

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF JANUARY 2020

BEFORE

THE HON'BLE MR.JUSTICE H.T.NARENDRA PRASAD

M.F.A.No.1932 OF 2015

BETWEEN:

Suresha
S/o Late Channegowda
Aged about 25 years
R/at Shanthinagara
Pandavapura Town
Mandya District – 571 434 ... Appellant

(By Sri Gurudev Prasad K.T., Advocate)

AND:

1. K.S.Umesha
S/o Swamy Gowda
Aged about 25 years
R/o Kadaba Village,
Chinakurali Hobli,
Pandavapura Taluk – 571 434
2. Manager,
Bharti Axa General Insurance
Company Limited,
D 29/1, 1st floor, Temple road,
Kalidasa Circle, V.V.Mohalla,
Mysore – 570 002 ... Respondents

(By Sri Vasanthappa, Advocate for R1:
Sri H.N.Keshava Prashanth, Advocate for R2)

This MFA is filed under 173(1) of MV Act, against the Judgment and Award dated:01.12.2014 passed in MVC No.1070/2012 on the file of the Senior Civil Judge, JMFC, Pandavapura, partly allowing the claim petition for compensation and seeking enhancement of compensation.

This MFA, coming on for admission, this day, the Court, delivered the following:

J U D G M E N T

This appeal is filed by the claimant challenging the judgment and award dated 01.12.2014 passed by the Senior Civil Judge and JMFC, Pandavapura in MVC No.1070/2012 whereby the Tribunal has granted a compensation of Rs.1,86,200/- with interest at 6% p.a., fastening liability on the owner of the offending vehicle.

2. The brief facts of the case are that on 20.02.2012 at about 4.00 p.m. claimant was traveling as a pillion rider along with one Radha in Hero Honda Passion Plus bearing registration No.KA-11/S-9602 from Illenhally towards Kodagahalli in Chinakurali-Melukote road. At that time, one goods auto bearing registration No.KA-11/A-2427 driven by its driver in a rash and negligent manner,

dashed against the claimant's motorcycle. Due to the impact claimant fell down and sustained grievous injuries. Immediately, after the accident, he was shifted to Government Hospital, Pandavapura and afterwards shifted to K.R.Hospital, Mysore and then to Vikram Jeev Hospital, Mysore where he was inpatient for 8 days. After recovering from the injuries, he filed a claim petition before the Tribunal in MVC No.1070/2012.

3. To establish his case, claimant examined himself as PW1 and got marked 45 documents as Exs. P1 to P45. On the other hand, on behalf of the Insurance Company two witnesses were examined as Rws. 1 and 2 and 4 documents were got marked as Exs. R1 to R4. On appreciation of the oral and documentary evidence, the Tribunal granted a compensation of Rs.1,86,200/- with interest at 6% p.a. fastening liability on the owner of the offending vehicle. Being aggrieved by the same, claimant has filed this appeal.

4. Sri K.T.Gurudeva Prasad, learned counsel for the appellant contended that at the time of the accident driver of the goods auto bearing registration No.KA-11/A-2427 was having LMV non-transport driving licence but he was driving the transport vehicle. The Apex Court in the case of **MUKUND DEWANGAN vs. ORIENTAL INSURANCE COMPANY LIMITED** reported in **(2017) 14 SCC 663**, has held that licence to drive LMV includes licence to drive transport vehicle. Hence, he sought for allowing of the appeal.

5. Per contra, Sri H.N.Keshava Prashanth, learned counsel for the respondent – Insurance Company contended that at the time of the accident driver of the offending vehicle was having LMV non-transport driving licence and he has driven the transport vehicle by violating the policy conditions. Therefore, the Tribunal has rightly fastened the liability on the owner of the offending vehicle. Hence, he sought for dismissal of the appeal.

6. Heard learned counsel for the parties and perused the records.

7. It is not in dispute that the claimant has suffered the injuries due to the accident occurred on 20.02.2012 due to the rash and negligent driving of the driver of the goods auto bearing registration No.KA-11/A-2427. It is also not in dispute that the driver of the goods auto was having LMV non-transport driving licence. But in view of the law laid down by the Hon'ble Apex Court in the case of **MUKUND DEWANGAN (supra)**, licence to drive light motor vehicle includes licence to drive transport vehicle, and therefore liability lies on the insurer.

8. In view of the above, appeal filed by the claimant is allowed. Judgment and award passed by the Tribunal is modified to the extent that respondent Nos.1 and 2 are jointly and severally liable to pay the compensation. The Insurance Company is directed to deposit the entire compensation amount with interest at 6% p.a. from the date of filing of the claim petition till the date of

realization, within a period of three months from the date of the receipt of a copy of this order. The amount so deposited by the Insurance Company shall be disbursed to the claimant, after due verification of his identity.

**Sd/-
JUDGE**

Cm/-