3/1 and 3/2, 11th Main,
3rd Block, Jayanagar,
Bangalore - 61.
(Sri K. Chandra Shekhar, Advocate)

JUDGMENT

This is a claim petition filed by the petitioner against the respondents under Section 166 of Motor Vehicles Act, 1989, for seeking compensation of Rs.13,00,000/- for the injuries sustained by him in a road traffic accident.

2. The brief facts of the claim petition are as under:

The petitioner in his claim petition has alleged that, on 26-03-2010 after finishing his work, he was returning to his house through his two wheeler bearing No.KA-01-EH-1271 slowly and cautiously on the left side of the road by observing all traffic rules and regulations at

3 (SCCH-8) M.V.C. No.7867/2010 about 6.30 a.m., all of a sudden the driver of the bus bearing No.KA-01-F-8739 has drove the same with high speed in a rash and negligent manner, without observing the traffic rules and regulations came from back side by overtaking his right side of his vehicle and straight away drove the bus towards the left side, without any caution and immediately stopped the bus, due to the said act of the driver of the bus, he dashed back side of the bus, as a result he was fell down and sustained grievous injuries. So, immediately he was shifted to Sparsh Hospital, wherein he took the treatment as an inpatient for a period of one week and he was discharged from the hospital on 01-04-2010. So, immediately after the discharge from the hospital, he was totally under bed rest and he was taken care by his parents and the doctor has been advised to take complete bed rest. So, he could not sit nor walk or do daily work as earlier. On 13-04-2010 he wrote a complaint against the second respondent, who was the driver of the bus bearing No.KA-01-F-8739 to 4 (SCCH-8) M.V.C. No.7867/2010 take appropriate and necessary action against the driver of the bus for his rash and negligent driving, since he was not in a position to walk and lodge the complaint. So, he gave instructions to his father to go and lodge the complaint at Attibele Police Station. So, on 13-04-2010 his father had been to the Attibele Police Station to lodge the complaint against the second respondent, but he was surprised that the driver of the bus has been lodged the complaint against him by colluding with the police just to escape from his fault. So, initially the police have refused to receive the complaint from his father and his father has explained about the accident which was caused by the second respondent and they have received the complaint, but they did not taken any action against the second respondent. So, he filed the private complaint under Section 200 of Criminal Procedure Code and it was referred to the police for investigation under Section 156(3) of Criminal Procedure Code, but after investigation, they have filed the B. report. So, he filed 5 (SCCH-8) M.V.C. No.7867/2010 the protest petition which is pending for consideration. The accident was occurred on account of rash and negligent driving of the bus driver and the PCR has been registered against the respondent No.2 as PCR No.251/2010.

3. Prior to the accident he was hale and healthy working as a Area Manager by getting monthly income of Rs.31,963/-, due to the accidental injuries, he could not do the work as before. The accident in question was taken place on account of rash and negligent driving of the bus driver. So, the respondents are jointly and severally liable to pay the compensation and prays for allow the claim petition.

4. In response of the notice, the respondents were appeared through their respective counsel, but inspite of sufficient time, the first respondent did not file his written statement. So, the written statement of the first respondent taken as not filed. The respondent Nos.2 to 4 were filed their independent written statement. 6 (SCCH-8) M.V.C. No.7867/2010

5. The second respondent being the driver of the bus in his written statement has alleged that the claim petition filed by the petitioner is not maintainable in law or on facts and he has denied the averments made in column No.1 to 4 of the claim petition and he has alleged that he has lodged the complaint against the rider of the motor cycle at Attibele Police Station and police have registered the case against the petitioner in their police station Crime No.78/2010 for the offences punishable under Section 279 and 337 of IPC and he has denied that as on the date of the alleged accident, he drove the offending vehicle with high speed in a rash and negligent manner, on his negligence the accident was occurred and he has admitted that the first respondent is the RC owner of the bus bearing No.KA-01-F-8739 which was duly insured with the insurance company and he has denied that they are jointly and severally liable to pay the compensation and prays for reject the claim petition. 7 (SCCH-8) M.V.C. No.7867/2010

