IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF DECEMBER, 2022

BEFORE

THE HON'BLE MR JUSTICE C M JOSHI

MISCELLANEOUS FIRST APPEAL NO. 5181 OF 2012 (MV-I)

BETWEEN:

SRI. M. NANJUNDAPPA,
S/O. LATE SRI MUNISWAMAPPA,
HINDU, AGED 57 YEARS
R/O. NO.7, CORPORATION MARKET
8TH MAIN ROAD, 14TH CROSS ROAD,
LAKKASANDRA EXTENSION,
ADUGODI POST
BANGALORE - 560 030.

...APPELLANT

(BY SRI. OMKAR BASAVA PRABHU, ADVOCATE)

AND:

1. BHASKAR
   S/O. DODDABANAPPA
   HINDU, ADULT, (AGED ABOUT 28 YEARS)
   R/O NO.404,
   WILSON MANOR APARTMENTS
   13TH CROSS, WILSON GARDENS,
   BANGALORE - 560 027.

2. BAJAJ ALLIANZ GENERAL
   INSURANCE COMPANY
   GE PLAZA, AIRPORT ROAD,
   YERWADA, PUNE - 411 006 AND

ITS BRANCH OFFICE AT NO.31,
GROUND FLOOR, IBR TOWER,
1ST CROSS, NEW MISSION ROAD,
ADJACENT TO JAIN COLLEGE
BANGALORE - 560 002.

…RESPONDENTS

(BY SRI. RAGHAVENDRA C, ADVOCATE FOR R-1;
SRI. O.MAHESH, ADVOCATE FOR R-2)

THIS M.F.A. IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 09.01.2012 PASSED IN MVC NO.4071/2009 ON THE FILE OF THE IV ADDITIONAL JUDGE, COURT OF SMALL CAUSES AND MEMBER, MACT, BENGALURU CITY, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION AND ETC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE *COURT DELIVERED* THE FOLLOWING:

JUDGMENT

Aggrieved by the judgment and award dated 09.01.2012 passed in MVC No.4071/2009 by the learned IV Additional Judge, Court of Small Causes and Member, MACT, Bangalore City (SCCH 6) partly allowing the petition awarding compensation of Rs.45,000/- and directing the 1st respondent to deposit the same and dismissing the petition against 2nd

respondent -Insurance Company, petitioner/appellant has approached this Court in appeal by urging various grounds.

2. The parties are referred to as per their ranks before the Tribunal for the sake of convenience.

3. The brief facts are as below:

On 17.01.2009 at 8.15 p.m. petitioner was proceeding on his two wheeler viz., TVS Scooty bearing NO.KA-02-EE-1283 from 8th M.R.Hombegowdanagar, Bangalore, respondent No.1 came on his two wheeler viz., motor cycle bearing NO.KA-01-EA-3121 in wrong direction in rash and negligent manner and dashed to the TVS Scooty. As a result, petitioner fell along with his Scooty and suffered several injuries. He was taken to the Jayanagar, Garden City Academy Hospital and was treated. Thereafter, petitioner also took treatment at different hospitals including Bowring and Lady Curzon Hospital and Ramakrishna Nursing home by spending lot of amount and respondent No.2 is the insurer of the motor cycle and therefore, prays to allow the petition awarding compensation with costs and interest.

4. On issuance of notice by the Tribunal, respondent Nos.1 and 2 appeared through their counsel and filed written statements. The 1st respondent admitted that he is the owner of the motor cycle and it was insured with 2nd respondent and denied rest of the petition averments as false alleging that bogus case was filed against motor cycle rider with the help of police. He alleged that though the alleged accident said to have occurred on 17.01.2009 no complaint was filed till 5.2.2009 and after filing of such belated complaint police officials pressurized rider to pay the fine and get rid of the problem of attending the court and by succumbing to the pressure of the police, the rider paid the fine. Without prejudice to the above he alleged that he offered the petitioner Rs.75,000/- towards full and final settlement and paid such amount to the petitioner. Despite that this bogus claim petition is filed against him and therefore, petitioner is estopped from filing the present claim petition. Hence, prayed to dismiss the petition.

5. In its separate written statement, 2nd respondent-Insurance Company admitted the issuance of policy and alleged that liability under the said policy is subject to the proof

of involvement of the motor cycle in the impugned accident. It contended that accident was not reported to it by 1st respondent and knowingly the said respondent handed over the vehicle to a person who had no valid D.L. as such for a contravention of policy conditions it is not liable to indemnify 1st respondent. Without prejudice to the above it also alleged that there is a delay of 19 days in filing the complaint and that itself shows that its insured vehicle is falsely involved in the accident. Further it contended that petitioner himself was negligent in riding his TVS Scooty and the accident, if any, occurred due to his negligence and not because of the motor cycle rider and denying other petition averments as false prayed to dismiss the petition.

