

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 24TH DAY OF OCTOBER, 2019

BEFORE

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

MFA NO.100661/2016(MV)
C/W MFA NO.100662/2016,
MFA NO.103826/2016 AND
MFA NO.103825/2015

IN MFA NO.100661/2016

BETWEEN:

THE BRANCH MANAGER
ORIENTAL INSURANCE COMPANY LTD.,
RANA CIRCLE MUDHOL,
REP. THROUGH REGIONAL OFFICE,
SUMANGALA COMPLEX, II FLOOR,
OPP. HDMC, LAMINGTON ROAD,
HUBBALLI, REP. BY ITS DEPUTY MANAGER.

... APPELLANT

(BY SRI.S.S. KOLIWAD, ADVOCATE)

AND:

1. ASHOK BELURAPPA JINGI
AGED 36 YEARS, OCC:POLICE,
R/O JALIHAI, TQ:BADAMI,
DIST:BAGALKOT.
NOW R/O TERADAL VILLAGE,
TQ:JAMKHANDI.
2. HANMANT KARIYAPPA PUJARI
AGE:46 YEARS, OCC:AGRICULTURE,
R/O AT POST: AMALJHERI,
TQ:BILAGI, DIST:BAGALKOTE.

... RESPONDENTS

(BY SRI. N.L. BATAKURKI, ADV. FOR R2) (R1-SD)

THIS APPEAL IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT, 1988 AGAINST THE JUDGMENT AND AWARD DATED 19.10.2015 PASSED IN MVC NO.101/2009 ON THE FILE OF THE ADDL. SENIOR CIVIL JUDGE AND MEMBER, ADDL. MACT-VI, JAMKHANDI, AWARING THE COMPENSATION OF RS.1,80,000/- WITH INTEREST AT 6% PER ANNUM FROM THE DATE OF PETITION TILL ITS DEPOSIT.

IN MFA NO.100662/2016

BETWEEN:

THE BRANCH MANAGER
ORIENTAL INSURANCE COMPANY LTD.,
RANA CIRCLE MUDHOL,
REP. THROUGH REGIONAL OFFICE,
SUMANGALA COMPLEX, II FLOOR,
OPP. HDMC, LAMINGTON ROAD,
HUBBALLI, REP. BY ITS DEPUTY MANAGER.

... APPELLANT

(BY SRI.S.S. KOLIWAD, ADVOCATE)

AND:

1. SRI. BHIMAPPA NINGAPPA BHOVI
AGED 35 YEARS, OCC:GOUNDI/MESTRI,
R/O JALIHAI, TQ:BADAMI,
DIST:BAGALKOT.
NOW R/O AMBEDKAR CIRCLE,
TQ:JAMKHANDI.

2. HANMANT KARIYAPPA PUJARI
AGE:46 YEARS, OCC:AGRICULTURE,
R/O AT POST: AMALJHERI,
TQ:BILAGI, DIST:BAGALKOTE.

... RESPONDENTS

(BY SRI. N.L. BATAKURKI, ADV. FOR R2) (R1-SD)

THIS APPEAL IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT, 1988 AGAINST THE JUDGMENT AND AWARD DATED 19.10.2015 PASSED IN MVC NO.102/2009 ON THE FILE OF THE ADDL.

SENIOR CIVIL JUDGE AND MEMBER, ADDL. MACT-VI,
JAMKHANDI, AWARDED THE COMPENSATION OF
RS.40,000/- WITH INTEREST AT 6% PER ANNUM
FROM THE DATE OF PETITION TILL ITS DEPOSIT.

IN MFA NO.103826/2015

BETWEEN:

BHIMAPPA NINGAPPA BHOVI
AGED 34 YEARS, OCC:GOUNDI/MESTRI,
NOW NIL, R/O JALIHAI, TQ:BADAMI,
NOW R/O AMBEDKAR CIRCLE,
TQ:JAMKHANDI.

...APPELLANT

(BY SRI.HARISH S MAIGUR, ADVOCATE)

AND:

1. HANMANT S/O KARIYAPPA PUJARI
AGE:46 YEARS, OCC:AGRICULTURE,
R/O AMALJHERI,
TQ:BILAGI.
2. THE BRANCH MANAGER
ORIENTAL INSURANCE COMPANY LIMITED,
RANNA CIRCLE, MUDHOL.