6. The third respondent in its written statement has alleged that the claim petition filed by the petitioner is not maintainable in law or on facts and he has denied the averments made in column No.1 to 6 and 8 to 16 of the claim petition and he has also denied about the issuance of the policy in favour of the first respondent in respect of the offending vehicle and the petitioner has to strict proof of the same and he has alleged that the accident in question was taken place on account of rash and negligent riding of the petitioner, since he has not followed the traffic rules nor regulations. So, he is not liable to pay any compensation to the petitioner and he has denied that the petitioner was proceeding in a motor cycle slowly and cautiously by observing all traffic rules and regulations, the driver of the offending vehicle has drove the same with high speed in a rash and negligent manner, without giving any signal nor indication has stopped the bus. Thereby, the accident was occurred and the petitioner has sustained the injuries and he has 8 (SCCH-8) M.V.C. No.7867/2010 alleged that either the owner of the offending vehicle nor the jurisdictional police have not complied the mandatory provisions under Section 134(C) and 158(6) of the M.V. Act in furnishing better particulars and the claim petition is not maintainable for non joinder of necessary parties and he has denied the age, avocation and income of the petitioner and prays for reject the claim petition.

7. The fourth respondent in its written statement has alleged that the claim petition filed by the petitioner is not maintainable in law or on facts and there is no charge sheet against him and it is a self accident. Thereby, he is not liable to pay any compensation and the accident was occurred on account of negligence of the petitioner only it amounts to self accident and he has alleged that either the owner of the offending vehicle nor the jurisdictional police have not complied the mandatory

provisions under Section 134(C) and 158(6) of the M.V. Act in furnishing better particulars and the petitioner is not a third party and he was not the owner of the vehicle 9 (SCCH-8) M.V.C. No.7867/2010 bearing No.KA-01-EH-1271 and he has denied the age, avocation and income of the petitioner and prays for reject the claim petition.

8. On the basis of the pleadings of the parties, my Predecessor has framed the following issues.

1. Whether the petitioner proves that he has sustained grievous injuries as mentioned in wound certificate, in a road traffic accident on 26-03-2010 at about 6.40 a.m., on NH-7, Bangalore-Hosur main road, near Neralur Village bus stand, Attibele Hobli, Anekal Taluk, due to the rash and negligent driving of the driver of the BMTC Bus bearing No.KA-01-F-8739?

2. Whether petitioner is entitled for any compensation? If so to what extent and from whom?

3. What Order or Award?

9. The petitioner in order to prove his case has examined himself as PW1 and got marked the documents as Ex.P1 to Ex.P20 and he has examined five more 10 (SCCH-8) M.V.C. No.7867/2010 witnesses on his behalf as PW2 to PW6 and got marked the documents as Ex.P21 to Ex.P26. The third respondent has examined its officer as RW1 and got marked the documents as Ex.R1 and Ex.R2 and the second respondent has been examined himself as RW2. The fourth respondent has examined its Deputy Manager as RW3 and got marked the document as Ex.R3.

10. The learned counsel for the petitioner and the respondents were filed the written arguments. Heard arguments on both side.

11. My finding on the above issues are as under:

Issue No.1: Negative

Issue No.2: Does not survive for court consideration.

Issue No.3: As per the final order for the following.

