

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 27<sup>TH</sup> DAY OF JUNE, 2012

BEFORE

THE HON'BLE MR. JUSTICE K.N.KESHAVANARAYANA

M.F.A. NO.11278/2008 (MVC)

BETWEEN

UNITED INDIA INSURANCE CO LTD  
NO.803, JAYANAGAR MANANDI COURT  
III BLOCK JAYANAGAR  
BANGALORE-560011,  
NOW REPRESENTED BY REGIONAL MANAGER  
UNITED INDIA INSURANCE CO LTD  
REGIONAL OFFICE, SHANKARANARAYANA BUILDING,  
NO.25, M G ROAD, BANGALORE-560001

... APPELLANT

(BY SRI A N KRISHNA SWAMY, ADV.)

AND

1. R CHANDRA REDDY  
S/O.LATE RAMA REDDY  
AGED ABOUT 50 YRS  
R/O.JIGALA VILLAGE  
ATTIBELE HOBLI, ANEKAL TQ  
BANGALORE DISTRICT
2. J D SHIVASHANKAR REDDY  
S/O.LATE DASHARATHA REDDY  
NOW AGED ABOUT 34 YRS  
R/O.JIGALA VILLAGE, ATTIBELE HOBLI  
ANEKAL TQ, BANGALORE DISTRICT
3. S MARIYAPPA  
S/O.DODDA SAMBAIAH MAJOR  
INDLABELE VILLAGE

ATTIBELE HOBLI, ANEKAL TQ  
BANGALORE DISTRICT

... RESPONDENTS  
(BY SRI N GOPALAKRISHNA, ADV. FOR R1 AND  
R2 & R3 SERVED)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED: 5.5.2008 PASSED IN MVC NO. 340/2001 ON THE FILE OF THE I ADDL. CIVIL JUDGE (SR.DN) AND MACT, BANGALORE RURAL DISTRICT, BANGALORE, AWARING A COMPENSATION OF RS. 87,000/- WITH INTEREST @ 8% P.A ON A SUM OF RS. 82,000/- FROM THE DATE OF PETITION TILL PAYMENT.

THIS APPEAL COMING ON FOR FINAL HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING:-

### **J U D G M E N T**

This appeal is by the insurer of one of the vehicles involved in the accident, questioning the legality and correctness of the judgment and award dated 5.5.2008 passed by I Additional Civil Judge (Sr.Dn.) and Additional Motor Accident Claims Tribunal, Bangalore Rural District, Bangalore in MVC No.340/2001.

2. Respondent No.1 herein filed the claim petition under Section 166 of the Motor Vehicles Act seeking compensation for the personal injuries sustained by him in the motor vehicle accident that occurred on 3.6.2001. According to the case of the claimant, on the date of accident while he was proceeding as a pillion rider on the scooter bearing registration No.KA-05-ED-4137 from Attibele to Chikkanahalli Village ridden by one G.Bhaskar @ Babu, near the place of the accident, tractor-trailor bearing registration No.KA-05-TR-Z-601/2001-02 came from opposite direction and dashed against the scooter, as a result, he fell down from the scooter and sustained grievous injuries. The claimant contended that the accident was due to composite negligence of the rider of the scooter and driver of the tractor-trailor. The claim petition was filed against the owner and insurer of the scooter, as well as owner of the

tractor-trailor. It appears that the tractor-trailor was not covered under any insurance policy.

3. The owner of the scooter remained absent before the Tribunal. The claim petition was contested by the insurer of the scooter and owner of the tractor-trailor. The insurer of the scooter contended that the accident was solely due to negligence of the driver of the tractor-trailor. Similarly, the owner of the tractor-trailor contended that the accident was solely due to negligence of the rider of the scooter.

4. The claimant examined himself as PW-1 apart from examining the doctor, who treated him as PW-2. He placed reliance on Ex.P-1 to 12. An official of insurer of the scooter was examined as RW-1 and produced the copy of the insurance policy as per Ex.D-1.

5. The Tribunal after hearing on both sides and on assessment of the oral and documentary evidence, by the judgment under appeal held that the accident was due to composite negligence of rider of the scooter and driver of the tractor-trailor. Nevertheless, the Tribunal in the light of the decision of this Court in the case of Ganesh v/s Syed Muneed Ahmed reported in 2000 ACJ 1463 held that the claimant can proceed against any one of the joint tortfeasers and therefore, directed the insurer of the scooter to satisfy the award. The Tribunal quantified the compensation payable to the claimant at Rs.87,000/-. Aggrieved by the judgment and award of the Tribunal with regard to actionable negligence, the appellant-insurer is in appeal before this Court.