....RESPONDENTS

(BY SRI.S.S. KOLIWAD, ADV. FOR R2) (R1-SERVED)

THIS APPEAL IS FILED UNDER SECTION 173(1)
OF MV ACT, AGAINST THE JUDGMENT AND AWARD
DATED 19.10.2015 PASSED IN MVC NO.102/2009 ON
THE FILE OF THE ADDL. SENIOR CIVIL JUDGE AND
MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL-VI,
JAMKHANDI, PARTLY ALLOWING THE CLAIM PETITION
FOR COMPENSATION AND SEEKING ENHANCEMENT OF
COMPENSATION.

IN MFA NO.103825/2015**BETWEEN:**

ASHOK BELURAPPA JINGI
 AGED 36 YEARS, OCC:POLICE,
 R/O JALIHAI, TQ:BADAMI,
 NOW R/O TERADAL, TQ:JAMKHANDI.

...APPELLANT

(BY SRI.HARISH S MAIGUR, ADVOCATE)

AND:

1. HANMANT S/O KARIYAPPA PUJARI
 AGE:46 YEARS, OCC:AGRICULTURE,
 R/O AMALJHERI,
 TQ:BILAGI.
2. THE BRANCH MANAGER
 ORIENTAL INSURANCE COMPANY LIMITED,
 RANNA CIRCLE, MUDHOL.

....RESPONDENTS

(BY SRI.S.S. KOLIWAD, ADV. FOR R2) (R1-SERVED)

THIS APPEAL IS FILED UNDER SECTION 173(1) OF MV ACT, AGAINST THE JUDGMENT AND AWARD DATED 19.10.2015 PASSED IN MVC NO.101/2009 ON THE FILE OF THE ADDL. SENIOR CIVIL JUDGE AND MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL-VI, JAMKHANDI, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THESE APPEALS COMING ON FOR HEARING ON IA, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

COMMON JUDGMENT

MFA No.100661/2016 and 100662/2016 are filed by the Insurance Company, MFA No.103826/2015 and MFA No.103825/2015 are filed by the claimants challenging the judgment and award dated 19.10.2015 passed by the MACT-VI, Jamkhandi in MVC Nos.101/2009 and 102/2009.

2. Brief facts are that, on 2.11.2007 at about 2 p.m., both the claimants were proceeding towards Teradal on motor cycle bearing registration No.KA-48/E-8919. After passing Hunnur village, at that time, the driver of one Tempo Trax bearing registration No.KA-29/7147 came from opposite direction in high speed, rash and negligent manner and dashed against motor cycle of the petitioners and caused accident. As a result, the claimants had sustained injuries. Due to that accident, they were admitted to the hospital and they had undergone treatment. After recovering from the injuries, they have filed claim petitions in MVC

No.101 and 102/2009 before the MACT-VI, Jamkhandi.

3. In MVC No.101/2009, the Tribunal has granted compensation of Rs.1,80,000/- with 6% interest and in MVC No.102/2009, the Tribunal has granted global compensation of Rs.40,000/- with 6% interest fastening the liability on the owner as well as the insurance company. Being aggrieved by the same, the insurance company has filed MFA Nos.100661/2016 and 100662/2016 challenging the liability fastened on it and the claimants have filed MFA No.103826/2015 and 103825/2015 seeking enhancement of compensation.

4. Learned counsel appearing for the insurance company has contended that at the time of the accident, the driver of the offending vehicle was not having valid driving license. He was driving passenger vehicle but he was not holding any license to drive the passengers vehicle. Hence,

the Tribunal was not justified in fastening the liability on the insurance company.

5. Per contra, learned counsel appearing for the claimants in both the appeals has contended that the Hon'ble Apex Court in the case of ***Mukund Dewangan Vs. Oriental Insurance Company Limited*** reported in ***AIR 2017 Supreme Court 3668***, has held that if the driver is holding license to drive the LMV vehicle, he can also drive a transport vehicle of such class without an endorsement to that effect. He further contended that the Tribunal has given finding that the insurance company is liable to pay the compensation, but in the operative portion of the judgment, it is observed that the insurance company as well as the owner of the each vehicle has to deposit 50% of the compensation amount within one month from the date of the order. This portion of the order is contrary to the finding given by the Tribunal and also contrary to the law laid down by the Hon'ble

Apex Court in the case of ***Mukund Dewangan*** (***Supra***).