REASONS

12. Issue No.1:

The petitioner being said to be the injured has approached the court on the ground that on 26-03-2010, 11 (SCCH-8) M.V.C. No.7867/2010 he was proceeding in a motor cycle slowly and cautiously by observing all traffic rules and regulations, the driver of the bus has drove the same with high speed in a rash and negligent manner, without observing the traffic rules and regulations and without giving any indication immediately stopped the bus. So, he lost the control over the

vehicle and dashed behind the bus. The accident was taken place on account of rash and negligent driving of the bus driver. So, he was fell down and sustained the grievous injuries and took the treatment at Sparsh Hospital and he was in the hospital could not file the complaint against the bus driver. So, he has instructed his father to lodge the complaint, when his father had been to the police station and came to know that the second respondent being the driver of the BMTC bus has lodged the complaint against him on the ground that the accident was occurred on his negligence, but the accident was occurred on account of rash and negligent driving of the BMTC bus driver. Though, his father has 12 (SCCH-8) M.V.C. No.7867/2010 filed the compliant, but initially the police have not received the complaint, later on it was received, but they did not taken any action. Thereby, he has filed the private complaint and it was referred to the police for investigation, but the police filed the B report and he has filed the protest petition which is pending for consideration. Thereby, the petitioner has filed the instant claim petition against the respondents.

13. The petitioner in order to prove his case has filed his affidavit as his chief examination as PW1, in which he has stated that on 26-03-2010 after finishing his work, was proceeding towards his house through his two wheeler bearing No.KA-01-EH-1271 slowly and cautiously on the left side of the road by observing all traffic rules and regulations, when he was reached at about 6.30 a.m., near Neralur, all of a sudden, the driver of the bus bearing No.KA-01-F-8739 has drove the same with high speed in a rash and negligent manner, without observing the traffic rules and regulations came from 13 (SCCH-8) M.V.C. No.7867/2010 back side by overtaking his right side of his vehicle and straight away drove the bus towards the left side, without any caution and immediately stopped the bus, due to the said act of the driver of the bus, he dashed back side of the bus, as a result he was fell down and sustained grievous injuries. The accident was occurred on account of rash and negligent driving of the BMTC bus driver, but the second respondent being the driver has lodged the complaint before the Attibele Police against him on the ground that the accident was occurred on account of his negligence and the said facts was came to his knowledge only when his father had been to the police station to lodge the complaint. Thereby, he has filed the private complaint against the BMTC bus driver before the Addl. Civil Judge (Jr. Dn.) and JMFC, Anekal and private complaint has been registered as per PCR 251/2010 and the matter was referred to the jurisdictional police under Section 156(3) of Criminal Procedure Code and the police have filed the 'B' report and he has filed the protest 14 (SCCH-8) M.V.C. No.7867/2010 petition and the said matter is pending for adjudication. The PW1 in his cross examination has admitted that the police after investigation have charge sheeted against him and he has denied that the driver of the bus has stopped the bus nearby bus stop to facilitate the passengers who are getting down from the bus and he rode the motor cycle with high speed in a rash and negligent manner dashed against the BMTC bus and he has admitted that the bus driver has lodged the complaint against him on the ground that the accident was occurred on his negligence and he has also admitted the criminal case which was filed against him is pending before the Anekal Criminal Court and the motor cycle which belongs to his father and he has not produced any document to show that as on the date of the alleged accident, he was holding driving licence to ride the motor cycle and he has not challenged the charge sheet filed against him before the Hon'ble High Court and the police have filed the 'B' report in connection of the private complaint filed by him 15 (SCCH-8) M.V.C. No.7867/2010 and the BMTC bus driver on the very day of the accident has lodged the complaint against him.

14. The RW2 being the driver of the BMTC bus in his evidence has stated that he has filed the complaint against the rider of the motor cycle on the ground that the accident was occurred on the negligence of the rider of the motor cycle. So, the case has been registered against the rider of the motor cycle at Attibele Police Station in their police station Crime No.78/2010 for the offences punishable under Section 279 and 337 of IPC. The petitioner has filed the private complaint, it was referred to the police in order to overcome the complaint filed against the petitioner at Attibele Police Station and the police after investigation have filed the 'B' report. The RW2 in his cross examination has admitted that the rider of the motor cycle has caused the accident, when the bus was parking in the bus stop, at the time of panchanama, the conductor of the bus and the public were gathered on the spot and he has denied that he has overtaken the 16 (SCCH-8) M.V.C. No.7867/2010 motor cycle which belongs to the petitioner, without giving any indication has took the bus towards left side and the accident was occurred on his own negligence.