6. On the basis of the above pleadings, the Tribunal has framed necessary issues for its consideration and after hearing both sides and considering the oral evidence of PW1 and PW2-Dr. S.Ramachandra of Bowring Hospital and documentary evidence of Exs.P1 to P24 and oral evidence of RW1 and documentary evidence of Exs.R1 to R4, allowed the petition in part and awarded a sum of Rs.45,000/- under different heads

as below and directed the 1st respondent to deposit the compensation amount and dismissed the claim petition against 2nd respondent.

Pain sufferings	Rs. 20,000/-
Medical Expenses including conveyance and nourishment	Rs. 17,000/-
Loss of amenities	Rs. 8,000/-
Total	Rs. 45,000/-

7. Aggrieved by the said judgment and award, the petitioner is before this Court seeking enhancement contending that the Tribunal has not considered the evidence on record in a proper perspective and it has misdirected itself in dismissing the petition as against the 2nd respondent Insurance Company on the ground that the rider of the offending motor cycle had no valid driving licence at the time of the accident. It is contended that the petitioner was a third party and therefore, the liability should have been fastened upon respondent Nos. 1 and 2 jointly and severally. It is also contended that the compensation awarded by the Tribunal is also on the lower side and it has not considered the loss of amenities in life suffered by the petitioner and it erred in rejecting the claim under the

head of loss of income during the laid up period and not considering the future loss of income also. It is contended that the compensation under the head of medical expenses was also rejected on the ground that the bills are not proved.

8. Respondent Nos. 1 and 2 have appeared in pursuant to the notice issued by this Court.

9. Tribunal records have been secured and heard learned counsel Sri Omkar Basava Prabhu, appearing for the appellant/petitioner, learned counsel Sri Raghavendra C., appearing for respondent No.1 and learned counsel Sri O. Mahesh, appearing for the Insurance Company/respondent No.2.

10. The facts about the accident are undisputed. It is evident that while the petitioner was riding his scooty in the proper direction on one way road, the offending vehicle owned by respondent No.1 and insured with respondent No.2 came from the opposite direction and collided with the scooty of the petitioner causing the accident. The fact that the rider of the offending motor cycle was not having a valid driving licence is

also borne out of the police papers as well as the evidence on record. On that ground, the insurer had issued a notice to the owner to produce the driving licence which was not complied with. This aspect is noted by the Tribunal in para 10 of its judgment.

11. Of course, it is true that when the said judgment was rendered on 9-1-2012, the insurance company was right in contending that non- possession of the driving licence by the rider would absolve its liability. However, the decision in the case of ***Pappu v. Vinod Kumar Lamba and another***[1]**,** lays down as below:

> **"18.** Further, in para 110, the Court in *National Insurance Co. Ltd.* [*National Insurance Co. Ltd.* v. *Swaran Singh*, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] observed thus: (SCC pp. 341-42)
>
> "*110*. The summary of our findings to the various issues as raised in these petitions is as follows:
>
> (*i*) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

[1] **(2018) 3 SCC 208**

(*ii*) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(*a*)(*ii*) of the said Act.

(*iii*) The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(*a*)(*ii*) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(*iv*) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof where for would be on them.

(*v*) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case.

(*vi*) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow

defences available to the insurer under Section 149(2) of the Act.

(*vii*) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(*viii*)-(*ix*) ***

(*x*) *Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third-party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal*.

(*xi*) *The provisions contained in sub-section (4) with the proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims*."

(emphasis supplied)

> **19.** In the present case, the owner of the vehicle (Respondent 1) had produced the insurance certificate indicating that Vehicle No. DIL 5955 was comprehensively insured by Respondent 2 (insurance company) for unlimited liability. Applying the dictum in *National Insurance Co. Ltd.* [*National Insurance Co. Ltd.* v. *Swaran Singh*, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] , to subserve the ends of justice, the insurer (Respondent 2) shall pay the claim amount awarded by the Tribunal to the appellants in the first instance, with liberty to recover the same from the owner of the vehicle (Respondent 1) in accordance with law."

12. In view of the proposition culled out in the case of *National Insurance Co. Ltd.* v. *Swaran Singh*, the third party claiming compensation is entitled for the compensation from the insurer and the insurer is at liberty to recover the compensation amount paid as such from the owner of the vehicle. Therefore, the view taken by the Tribunal to dismiss the petition as against the respondent No.2 Insurer is not sustainable under law.

13. Coming to the question of the quantum of the compensation, it is evident that some of the heads under which the compensation has to be awarded has not been considered by the Tribunal. Evidently, the petitioner had sustained two injuries as per the wound certificate which are

narrated by the Tribunal in para 9.1 of the judgment. What has been missed by the Tribunal is, the resultant effect of the injuries. The PW2 in his affidavit evidence has stated as: (i) Full thickness tear of supraspinatus tendon with; (ii) Partial tear of subseapularis muscle at the site of attachment; (iii) dislocation of BICEPS Tendon and (iv) Traumatic dislocation of L4-L5 treated conservatively.