6. Heard the learned counsel for the parties and perused the material available on record.

7. It is not in dispute that the claimants have suffered injuries in the accident that occurred on 02.11.2007 due to rash and negligent driving by the driver of Tempo Trax bearing registration No.KA-29/7147. The Hon'ble Apex Court in the case of ***Mukund Dewangan*** (supra) has held that, the driver holding LMV license can drive all vehicles of class including transport vehicles and no separate endorsement is required to drive such transport vehicles.

8. In view of the above, the insurance company is liable to pay entire compensation to the claimants in both the appeals. Accordingly, the appeals filed by the insurance company are dismissed. The amount in deposit, if any, by the insurance company shall be transmitted to the jurisdictional Tribunal forthwith for disbursement.

9. In respect of MFA No.103826/2015 filed against MVC No.102/2009 is concerned, it is the specific contention of the learned counsel for the claimant that the claimant was inpatient for a period of 3 days and he has suffered injuries viz. 1) Red colour abrasion on the external surface (part) of right forearm at middle portion; 2) 2 ½ x 1 ½ in size red colour abrasion on left side of anti surface of right knee joint; 3) 3 cms in size, red color abrasion on the medial of right knee; 4) 4 ½ x 1 ½ in size, red colour abrasion on the outer surface of the upper part of right leg. He has examined the treated doctor who assessed the disability at 10% to the right lower limb. The tribunal is not justified in granting global compensation of Rs.40,000/- only.

10. Considering the submission of the learned counsel for the parties and injuries suffered by the claimant, I am of the opinion that the claimant is entitled to global compensation of Rs.65,000/- including pain and suffering and other expenses.

11. Accordingly, the appeal in MFA No.103826/2015 is allowed in part. The claimant is entitled to global compensation of Rs.65,000/-. The impugned judgment and award passed by the Tribunal in MVC No.102/2009 is modified.

12. The insurance company is directed to deposit the entire compensation amount within six weeks from the date of receipt of copy of this order. On such deposit, the Tribunal is directed to disburse the same in favour of the claimant after due verification.

13. In respect of MFA No.103825/2015 filed against MVC No.101/2009 is concerned, it is the specific contention of the learned counsel for the claimant that the claimant was inpatient for a period of 84 days and he has suffered injuries as under:

- a) Two fractures cut lacerated wound on the right side of forehead above eye brow, red in colour and size is about 2 ½ x ½ skin deep in size;

- b) Red colour cut lacerated wound on the right side of lower lip $1\frac{1}{2} \times \frac{1}{2}$ skin deep in size;
- c) Red colour cut lacerated wound on the chin (submental region) $3\frac{1}{2} \times \frac{1}{2}$ skin deep in size;
- d) Swelling on lower part of right forearm and on multiple fracture;
- e) Red colour abrasion and on right side of ant, surface of right knee joint;
- f) Swelling of the right leg at the juncture of upper $\frac{1}{3}^{\text{rd}}$ middle $\frac{1}{3}^{\text{rd}}$ portion, tenderness, and fracture of right leg bones.

14. He has examined the treated doctor who assessed the permanent disability of the claimant at 40% to the right lower limb and 15% to right upper limb and 48% to the whole body. The tribunal has not granted any compensation under the head loss of amenities. Taking into consideration the deposition of the treated doctor and also the injuries suffered by the claimant, I am of the opinion that the claimant is entitled for a sum of Rs.40,000/- under the head loss of

amenities. The compensation awarded by the Tribunal under other heads is retained.

15. Accordingly, the appeal in MFA No.103825/2015 is allowed in part. The impugned judgment and award of the Tribunal is modified as follows:

Pain and suffering	Rs. 50,000/-
Other expenses	Rs. 30,000/-
Medical expenses	Rs.1,00,000/-
Loss of amenities	Rs. 40,000/-
Total	Rs.2,20,000/-

16. The insurance company is directed to deposit the entire compensation amount with interest at 6% per annum from the date of petition till realization within six weeks from the date of receipt of copy of this judgment.

17. In view of disposal of the above appeals, consideration of pending applications, if any, would not arise.

Sd/-
JUDGE

JTR