



C/W MFA No. 9365 of 2012

MFA No. 9366 of 2012

MFA No. 9367 of 2012

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF JANUARY, 2023

BEFORE

THE HON'BLE MR JUSTICE M.I.ARUN

MISCELLANEOUS FIRST APPEAL NO.9368 OF 2012 (MV-I)

C/W

MISCELLANEOUS FIRST APPEAL NO.9365 OF 2012 (MV-I),

MISCELLANEOUS FIRST APPEAL NO.9366 OF 2012 (MV-I),

&

MISCELLANEOUS FIRST APPEAL NO.9367 OF 2012 (MV-I)

BETWEEN:

1. UNITED INDIA INSURANCE CO. LTD.
CKN CHAMBERS, 1ST FLOOR
143/144, 1ST MAIN ROAD,
SESHADRIPURAM, BANGALORE - 560 020
BY REGIONAL MANAGER
UNITED INDIA INSURANCE CO. LTD.
5TH FLOOR, KRISHI BHAVAN
NRUPATHUNGA ROAD, HUDSON CIRCLE
BANGALORE - 27
BY IT'S MANAGER.

...APPELLANT
(COMMON)

(BY SRI O. MAHESH, ADVOCATE)

AND:

IN MFA NO.9368 OF 2012:

1. G. HARISHA
AGE 19 YEARS





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S/O. GANGADHARAPPA
R/AT NO.414,
BESIDE MALLASANDRA GOVT. SCHOOL
T. DASARAHALLI
BANGALORE - 560 057.

2. KUMARASWAMY MUDALIAR
MAJOR
VINAYAKA TRANSPORT
MAIN ROAD, THAYAMMA GONDULU
NELAMANGALA RURAL
TUMKUR - 572 101.

...RESPONDENTS

(BY SRI AMBAJI RAO NAJRE, ADVOCATE FOR R.1;
SRI G.V. DAYANANDA, ADVOCATE FOR R.2)

IN MFA NO.9365 OF 2012:

1. R.M. SOWMYA
D/O. MUNIRAJA
S/O. HANUMANTHAIAH
R/AT NO.10/1, BESIDE GOVT. HOSPITAL
MALLASANDRA, T. DASARAHALLI
BANGALORE - 560 057.
2. KUMARASWAMY MUDALIAR
MAJOR
VINAYAKA TRANSPORT
MAIN ROAD, THAYAMMA GONDULU
NELAMANGALA RURAL
TUMKUR - 572 101.

...RESPONDENTS

(BY SRI AMBAJI RAO NAJRE, ADVOCATE FOR R.1;
SRI G.V. DAYANANDA, ADVOCATE FOR R.2)



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IN MFA NO.9366 OF 2012:

1. MUNILAKSHMAMMA
AGE 31 YEARS
W/O. ANAND
R/AT NO.10/1, BESIDE GOVT. HOSPITAL
MALLASANDRA, T. DASARAHALLI
BANGALORE - 560 057.
2. KUMARASWAMY MUDALIAR
MAJOR
VINAYAKA TRANSPORT
MAIN ROAD, THAYAMMA GONDULU
NELAMANGALA RURAL, TUMKUR - 572 101.

...RESPONDENTS

(BY SRI AMBAJI RAO NAJRE, ADVOCATE FOR R.1;
SRI G.V. DAYANANDA, ADVOCATE FOR R.2)

IN MFA NO.9367 OF 2012:

1. MUNIRAJA
AGE 24 YEARS
S/O. NARAYANAPPA
R/AT & C/O. RAJANNA
12TH CROSS, MARAMMA TEMPLE ROAD
BAGALKUNTE, T. DASARAHALLI
BANGALORE - 560 057.
2. KUMARASWAMY MUDALIAR
MAJOR
VINAYAKA TRANSPORT
MAIN ROAD, THAYAMMA GONDULU
NELAMANGALA RURAL, TUMKUR - 572 101.

...RESPONDENTS

(BY SRI AMBAJI RAO NAJRE, ADVOCATE FOR R.1;
SRI G.V. DAYANANDA, ADVOCATE FOR R.2)



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THESE MFAs ARE FILED U/S.173(1) OF MV ACT, PRAYING TO ALLOW THE APPEAL AS PRAYED FOR BY SETTING ASIDE THE JUDGMENT AND AWARD DATED 30.03.2012 PASSED BY THE MACT, COURT OF SMALL CAUSES, BANGALORE, SCCH-15, IN M.V.C. NO.2573 OF 2011, M.V.C. NO.2570 OF 2011, M.V.C. NO.2571 OF 2011 AND M.V.C. NO.2572 OF 2011 RESPECTIVELY, WITH COSTS IN THE INTERESTS OF JUSTICE AND EQUITY.

THESE APPEALS COMING ON FOR FINAL HEARING, THROUGH PHYSICAL HEARING/VIDEO CONFERENCING THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

1. Aggrieved by the judgment and award dated 30.03.2012 passed in MVC Nos.2570/2017, 2571/2011, 2572/2011 & 2573/2011 by the XIII Additional Small Causes Judge and Member, MACT, Bengaluru (for short 'the Tribunal'), the present appeal Nos.9368/2012, 9365/2012, 9366/2012 and 9367/2012 have been preferred by respondent No.2 - Insurance Company therein.

