



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF MAY, 2019

BEFORE

THE HON'BLE MR.JUSTICE K. SOMASHEKAR

MFA NO.11288/2012

C/W

MFA NO.11287/2012 (MV-INJ)

IN MFA NO.11288/2012

BETWEEN

THE ORIENTAL INSURANCE CO. LTD.
METAGALLI, MYSURU
THROUGH ITS REGIONAL OFFICE
LEO SHOPPING COMPLEX
44/45, RESIDENCY ROAD
BENGALURU – 560 025
REP. BY ITS MANAGER
SRI. K. GOVINDARAJAN

... APPELLANT

(BY SRI. K. S. LAKSHMINARASAPPA, ADV. FOR
SRI. B. C. SEETHARAMA RAO, ADV.)

AND

1. SRI. SHANKARA
AGED: 43 YEARS, S/O MADIAH
ALAGUDU VILLAGE
T.NARASIPURA TALUK
2. SRI. NAGANNA
AGED ABOUT 34 YEARS, S/O MADIAH
R/O KELLAMBHALLI VILLAGE
CHAMARAJANAGAR TALUK
AND DISTRICT. (DRIVER-CUM-
OWNER OF AUTO NO.KA.10/2758) ... RESPONDENTS

(BY SRI. SYED AKBAR PASHA, ADV. FOR
SRI. MAHANTESH S. HOSMATH, ADV. FOR R-2;
R-1 SERVED.)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 31.07.2012 PASSED IN MVC NO.40/2008 ON THE FILE OF THE SENIOR CIVIL JUDGE, JMFC, MACT, T.NARASIPURA, AWARDED A COMPENSATION OF RS.13,730/- WITH INTEREST @ 6% P.A., FROM THE DATE OF PETITION TILL REALIZATION.

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BETWEEN

THE ORIENTAL INSURANCE CO. LTD.
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THROUGH ITS REGIONAL OFFICE
LEO SHOPPING COMPLEX
44/45, RESIDENCY ROAD
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SRI. K. GOVINDARAJAN

... APPELLANT

(BY SRI. K. S. LAKSHMINARASAPPA, ADV. FOR
SRI. B. C. SEETHARAMA RAO, ADV.)

AND

1. SRI. RAGHAVENDRA
AGED ABOUT 51 YEARS
S/O PRANESWARA RAO
A.W.S., K.S.R.T.C.,
CHAMARAJANAGAR
NOW AT S/O MADIAH
DODDAGANDU, ALAGUDU VILLAGE
T. NARASIPURA TALUK
2. SRI. NAGANNA
AGED ABOUT 34 YEARS
S/O MADIAH
R/O KELLAMBHALLI VILLAGE
CHAMARAJANAGAR TALUK
AND DISTRICT. (DRIVER - CUM-

OWNER OF AUTO NO.KA.10/2758)

... RESPONDENTS

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THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 31.07.2012 PASSED IN MVC NO.39/2008 ON THE FILE OF THE SENIOR CIVIL JUDGE, JMFC, MACT, T.NARASIPURA, AWARDED A COMPENSATION OF RS.2,67,130/- WITH INTEREST @ 6% P.A., FROM THE DATE OF PETITION TILL REALIZATION.

THESE MFAs. COMING ON FOR ADMISSION THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

These appeals are preferred by the Insurer - Oriental Insurance Company Ltd., being aggrieved by the judgment and award dated 31.7.2012 passed by the Senior Civil Judge & MACT, T.Narasipura, to set aside the award passed in MVC Nos.39 and 40 of 2008, as awarding of compensation are found to be exorbitant and also on higher side.

2. It is the contention of the learned counsel for the appellant that the claimant-Raghavendra in MVC

No.39/2008 who is said to be the pillion rider; and the claimant Shankara in MVC No.40/2008 who is said to be the rider of the motorcycle, have filed claim petitions seeking compensation, contending that the accident has occurred due to the rash and negligent driving of the driver of the Auto bearing registration No.KA-10/2758, whereby the Tribunal has awarded compensation in a sum of Rs.2,67,130/- and Rs.13,730/- respectively with interest at 6% p.a., The learned counsel for the appellant further contends that the Tribunal has awarded a compensation in a sum of Rs.2,67,130/- with interest at 6% p.a., are found to be exorbitant and also on higher side. Therefore, in these appeals, the learned counsel for the appellant seeks to set aside the impugned Judgment passed by the Tribunal.

