

IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD

DATED THIS THE 29TH DAY OF JUNE, 2011

PRESENT

THE HON'BLE MR. JUSTICE N. KUMAR

AND

THE HON'BLE MR. JUSTICE ARAVIND KUMAR

M.F.A.NO.9329/2005

A/W

MISC. CVL.Nos.104065/2011

& 104066/2011

C/W M.F.A.Crob.313/2005

M.F.A.NO.9329/2005

* A/W Misc. Cvl. 104065/2011 and 104066/2011

Between:

The Divisional Manager,
United India Insurance Co. Ltd.,
Maruthi Galli, Belgaum,
Represented by its
The Deputy Manager,
United India Insurance Co. Ltd.,
Regional Office,
No25, Shankaranarayana Building,
M.G.Road, Bangalore-560 001.

... Appellant

(Common in Appeal and Misc. Cvl.)

(By Sri.Laxman B. Mannoddar, Advocate)

And:

1. Sri. Rajashekhar,
S/o. Basappa Patted @ Ganadi,

Kumar
* Corrected vide
Chamber order
dated 24.08.2012

✓

Aged about 41 years,
Proprietor of Basavaraj
Oil Industries, Hukkeri.

2. Sri. Ashok Basappa Patted,
S/o. Basappa Patted,
Major,
R/at Bilakundi, Ramadurg Tq,
Belgaum District. ... Respondents
(Common in Appeal and Misc. Cvl.s.)

(By Sri. Pavan B. Doddatti, Advocate for
Sri. F.V.Patil, Advocate for R-1;
Sri.S.S.Sajjan, Advocate for R-2)

This M.F.A. is filed under Section 173(1) of MV Act against the judgement and award 04.06.2005 passed in MVC No.1513/2004 on the file of the Civil Judge (Sr.Dn.) & Member, AMACT, Hukkeri, awarding compensation of Rs.13,48,350/- with interest at 6% p.a.

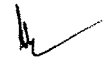
Misc. Cvl. No.104065/2011 is filed under Section 5 of Limitation Act, that this Hon'ble Court be pleased to condone 1990 days delay in filing application for recalling in the interest of justice and equity.

Misc. Cvl.No.104066/2011 is filed under Section 151 of C.P.C. that this Hon'ble Court be pleased to that the order dated 24/10/2005 may kindly be recalled in the interest of justice and equity in the interest of justice and equity.

M.F.A.Crob.313/2005

Between:

Rajashekhara
S/o. Basappa Patted @ Ganagi,



Age: 41 years, Occ: Proprietor of
Basavaraj Oil Industries,
Now Nil, R/o. Hukkeri,
District: Belgaum.

... Cross Objector

(By Sri. Pavan S. Doddatti, Advocate for
Sri. F.V.Patil, Advocate)

And:

1. Sri. Ashok Basappa Patted,
Age: Major, Occ: Business,
R/o. Balakundi, Tq: Ramadurg,
District: Belgaum.
(Owner cum Driver of Motor Cycle
No.KA-27/E-5812)

2. The Sr. Divisional Manager,
United India Assurance Co. Ltd.,
Maruti Galli, Belgaum.

(Insurer of Motor Cycle bearing
No.KA-27/E-5812 policy Cover Note
No.HBLRO/MOT No.033720
Valid from 16-2-2003 to 15-2-2004)

... Respondents

(By Sri. S.S.Sajjan, Advocate for R-1;
Sri. Laxman B. Mannoddar, Advocate for R-2)

This MFA.Crob in MFA NO.9329/2005 is filed under order 41 Rule 22 of CPC, against the judgment and award dated:04/06/2005 passed in MVC No.1513/2004 on the file of the Member, Additional MACT, Hukkeri, partly allowing the claim petition for compensation and seeking enhancement of compensation.

These appeals and Misc. Cvl's coming on for orders this day, N.Kumar J., delivered the following:



JUDGMENT

On a submission made by the learned counsel appearing for the Insurance Company that notice to the owner may be dispensed with, an order came to be passed on 24.10.2005 dispensing with the notice. However, realising the error in making this submission, application is filed i.e., Misc.Cvl.104066/2011 for recalling the said order and Misc.Cvl.104065/2011 for condoning the delay in filing the said application. The delay is condoned and the order is recalled.

2. However, the owner of the vehicle was duly served in the cross objections filed by the claimant. Therefore, he was directed to take notice to the owner in the appeal. Accordingly, he has appeared in the present appeal also.

3. This appeal is by the Insurance Company challenging the liability to indemnify the owner of the



vehicle inspite of an award passed by the Motor Accidents Claims Tribunal.

4. For the purpose of convenience, the parties are referred to as they are referred in the claim petition.

5. On 04.09.2003 at about 11.30 p.m., the claimant as a pillion rider was travelling on a motorcycle bearing registration No.KA-27/E-5812. The motorcycle was driven by the 1st respondent-Ashok Basappa Patted. On account of his rash and negligent driving, the vehicle met with an accident. The claimant sustained injuries. He was treated in the hospital. Thereafter, he preferred a claim petition claiming compensation in a sum of Rs.40,00,000/-. To the said claim petition, he has made the owner as the 1st respondent and the 2nd respondent, the Insurance Company which had insured the aforesaid motorcycle. After service of notice, both the respondents entered appearance, filed their statement of objections denying the



liability to pay compensation. The Insurance Company specifically contended that said motorcycle was not involved in the accident. The rider of the motorcycle was not holding a valid driving license at the time of the accident and it was not insured with them. Therefore, they denied the liability to pay compensation. On the aforesaid pleadings, Tribunal framed as many as 6 issues to substantiate his claim. The claimant examined himself as PW-1 and he examined 3 witnesses PW-2 to PW-4. He also produced 36 documents which are marked as Ex.P.1 to Ex.P.36. On behalf of the respondents, no evidence was adduced. However, by consent of parties, Insurance Policy issued to the offending vehicle was marked as Ex.R.1. Tribunal on consideration of the aforesaid oral and documentary evidence on record held that accident in question was on account of rash and negligent driving by the 1st respondent/owner of the vehicle in question and thus claimant has established actionable negligence.



