

**IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH**

DATED THIS THE 30TH DAY OF JUNE, 2017

BEFORE

THE HON'BLE DR.JUSTICE H.B.PRABHAKARA SASTRY

MISCELLANEOUS FIRST APPEAL NO.20780/2011 (MV)

BETWEEN:

BHUVANESHWARI D/O VEERESH KARIGAR,
AGE: 11 YEARS, OCC: STUDENT,
MINOR BY GUARDIAN NATURAL FATHER,
VEERESH S/O GAVISIDAPPA KARIGAR,
AGE: 31 YEARS, OCC: HOTELIER,
R/O KALIDAS NAGARA, KOPPAL, KOPPAL. ... APPELLANT

(BY SRI. GURUBASAVARAJ S.M., ADVOCATE)

AND:

1. SHIVAYOGI S/O SHIVAPPA GONDIHOSALLI,
AGE: 52 YEARS, OCC: OWNER OF VEHICLE
NO.KA-37/5662 (TOM-TOM),
R/O TANAKANAKAL, TA & DIST: KOPPAL.
2. YALLAPPA S/O SHIVAPPA GONDIHOSALLI,
AGE: 52 YEARS, OCC: OWNER OF VEHICLE
NO.KA-37/5662 (TOM-TOM),
R/O TANAKANAKAL, TQ & DIST: KOPPAL.
3. THE DIVISIONAL MANAGER,
UNITED INDIA INSURANCE COMPANY LIMITED,
BRANCH OFFICE, YALAMANHALI COMPLEX,
1ST FLOOR, STATION ROAD, HOSPET,
DIST: BELLARY. ... RESPONDENTS

(R1 AND R2 SERVED,
SRI. LAXMAN B MANNODDAR, ADVOCATE FOR R3)

THIS MFA IS FILED UNDER SECTION 173(1) OF THE MV ACT AGAINST THE JUDGMENT AND AWARD DATED 30.09.2010, PASSED IN MVC NO.939/2008, ON THE FILE OF THE MEMBER, ADDL. MACT AND PRESIDING OFFICER, FAST TRACK COURT-II, KOPPAL, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL COMING ON FOR FINAL HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

The present appellant who was the claimant in the Tribunal below has filed this appeal seeking modification of the judgment and award under appeal by enhancement of compensation, setting aside the liability saddled on the owner of the vehicle and consequently shifting the liability to pay the compensation upon the 3rd respondent-Insurance Company in the Tribunal below.

2. During the pendency of this appeal, the appellant has filed I.A.No.2/2011 under Order XLI Rule 27 of the Code of Civil Procedure, seeking permission to produce an attested true copy of insurance policy extract for the period from 18.12.2007 to 17.12.2008, said to have been issued by the respondent-Insurance Company. In the affidavit

accompanying the application, the applicant/appellant has stated that, since she was an injured/claimant in the Tribunal below, the insurance particulars regarding the offending vehicle would be with the respondent/owner of the vehicle in the Tribunal below. The said owner did not furnish the insurance particulars well in time. As such, the Tribunal below exonerated the Insurance Company from its liability and affixed the liability upon the driver and the owner of the vehicle. She has further stated that, very recently with great difficulty, she has obtained the copy of the insurance policy covering the relevant period. It is with said statements on oath she has produced the said document.

3. The respondents have not filed their objection to the said application. However, learned counsel for the respondent No.3-Insurance Company made a oral submission that the document now said to be produced under I.A.No.2/2011 though prima facie appears to be an insurance policy for the relevant period, but it lacks the mentioning of

registration number of the vehicle in it. As such, he submits that to ascertain the authenticity of the said document and the say of the owner regarding the said document, the matter requires to be remanded.

4. As observed above, the Tribunal below has fastened the liability to pay the compensation upon the owner and the driver of the alleged offending vehicle stating that the copy of the insurance policy produced by the claimant as well as the respondent before it as Ex.P.8 and Ex.R.1 respectively, were for a period from 18.12.2008 to 17.12.2009. With this, it observed that as on the date of the accident, since the said policy was not valid, the insurer was absolved from its liability. Now the appellant has come with the document said to be an insurance policy covering the alleged vehicle for a period from 18.12.2007 to 17.12.2008. If this document is proved to be a valid insurance policy for the relevant period covering the alleged offending vehicle, the finding of fixation of the liability upon the respondents may vary.

5. Further, the appellant/claimant has shown the reason in his affidavit that the said document has never been in her possession, since it belongs to the vehicle under the ownership of the respondent No.1 in the Tribunal below. She has further shown that it is only recently before filing I.A.No.2/2011 she got the said document. Therefore, she has shown convincing reason for the belated production of the said document. Further, the said document appears to be an important and necessary document for the proper adjudication of the matter. As such, without going into the other phase of this appeal regarding the prayer for enhancement of the compensation, suffice it to say that the I.A.No.2/2011 deserves to be allowed and the Tribunal below be directed to give an opportunity to both side to lead their further evidence on the document now produced by the claimant/appellant under the I.A. and to decide the matter afresh in accordance with law. For the said purpose there is necessity to set aside the judgment and award under appeal and remand the matter back.

6. Accordingly, I proceed to pass the following:

ORDER

I.A.No.2/2011 filed under Order XLI Rule 27 of the Code of Civil Procedure is hereby allowed.

The document said to be produced under the said I.A., which is an attested true copy of insurance policy extract for the period from 18.12.2007 to 17.12.2008 is permitted to be produced by the claimant in the Tribunal below.

The judgment and award under appeal is set aside.

For the limited purpose of production of document permitted above, the parties are at liberty to adduce evidence. Thereafter, the Tribunal below shall dispose of the matter afresh in accordance with law.

The parties appearing in this appeal before this Court are directed to appear before the Tribunal below without anticipating any fresh notice from it on 14/07/2017 at 11.00 a.m.

Registry to transmit a copy of this order along with lower court records to the concerned Tribunal forth with.

Accordingly, the appeal stands disposed of.

**Sd/-
JUDGE**

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