14. It is also evident that such statement made by PW2 is supported by the bills produced, the OPD slips at Ex.P7, the medical records which have been produced including MRI reports. Therefore, there cannot be any doubt that though the petitioner had not taken treatment as inpatient, he was treated conservatively and had to attend physiotherapy on many occasions as evidenced by the bills produced at Ex.P9. Therefore, when these injuries are borne out of the records, it cannot be said that there are only two minor injuries, for which, a sum of Rs.20,000/- was awarded by the Tribunal. Rupture of tendon is irreversible and this aspect should have been considered by the Tribunal.

15. It is stated that the petitioner was a Real Estate businessman, aged about 57 years and he has produced the Income Tax Returns for the year 2007-2008 to 2009-2010 at Exs.P19 to P21. Though these returns were considered by the Tribunal in para 9.4, it came to conclusion that there is escalation of income "unabated" subsequent to the accident and therefore, petitioner is not entitled for future loss of income or loss of income during laid up period. In the considered view of this Court, the said conclusions are hyper technical and an injured though did not take any treatment as inpatient, has to take rest for the injuries suffered to his vertebra and tendon rupture and it obviously affect his income. The increase in the income over the period of year may be for various other reasons and denying the future loss of earnings can be justified on that ground. However, loss of income during laid up period was unjustly denied by the Tribunal.

16. It is also evident that the Tribunal did not accept the medical bills on the ground that some of the bills do not bear the seal of the hospital and therefore, rejected the same and only a sum of Rs.17,000/- was allowed, inclusive of the

incidental expenses also. Thus, it is evident that the Tribunal has not considered the compensation in the proper perspective and in a casual manner the claims were rejected. Hence, this court has taken up the reassessment of the compensation under different heads.

17. On a careful reassessment of the evidence on record, considering the nature of the injuries suffered as stated supra, it would be just and proper to award a sum of Rs.25,000/- under the head of pain and sufferings. This Court has re-assessed the medical expenses and bills account for a sum of Rs.26,880/- (rounded off to Rs.27,000/-). It is to be noted that strict proof of evidence are not applicable for the Tribunal and therefore, the said amount should have been allowed by the Tribunal.

18. So far as loss of income during laid up period is concerned, the income tax returns having shown the income of Rs.1.50,000/- and 1,80,000/- for the previous years and Rs.2,50,000/- for the subsequent year of the accident, it has to be inferred that the petitioner was having an income of about Rs.15,000/- per month. The income tax returns of previous

years are relevant piece of evidence and therefore, considering the fact that the petitioner would have required atleast two months for recuperating, it would be proper to award a sum of Rs.30,000/- under this head.

19. The Tribunal has also awarded a sum of Rs.8,000/- under the head of loss of amenities in life. Evidently, the accident had taken place in the year 2009 and therefore, it would be proper to award a sum of Rs.20,000/- under this head.

20. Para 9.2 of the impugned judgment shows that no separate assessment is made in respect of conveyance and nourishment expenses. Ex.P9 bills show that petitioner had to attend for physiotherapy on a number of occasions and therefore, it would be proper to award a sum of Rs.10,000/- under this head. Hence, on reassessment of the compensation, the petitioner is awarded a sum of Rs.1,12,000/- under following heads:

Pain sufferings	Rs. 25,000/-
Medical Expenses	Rs. 27,000/-
Conveyance and nourishment and Misc. expenses	Rs. 10,000/-
Loss of amenities	Rs. 20,000/-
Loss of income during laid up period	Rs. 30,000/-
Total Less: awarded by Tribunal	Rs.1,12,000/- Rs. 45,000/- Rs. 67,000/-

21. Thus, petitioner is entitled to a sum of Rs.67,000/- in addition to what has been awarded by the Tribunal. Hence, the following:

ORDER

(i) Appeal is allowed in part.

(ii) The impugned judgment and award dated 09.01.2012 passed in MVC No.4071/2009 by the Tribunal is set aside to the extent of dismissing the petition against respondent No.2 holding that respondent Nos. 1 and 2 are jointly and severally liable to pay the compensation to the petitioner and respondent No.2 insurance company is at liberty to recover the same from owner/1st respondent and enhancing the compensation by Rs.67,000/- together with interest at 6% p.a. from the date of petition till its payment.

(iii) Insurance company is directed to deposit the compensation amount together with interest within a period of 4 weeks from the date of receipt of the copy of this order.

(iv) The conditions of apportionment and deposit as ordered by the Tribunal remain unaltered.

Sd/-
JUDGE

List No.: 1 Sl No.: 151