

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

DATED THIS THE 31ST DAY OF AUGUST 2017

BEFORE

THE HON'BLE Mr. JUSTICE L. NARAYANA SWAMY

MISCELLANEOUS FIRST APPEAL No.22084 OF 2013 [MV-I]

C/w.

M.F.A. CROSS OBJECTION No.100010 OF 2015 [MV-I]

IN MFA No.22084/2013:

BETWEEN:

MANJUNATH S/O NINGAPPA HARIJAN
AGE: 22 YEARS, OCC: MASON NOW NIL,
R/O: CHIKKONTI, TQ: HIREKERUR,
DIST: HAVERI.

... APPELLANT

(By Sri. M H PATIL ADV.)

AND:

1. GUDDAPPA S/O BASAPPA MADAR
AGE: 47 YEARS, OCC: BUSINESS,
R/O: HOLABIKONDA,
TQ: HIREKERUR,
DIST: HAVERI
2. THE GENERAL MANAGER
ICICI LOMBARD GENERAL INSURANCE CO.LTD.,
DR. RAJKUMAR ROAD,
OPP. TO CARE COFFEDAY,
RAJAJINAGAR ENTRANCE,

BANGALORE-560010

... RESPONDENTS

(By Sri. NAGARAJ C.KOLLOORI ADV.FOR R2
NOTICE TO R1 DISPENSED WITH.)

THIS MFA IS FILED U/SEC.173(1) OF MV ACT, 1988,
AGAINST THE JUDGMENT AND AWARD DTD:31-01-2013
PASSED IN MVC.NO.82/2011 ON THE FILE OF THE
SENIOR CIVIL JUDGE AND JMFC., HIREKERUR, PARTLY
ALLOWING THE CLAIM PETITION FOR COMPENSATION
AND SEEKING ENHANCEMENT OF COMPENSATION.

IN MFA CROB. NO.100010/2015:

BETWEEN:

THE GEN MANAGER
ICICI LOMBARD GENERAL INSURANCE COM.LTD.,
DR. RAJKUMAR ROAD, OPP. CARE COFFEEDAY,
RAJAJI NAGAR ENTRANCE, BENGALURU-10
REP BY MANAGER LEGAL

... CROSS-OBJECTOR

(By Sri. NAGARAJ C. KOLLOORI ADV.)

AND:

1. MANJUNATH S/O NINGAPPA HARIJAN
AGE: 22 YEARS, OCC: MASON,
R/O: CHIKKONTI, TQ: HIREKERUR,
DIST: HAVERI
2. GUDDAPPA S/O BASAPPA MADAR
AGE: 47 YEARS, OCC: OWNER,
R/O: HOLABIKONDA, TQ: HIREKERUR,
DIST: HAVERI

... RESPONDENTS

(By Sri.M.H. PATIL ADV. FOR R1)

THIS MFA.CROB. IN MFA NO.22084/2013 IS FILED
UNDER ORDER 41 RULE 22 OF CPC, AGAINST THE
JUDGMENT & AWARD DATED 31.01.2013, PASSED IN MVC

No.82/2011, ON THE FILE OF THE SENIOR CIVIL JUDGE & JMFC, HIREKERUR AWARDING COMPENSATION OF RS.78,500/- ALONG WITH THE INTEREST AT THE RATE OF 6% P.A. FROM THE DATE OF PETITION TILL ITS REALISATION.

THESE CASES COMING ON FOR *ADMISSION* THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

Aggrieved by the inadequacy of compensation awarded by the Motor Accident Claims Tribunal (for short 'Tribunal') by its judgment and award dated 31st January 2013 in MVC No.82 of 2011, the injured claimant has filed the appeal in MFA No.22084 of 2013 seeking enhancement of compensation. Questioning the liability fastened on it as well as the quantum of compensation awarded, the insurer of the offending vehicle has filed MFA Cross objection No.100010 of 2015.

2. Though these matters are listed for admission, they are heard on merits and disposed of with the consent of learned counsel for the parties.

3. The parties are referred to as per their ranking before the Tribunal.

4. The facts of the case are that on 23rd June 2008 at about 10.00 a.m., the petitioner after completion of his mason work at Tiluvalli boarded an auto rikshaw bearing registration No.KA-27/9147 in order to go to his native at Chikkonti. When the said vehicle reached Tiluvalli daba, the driver of the auto rikshaw drove the same in rash and negligent manner and lost control over the vehicle. As such, the vehicle toppled down and due to the said accident, the petitioner sustained injuries all over the body and immediately, he was shifted to Government Hospital, Haveri. Contending that the accident occurred due to sole negligence of the driver of the Auto rikshaw, the petitioner filed a claim petition before the Tribunal, seeking compensation from the owner and insurer of the offending vehicle.

