

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JANUARY, 2021

BEFORE

THE HON'BLE MR.JUSTICE S.R.KRISHNA KUMAR

M.F.A. NO.8509 OF 2019 (MV - INJ)

BETWEEN:

SRI. JOHN BOSCO A.,
S/O I.RUDHAYANATHAN
AGED ABOUT 53 YEARS,
SRIRAMAKRISHNA APARTMENT,
FLAT NO.11, 3RD FLOOR,
DODDABOMMASANDRA,
VIDHYARANYAPURA (POST),
BANGALORE – 560 097.

... APPELLANT

(BY SRI.V.F.KUMBAR, ADVOCATE)

AND:

1. SRI. NANJIAH,
S/O LATE NANJAPPA,
AGED ABOUT 72 YEARS,
NO.49, 1ST MAIN, 3RD CROSS,
JAKKASANDRA,
KORAMANGALA 1ST BLOCK,
BANGALORE – 560 034.
2. THE ORIENTAL INSURANCE
COMPANY LTD.,
OFFICE CODE NO.421700,
DO VII, NO.01, SHANKAR HOUSE,
3RD FLOOR, RMV EXTENSION,
MEKHRI CIRCLE,
BENGALURU – 560 080.

... RESPONDENTS

(BY SRI.B.C.SEETHARAMA RAO, ADVOCATE FOR R2;
R1 SERVED UNREPRESENTED)

THIS M.F.A. IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 06.06.2018, PASSED IN MVC NO.636/2017, ON THE FILE OF THE I ADDITIONAL SMALL CAUSES JUDGE AND MACT, BENGALURU (SCCH-11), AWARDING COMPENSATION OF RS.1,86,818/- WITH INTEREST AT THE RATE OF 6 PERCENT P.A., FROM THE DATE OF PETITION TILL THE DATE OF REALIZATION.

THIS M.F.A. COMING ON FOR ADMISSION, THIS DAY, THE COURT DELIVERED THE FOLLOWING :

J U D G M E N T

This appeal is directed against the impugned judgment and award dated 06.06.2018 passed by the MACT, Bengaluru whereby the Tribunal allowed the claim petition filed by respondent No.1 and awarded compensation in a sum of Rs.1,86,818/- together with interest 6% per annum in favour of respondent No.1 towards injury sustained by him in a road traffic accident that occurred on 02.12.2016. By the impugned judgment and award, the Tribunal absolved the insurance company of its liability to pay compensation and fastened the entire liability upon the appellant-owner on the ground that the driver of the offending vehicle did not possess valid and effective driving license as on the date of the accident.

2. Though several contentions have been urged by the learned counsel for the parties for both side, the appellant has also filed an application I.A.No.2/2019 under Order 41 Rule 27 R/w 151 of CPC seeking permission to produce the copy of learners driving license of the driver of the vehicle involved in the accident which was valid as on the date of the accident. In the affidavit in support of the application, it is stated that on account of ill health and inability on part of the appellant to move and give necessary instruction to his counsel to produce the said learners license during the proceedings before the Tribunal, the same could not be produced by the appellant. It is therefore submitted that inability and omission on the part of the appellant to produce driving license was due to *bona fide* reason and due to unavoidable circumstances and as such it is necessary that an opportunity is granted in favour of the appellant to produce the same by way of additional evidence. It is also pointed out that due to the aforesaid reason, the appellant also could not contest the claim petition before the Trial Court and as such an

opportunity in this regard is required to be given in favour of the appellant.

3. Though the said application is seriously contested by the Insurance Company, having regard to the undisputed facts that the said document being the driving license is relevant and material for the purpose of adjudication of the issues in controversy between the parties, particularly, when the Tribunal has absolved the insurance company of its liability to pay compensation and fastened the entire liability upon the owner on the ground that the driver of the vehicle did not possess a valid and effective driving license, I deem it just and proper to grant one more opportunity to the appellant to produce the said document and remit the matter back to the Tribunal for disposal afresh by setting aside the impugned judgment and award.

In the result, I pass the following:

ORDER

- i) Appeal is partly allowed.

ii) The impugned judgment and award insofar as it relates to fastening the liability to pay compensation upon the appellant and absolving the insurance company of its liability to pay compensation is hereby set aside.

iii) The impugned judgment and award insofar as it relates to the quantum of compensation payable in favour of the claimant remains unaltered.

iv) The Tribunal is directed to permit the appellant to adduce additional evidence on its behalf including producing the learner's license which is produced by way of additional evidence before this Court. Accordingly, I.A.No.2/2019 is hereby stands allowed.

v) It is needless to state that insurance company and claimant will be at liberty to cross-examine the appellant in relation to the said document and also adduce evidence on their behalf.

vi) The appellant is directed to pay a sum of Rs.5,000/- in favour of insurance company towards cost. Since the claim

petition is of the year 2017, the Tribunal directed to dispose of the same as expeditiously as possible.

The amount deposited by the appellant is directed to be refunded to him.

SD/-
JUDGE

nms