

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JULY, 2021

BEFORE

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

MISCELLANEOUS FIRST APPEAL No.9308 OF 2018 (MV)

BETWEEN:

SRI. K SHASHIKALA R BHAT
W/O K RAGHAVENDTA BHAT,
AGED ABOUT 58 YEARS,
R/AT DOOR NO.22-98,
KAMBALAKATTA HOUSE,
MOODABETTU POST,
KODAVOORU, TENKANIDIYOOR,
KRODASHRAMA, UDUPI TALUK
AND DISTRICT.

... APPELLANT

(BY SRI. SRIKANTH, ADV. FOR
SRI. SACHIN B.S., ADV.)

AND:

1. APOORVA K R
D/O K RAGHAVENDRA BHAT,
AGED ABOUT 23 YEARS,
R/A CHANDRAKALA, DOOR NO.22-98,
KAMBALAKATTE, KODAVOORU,
UDUPI TALUK AND DISTRICT-576101
2. THE UNITED INDIA INSURANCE CO LTD
REP BY ITS DIV.MANAGER,

JEWEL PLAZA, MARUTHI VITHIKA ROAD,
UDUPI-576101. ... RESPONDENTS

(BY SRI. RAVISH BENNI, ADVOCATE;
NOTICE TO R1 IS D/W V/O DTD: 07.04.2021)

MFA FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 01.08.2018 PASSED IN MVC NO.757/2017 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE & ADDITIONAL MACT, UDUPI, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL COMING ON FOR FURTHER ORDERS, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

J U D G M E N T

This appeal under Section 173(1) of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act', for short) has been filed by the claimant being aggrieved by the judgment dated 01.08.2018 passed by the Additional Motor Accident Claims Tribunal and Principal Senior Civil Judge, Udupi.

2. Facts giving rise to the filing of the appeal briefly stated are that on 30.08.2016 at about 2.30 hours, near Shirva Masidi, Shirva Village Udupi, the

claimant traveling as a pillion rider along with her husband K. Raghavendra Bhat, who was riding Suzuki Access Scooter bearing Registration No.KA-20-EF-3703. Both of them were proceeding towards Kodavoor Side. When they reached near Shirva Masidi, at that time, the rider of the motor cycle drove the vehicle in a high speed rash and negligent manner and suddenly applied break, on account of which the claimant as well as rider fell on the road and sustained injuries and was hospitalized.

3. The claimant filed a petition under Section 166 of the Act seeking compensation. It was pleaded that she spent huge amount towards medical expenses, conveyance, etc. It was further pleaded that the accident occurred purely on account of the rash and negligent driving of the offending vehicle by its driver.

4. On service of notice, respondent No.2 appeared through counsel and filed written statement in which the averments made in the petition were denied.

It was pleaded that the petition itself is false and frivolous in the eye of law. It was further pleaded that the accident was due to the negligence of the claimant herself. The driver of the offending vehicle did not have valid driving licence as on the date of the accident. The liability is subject to terms and conditions of the policy. The age, avocation and income of the claimant and the medical expenses are denied. It was further pleaded that the quantum of compensation claimed by the claimant is exorbitant. Hence, he sought for dismissal of the petition.

Respondent No.1 has appeared but did not choose to file any written statement.

5. On the basis of the pleadings of the parties, the Claims Tribunal framed the issues and thereafter recorded the evidence. The claimant herself was examined as PW-1 and got exhibited documents namely Ex.P1 to Ex.10. On behalf of the respondents, no witnesses were examined but got exhibited document

namely Ex.R1. The Claims Tribunal, by the impugned judgment, inter alia, held that the accident took place on account of rash and negligent driving of the offending vehicle by its driver, as a result of which, the claimant sustained injuries. The Tribunal further held that the claimant is entitled to a compensation of Rs.47,860/- along with interest at the rate of 6% p.a. and directed the Insurance Company to deposit the compensation amount along with interest. Being aggrieved, this appeal has been filed.

6. The learned counsel for the claimant has contended that due to that accident the claimant has sustained right clavicle fracture which is grievous in nature and has spent Rs.16,860/- for medical expenses and the overall compensation awarded by the Tribunal is on the lower side. Hence, she sought to allow the appeal.

7. On the other hand, the learned counsel for the Insurance Company has contended that the injury

suffered by the claimant is minor in nature. On considering the evidence of the parties, the overall compensation awarded by the Tribunal is just and proper. Hence, he sought to dismiss the appeal.

8. Heard the learned counsel for the parties and perused the records.

9. It is not in dispute that the claimant has suffered injuries in a road traffic accident occurred on rash and negligent driving of the motorcycle bearing registration No.KA-20-EF-3703. Due to the accident the claimant has suffered right clavicle fracture. She has spent Rs.16,860/- towards medical expenses.

10. By considering the evidence of the parties and considering the wound certificate at Ex.P4 and medical bills at Ex.P9, I am of the considered view that in addition to the compensation awarded by the Tribunal, the claimants are entitled for additional compensation of Rs.15,000/- without interest.

11. Accordingly, the appeal is allowed and the judgment and award passed by the Tribunal is modified..

The Insurance Company is directed to deposit the entire compensation amount with interest @ 6% p.a. from the date of petition till the date of realization, within a period of four weeks from the date of receipt of copy of this judgment. The enhanced compensation does not carry interest.

The Tribunal is directed to release the entire compensation amount after due verification.

**Sd/-
JUDGE**

NR/-