Thereafter, it considered the medical evidence on record as well as the evidence of the claimant and came to a conclusion that he has sustained serious injuries and permanent disability to the extent of 75%. Thereafter, it proceeded to award a global compensation of Rs.13,48,350/- under various heads. In so far as the liability of the Insurance Company is concerned, it held admittedly the vehicle in question was insured which was owned by the 1st respondent and therefore it proceeded to foist the liability on the Insurance Company also. Thus, an award came to be passed for a sum of Rs.13,48,350/- payable with interest at 6% p.a. from the date of claim petition till the date of realisation to be recovered from respondents 1 and 2. However, liability to pay the compensation was foisted on the 2nd respondent. Aggrieved by the said award of the Tribunal, the Insurance Company is in appeal.

6. The learned counsel for the Insurance Company assailing the impugned award contends firstly the 1st



respondent was not the owner of the vehicle in question on the date of the accident though the vehicle in question was duly insured by the Insurance Company, the name of the 1st respondent is entered in the RC book on 06.10.2003 though the accident took place on 04.09.2003. As the owner of the vehicle on the date of the accident was not made a party, the appeal is liable to be dismissed for non-joinder of necessary party. At any rate, no liability could have been foisted against the Insurance Company. Secondly, it was contended that policy which is issued is an Act policy. According to the claimant, he was a pillion rider. Therefore, under Section 147 of the Motor Vehicles Act, the Insurance Company is under no obligation to indemnify the owner of the vehicle in respect of a claim by a pillion rider who is not a third party as understood in the context of the Motor Vehicles Act and therefore he submits on the face of it, the foisting of the liability on the Insurance Company is illegal and the award



foisting liability on the Insurance Company is liable to be set aside.

7. In support of his contention he placed reliance on a judgment of this court in the case of **THE BRANCH MANAGER, THE NEW INDIA ASSURANCE CO., LTD., VS. MAHADEV PANDURANG PATIL AND ANOTHER (ILR 2011 KAR 850)** where after reviewing the entire case law, this court has held as under:

“14. From the scheme of Chapter XI, the statutory insurance which is made mandatory is only to protect the interest of third parties. Section 146 deals with the necessity for insurance against third party risks. Section 147 deals with the requirements of policies and limits of liability. Sub-clause (i) of Clause (b) of sub-Section (1) of Section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. Whereas sub-Clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle against the death of or bodily injury to any passenger of a



public service vehicle caused by or arising out of the use of the vehicle in a public place. Section 2(35) of the Act defines what a public service vehicle means, i.e., any motor vehicle used or adopted to be used for the carriage of passengers for hire or reward and includes a maxi cab, a motor cab, contract carriage and stage carriage. Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle however the liability in so far as they are concerned is limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a 'goods carriage'. Therefore, it is clear the statutory insurance is confined to the death or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.


15. *Therefore, the passenger of a vehicle which is not meant for public service is not covered under this Section. The said passenger in the case of a two wheeler is the pillion rider and in the case of three wheeler and four wheeler the occupants of such vehicle who are not carried in the said vehicle for hire or reward. Therefore, the insurance policy taken in respect of a vehicle, in which they are*



travelling as such passengers are not treated as third parties and such an insurance do not cover the risk of such persons. The reason is Section 147 does not require a policy to cover the risk to passengers who are not carried for hire or reward. The statutory insurance does not cover injuries suffered by occupants of the vehicle who are not carried for hire or reward and the insurer cannot be held liable under the Act. The occupants/passengers/inmates of private vehicle do not fall within the definition of the word third party. Therefore, the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of the vehicle, passengers in such private vehicle or a pillion rider in the case of a two wheeler. Gratuitous passengers who are not carried for hire or reward in a vehicle other than a public service vehicle, cannot be construed as third parties."

8. In view of the aforesaid judgment, the claimant being a pillion rider is not entitled to be compensated by the Insurance Company as he is not a third party.

9. We are satisfied from the material on record that the Tribunal has properly appreciated the same and



awarded a just compensation and there is no scope for any interference as contended by the cross-objector.

10. For the aforesaid reasons, the award passed by the Tribunal requires to be set aside to that extent. Hence, we pass the following order:

The appeal is allowed. The liability foisted on the Insurance Company to pay the compensation amount is hereby set aside. However, the liability foisted on the owner of the vehicle by the Tribunal remains undisturbed.

The cross objections 313/2005 is hereby dismissed.

The parties to bear their own costs.

The amount in deposit made before this court at the time of filing of the appeal and the amount deposited before the Tribunal by the Insurance Company are ordered to be returned to it forthwith. If any amount is already withdrawn by the claimant, the said amount shall be recovered by the Insurance



Company by filing a execution petition from the owner of the vehicle.

Sd/-
JUDGE

Sd/-
JUDGE

Jm/-