

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 31st DAY OF JANUARY 2013

BEFORE

THE HON'BLE MR.JUSTICE S.N.SATYANARAYANA

M.F.A.No.2460/2008 (MV)

c/w

MFA.No.2459/2008(MV)

BETWEEN:

Senior Superintendent of Post Office,
Mangalore Division, Balmatta
Mangalore-2 ... Appellant common

(By Sri.H. Jayakara Shetty, Advocate)

AND:

1.Hemanth, 29 years
s/o.Jayakara
R/o.Laxmi H.R.Compound,
Bolar, Mangalore.

2.Niranjan,
S/o.Sarvothama Shetty,
Kusuma Nilaya, Hosabettu
Mangalore.

3.The New India Assurance
Company Limited, Nellikai Road
Mangalore. ...Respondents in
MFA.No.2460/08

(By Sri.S.V. Hegde Mulkhand, Advocate for R-3
Sri.P.Karunakar Associates, Advocates for R-1
R-2-service held sufficient v/o. dated 6.12.12)

AND:

1.Hemanth, 29 years
s/o.Jayakara
R/o.Laxmi H.R.Compound,
Bolar, Mangalore.

2.Chandu Naik,
S/o.Late Thukra Naik
Pelathadka House,
Mundaje Village
Now at P & T Quarters,
C-2, Bolar, Mangalore.

...Respondents in
MFA.No.2459/08

(Appeal against R-1 is dismissed v/o. dated 27.9.2010;
R-2 served)

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MFA NO.2460/2008 is filed under Section 173(1) of the M.V.Act against the judgment and award dated 9.11.2007 passed in MVC.No.177/2004 on the file of I Additional Dist. Judge & MACT, D.K. Mangalore, dismissing the claim petition for compensation.

MFA NO.2459/2008 is filed under Section 173(1) of the M.V.Act against the judgment and award dated 9.11.2007 passed in MVC.No.1648/2004 on the file of I Additional Dist. Judge & MACT, D.K. Mangalore, partly allowing the claim petition for compensation and seeking enhancement of compensation.

These appeals coming on for final hearing this day, the Court delivered the following :

J U D G M E N T

MFA.No.2460/08 is filed by the petitioner in MVC.No.177/04 impugning the judgment and award so far as it pertains to rejecting their claim seeking damages

to the Maruthi Omni car belonging to appellant-postal department.

2. MFA.No.2459/08 is filed by the very same department which is the second respondent in MVC.No.1648/04 wherein compensation is awarded to the claimant for fracture of neck talus right with subtalar ankle joint dislocation and fracture of left 8th rib.

3. These two appeals are clubbed together and taken up for final disposal.

4. The accident is not in dispute so also the involvement of the Maruthi Omni car belonging to the postal department and the motorcycle belonging to the claimant in MVC.No.1648/04. It is further not in dispute that the said accident took place on 3.4.2002 at about 2.45 p.m. when the maruthi omni car belonging to the postal department was proceeding from Super Market side to Nandigudde Circle. The finding of the Tribunal is that the place where the accident has taken place is 18 ft. wide

asphalt road with 3 ft. shouldering on either side. The sketch produced along with the report shows that at the time of accident, the maruthi car was on the extreme right side of the asphalted road in the direction in which it was proceeding by leaving 14 ft. wide gap on its left side. With this the Tribunal has come to the conclusion that the maruthi car belonging to the postal department was being driven in a rash and negligent manner by its driver who is the first respondent in MVC.No.1648/04, which has resulted in the accident causing injuries to the rider of the motor cycle.

5. Heard the learned counsel appearing for appellant in both the appeals and respondent-Insurance Company and also the claimant.

6. On going through the impugned judgment, this Court is of the opinion that the reason given by the Tribunal to hold that the maruthi car belonging to the appellant is solely responsible for the accident is just and proper. This is further strengthened by the fact that the

police after investigation have filed charge sheet against driver of the said vehicle. In that view of the matter, the appeal filed by the Postal Department in seeking compensation from the rider of the motor cycle for the damages caused to the maruthi car does not survive and accordingly, the same is rightly rejected by the Tribunal and this Court do not find any reason to disbelieve the finding of the Tribunal. The acquittal of the driver by the jurisdictional Magistrate in itself does not absolve the liability of the postal department inasmuch as the said acquittal is on technical grounds. Accordingly, the appeal filed by the postal department impugning the judgment in MVC.No.177/04 requires to be dismissed.

7. Coming to the appeal filed by the postal department impugning the judgment and award so far it pertains to awarding compensation to the claimant, on going through the material available on record, it is seen that for the injuries sustained by the claimant in MVC.No.1648/04 the compensation awarded by the Tribunal is in fact on lower side and in this view of the

matter, the question of reducing the quantum of compensation awarded does not arise. It is further observed that in view of the finding of this Court in dismissing the appeal filed in MVC.2960/08, the liability of the postal department is established beyond all reasonable doubt in satisfying the compensation awarded to the rider of the motor cycle. In that view of the matter, the appeal filed by the postal department challenging the award passed in favour of the rider of the motor cycle in MVC.No.2459/08 also does not survive for consideration.

8. Accordingly, both the appeals are dismissed.

In view of dismissal of the appeals filed by the postal department, the amount in deposit is ordered to be transferred to the Tribunal for disbursement to the claimant.

**Sd/-
JUDGE**

*alb/-.