3. The factual matrix of these cases are:

That on 6.1.2008 at about 6.10 p.m. while these appellants/petitioners proceeding to T.Narasipura on T.Narasipura Kollegal Main Road in a motorcycle bearing Regn. No.KA-09/EE-4091 near Santhemala circle one Auto bearing Regn. No.KA-10/2758 was driven by the

respondent No.1 dashed against the motorcycle with high speed rashly and negligently. The petitioner Shankar was riding the motorcycle and Raghavendra was the pillion rider of the said motorcycle. Due to which, the petitioners sustained multiple injuries on them. Subsequently, the injured persons have been shifted to the Government Hospital, T.Narasipura for better treatment, where the doctors have advised Raghavendra to shift to Vinayaka Hospital, Bangalore, for better treatment and there, he took treatment as inpatient for his fracture of left leg.

4. It is the case of the respondents that Raghavendra is an employee of KSRTC, Chamarajanagar and earning Rs.13,000/- per month. Due to the fracture of left leg, the petitioner in MVC No.39/2008 Raghavendra could not able to move for about six months. Even now, his left leg movement is restricted and painful. Hence, for all these reasons, the petitioners have filed petitions claiming compensation of Rs.10,30,000/- in MVC No.39/2008 and Rs.1,53,000/- in MVC No.1,53,000/- with interest at 12% p.a., from the respondents.

5. Based on the pleadings in both the petitions, the Tribunal has framed issues and thereafter given findings having gone through the evidence of PW-1 Raghavendra, PW-2 Shankar and PW-3 Dr. N. Karunakar, who had given treatment. In order to establish their case, they have produced documents Exhibits P-1 to P-21. On behalf of the respondents, RW-1 K. Prabhakara is examined and got marked Ex.R-1 Driving Licence Extract.

6. It is relevant to state that the vital documents such as wound certificates of the claimants are marked at Exs.P-14 and P-21, and the X-ray report of the claimant in MVC No.39/2008 is marked at Ex.P-20. Apart from these documents, the other documents were also gone through by the tribunal and so also the documents at Ex.R1 which is the Driving Licence extract produced on behalf of the respondent RW-1 K. Prabhakara is also examined. Based upon the evidence let in by the claimants/injured, the Tribunal has awarded compensation in a sum of Rs.2,67,130/- in MVC No.39/2008 and Rs.13,730/- in MVC No.40/2008/- with interest at 6% p.a.

7. The learned counsel for the appellant has taken me through the evidence of PWs.1 & 2, so also, the evidence of PW.3, and stated that the injured Raghavendra had sustained fracture of left leg and there is a permanent disability. But no medical report has been produced in order to show the disability or no evidence has been adduced by doctor who has treated him and therefore, the said aspect has to be appreciated by the Tribunal in a proper perspective to award compensation to the claimants being the injured.

8. Further, the Tribunal has referred a decision reported in **ILR 2011 KAR 5731** in the case of ***Oriental Insurance Co.Ltd., Vs. Sri Chennabasavaiah & Others*** while dealing with the driver who had obtained Light Motor Vehicle (Non-transport) driving licence prior to the amendment of Section 10 of Motor Vehicles Act and amendment of Rule 14 of Karnataka Motor Vehicles Rules. The Tribunal has erroneously held that the driving licence possessed by the driver at the time of the accident is sufficient to drive the LMV Goods Auto. It is the offending vehicle which is involved in the accident. The finding

which has been given by the Tribunal while considering the claim petition in MVC No.39/2008 and so also in MVC No.40/2008 is contrary to the statutory provisions of Sections 3 & 5 of the Motor Vehicles Act of 1988. These are the points that are urged by the learned counsel for the appellant and sought for interference of the impugned judgment rendered by the Tribunal in MVC Nos.39 & 40 of 2008, contending that the Tribunal has awarded exorbitant compensation and it is very much on the higher side.

9. Sri Mahantesh S. Hosmath, learned counsel for respondent No.2, submits that the second respondent is the owner cum driver of the offending autorickshaw. He has addressed the arguments based upon the judgment rendered by the Hon'ble Supreme Court of India reported in **AIR 2017 SC 3668** in the case of ***Mukund Dewangan Vs. Oriental Insurance Company Ltd.***, wherein the Hon'ble Supreme Court pressed all the issues relating to Light Motor Vehicle which include the transport vehicle as per Sections 2(21), 2(15) and 2(48) of the Motor Vehicles Act. But nothing has remained in these appeals to address the issues raised by the learned counsel for the appellant.

