

IN THE HIGH COURT OF KARNATAKA

GULBARGA BENCH

DATED THIS THE 31<sup>ST</sup> DAY OF JANUARY 2014

BEFORE:

THE HON'BLE MR. JUSTICE A.S. PACHHAPURE

MISCELLANEOUS FIRST APPEAL NO. 31324 OF 2010 (MV)

**BETWEEN:**

The New India Assurance Company Ltd.,  
Gulbarga, represented by its  
Divisional Manager, Bangalore  
Branch Manager,  
Gunj Road, Raichur

... Appellant

[By Sri R.V.Nadagouda, Advocate)

**AND:**

1. Madsudan Rao S/o Venkat Rao,  
Age: 65 Years, Occ: Retd. Govt. Servant  
R/o Bairoon Quilla, Raichur
2. Venkeppa S/o Timmappa  
Age: 30 years, Occ:  
R/o Manchalapur now residing at  
Makthalpet, Raichur.
3. Venugopal s/o Ghanshamdas Karwa  
Age: 37 years, Occ: Business  
R/o Square Colour Lab Pvt.Ltd.  
Gandhi Chowk, Lingasugur Road  
Raichur

... Respondents

(By Sri Prakash R.Kulkarni, Advocate for R-1;  
Sri Shivakumar Kalloor, Advocate for R-3)

This appeal is filed U/S 173(1) of M.V. Act against the judgement and award dated 01.12.2009 passed in MVC No.572/2008 on the file of the Prl.District Judge (MACT) Raichur, partly allowing the claim petition and awarding amount of Rs.1,66,000/- with interest of 6% p.a.

This appeal coming for Orders this day, the Court delivered the following:

### **JUDGEMENT**

The appellant has challenged its liability and the quantum of compensation awarded by the Tribunal for the injuries sustained by the 1<sup>st</sup> respondent in an accident that occurred on 26.03.2008.

2. The 1<sup>st</sup> respondent is claimant before the Tribunal had suffered fracture of femur and other simple injuries. Therefore, he approached the Tribunal claiming compensation.

3. After recording the evidence the Tribunal granted a sum of Rs.1,66,000/- with interest at 6%. Challenging its liability and the quantum, this appeal is filed by the insurer.

4. Heard learned counsel for both the parties.

The points that arise for my consideration are;

(1) Whether the insurer is liable to indemnify the owner by paying the amount of compensation?

(2) Whether the quantum of compensation is on the higher side?

5. The learned counsel for the appellant would submit that as the driver did not hold a licence on the date of accident, the insurer is not liable to pay the compensation. So also he submits that quantum of compensation is on the higher side.

6. On the other hand the learned counsel for the respondent has supported the judgment and award of the Tribunal. Not holding a licence according to the appellant is a breach of conditions of the policy. It is for the appellant to establish that the driver had no valid driving licence on the date of the accident. To prove this fact the insurer has not obtained any document from the authorities concerned

and except issuing notice to the owner of the vehicle calling upon him to produce the licence of his driver, no other steps have been taken. The owner has replied the notice stating that the driver has left the job and his whereabouts are not known. Mere issuance of the notice to the owner and obtaining a receipt as aforesaid itself is not sufficient to exempt the insurer from the liability to pay the compensation as the said circumstance on record is insufficient to hold that the driver did not have a licence on the date of accident.

7. So far as the quantum of compensation is concerned, 1<sup>st</sup> respondent has suffered fracture of femur and the simple injuries. A sum of Rs.25,000/- is granted for pain, suffering and mental agony, a sum of Rs.1,16,000/- towards medical expenses on the basis of the bills produced before the Tribunal. An amount of Rs.25,000/- has been paid towards compensation for loss of amenities. In the absence of compensation towards loss of future income, though a

sum of Rs.25,000/- has been awarded towards loss of amenities, I do not find it is a ground to interfere with the amount awarded. The compensation awarded on other heads appears to be just and proper. Therefore, I do not find any grounds to interfere with the impugned judgment and award. Hence, the point No.1 is answered in the affirmative and point No.2 in the negative.

Consequently, the appeal fails and it is dismissed.

The amount in deposit is ordered to be transmitted to the jurisdictional Tribunal.

**Sd/-  
JUDGE.**

**\*MK**