

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 28TH DAY OF FEBRUARY, 2019

BEFORE:

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

MISCELLANEOUS FIRST APPEAL No.7439 OF 2013 [MV]

BETWEEN

Mr. Rajesh Poojary
Aged about 47 years
s/o Anni Poojari
r/a Kuntady, Kalya
Village-574244, Karkala
Taluk, Udupi District.

... Appellant

[By Sri K Chandranata Ariga, Advocate]

AND

1. Mr. Rajesh, s/o Dhananjaya
Shettigar, Aged about 31 years
r/a Navadurga Nivas
Nelligudde, Nitte village
Karkalla Taluk
Now r/a II Block
Thiruvali village
Vamanjoor – 575028
Mangalore Taluk.

2. The Branch Manager
Future General India
Insurance Co. Ltd.,
M G Road, Ballalbagh
Mangalore – 575 003. ... Respondents

[By Sri D Prashanth for Sri Sandesh Shetty T, Advocates for R1,
Sri O Mahesh, Advocate for R2)

This MFA is filed under Section 173(1) of MV Act against the judgment and award dated 6.4.2013 passed in MVC No.1046/2011 on the file of III Additional Senior civil Judge, Member, MACT, Mangalore, DK, awarding compensation of Rs.3,88,776/- from the date of petition till realization.

This MFA coming on for final hearing this day, the Court delivered the following:

JUDGMENT

This appeal is filed challenging the liability fastened on the appellant/insured, wherein the Tribunal in MVC No.1046/2011 while awarding compensation to the claimant for the injuries sustained by him in a road traffic accident absolved the insurer and held the insured liable to pay the compensation.

2. The brief facts of the case are that on 1.4.2011, the claimant/respondent No.1 was riding his bicycle from his factory towards his house i.e. from Belman side towards Karkala side and when he reached near Bramari Cross, Nitte village, Karkala Taluk at about midnight 12 O' clock, a lorry bearing Regn. No.KA-20/B-1212 came from Balmatta side towards Karkala side driven by its driver in a rash and negligent manner and hit against the bicycle

from behind, as a result of which, the claimant sustained grievous injuries to his left hand and other parts of the body. His left foot was crushed under the tyres of the lorry. Immediately he was shifted to A J Hospital, Mangalore, wherein he was treated as an inpatient from 1.4.2011 to 27.5.2011. Surgery was conducted on his left hand and left foot and three fingers of left foot were amputated.

3. The Tribunal awarded a total compensation of Rs.3,88,776/- with interest at 6% p.a. on Rs.1,84,776/- from the date of petition till realization, however, observing that the lorry in question belonging to the appellant herein did not have fitness certificate as on the date of accident, held the appellant/insured liable to pay the compensation.

4. Learned counsel Sri Chandranatha Ariga, appearing for the appellant contended that the judgment and award passed by the Tribunal insofar as fixing the liability on the appellant/owner of the vehicle on the ground that the vehicle did not possess fitness certificate as on the date of accident is contrary to law and various

decisions in this regard. He would contend that the offending vehicle had a valid insurance policy as on the date of accident and the driver of the vehicle was also holding a valid driving license. As such, the Tribunal was not justified in absolving the liability of the insurer to pay compensation and fixing the liability on the insured only on the ground that there is no fitness certificate. In support of his contention, he placed reliance on a judgment of this Court in MFA No.6621/2006 c/w MFA.CROB.No.304/2006 (DD 18.9.2007) and Full Bench decision of the Kerala High Court in the case of '**V M Augustine, Vattakavumkal -vs- Ayyappankutty alias Mani' & anr. reported in 'AIR 2015 Kerala 131'.**

5. Learned counsel appearing for respondent No.2/Insurance Company, on the otherhand, would vehemently contend that the charge sheet was filed against the driver of the offending vehicle even under Rule 52 of the Central Motor Vehicles Rules and it is obvious that the fitness certificate had expired as on the date of accident and the vehicle being a transport vehicle, there was

fundamental breach of conditions and in such a case, the insurer cannot be held liable to pay the compensation.

6. The fact that the respondent No.1 sustaining injuries in a road traffic accident involving the lorry bearing Regn. No.KA-20B/1212 and the actionable negligence on the part of the driver of the said lorry are not in dispute. The said lorry was insured with respondent No.2/Insurance Company. As per the insurance policy – Ex.R2, the policy was in existence as on the date of accident.

7. The only question which arises for consideration in this appeal is as to whether the Insurance Company can be exonerated of its liability on the ground that the insured did not possess fitness certificate for the offending vehicle as on the date of accident.

8. The Tribunal after considering that the driver of the lorry was charge sheeted for the offences punishable under Sections 279 and 338 of IPC and Rule 52 of Central Motor Vehicles Rules and Section 192 of Indian Motor

Vehicles Act and after observing that according to charge sheet, the fitness certificate had expired prior to the date of accident and also relying on a decision of the Kerala High Court in the case of 'Thara -vs- Syamala' reported in 'AIR 2009 (NOC) 2244 (Ker)', wherein it is held that when the vehicle involved in the accident did not have a valid fitness certificate at the time of accident, Insurance Company shall be exempted from its liability and therefore held the insured/appellant liable to pay the compensation.

9. The Division Bench of this Court in a decision rendered in MFA No.6621/2006 c/w MFA.CROB No.304/2006 in the case of the 'New India Assurance Co. Ltd. -vs- Sri N Srinivasa Murthy and others' (DD 18.9.2007) has observed that 'absence of fitness certificate cannot be a reason to deny the compensation to the claimant'. A coordinate Bench of this Court in the case of the Branch Manager -vs- H D Channadevaiah and others in MFA No.4428/2013 c/w MFA No.3553/2013 (DD 25.6.2014) held in a similar circumstances, where the insured vehicle did not possess fitness certificate as on the

date of accident that, "the policy was in force on the date of accident and the Insurance Company cannot disown its liability."

10. The Tribunal while fixing the liability on the insurer placed reliance on the decision of the Kerala High Court in the case of Thara -vs- Syamala reported in 2009 ACJ 2440. It is pertinent to note that the said decision of the Kerala High Court has been over-ruled by the Full Bench decision in the case of V M Augustine, Vattakavumkal -vs- Ayyappankutty alias Mani & another reported in AIR 2015 Kerala 131. It is held that lapse of certificate of fitness would constitute breach of the provisions of Motor Vehicles Act or Rules. However, there is nothing under Section 56 of the Act, which suggests that the registration or permit issued would stand cancelled or revoked on account of lapse of period of fitness certificate.

11. In view of the decisions referred to supra, the judgment and award passed by the Tribunal thereby exonerating the Insurance Company to pay the compensation and directing the insured/appellant to pay

the compensation is liable to be set aside. Accordingly, I pass the following:

ORDER

Appeal is allowed.

The judgment and award dated 6.4.2013 passed in MVC No.1046/2011 on the file of III Additional Senior Civil Judge, Member, MACT, Mangalore, DK, is hereby set aside.

Respondent Nos.1 and 2 before the Tribunal are jointly and severally liable to pay the compensation.

Respondent No.2/Insurance Company shall pay the amount as awarded by the Tribunal within a period of four weeks from the date of receipt of copy of this judgment.

Appellant is entitled to refund of the amount deposited before this Court.

Sd/-
JUDGE

Bkm.