

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 31ST DAY OF OCTOBER 2022

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MFA.NO.200634/2017 (MV-I)

BETWEEN:

RAYAL SUNDARAM ALLIANCE INS.CO. LTD
MAHANTH ARCADE,
3RD FLOOR,MAHANTH NAGAR
S.B.TEMPLE ROAD,
GULBARGA

NOW REPRESENTED BY
ROYAL SUNDARAM ALLIANCE
INS.CO.LTD,
SUNDARAM TOWERS
45 & 46, WHITE ROAD
CHENNAI – 600 014

THROUGH ITS MANAGER LEGAL

...APPELLANT

(By Sri C.S.KALABURGI, Advocate)

AND:

1. MALLIKARJUN
S/O BHIMARAYA RAMTAL
AGED ABOUT 09 YEARS
OCC : STUDENTS
AND MILK VENDING,
MINOR,
REPRESENTED THROUGH HIS
NATURAL MOTHER
MALLAMMA

W/O BHIMARAYA RAMTAL
 OCC: HOUSEHOLD
 & COOLIE WORK
 R/AT WADGERA (HIRE),
 TQ.SHAHAPUR
 DIST- YADGIRI – 585 201

2. SABREDDY
 S/O HALLEPPA KALA
 AGED ABOUT 32 YEARS
 OCC:OWNER AND
 DRIVER OF AUTO
 BEARING NO.KA33-0766
 R/AT MASTUR
 TQ & DIST: YADGIR – 585 201

... RESPONDENTS

(By Sri S.V.PARADDY, ADVOCATE FOR R-1; SRI
 VENKATAREDDY S.PATIL, ADVOCATE FOR R-2)

THIS MISCELLANEOUS FIRST APPEAL IS FILED
 UNDER SECTION 173 (1) OF MOTOR VEHICLES ACT,
 PRAYING TO SET ASIDE THE JUDGMENT AND AWARD
 DATED-11TH AUGUST, 2016 PASSED BY THE SENIOR
 CIVIL JUDGE AND ADDL. MACT, SHORAPUR SITTING AT
 SHAHAPUR IN MVC NO.48/2014 AND TO MODIFY THE
 COMPENSATION AWARDED AND TO PASS SUCH OTHER
 ORDERS AS THIS HON BLE COURT DEMS FIT UNDER THE
 FACTS AND CIRCUMSTANCES OF THE CASE, INCLUDING
 THE COSTS, IN THE INTEREST OF JUSTICE AND EQUITY

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

JUDGMENT

This appeal is preferred by the Insurance Company challenging the judgment and award dated 11.08.2016 passed by the Senior Civil Judge and Addl. MACT, Shorapur, sitting at Shahapur (hereinafter referred to as the 'Tribunal' for brevity) in MVC No.48/2014. This appeal is founded on the premise of exorbitant compensation and to modify the same.

2. Though this matter is listed for admission, with consent of learned counsel on both sides, matter is taken up for final disposal.

3. Parties to the appeal shall be referred to as per their status before the Tribunal.

4. Brief facts of the case are:

On 16.01.2013 at about 10.30pm claimant was standing in front of the shed near Haligera Cross near Mallapur Temple Kalyan Mantap along with his mother and other relatives at Mallapur village of Yadgir District, the driver of the Auto bearing Registration No. KA-33-0766

came in a rash and negligent manner and dashed against him. Due to the said impact he sustained grievous injuries on his right leg foot and other parts of the body.

5. It is stated that the claimant is aged seven years at the time of accident. The claimant spent about Rs.One lakh towards medical expenses and treatment. The claimant has claimed a sum of Rs.12,50,000/- as compensation from the respondents. Hence, he filed a claim petition before the tribunal seeking compensation.

6. On service of notice, respondent Nos.1 and 2 appeared. Respondent No.1 – Insurance Company filed a detailed objections denying petition averments as false and baseless. It further pleaded that as a result of claimant was moving in a zig-zag manner accident occurred. It further pleaded that the claim made by the claimant is exorbitant and denied the age, avocation and income including the injuries as alleged in the claim petition as the claimant is a minor. It also denied that the injuries sustained by the claimant was due to the fault of the claimant himself. It further pleaded that the Insurance

Company is not liable to pay compensation. Hence, On the basis of this, sought for dismissal of claim petition.

