

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF OCTOBER, 2021

BEFORE

THE HON'BLE MR. JUSTICE H. T. NARENDRA PRASAD

M.F.A No. 5208 OF 2014 (MV)

C/W

M.F.A. No.5209 OF 2014 (MV)

IN MFA No.5208 OF 2014

BETWEEN:

SRI. RAMESH
S/O KEMPAIAH
AGED ABOUT 27 YEARS
R/AT CHENNENAHALLI VILLAGE
KASABA HOBLI
RAMANAGARA TALUK AND
DISTRICT - 562 159.

...APPELLANT

(BY SRI. SHANTHARAJ., ADVOCATE)

AND:

1. DORESWAMY
S/O KEMPAIAH
AGE MAJOR
R/AT RAYARADODDI
MAGADI ROAD
RAMANAGARA TALUK & DISTRICT - 562 159.
2. THE REGIONAL OFFICE
UNITED INDIA INSURANCE COMPANY LTD.,
NO.25, SHANKARANARAYANA
BUILDING, M.G. ROAD
BANGALORE -560 001.
NOW SHIFTED TO KRUSHI BHAVAN

5TH AND 6TH FLOOR
HUDSON CIRCLE
BANGALORE - 560 001.
REPRESENTED BY ITS
REGIONAL MANAGER.

... RESPONDENTS

(BY SRI. PUTTIGE R. RAMESH ADVOCATE FOR R2
R1 SERVED UNREPRESENTED)

THIS MFA IS FILED UNDER SECTION 173(1) OF M.V. ACT
AGAINST THE JUDGMENT AND AWARD DATED 01.01.2014 PASSED IN
MVC NO.93/2009 ON THE FILE OF THE ADDITIONAL SENIOR CIVIL
JUDGE, RAMANAGARA, PARTLY ALLOWING THE CLAIM PETITION FOR
COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

M.F.A. 5209 OF 2014

BETWEEN:

SRI. KUMAR
S/O KALEGOWDA
AGED ABOUT 28 YEARS
R/AT CHENNENAHALLI VILLAGE
KASABA HOBLI
BILAGUMBA POST
RAMANAGARA TALUK AND
DISTRICT - 562 159.

...APPELLANT

(BY SRI. SHANTHARAJ., ADVOCATE)

AND:

1. DORESWAMY
S/O KEMPAIAH
AGE MAJOR
R/AT RAYARADODDI
MAGADI ROAD
RAMANAGARA TALUK & DISTRICT - 562 159.
2. THE REGIONAL OFFICE
UNITED INDIA INSURANCE COMPANY LTD.,

NO.25, SHANKARANARAYANA
 BUILDING, M.G. ROAD
 BANGALORE -560 001.
 NOW SHIFTED TO KRUSHI BHAVAN
 5TH AND 6TH FLOOR
 HUDSON CIRCLE
 BANGALORE - 560 001.
 REPRESENTED BY ITS
 REGIONAL MANAGER.

... RESPONDENTS

(BY SRI. PUTTIGE R. RAMESH ADVOCATE FOR R2
 R1 SERVED UNREPRESENTED)

THIS MFA IS FILED UNDER SECTION 173(1) OF M.V. ACT AGAINST THE JUDGMENT AND AWARD DATED 01.01.2014 PASSED IN MVC NO.88/2009 ON THE FILE OF THE ADDITIONAL SENIOR CIVIL JUDGE, RAMANAGARA, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THESE APPEALS COMING ON FOR HEARING, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

These appeals have been filed by claimants under Section 173(1) of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act', for short) challenging the judgment and award dated 01.01.2014 passed by the Motor Accident Claims Tribunal at Ramanagara ('Tribunal' for short), in MVC Nos.93/2009 and 88/2009, whereby the Tribunal has granted compensation of Rs.32,255/- and Rs.32,085/- respectively with interest @ 6% p.a. Since, both the

appeals arise out of the same accident as well as a common judgment, they were heard together and are being decided by this common judgment.

2. The brief facts of the case are that on 04/08/2006 at about 9.00 a.m., when the claimants were traveling in a Lorry bearing Reg.No.KA-42-382 on B.M.Road, Banandur Cross as loaders/unloaders, it met with an accident on account of said Lorry being driven in a rash and negligent manner and as such driver lost control over the said vehicle, due to the said impact the lorry fell down. As a result, they sustained grievous injuries and were hospitalized.

3. The claimants, Ramesh and Kumar filed the claim petitions under Section 166 of the Motor Vehicles Act in MVC Nos.93/2009 and 88/2009 respectively, seeking compensation of Rs.4,00,000/- each along with interest on the ground that they spent huge amount towards medical expenses for their treatment and have suffered financial

loss. It was further pleaded that the accident occurred purely on account of rash and negligent driving of the offending vehicle by its driver.

4. On service of notice in both the petitions, respondent No.1 did not appear and contest the matter and was placed ex-parte. Respondent No.2 namely insurer appeared through its counsel and filed written statement and averments made in the claim petition was denied. The liability, if any, is subject to terms and conditions of the policy. It was further pleaded that claimants were traveling as gratuitous passengers in the said Lorry and therefore the policy would not cover the risk of the gratuitous passengers. It was further pleaded that accident was not due to rash and negligent driving of the driver of the Lorry. The driver of the offending vehicle did not have valid and effective driving licence as on the date of the accident to drive the same. The injuries suffered by the claimants and

money spent towards medical expenses are denied. Hence, he sought for dismissal of the petitions.