6. I have heard the learned counsel for the appellant-insurer as well as learned counsel for the respondent-claimant.

7. As could be seen from the records, neither the insurer of the scooter nor the owner of the tractor-trailor have disputed the accident, as a result of collision between the scooter and the tractor-trailor. They have also not disputed the claimant sustaining injuries in the said accident. It is also not in dispute that the claimant was proceeding as pillion rider on the scooter at the time of accident. Therefore, he is a third party vis-à-vis tortfeasors. The Tribunal on the basis of the evidence of claimant examined as PW-1 has come to the conclusion that the accident was due to composite negligence of the rider of the scooter and driver of the tractor-trailor. The Tribunal has also noticed that after investigation, the police filed charge sheet only against the driver of the tractor-trailor. However, the Tribunal has held that merely because the police have filed charge sheet only against the driver of the tractor-trailor, that itself cannot be sole basis to hold that the accident was solely due to

negligence of driver of the tractor-trailor. In view of the finding that there was collision between two vehicles, the Tribunal concluded that the accident was due to composite negligence. The insurer placing reliance only on the contents of the charge sheet filed by the police sought to contend that the accident was solely due to negligence of driver of the tractor-trailor.

8. Ofcourse, in respect of this accident, the police after completing investigation filed charge sheet against the driver of the tractor-trailor only. The contents of the charge sheet cannot be a substantive piece of evidence as rightly observed by the Tribunal. The Investigating Officer on the basis of the evidence which he may have collected during the investigation forms an opinion and files the charge sheet. It is only an accusation made against the person against whom the charge sheet is filed. It is not a conclusive proof of the accusation. The accusation made in the charge sheet will have to be proved before the Court of law.

Therefore, the Tribunal in my opinion is justified in holding that merely on the basis of police filing charge sheet only against the driver of the tractor-trailor, it cannot be said that the accident was solely due to the negligence of the said driver. It is also well settled that the finding recorded by the Criminal Court is not binding on the Tribunal and on the basis of the evidence placed before it, the Tribunal will have to independently record its finding with regard to actionable negligence. The finding of the Criminal Court could be a piece of evidence.

9. It is not the case of the appellant-insurer that the driver of the tractor-trailor who was charge sheeted has been convicted by the Criminal Court. Therefore, mere production of charge sheet filed by the police against the driver of the tractor-trailor would not establish that accident was solely due to negligence of the said driver. The claimant in his oral evidence has stated on oath that accident was due to



composite negligence of the rider of the scooter and driver of the tractor-trailor. There is nothing in the cross examination to discard his evidence. The claimant being the pillion rider on the scooter was an eyewitness to the accident. Therefore, he is a competent witness to speak as to the manner in which the accident occurred. Therefore, the Tribunal has rightly accepted the evidence of the claimant to record the finding that the accident was due to composite negligence of the rider of the scooter and driver of the tractor-trailor. The said finding in my opinion is sound and reasonable regard being had to the evidence on record. I find no perversity or illegality in the findings recorded by the Tribunal, as such it does not call for interference by this Court.

10. The observation of the Tribunal that in respect of the accident occurring due to composite negligence of two or more vehicles, the claimant can proceed against any one of the joint tortfeasers is in

accordance with the principles laid down in Ganesh case referred to supra. In such a case, it is not necessary for the Tribunal to determine the percentage of negligence on the part of each of the tortfeasers, unless, one of the joint tortfeasers asks for such determination so as to enable such joint tortfeaser to proceed against the other joint tortfeaser in the event of claimant proceeding to recover the entire compensation amount from one of the joint tortfeasers. Such an exercise has not been undertaken in this case since the appellant insurer did not seek such adjudication. Therefore, the Tribunal is justified in holding that the appellant-insurer of the scooter which was one of the offending vehicle should satisfy the award. Yet another ground urged in this appeal is that the claimant was proceeding as a pillion rider and the policy does not cover the risk of such person. However, perusal of copy of the policy indicates that it is a comprehensive

“B” policy and now, it is well recognised that a comprehensive “B” policy insured in respect of a two wheeler also covers the risk of the pillion rider and hence, there is no substance in the said contention.

11. In view of the above discussion, I find no merit in this appeal. Accordingly, the appeal is dismissed.

12. The amount in deposit if any, before this Court is ordered to be transferred to the Tribunal concerned.

Sd/-  
JUDGE

DM