It is further contended that he is supporting the impugned judgment rendered by the Tribunal by awarding compensation by the claimants in MVC No.39/2009 and 40/2008. There is no legal issues involved in these appeals to interfere with the impugned judgment. Moreover, there is no infirmity canvassed by the judgment rendered by the Tribunal for awarding compensation to the claimant/injured in MVC Nos.39 and 40/2008. The Tribunal has considered the evidence of PWs.1 & 2 being the injured and so also the evidence of PW-3 Dr.N.Karunakar that the injured Raghavendra has sustained injuries mentioned in the wound certificate marked at Ex.P-21 and the injured was also subjected to X-ray marked at Ex,.P-20. These are all the relevant documents which have been produced by the claimants who are said to be the injured before the Tribunal for seeking compensation and the same has been appreciated by the Tribunal in proper perspective and awarded compensation, which cannot be interfered with. Therefore, learned counsel for the respondent No.2 in these appeals support the impugned judgment rendered by the Tribunal

and sought for dismissal of these appeals preferred by the Insurance Company.

10. The contention taken up by the learned counsel for the appellant in these appeals are relevant to state that:

In MVC No.39/2008, the petitioner Raghavendra has stated that he was working as Assistant Works Superintendent in KSRTC at Chamarajanagar and drawing salary of Rs.13,000/- per month. After the accident, he has become disable and finding very difficult to do his day to day work. He has further stated that he has sustained injuries due to the rash and negligent driving of the Autorickshaw bearing Registration No.KA-10/2758 which came in a high speed dashed against the motor cycle. In MVC No.40/2008, the petitioner Shankar being the claimant, has deposed that he was riding the motorcycle and Raghavendra was the pillion rider. Due to the accident, the petitioners in MVC Nos.39 and 40 have sustained grievous injuries on the various part of their bodies. The petitioner in MVC No.39/2008 have sustained fracture of left leg and therefore, he could not able to

move for about six months. The petitioner in MVC No.40/2008 has sustained injuries and therefore, he cannot do any work as he was doing prior to the accident.

11. In so far as the evidence of PW-3 Dr.N. Karunakar, being the doctor working in T.Narasipura Government Hospital, who had provided treatment to the injured. He has deposed that on 6.1.2008 at about 6.10 p.m., he has treated PW-2 Shankar and found cut injuries on his forehead, incised wound on the right cheek, abrasion and swelling on below the eyes, knee. The doctor who has given evidence said that there was 10 to 15% permanent disability. There is no material to prove the injuries which are grievous in nature. The doctor has specifically stated in his evidence that on 8.1.2008 he has taken x-ray and found soft tissue injury. Therefore, he has deposed that the petitioner has sustained injury which is grievous in nature. The petitioner said to be required leg treatment for that injury. Therefore, it is contended that there is 15 to 20% permanent disability to the injured claimant. These are all the evidence which has gone through by the Tribunal in awarding compensation to the

injured claimants in MVC Nos.39 and 40 of 2008. However, the Tribunal has been awarded compensation in respect of loss of future income, pain and sufferings and medical expenses incurred by the injured petitioners. These are all the things which has been appreciated by the Tribunal and awarded compensation. Therefore, it is said that there is no substance in the contention of the learned counsel for the appellant in these appeals for intervention. It is further stated that no infirmities are found in the impugned judgment in MVC Nos.39 and 40 of 2008 relating to the injured Raghavendra and Shankara. However, keeping in view the decision rendered in the case of ***Mukund Dewangan Vs. Oriental Insurance Co.Ltd.,*** cited supra, squarely applies to the present case on hand. Therefore, it is said that the appeals preferred by the appellant – Insurance Company are found to be devoid of merit. Consequently, these appeals are liable to be rejected.

In view of the aforesaid reasons, I proceed to pass the following:

ORDER

The appeals preferred by the Insurance Company are hereby dismissed. Consequently, the impugned judgment rendered in MVC Nos.39 and 40 of 2008 dated 31.7.2012 is confirmed. Amount in deposit if any in these appeals, shall be transmitted to the concerned MACT forthwith for needful.

**Sd/-
JUDGE**

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