15. The PW4 who is said to be the conductor of the BMTC bus as on the date of the alleged accident in his evidence has stated that the bus was parking in the bus stop and the passengers were getting down from the bus and some of the passengers were getting into the bus. The rider of the motor cycle was came behind the bus with high speed in a rash and negligent manner dashed behind the bus. Though, the petitioner has examined the PW4 who is the eye witness, but with the permission of the court has cross examined the PW4 in his cross examination has denied that the accident was occurred on account of rash and negligent driving of the BMTC bus driver, since the BMTC bus driver, without giving any indication has took the bus towards left side.

16. The PW5 who is said to be the eye witness in his evidence has stated that the accident was occurred, when 17 (SCCH-8) M.V.C. No.7867/2010 the bus was parking in the bus stop, as he was getting inside the bus heard the sound and getting down and found that the rider of the motor cycle has caused the accident behind the bus. So, the learned counsel for the petitioner with the permission of the court has cross examined the PW5, in his cross examination has denied that the accident was taken place on account of rash and negligent driving of the BMTC bus driver, as the bus driver, without giving any indication has took the bus towards bus stand side, thereby the accident was occurred.

17. The PW6 who is the then Police Inspector of Attibele Police Station in his evidence has stated that one Kamalesh Reddy has filed the complaint, based on the complaint, has registered the case and visited the spot and drawn the panchanama and recorded the statement of the witnesses. The learned counsel for the petitioner with the permission of the court has cross examined the PW6, in his cross examination has admitted that the 18 (SCCH-8) M.V.C. No.7867/2010 accident was occurred near Neralur bus stop and he has denied that he has received the intimation from the Sparsh Hospital and the Sparsh Hospital authorities have registered the MLC and the accident was occurred on account of rash and negligent driving of the BMTC bus driver.

18. The petitioner in support of oral evidence has produced the documents marked as Ex.P1 to Ex.P26. Ex.P2 is the information filed by one Kamalesh Reddy who is the driver of the BMTC bus in which has stated that on 26-03-2010, he was the driver of the BMTC bus bearing No.KA-01-F-8739 was proceeding towards Attibele on Bangalore-Hosur NH-7 road and reached the Neralur bus stop

and parked the bus, when the passengers were getting down from the bus, the rider of the motor cycle was came from Bangalore side towards Hosur with high speed in a rash and negligent manner dashed behind the bus and sustained the injuries. So, immediately they were shifted the injured to the Sparsh 19 (SCCH-8) M.V.C. No.7867/2010 Hospital through 108 ambulance. The accident was occurred on account of rash and negligent riding of the rider of the motor cycle. So based on the information Attibele Police have registered the case against the rider of the motor cycle in their police station Crime No.78/2010 for the offences punishable u/s 279 and 337 of IPC.

19. The learned counsel for the petitioner has much argued that the driver of the BMTC bus has took the bus towards left side, without giving any indication, thereby the accident was occurred. But, whereas the Ex.P2 is reflects that the accident was occurred when the bus was parking in the bus stop. If at all the accident was occurred while taking towards left side of the bus stop, without giving any indication, the recitals would have appeared as submitted by the learned counsel for the petitioner in Ex.P2. But, Ex.P2 nowhere appears that the accident was occurred, when the bus driver has took the bus towards bus stop, without giving any indication nor 20 (SCCH-8) M.V.C. No.7867/2010 signal, if that is so, the matter would have different. Therefore, Ex.P2 reflects that the accident was occurred, when the BMTC bus was parking in the bus stop to accommodate the passengers who are getting down from the bus and getting into the bus. So, the arguments advanced by the learned counsel for the petitioner on this aspect holds no water.

