

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF MARCH 2019

BEFORE

THE HON'BLE MR. JUSTICE ALOK ARADHE

M.F.A NO.570 OF 2012 (MV)

BETWEEN:

SRI H C NANJUNDAPPA
AGED ABOUT 48 YEARS
S/O H G CHANNABASAPPA
AGRICULTURIST
R/AT HOSAHALLI VILLAGE
HOLEHONNUR HOBLI
BHADRAVATHI TALUK-583218.

... APPELLANT

(BY MR. SKANDA R.K. RAO, ADV., FOR
MR. T.N. VISWANATHA, ADV.,)

AND:

1. AIZAZ PASHA @ JABBAR
MAJOR, S/O ABDUL SAMAD
SYED COLONY, SEEGBAGI
BHADRAVATHI-577301.
2. SRI HABIBULLA KHAN
S/O RAHEEM KHAN
SINCE DECEASED BY HIS LRS
- 2(a) SMT. SHAHEEDA
W/O LATE HABIBULLA KHAN, MAJOR.
- 2(b) MANSOOR
S/O LATE HABIBULLA KHAN, MAJOR.

BOTH ARE R/AT KAGE KODMAGGE VILLAGE
HOLEHONNUR HOBLI
TALLIKATTE POST, BHADRAVATHI TALUK-577301.

3. M/S THE NEW INDIA ASSURANCE CO LTD
ALJUBEDA BUILDING
NEHRU ROAD, SHIMOGA-577201.

... RESPONDENTS

- (BY MR. M.V. MAHESHWARAPPA, ADV., FOR R2(a&b) (ABSENT)
MR. M. NARAYANAPPA, ADV., FOR R3
R1 SERVED AND UNREPRESENTED)

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THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED:11.11.2010 PASSED IN MVC NO.103/2005 ON THE FILE OF PRESIDING OFFICER, FAST TRACK COURT, ADDL. MACT, BHADRAVATHI, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION & ETC.

THIS APPEAL COMING ON FOR *HEARING* THIS DAY, THE COURT MADE THE FOLLOWING:-

JUDGMENT

Mr.Skanda R.K.Rao for Mr.T.N.Viswanatha, learned counsel for the appellant.

Mr.M.Narayanappa, learned counsel for respondent No.3.

2. The appeal is admitted for hearing. With consent of the learned counsel for both the parties, the same is heard finally.

3. This appeal has been filed by the appellant claiming enhancement of the amount of award by the claims Tribunal.

4. Facts giving rise to filing of this appeal briefly stated are that on 07.04.2005 at about 8.00 p.m. the appellant was traveling in a motor bike as a pillion rider. At that time, the autorickshaw, which was driven in a rash and negligent manner dashed against the motor cycle. Due to the accident, the appellant fell down and sustained injuries in his right leg and injuries on the other parts of the body. The appellant was admitted in hospital and underwent a surgery for the right leg and was treated as inpatient in the hospital from 08.04.2005 to 18.04.2005. Thereupon, the appellant filed a petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation to the tune of Rs.4,75,000/- on account of the injuries sustained by him in the aforesaid accident.

5. The respondents 1 to 3 filed the written statement in which inter alia it was stated that the accident took place due to rash and negligent driving of the motor bike on which the appellant was traveling as a pillion rider and thereupon no negligence on the part of the driver of the autorickshaw. The claims Tribunal on the basis of the pleadings of the parties, framed the issues and recorded the evidence. Thereafter vide impugned award dated 11.11.2010, the Tribunal awarded the compensation as follows:

1. Towards Pain and Suffering : Rs.30,000/-
2. Towards Medical Expenses,
Conveyance, nourishments etc. : Rs.50,000/-
3. Towards loss of future earning
Capacity : Rs.50,400/-
4. Towards loss of earning during
Treatment period : Rs. 9,000/-
- Total : Rs.1,39,400

On the aforesaid amount, the Tribunal directed payment of interest at the rate of 6% p.a. from the date of petition till realization. However, the insurance company was exonerated of his liability to indemnify the insured on the ground that the driver of the autorickshaw had no valid driving licence.

6. When the matter was taken up today, learned counsel for the appellant while placing reliance on the decision of the supreme court in the case of **'PAPPU AND OTHERS vs. VINOD KUMAR LAMBA', AIR 2018 SC 592**, submitted that in the aforesaid decision, the supreme court had invoked the liberty to pay and recover. Therefore, in the fact situation of the case, the insurance company had directed to pay the amount of compensation to the appellant and be granted liberty to recover the same from the owner. On the other hand, learned counsel for the respondent has supported the award passed by the claims tribunal.

7. I have considered the submissions made by learned counsel for the parties and have perused the record. The supreme court in the case of '**NATIONAL INSURANCE COMPANY LTD. VS. SUVARN SINGH & OTHERS**', AIR 2004 SC 1531, has held that even if the insurance company succeeds in establishing its defence before the Tribunal or the Court, the Court can direct the insurance company to pay the award amount and in turn grant the liberty to the insurance company to recover the same from the owner of the vehicle. The aforesaid decision was followed by a two Judge Bench of the supreme court in the case of '**PAPPU AND OTHERS**' supra.

8. In view of the aforesaid enunciation of law by the supreme court and in view of the fact that in the instant case also the defence taken by the insurance company is with the owner of the offending vehicle had no valid driving licence and in the facts of the case, I deem it appropriate to invoke the liberty to pay and

recover. The insurance company shall pay the amount of compensation as directed by the Tribunal. However, it shall be at liberty to recover the same from the owner of the vehicle in question. To the aforesaid extent, the award passed by the Motor Accident Claims Tribunal is modified.

Accordingly, the appeal is disposed of.

**Sd/-
JUDGE**

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