5. To establish their case, claimant-Ramesh in MVC No.93/2009 himself was examined as PW.1 and got exhibited 6 documents namely, Exs.P1 to P6. On the other hand, Assistant Manager of respondent No.2's company was examined as RW.1 and no documents were marked and Claimant-Kumar in MVC No.88/2009 himself was examined as PW1 and got exhibited 6 documents namely, Exs.P1 to P6. On the other hand, respondent No.2 was examined as RW.1 and got exhibited 2 documents namely, Exs.R1 and R2. On appreciation of oral and documentary evidence, the Tribunal granted compensation of Rs.32,255/- and Rs.32,085/- with interest at 6% p.a. in MVC Nos.93/2009 and 88/2009 respectively and fastened liability on the owner of the offending vehicle. Being aggrieved by the same, the claimants have filed these appeals, seeking for enhancement and to fix liability on the insurance company.

6. Sri. Shantharaj K., learned counsel appearing for the claimants has contended that on the alleged dated of accident i.e., 04/08/2006, claimants were traveling as loaders in the Lorry bearing Reg.No.KA-42-382 belonging to respondent No.1 and due to negligent driving of driver of the Lorry, they fell down from the Lorry and have suffered injuries.

Secondly, the claimants were themselves examined as PW.1, who in their evidence have categorically stated that they were traveling in the Lorry as loaders/unloaders sitting next to driver of the Lorry, belonging to respondent No.1. Even in the cross-examination, claim of the claimants was not disproved. The Tribunal is not justified in giving finding that claimants were traveling as gratuitous passengers and not as loaders only on the ground that the owner has neither appeared before the Tribunal nor filed any written statement. This finding of the Tribunal is erroneous.

Thirdly, he has further contended that the judgment referred by the Tribunal in the case of **LOKESH VS. A.P.DEVI** reported in **LAWS (KAR) 2011-4-60** is not applicable to the facts of this case. Hence, he sought for allowing the appeals.

7. Per contra, Sri Puttige R.Ramesh, learned counsel for the insurance company has contended that it is not in dispute that claimants have suffered injuries in the road traffic accident occurred on 04/08/2006 due to rash and negligent driving of driver of the Lorry bearing Reg.No.KA-42-382. Therefore, the Tribunal considering the nature of injuries sustained by the claimants has rightly awarded just and reasonable compensation.

Secondly, he has contended that since the claimants have failed to prove that they were working as loaders/unloaders in the said Lorry belonging to respondent No.1, the insurance company is not liable to pay compensation.

Thirdly, the owner of the offending vehicle neither appeared before the Tribunal nor filed any written statement to show that claimants were employed under him as loaders/unloaders. Hence, the insurance company is not liable to pay compensation.

Fourthly, in the similar circumstances, this Court in the case of **LOKESH vs. A.P.DEVI** reported in **ILR 2011 KAR 252**, has held that insurance company is not liable to pay compensation. Therefore, by following the same judgment, the Tribunal has rightly dismissed the claim petitions against the insurance company. Hence, on these grounds he sought for dismissal of the appeals.

8. Heard the learned counsel for the parties and perused the judgment and award and original records.

9. It is not in dispute that claimants have sustained injuries in the road traffic accident occurred on 04/08/2006

due to rash and negligent driving of the Lorry bearing Reg.No.KA-42-382 belonged to respondent No.1.

The only question that arises for consideration in this case is whether the claimants were traveling in the above said offending vehicle as loaders/unloaders belonging to respondent No.1?

The claimants were themselves examined as PW.1 in their respective petitions and they have categorically stated that they were working under respondent No.1-Doreswamy as loaders on 04/08/2006 sitting next to driver of the offending vehicle and they were working under respondent No.1 and he was paying salary to them. Further they have stated that due to negligent driving of driver of the offending vehicle, Lorry fell into the ditch, due to the said impact they sustained injuries. The claimants have been cross-examined by respondent No.2, they have denied the suggestion that they were traveling along with goods and

not as loaders. They have categorically admitted that they were traveling in the lorry as loaders and they have not paid any fare since they were loaders. In the cross-examination nothing worthwhile has been elicited from the evidence of PW.1 by respondent No.2. The Tribunal only on the ground that respondent No.1-owner of the offending vehicle though he has been served, has not appeared before the Tribunal nor filed any written statement, has come to the conclusion that they were traveling in the Lorry as gratuitous passengers and not as loaders, and hence the insurance company is not liable to pay compensation. On the other hand, the claimants, in their evidence have categorically stated that they were traveling as loaders in the offending vehicle belonging to respondent No.1 and not as gratuitous passengers. From the above facts and circumstances, it is very clear that finding of the Tribunal is perverse. The judgment relied upon by the Tribunal in the case of **LOKESH** (supra), it is clear finding that claimants

failed to prove that they were loaders and were working under respondent No.1, and also respondent has examined their witness and have produced school certificate to show that claimants are studying in the School. Under the circumstances, this Court in the case of **LOKESH** (supra) has held that claimants failed to prove that they were loaders. Therefore, the facts and circumstances of the above case is not applicable to the case on hand since the claimants in the present case have proved that they were loaders and were working under respondent No.1. Hence, the above point is answered accordingly. The finding of the Tribunal that the insurance company is not liable to pay compensation is unsustainable. Accordingly, the appeals are allowed and judgment and award dated 01/01/2014 passed in MVC.Nos.93/2009 and 88/2009 by the MACT, Ramanagara is modified to the extent that the insurance company is directed to pay award amount along with interest at the rate of 6% p.a. from the date of filing of the

claim petition till the date of realization, within a period of six weeks from the date of receipt of certified copy of this judgment.

**Sd/-
JUDGE**

Mkm/-