2. For the sake of convenience, the parties are referred to herein as per their status before the Tribunal

3. On 24.05.2010 at about 8.40 a.m., there was an accident between the bus bearing registration NO.KA-01-F-3812



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belonging to respondent No.1 and BMTC bus bearing registration No. KA-01-F-8780. The said accident happened due to rash and negligent driving of the bus bearing No.KA-0F-F-3812. Due to the said accident, the petitioners sustained grievous injuries and hence they preferred claim petitions before the Tribunal and the Tribunal was pleased to pass the following order:

The claim petitions in MVC.No.2570 to MVC.No.2573/2011 filed under Section 166 of the M.V. Act are partly allowed with cost.

The petitioner in MVC.No.2570/2011 is entitled for global compensation of Rs.3,000/- together with interest at the rate of 6% p.a. from the date of petition till the date of deposit of compensation amount in the Tribunal.

The petitioner in MVC.No.2571/2011 is entitled for global compensation of Rs.4,000/- together with interest at the rate of 6% p.a. from the date of petition till the date of deposit of compensation amount in the Tribunal.

The petitioner in MVC.No.2572/2011 is entitled for global compensation of Rs.3,000/- together with interest at the rate of 6% p.a. from the date of petition till the date of deposit of compensation amount in the Tribunal.

The petitioner in MVC.No.2573/2011 is entitled for compensation of Rs.49,500/- together with interest at the rate of 6% p.a., from the date of petition till the date of deposit of compensation amount in the Tribunal.

The respondent No.1 & 2 are jointly & severally liable to pay the compensation as awarded by this Tribunal and the same shall be paid or deposited within a period of 30 days from the date of order at the first instance



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with liberty to recover the same from the insured at the appropriate stage in accordance with law.

Out of the compensation amount payable to petitioner in MVC.No.2573/2011 a sum of Rs.25,000/- shall be invested in his name for a period of 5 years in Karnataka Bank, City Civil Court Branch, Bengaluru with a liberty to withdraw the periodical interest thereon from time to time. The balance amount be disbursed in the petitioner through an Account Payee cheque on proper identification.

Out of the compensation amount payable to petitioners in MVC Nos.2570/2011, 2571/2011 & 2572/2011 since the compensation awarded is meager amount entire amount-shall be disbursed to the petitioner through an Account Payee cheque on proper identification.

Intimate the concerned bank manager not to allow the premature withdrawal of fixed deposit amount or to raise loan on the same without prior permission of this tribunal.

Draw an award accordingly.

4. Aggrieved by the same, respondent No.2 - Insurance Company has preferred MFA.Nos.9368/2012, 9365/2012, 9366/2012 and 9367/2012 on the ground that the driver of the offending bus did not have a valid driving license to drive the transport vehicle at the time of the accident. However, it is not denied that on earlier point of time he did have the driving license and at the time of accident he had valid driving license to drive a non-transport vehicle. Hence, in the light of the judgment of Hon'ble Apex Court in the case of **'PAPPU AND OTHERS VS. VINOD KUMAR LAMBA AND ANOTHER'**



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reported in **AIR 2018 SC 592**, the said defense is no longer available to the Insurance Company.

Paragraph 14 of the said judgment reads as under:

14. The next question is: whether in the fact situation of this case the insurance company can be and ought to be directed to pay the claim amount, with liberty to recover the same from the owner of the vehicle (respondent No.1)? This issue has been answered in the case of National Insurance Company Ltd. (supra). In that case, it was contended by the insurance company that once the defence taken by the insurer is accepted by the Tribunal, it is bound to discharge the insurer and fix the liability only on the owner and/or the driver of the vehicle. However, this Court held that even if the insurer succeeds in establishing its defence, the Tribunal or the Court can direct the insurance company to pay the award amount to the claimant(s) and, in turn, recover the same from the owner of the vehicle. The three-Judge Bench, after analysing the earlier decisions on the point, held that there was no reason to deviate from the said well-settled principle. In paragraph 107, the Court then observed thus:

"We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued, despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realize the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the Act. However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it has not been able to do so, the insurance company may



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initiate a separate action therefor against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given an opportunity to defend at all. Such a course of action may also be resorted to when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage." Further, in paragraph No.110, the Court observed thus:

110. The summary of our findings to the various issues as raised in these petitions are as follows:

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)

(ii) of the said Act.

(iii) The breach of policy condition, e.g. disqualification of driver or invalid driving licence of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time,

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available



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defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof where for would be on them.

(v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/ are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149(2) of the Act.

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) xxx

(ix) xxx

(x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with Sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land



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revenue only if, as required by Sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.

(xi) The provisions contained in Sub-section (4) with proviso thereunder and Sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by, relegating them to the remedy before, regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims." (emphasis supplied)

5. Hence, the appeals are devoid of merits and there is no infirmity in the order passed by the Tribunal and accordingly the present appeals are hereby ***dismissed***.

Amount-in-deposit, if any, before this Court shall be transferred to the concerned MACT for disbursement.

Sd/-
JUDGE

AG