20. Ex.P4 and Ex.P5 are the panchanama and sketch drawn by the I.O., clearly reflects that the accident was occurred towards extreme northern side of the road and there is a bus stop by the side of the road, that is the reason why, the BMTC bus driver has parked the bus nearby bus stop. Though, there is a sufficient space towards southern side of the bus to avoid the accident, but the reasons best known to the petitioner has not taken minimum care to avoid the accident, but he took the motor cycle towards northern side of the road where the bus was parking near the bus stop. So, on his own negligence, the accident was occurred and it was not 21 (SCCH-8) M.V.C. No.7867/2010 occurred on account of rash and negligent driving of the BMTC bus driver. Even while cross examination of the RW2, the learned counsel for the petitioner has not at all elicited that there was no space towards southern side of the road. Thereby, the accident was occurred on his own negligence, if that is so, the matter would have different and moreover the learned counsel for the petitioner has examined the eye witnesses i.e., bus conductor and the Investigation Officer, but nothing is elicited through them to show that the accident was occurred on account of rash and negligent driving of the BMTC bus driver. So, Ex.P4 and Ex.P5 are clearly reflects that the accident was occurred on account of rash and negligent riding of the petitioner, that is the reason why, the driver of the BMTC bus has lodged the complaint against the petitioner. The PW1 in his cross examination has categorically admitted that the BMTC bus driver has lodged the complaint against him on the ground that the accident was occurred on his own negligence. Though, he has filed the 22 (SCCH-8) M.V.C. No.7867/2010 private complaint, but the police have filed the 'B' final report. Though, the matter is pending before the Criminal Court it does not mean that the accident was occurred on account of rash and negligent driving of the BMTC bus driver, since the petitioner except Ex.P12 to Ex.P16 has not placed any materials to show that the accident was occurred on account of rash and negligent driving of the BMTC bus driver. So, mere production of Ex.P12 to Ex.P16 it does not mean that the accident was occurred on account of rash and negligent driving of

the BMTC bus driver. Ex.P22 is the outpatient record in which nowhere appears that the accident was occurred on account of rash and negligent driving of the BMTC bus driver. If at all the accident was occurred on account of rash and negligent driving of the BMTC bus driver, the hospital authorities would have recorded the same in the Ex.P22, but nothing is appeared in the Ex.P22 about the rash and negligent driving of the BMTC bus driver. So, the oral and documentary evidence on record nowhere 23 (SCCH-8) M.V.C. No.7867/2010 appears that the accident was occurred on account of rash and negligent driving of the BMTC bus driver. The petitioner has not established through independent witness that the accident was occurred on account of rash and negligent driving of the BMTC bus driver. Though, he has examined the bus conductor, eye witness and Investigation Officer, but their evidence will not help the petitioner to establish his case, on the other hand it will help the respondents to disprove the oral and documentary evidence of the petitioner. So, mere production of documents to show about his treatment is not a ground to accept the case of the petitioner, that the accident was occurred on account of rash and negligent driving of the BMTC bus driver, since the petitioner has failed to establish the rash and negligent driving of the bus driver.

21. The learned counsel for the petitioner has drawn the court attention on the judgment of the Hon'ble High Court of Madhya Pradesh reported in 2010 ACJ 656 in 24 (SCCH-8) M.V.C. No.7867/2010 between T. Subramaniam and others vs. Banwari Gurjar and others. On careful perusal of the above said decision, in the said decision the claimants being the parents of the deceased S. Kiruwananand were filed the claim petition for seeking compensation on the ground that the deceased was proceeding in a motor cycle, the offending vehicle driver i.e., bus driver has drove the same with high speed in a rash and negligent manner who was going ahead of the vehicle has stopped all of a sudden, without applying the indicators. So, the rider of the motor cycle has sustained grievous injuries. Though, he was taken to J.A.H. Hospital, Gwalior, where they were declared brought to be dead. On account of death, the claimants were filed the claim petition. The driver and owner of the bus remained ex parte. The insurer has denied its liability on the ground, the deceased was the cause for the accident. So, the Tribunal has dismissed the claim petition. Thus, the claimants were filed the appeal before the Hon'ble High Court of Madhya Pradesh 25 (SCCH-8) M.V.C. No.7867/2010 and the said appeal was came to be allowed. In the said judgment, the eye witnesses were deposed that the bus was being plied at an excessive speed and the charge sheet has been filed against the driver of the bus on the ground the accident was occurred on his negligence and the driver of the bus did not enter the witness box.