7. The respondent No.2 - Owner & Driver of the offending vehicle denied the age, avocation and income including the injuries as alleged in the claim petition as the claimant is a minor. He further contends that he is having valid licence to drive the offending vehicle and offending vehicle was insured with respondent No.1 - Insurance Company as on the date of accident and hence he is not liable to pay any compensation. He further contends that since the vehicle was insured with respondent No.1 - Insurance Company, if any liability is fastened on him, the same would have to be indemnified by respondent No.1. Accordingly, he seeks to dismiss the claim petition.

8. On the basis of pleadings, the Tribunal framed relevant issues for consideration.

9. In order to substantiate the issues and to establish the case, mother of the claimant got examined herself as PW1 and Doctor as PW2 and got marked documents as Exs.P1 to P13, whereas respondents

examined two witness as RW1 & RW2 and got marked Ex.R1 to R6 on their behalf.

10. On the basis of material evidence both oral and documentary, the Tribunal awarded the compensation of Rs.3,60,500/- with interest at the rate of 6% per annum and directed the respondent No.1 – Insurance Company to pay the compensation.

11. Being aggrieved by the judgment and award passed by the Tribunal and compensation awarded, the appellant – Insurance Company is before this Court seeking to set aside the same.

12. It is the vehement contention of learned counsel for appellant – Insurance Company that the judgment and award passed by the Tribunal is liable to be set aside. He further contends that the Tribunal has committed gross error in fastening liability against the Insurance Company, whereas the deceased was a minor and there is negligence on the part of the minor child. He further contends that respondent No.1 is the driver and

owner of the offending vehicle did not possess a valid and effective license to drive three wheeler.

13. Learned Counsel for appellant Insurance Company further contends that the Tribunal has committed illegality and perversity in not appreciating the policy and permit violations committed by the driver of the offending vehicle. He further contends that the permit was valid for radius of 8 kms., but the accident has occurred beyond the radius of 8 Kms., which is reflected in the FIR produced at Ex.P1 that the place of accident being Haligera Cross neat Mallapur Temple Kalyan Mantap, which is beyond the area given to respondent No.1 for use of offending vehicle. Therefore, respondent No.1 has violated the terms and conditions of the Police issued by the respondent No.2. Policy is produced at Ex.R1 and the permit is at Ex.R4.

14. Learned Counsel for claimant submits that even though there is violation of permit by respondent No.1, he had valid driving licence as on the date of occurrence of accident. Merely, because he has violated the terms and conditions of the Policy liability cannot be

fastened on the owner of the offending vehicle – respondent No.1 herein. The liability would have to be fastened jointly against appellant – Insurance Company and respondent No.1 – Owner and Driver of the offending vehicle in view of the decision of the Apex Court in the case of **AMRITH PAUL SINGH AND ANOTHER vs TATA AIG GENERAL INSURANCE CO. LTD. AND OTHERS** reported in **(2018) 7 SCC 558**.

15. In the facts and circumstances of the case pay and recover policy has to be adopted. The liability is to be fastened against both the appellant – Insurance Company and respondent No.1 – Owner and Driver of the offending vehicle. Respondent No.1 – Insurance Company being the insurer of the offending vehicle shall pay the compensation amount to the claimant would be at liberty to recover the same from respondent No.2 – Owner and Driver of the offending vehicle. In view of the age of the claimant may be 15 years as on today and undergone injuries, a sum of Rs.1,00,000/- has to be released in favour of the claimant, who is none other than the mother of the minor child, who

met with an accident upon proper verification and identification.

16. Accordingly, I pass the following :

ORDER

- i) The appeal is **partly allowed**;
- ii) The judgment and award passed by dated 11.08.2016 passed by the Senior Civil Judge and Addl. MACT, Shorapur, sitting at Shahapur in MVC No.48/2014, is modified;
- iii) The liability is fastened on both the Owner and Insurer of the offending vehicle;
- iv) In view of violations of the terms and conditions of the permit, the Insurance Company is liable to make good compensation to the claimant and be at liberty to recover the same from the Owner / Driver of the offending vehicle;
- v) A sum of Rs.1,00,000/- is directed to be released in favour of the respondent No.1 – minor injured claimant, ie., in favour of mother natural guardian

of the minor child, upon proper verification and identification.

- vi) Registry is directed to transmit the statutory amount in deposit along with records to the concerned Tribunal forthwith.

Sd/-
JUDGE

VK