

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 7TH DAY OF AUGUST, 2017

BEFORE

THE HON'BLE MR.JUSTICE K.SOMASHEKAR

MFA NO.21825/2012 (MV) C/W MFA CROB NO.833/2012

MFA NO.21825/2012:

BETWEEN

M K MANJUNATH S/O. K. RAMESH
AGE: 33 YEARS,
R/O. SHAKUNTALA NIVAS,
M.J. NAGAR, HOSPET, DIST: BELLARY.

... APPELLANT

(BY SRI. PATIL M H, ADV.)

AND

1. KARAMANCHAPPA S/O. M. DURGAPPA
AGE: 50 YEARS, OCC: AGRICULTURE
R/O. HOSAMALAPANAGUDI, TQ: HOSPET,
DIST: BELLARY.

2. THE MANAGER,
IFFICO TOKIO GENERAL INSURANCE CO. LTD.,
127/A, BHAWANI ARCADES, 3RD FLOOR,
NEAR OLD BUS STAND, OPP. TO BASAVANA
NEW COTTON MARKET, HUBLI.

3. VIRUPAKSHI S/O. N. ADIVEPPA
AGE: 26 YEARS, OCC: DRIVER,
R/O. HOSAMALAPANAGUDI, TQ: HOSPET,
DIST: BELLARY.

... RESPONDENTS

(BY SRI. M AMAREGOUDA, ADV. FOR R1,
SRI. R.R.MANE, ADV. FOR R2, R3 SERVED)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT, 1988, AGAINST THE JUDGMENT AND AWARD DATED 08.08.2011 PASSED IN MVC NO.607/2010 ON THE FILE OF THE PRL. SENIOR CIVIL JUDGE AND JMFC-CUM-MEMBER, MACT-IV, HOSPET, AWARDDING THE COMPENSATION OF RS.2,24,236/- WITH INTEREST AT THE RATE OF 6% P.A. FROM THE DATE OF PETITION TILL REALIZATION.

MFA CROB NO.833/2012:

BETWEEN

KARMANCHAPPA S/O. DURGAPPA
AGE: 50 YEARS, OCC: AGRICULTURE
R/O. HOSAMALAPANAGUDI,
TQ: HOSPET, DIST: BELLARY.

... CROSS OBJECTOR

(BY SRI. M AMARE GOUDA, ADV.)

AND

1. VIRUPAKSHI S/O. N. ADIVEPPA
AGE: 26 YEARS, OCC: DRIVER,
R/O. HOSAMALAPANAGUDI,
TQ: HOSPET, DIST: BELLARY.
2. M.K. MANJUNATH S/O. RAMESH
AGE: 33 YEARS, OCC. OWNER OF CAR
REG. NO.KA-35/9113,
R/O. SHAKUNTALA NIVAS,
M.J. NAGAR, HOSPET, DIST: BELLARY.
3. THE MANAGER,
IFFCO TOKIO GENERAL INSURANCE CO.
127/A, BHAVANI ARCADES 3RD FLOOR,
NEAR OLD BUS STAND, OPP TO BASAVANA
NEW COTTON MARKET, HUBLI.

... RESPONDENTS

(BY SRI. M.H.PATIL, ADV. FOR R2
SRI.R.R.MANE, ADV. FOR R3, R1 SERVED)

THIS MFA.CROB IN MFA.NO.21825/2012 IS FILED UNDER ORDER 41 RULE 22 OF CPC., AGAINST THE JUDGMENT AND AWARD DATED 08-08-2011 PASSED IN MVC NO.607/2010 ON THE FILE OF THE PRL.SENIOR CIVIL JUDGE AND JMFC., HOSPET,

PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS MFA AND MFA CROB COMING ON FOR HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

Heard the learned counsel for the parties.

2. MFA No.21825/2012 is preferred by the appellant – owner challenging the liability fastened on it to pay the compensation and also the quantum of compensation awarded in the impugned judgment and award dated 08.08.2011 in MVC No.607/2010 passed by the Principal Senior Civil Judge and JMFC cum Member, MACT IV, Hospet (hereinafter referred to as ‘Tribunal’ for short).

3. Whereas, MFA CROB No.833/2012 is preferred by the cross objector – claimant challenging the quantum of compensation awarded in the impugned judgment and award dated 08.08.2011 in MVC No.607/2010 passed by the Principal Senior Civil Judge and JMFC cum Member, MACT IV, Hospet.

4. Learned counsel for the parties submit that the issue involved in the present cases have been elaborately discussed by the Hon'ble Supreme Court in the case of ***Mukund Dewangan vs. Oriental Insurance Company Limited*** in ***Civil Appeal No.5826/2011*** decided on 03.07.2017 and the same is squarely applicable to the facts and circumstance of the present case on hand, wherein it is held as follows:

"1. In the reference, the main question involved is whether a driver who is having a licence to drive 'light motor vehicle' and is driving 'transport vehicle' of that class is required additionally to obtain an endorsement to drive a transport vehicle?"

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46. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well the post-amended position of Form 4 as amended on 28.03.2001. Any other interpretation would be

repugnant to the definition of "light motor vehicle" in section 2(21) and the provisions of section 10(2)(d), Rule 8 of the Rules 1989, other provisions and also the forms which are in the tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in section 10(2)(e) of the Act 'Transport Vehicle' would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in section 10(2)(e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed. Thus we answer the question which are referred to us thus:

(i) 'Light motor vehicle' as defined in Section 2(21) of the Act would include a transport vehicle as per the weight prescribed in section 2(21) read with section 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54/1994.

(ii) A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg. and holder of a driving licence to drive class of "light motor vehicle" as provided in Section 10(2)(d) is competent to drive a

transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the “unladen weight” of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.03.2001 in the form.

(iii) The effect of the amendment made by virtue of Act No.54/1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of section 10(2) which contained “medium goods vehicle” in section 10(2)(e), medium passenger motor vehicle in section 10(2)(f), heavy goods vehicle in section 10(2)(g) and “heavy passenger motor vehicle” in section 10(2)(h) with expression ‘transport vehicle’ as substituted in section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of section 10(2)(d) and section 2(41) of the Act i.e. light motor vehicle.

(iv) The effect of amendment of Form 4 by insertion of “transport vehicle” is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of “light motor vehicle” continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is

holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.”

5. In view of the dismissal of the appeal filed by the Insurance Company in MFA No.104163/2016 decided on 25.07.2017 relying on the decision in the case of ***Mukund Dewangan*** (supra), wherein the entire liability is fastened on the Insurance Company, the question of fixing the liability on the owner would not arise. Hence, the appeal filed by the owner is liable to be allowed in part.

6. Whereas, the question as regards enhancement or reduction of the compensation is concerned, the amount awarded by the Tribunal is just and reasonable and the same does not call for interference.

7. In the result, I proceed to pass the following:

ORDER

- (i) MFA No.21825/2012 is hereby allowed in part.

- (ii) MFA CROB No.833/2012 is hereby dismissed.
- (iii) The judgment and award insofar as liability is concerned, is modified only to the extent that the Insurance Company is liable to satisfy the compensation awarded by the Tribunal.
- (iv) The rest of the judgment and award passed by the Tribunal shall remain in tact.

The amount in deposit, if any, shall be transmitted to the concerned Tribunal, forthwith.

Sd/-
JUDGE

Rsh