22. In the instant case, though the petitioner has examined the conductor of the bus, eye witness and Investigation Officer, but nothing is elicited to show that the accident was occurred on account of rash and negligent driving of the BMTC bus driver. The RW2 being the driver of the bus has entered the witness box and clearly stated that the accident was occurred on account of rash and negligent riding of the petitioner. Though, the learned counsel for the petitioner has cross examined the RW2 who is the driver of the BMTC bus, but nothing is elicited to disbelief his evidence and moreover the charge sheet has been filed against the very petitioner. Therefore, I do respect to the decision relied by the 26 (SCCH-8) M.V.C. No.7867/2010 learned counsel for the petitioner, but the facts and circumstances of the present case and the above said decision are entirely different. Thus, this court drawn its attention on the decision reported in 2007 ACJ 1928 in between Oriental

Insurance Co. Ltd., vs. Premlata Shukla and others reads like thus;

Motor Vehicles Act, 1988, section 166 -

Claim application - Maintainability of -

Negligence - Proof of rashness and negligence of driver of offending vehicle is sine qua non for maintaining claim application - Collision between a van and truck and a passenger in van sustained fatal injuries - Registration number of truck could not be noted - On the basis of F.I.R. lodged by a passenger in van, criminal case against driver of truck was initiated but had to be closed as the truck and its driver could not be traced - Claimants filed claim against driver, owner and insurance company of van - Tribunal on the basis of evidence including F.I.R. held that van driver was not driving rashly and negligently and dismissed the claim 27 (SCCH-8) M.V.C. No.7867/2010 application - High Court relied upon the deposition of two witnesses and observed that as F.I.R. was not legally proved, driver of van should be held guilty of rash and negligent driving - F.I.R. had been relied upon by the parties on both sides and the claimants had made a reference to it in their claim application - F.I.R. was marked as an exhibit as both the parties intended to rely upon it - Whether the Tribunal was justified in relying upon the F.I.R.

irrespective of the fact that contents of the document have been proved or not - Held:

yes; judgment of High Court set aside and claim application dismissed.

23. On careful perusal of the above said decision, in the said decision the deceased Shivanandan Prasad Shukla was traveling in a tempo trax for going to Allahabad from Bhopal. The accident was occurred in between the tempo trax and truck, but the registration number of truck could not be noticed and the truck also could not be traced out. A first information report was

28 (SCCH-8) M.V.C. No.7867/2010 lodged by one of the occupants of tempo trax. The investigation was conducted based on the information for the offences punishable under Section 304(A) of the Indian Penal Code, as the case was registered against the truck driver, during the investigation the truck could not be traced out. So, the case was closed. The legal heirs of Shivanandan were filed the claim petition before the Motor Accident Claims Tribunal and the same was dismissed by the Tribunal on the ground the first information report has been filed against the truck driver and the case was registered against the driver of the truck. So, there is no rash and negligent driving on the part of the tempo trax driver, as the claimants were filed the claim petition against the driver, owner and insurer of the tempo trax. So, the claimants were filed the appeal before the Hon'ble High Court and the Hon'ble High Court held that there is a rash and negligent driving of the tempo trax driver. So, the insurance company has challenged the judgment of the Hon'ble High Court before 29 (SCCH-8) M.V.C. No.7867/2010 the Hon'ble Supreme Court and the Hon'ble Supreme Court held that the Tribunal on the basis of the evidence including the F.I.R. held that the tempo trax driver was not driving rashly and negligently and dismissed the claim application, but the High Court relied upon the deposition of two witnesses and observed that as F.I.R. was not legally proved,

driver of the tempo trax should be held guilty of rash and negligent driving, F.I.R. had been relied upon by the parties on both sides and the claimants had made a reference to it in their claim application, F.I.R. was marked as an exhibit as both the parties intended to rely upon it. The tribunal was justified in relying upon the F.I.R. irrespective of the fact that contents of the document have been proved or not. The judgment of High Court set aside and claim petition was dismissed.