5. Respondent No.1/owner remained *exparte* before the Tribunal. The respondent No.2/insurer denied all the averments of the petition and contended that since the driver had no driving licence to drive the offending vehicle and had no valid permit in respect of the vehicle in question and the accident occurred due to over-loading, the insurer is not liable to pay the compensation. Hence, he prayed for dismissal of the petition.

6. The Tribunal on appreciation of the entire material on record, while allowing the petition in part, awarded total compensation of Rs.78,500/- as detailed below, with interest at 6% per annum from the date of petition till its realization and fastened the liability to pay the compensation on the respondent Nos.1 and 2 jointly and severally.

1. Pain, trauma suffering and injury : Rs.30,000/-

2.	For medical expenses nutrition	:	Rs.5,000/-
3.	For Physiotherapy and future medical expenses	:	Rs.5,000/-
4.	Loss of income due to injuries sustained and during period of treatment for a period of 3 months	:	Rs.13,500/-
5.	For future loss of earning	:	<u>Rs.25,000/-</u>
TOTAL			<u>Rs.78,500/-</u>

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

8. The learned counsel for the appellant-petitioner contended that though the accident is of the year 2008 and the claimant was earning Rs.10,000/- per month by doing mason work, the Tribunal was not justified in taking the monthly income of the petitioner at Rs.4,500/-. Further, as a result of the accident, the petitioner sustained (i) fracture of left to right shoulder, chest and knee region and (ii) tenderness in right shoulder fracture of 3rd and 4th ribs, which is grievous in nature. Though, the doctor/PW-2 who had issued

the disability Certificate/Ex.P-7 has assessed the disability to the extent of 35%, the Tribunal has not considered the disability and awarded only Rs.25,000/- towards *future loss of earning*. Further, the compensation awarded under the heads of *pain and suffering* and *loss of income during laid up period* is on the lower side. The Tribunal has not awarded adequate compensation towards *medical expenses, future loss of earnings* and *future medical expenses*. Hence, he sought for awarding just and adequate compensation under all the heads.

9. On the other hand, the learned counsel for the Cross objector-insurer contended that the Tribunal has not properly appreciated the material on record in order to award compensation to the tune of Rs.78,500/-. The Tribunal had not adverted to the fact that neither the driver of the offending vehicle had any driving licence nor there was any permit in respect of the vehicle in

order to ply the same on road. Further, it is a fact that there were more members in the auto rikshaw at the time of accident than its seating capacity and also the driver of the Auto rikshaw took the vehicle outside its territorial jurisdiction/limits. Hence, the same is in violation of the terms and condition of the policy. As such, ignoring all these material facts, the Tribunal is not justified in fixing the liability on the insurer of the auto rikshaw. Hence, he sought for dismissal of the appeal and allowing the cross objection.

10. Having heard the learned counsel for the parties and perused the material on record, the first question this Court needs to answer is with regard to the fastening of liability on the insurer of the offending vehicle. If the driver had driven the vehicle without possessing a valid and effective driving licence and without any permit to ply the same, the burden is on the insurer to prove the said aspect. Since, no oral or

documentary evidence has been adduced by the insurer in support of its contention, the burden cast on the insurer remains not discharged. The Insurance Company having failed to discharge its obligation that the driver did not possess an effective Driving Licence to drive the offending vehicle cannot disown its liability to pay compensation to the claimant. Moreover, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.

11. In paragraph 21 of its judgment, the Tribunal has given its finding in regard to the issue relating to the driver carrying more passengers than the permitted capacity holding that respondent No.2 insurer cannot deny its liability to pay compensation. In view of the same, fastening of liability on the insurer of the

offending vehicle is just and proper. Hence, no interference is called for with regard to the said finding by the Tribunal.

12. Insofar as the quantum of compensation is concerned, on re-appreciation of the entire material on record and keeping in view the age, occupation, year of accident and the injuries sustained by the petitioner, this Court is of the considered opinion that the compensation awarded by the Tribunal requires to be enhanced by another Rs.50,000/- globally. Thus, in all, the petitioner would be entitled for total compensation of Rs.1,28,500/- as against the compensation of Rs.78,500/- awarded by the Tribunal.

13. In the result, the appeal by the petitioner is ***allowed in part.*** The judgment and award passed by the MACT dated 31st January 2013 in MVC No.82 of 2011 is modified. The compensation awarded by the Tribunal is enhanced by Rs.50,000/- globally and the

petitioner is entitled to total compensation of Rs.1,28,500/-.

The Cross objection filed by the insurer of the offending vehicle is ***dismissed***. The liability saddled on the insurer of the offending vehicle is affirmed and it is directed to pay the compensation awarded by the Tribunal.

The amount in deposit is directed to be transmitted to the Tribunal forthwith.

**SD/-
JUDGE**

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