

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF OCTOBER 2022

BEFORE

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

MFA No.2508 OF 2012(MV)

BETWEEN:

Regional Manager,
National Insurance Co. Ltd.,
Regional Office,
Subharam Complex,
144, M.G. Road,
Bangalore-560 001.

... Appellant

(By Sri.A.N.Krishnaswamy, Advocate)

AND:

1. Khadar Pasha,
S/o Abdul Rasheed,
Aged about 37 years.
2. Master K Nawaz Pasha,
S/o Abdul Rasheed,
Aged about 15 years.
3. Master K Yarab Pasha,
S/o Abdul Rasheed,
Aged about 13 years.
4. Kum. Nooheera Banu,
D/o Khadar Pasha,
Aged about 11 years.

5. Master K Sameer Pasha,
S/o Khadar Pasha,
Now aged about 9 years.
6. Smt. Sha Nawaz Begum,
W/o Abdul Rasheed,
Now aged about 62 years.
7. Abdul Rasheed,
S/o Late Mehaboob Sab,
Now aged about 67 years
R2 to R5 are minors Rep. by
Father natural guardian R1.
8. J. Bhaskar Samuel,
S/o Late John Peter,
Now aged about 57 years,
R/o Bethani Village, Maderahalli post,
Kolar Taluk & District. ... Respondents

(Notice to R1 to R7 are H/S
V/o dated: 19.08.2015
Notice to R8 is served but Unrepresented)

This MFA is filed under Section 173(1) of MV Act, against the Judgment and Award dated:13.09.2011 passed in MVC No.3003/2010 on the file of the IX Additional Senior Civil Judge, Member, MACT-7, Court Of Small Causes, Bangalore, awarding a compensation of Rs. 7,28,000/- with interest 6@ P.A. from the date of petition till realization.

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

J U D G M E N T

This appeal under Section 173(1) of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act', for

short) has been filed by the Insurance Company being aggrieved by the judgment dated 13.09.2011 passed by the IX Addl. Senior Civil Judge, Small Causes Court, Bangalore in MVC No.3003/2010.

2. Facts giving rise to the filing of the appeal briefly stated are that on 22.03.2010 at about 4.30 p.m., the deceased Rahamath Unnisa was standing on the foot path of NH-4 road. At that time, a motorcycle bearing registration No.KA-07/Q-7993 which was being ridden in a rash and negligent manner, dashed against the deceased. As a result of the aforesaid accident, the deceased sustained grievous injuries and succumbed to the injuries at the hospital.

3. The claimants filed a petition under Section 166 of the Act seeking compensation for the death of the deceased along with interest.

4. On service of summons, the respondent No.2 appeared through counsel and filed written statement in which the averments made in the petition were denied. The age, occupation and income of the deceased are denied. It was pleaded that the petition itself is false and frivolous in the eye of law. It was further pleaded that the accident was due to the negligence of the deceased herself. It was further pleaded that the rider of the offending vehicle did not possess valid driving licence as on the date of the accident. It was further pleaded that the liability is subject to terms and conditions of the policy. It was further pleaded that the quantum of compensation claimed by the claimants is exorbitant. Hence, he sought for dismissal of the petition.

The respondent No.1 did not appear before the Tribunal inspite of service of notice and hence was placed ex-parte.

5. On the basis of the pleadings of the parties, the Claims Tribunal framed the issues and thereafter recorded the evidence. The claimants, in order to prove their case, examined claimant No.1 as PW-1 and got exhibited documents namely Ex.P1 to Ex.P10. On behalf of respondents, two witnesses were examined as RW-1 and got exhibited documents namely Ex.R1 to Ex.R6. The Claims Tribunal, by the impugned judgment, inter alia, held that the accident took place on account of rash and negligent riding of the offending vehicle by its rider, as a result of which, the deceased sustained injuries and succumbed to the injuries. The Tribunal further held that the claimants are entitled to a compensation of Rs.7,28,000/- along with interest at the rate of 6% p.a. and directed the Insurance Company to deposit the compensation amount along with interest. Being aggrieved, this appeal has been filed.

6. Sri A.N.Krishna Swamy, the learned counsel for the Insurance Company has raised the following contentions:

Firstly, at the time of the accident the offending vehicle was ridden by one J.Bhaskar and he was not holding a valid driving licence at the time of the accident. On the basis of the complaint lodged by the claimant the police have registered FIR against an unknown person and has filed charge sheet as per Ex.P1 against J.Bhaskar, S/o. Jahan Peter. The Insurance Company has issued the policy in favour of J.Bhaskar, S/o. Jahan Peter. The respondent has produced the driving licence related to one J.Bhaskar Samuel. He contended that he was not the owner of the offending vehicle. Since the rider of the offending vehicle was not having a valid and effective driving licence Insurance Company is not liable to pay the compensation. The Tribunal has erred in fastening the liability on the Insurance Company.

Secondly, to prove the case of the insurance company they have examined the Medical Record Officer as RW2 and also RW1 is the officer of the Insurance Company to establish that J.Bhaskar Samuel, S/o. Jahan Peter was not driving the offending vehicle. The Tribunal has erred in holding that the rider of the offending vehicle was holding a valid and effective driving licence. Hence, he sought for allowing the appeal.

7. Respondents served and unrepresented.

8. Heard the learned counsel for the appellant and perused the judgment and award and the original records.

9. It is not in dispute that Rahamath Unnisa died in the road traffic accident occurred due to rash and negligent driving of the offending vehicle by its driver.

Immediately after the accident a complaint has been lodged as per Ex.P2. The police have registered the FIR as per Ex.P1 against an unknown person. After detailed

enquiry, the police have filed the charge sheet produced as Ex.R1. As per the charge sheet, J.Bhaskar, S/o.Jahan Peter was made as accused and also the owner of the offending vehicle.

10. The specific case of the claimant is that the owner of the offending vehicle was riding the motorcycle. In the driving licence produced as Ex.P10 the owner of the licence has been J.Samuel, S/o.Jahan Peter, resident of Bethani VI, Maderahalli PO, Kolar Taluk. Even in the RC book produced as Ex.P9 the owner of the offending vehicle has been shown as Bhaskar, S/o.Jahan Peter, R/o. resident of Bethani VI, Maderahalli PO, Kolar Taluk. By verifying the original records Exs. P9 and P10 and also charge sheet produced as Ex.R1, it is J.Bhaskar Samuel S/o.Jahan Peter is the RC owner and RC owner J.Bhaskar S/o.Jahan Peter as per Ex.P9 are one and the same. Therefore, it is very clear that as on the date of the accident the owner of the offending vehicle was riding the motorcycle and he was

having a valid and effective driving licence and the offending vehicle was covered with a valid insurance policy. The Tribunal has rightly fastened the liability on the Insurance Company. Hence, I do not find any error in the judgment and award passed by the Tribunal.

Accordingly, appeal is dismissed.

The amount in deposit is ordered to be transferred to the Tribunal forthwith.

**Sd/-
JUDGE**

Cm/-