24. In the instant case also the FIR was lodged against the petitioner and the police after conducting the investigation have charge sheeted against the petitioner 30 (SCCH-8) M.V.C. No.7867/2010 and the petitioner has not placed any materials to show that the FIR and the charge sheet filed against him was came to be quashed by the higher court, still the FIR and charge sheet filed by the I.O., are remained unchallenged and the petitioner has not established through oral and documentary evidence that the accident was occurred on account of rash and negligent driving of the BMTC bus driver. So, the decision as stated above is directly applicable to the case on hand. Therefore, looking from many angle, the petitioner has not proved his case through oral and documentary evidence. Therefore, question of considering other issues as stated above does not arise. Hence, I am of the opinion that the issue No.1 is answered as negative.

25. Issue Nos.2 & 3: When the issue No.1 is answered as negative, then the question of awarding the compensation nor finding on issue No.2 does not arise. Hence, the issue No.2 does not survive for Court 31 (SCCH-8) M.V.C. No.7867/2010 consideration. In view of the discussion as stated above, I proceed to pass the following:

ORDER The petition filed by the petitioner under section 166 of M.V. Act, is hereby dismissed. No order as to costs.

Dictated to the stenographer, transcript thereof, corrected by me and then pronounced in the open court on this the 19th day of January 2016.

(P.J. Somashekhar), XII Addl. Judge-Member, MACT, Bangalore.

ANNEXURE List of the witnesses examined on behalf of petitioner:

PW1	Sri V. Santhosh Kumar
PW2	Dr. B.N. Nagaraj
PW3	Sri M. Venugoplan
PW4	Sri Ashok Thppashetty
PW5	Sri Lokesh
PW6	Sri R. Virupakshaswamy
32	(SCCH-8)
	M.V.C. No.7867/2010

List of the documents exhibited on behalf of petitioner:

Ex.P1	True copy of FIR
Ex.P2	True copy of Complaint
Ex.P3	True copy of Charge sheet
Ex.P4	True copy of Spot Mahazar
Ex.P5	True copy of Sketch
Ex.P6	True copy of IMV Report
Ex.P7	True copy of Wound Certificate
Ex.P8 &	Certified copies of the Trip Sheets
Ex.P9	
Ex.P10 &	Statement recorded by the Police
Ex.P11	
Ex.P12	Office copy of the counter complaint
Ex.P13	Certified copy of the private complaint
Ex.P14	Certified copy of the FIR on private complaint
Ex.P15	Certified copy of the "B' final report
Ex.P16	32 Medical bills in a sum of Rs.93,869/-
Ex.P17	Notarized copy of the Driving license
Ex.P18	Salary certificate
Ex.P19	Certified copy of the Protest petition filed in PCR No.251/10
Ex.P20	Certified copy of the order sheet in PCR No.251/10
Ex.P21	MLC extract
Ex.P22	File relating to discharge summary and case sheet
Ex.P23	3 X-ray films
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Ex.P24	Certified copy of Deposition of Kamalesh Reddy in CC No.880/10
Ex.P25	4 Photos with CD
Ex.P26	Certified copy of Deposition of Virupakshaswamy in CC No.880/10

List of the witnesses examined on behalf of respondents:

RW1	Sri Hans Shivhare
RW2	Sri Kamalesh Reddy
RW3	H.B. Guruprasad

List of the documents marked on behalf of respondents:

Ex.R1	Authorization letter
Ex.R2	Policy copy
Ex.R3	Policy copy

(P.J. Somashekhar),
XII Addl. Judge-Member, MACT,
Bangalore.