IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 21ST DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

MISCL. FIRST APPEAL NO.200452 OF 2020 (MV-I)

BETWEEN:

THE DIVISIONAL MANAGER,
THE ORIENTAL INSURANCE COMPANY LIMITED,
THROUGH ITS SENIOR DIVISIONAL MANAGER,
OPP. MINI VIDHAN SOUDHA, MAIN ROAD,
KALABURAGI-585 102.

...APPELLANT

(BY SRI. J. AUGUSTIN, ADVOCATE)

AND:

1. AMARESH @ AMAREGOUDA
   S/O BASVANTHARAGOUDA SANKANAL,
   AGE: 36 YEARS, OCC: AGRICULTURE,
   R/O GUNJALLI CAMP, TQ. SINDHANUR,
   DIST: RAICHUR-584 128.

2. RAMESH MANI KANDAN @ R. MANI KANDAN
   S/O RAJENDRAN,
   AGE: 36 YEARS, OCC: DRIVER,
   R/O H.NO.1/76, MIDDLE STREET,
   THENCHETTI YANDAL POST, KALLA KURUCHI,
   TALUKA AND DIST. VILLU PURAM,
   NOW RESIDING AT CHINNA SELVAM,
   TAMIL NADU-638 011.

3. S. SENTHIL S/O SHANMUGAM,
   AGE: 38 YEARS,
   OCC: HARVESTER OPERATOR,

LUCYGRACE Digitally signed by LUCYGRACE Date: 2025.01.22 03:27:35 -0800

R/O H.NO.5/407, KATTU KOTTAI,
EDUTHARAINATHAM, KALLA KURUCHI TALUKA,
DIST: VILLU PURAM, TAMIL NADU-638 011.

…RESPONDENTS

(BY SRI. BASAVARAJ R. MATH, ADV. FOR R1;
V/O DTD. 21.01.2025, NOTICE TO R2 & R3 DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO SET ASIDE THE JUDGMENT AND AWARD DATED 03.07.2019 PASSED IN MVC NO.7/2014 (OLD MVC NO.65/2010) BY THE SENIOR CIVIL JUDGE AND JMFC, SINDHANUR AND EXONERATE THE APPELLANT OF ITS LIABILITY.

THIS APPEAL COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE C M JOSHI

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE C M JOSHI)

Heard the learned counsel appearing for the appellant on admission of the appeal.

2. The Insurance Company is before this Court in appeal, being aggrieved by the judgment and award passed by the learned Senior Civil Judge and JMFC and MACT at Sindhanur in MVC No.07/2014.

3. The petitioner before the Tribunal was one Amaresh. He was a pillion rider on a motorcycle and while carrying two diesel cans on the motorcycle, it was hit by another vehicle i.e., motorcycle bearing No.AP-04/B-2562, insured by the appellant herein. It was the contention of the appellant before the Tribunal that when the petitioner was carrying two diesel cans with him while riding as a pillion, there was negligence on his part and therefore, such negligence on his part should have been considered by the Tribunal.

4. It is worth to note that the petitioner carrying two diesel cans with him while he was riding pillion cannot be a ground to contend that there was negligence on his part. The Tribunal in the impugned judgment has clearly observed that the negligence was on the part of the offending vehicle, insured by the appellant herein. Moreover, the petitioner being a pillion rider, could not be attributed with any negligence. Carrying two diesel cans itself cannot be termed as an act of negligence on his part.

If at all the rider of the motorcycle is alleged to be contributor of the negligence, obviously, the petitioner being the pillion rider would be entitled for the compensation from any one of the tort-feasors, as it becomes a case of composite negligence for him. The rider of the motorcycle having succumbed to the injuries in the said accident, the petitioner is at liberty to go against anyone of the tort-feasors. The Tribunal has rightly decided the matter awarding the compensation to the petitioner. Therefore, the appeal filed by the insurer of the offending vehicle contending that there was contributory negligence on the part of the petitioner or his rider is bereft of any merits and as such, the same deserves to be dismissed.

5. Accordingly, the appeal is dismissed at the admission stage itself.

Sd/-
(C M JOSHI)
JUDGE

LG
List No.: 1 Sl No.: 29