IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 8TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE C.M. JOSHI

MISCL. FIRST APPEAL NO.200744/2018(MV-I)

BETWEEN:

THE NATIONAL INSURANCE COMPANY LIMITED,
OPP. MINI VIDHAN SOUDHA,
BILGUNDI COMPLEX
GULBARGA,
THROUGH ITS AUTHORISED SIGNATORY
THE DIVISIONAL MANAGER,
NATIONAL INSURANCE COMPANY LIMITED,
BILGUNDI COMPLEX, 1ST FLOOR,
OPP. MINI VIDHANA SOUDHA, MAIN ROAD,
KALABURAGI,

...APPELLANT

(BY SRI SHARANABASAPPA M. PATIL, ADVOCATE)

Digitally signed by LUCYGRACE
Location: HIGH COURT OF KARNATAKA

AND:

1. MASTER AMIT S/O SHARNU,
   AGE: 8 YEARS, MINOR U/G OF NATURAL FATHER,
   SHARANU S/O SHIVALINGAPPA,
   AGE: 38 YEARS, OCC: LABOUR,
   R/O JAMSHETTY NAGAR, NAGANALLI ROAD,
   GULBARGA-585102.

2. SRI SUSHAN
   S/O BAHUBALI CHINDE,

AGE: 48 YEARS, OCC: OWNER OF MARUTI RITIZ CAR
BEARING REG.NO.KA-32/N-2778,
R/O H.NO.1-429/221-243,
PDA ENGINEERING COLLEGE ROAD,
GULBARGA-585102.

…RESPONDENTS

(BY SRI SANJEEV PATIL, ADV., FOR R1
NOTICE TO R2 – SERVED, BUT UN-REPRESENTED)

THIS MFA IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO MODIFY THE ORDER OF THE TRIBUNAL AND CALL FOR THE LOWER COURT RECORDS AND HEAR THE PARTIES AND SET ASIDE THE JUDGMENT DATED 15.12.2017 AND AWARD DATED 15.12.2017 IN MVC NO.483/2015 IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE AND CJM AND M.A.C.T., AT KALABURAGI.

THIS APPEAL, COMING ON FOR ADMISSION, 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)

1. Heard learned counsel appearing for the appellant and the learned counsel appearing for respondent No.1.

2. Being aggrieved by the judgment and award in MVC No.483/2015 dated 15.12.2017 by the Principal

Senior Civil Judge and MACT, Kalaburagi, (for short 'Tribunal'), the Insurance Company is before this Court in this appeal.

3. The fact that the vehicle insured by the appellant, owned by respondent No.2 met with an accident, wherein, respondent No.1 minor boy, aged about 5 years, had sustained injuries is not in dispute. The appellant - Insurance Company is challenging the liability on the ground that the Driver of the Car which caused the accident had no valid driving license as on the date of the accident.

4. Learned counsel appearing for the appellant-Insurance Company would submit that even though there is sufficient evidence placed on record before the Tribunal that the driver of the offending vehicle was not having valid driving license at the time of the accident, the Tribunal has a fastened the liability upon the appellant - Insurance Company, on the ground that the driving license

which had expired could have been renewed, therefore, the appellant is liable. It is also contended that the compensation awarded is on higher side.

5. *Per contra*, learned counsel appearing for respondent No.1-claimant would submit an invalid driving license would not affect the right to claim compensation by respondent No.1. It is also submitted that in view of the judgment of Apex Court in the case of ***PAPPU DEO YADAV VERSUS NARESH KUMAR AND ORS.***[1]***,*** the Insurance Company is liable to pay the compensation with liberty to recover the same from the owner of the vehicle.

6. A careful perusal of impugned judgment would show that in Para 17 the Tribunal observes as below:

> *"Though in this case, the offending vehicle driver had no the driving licence at the time of accident, the RW.2 in cross examination admits that the D.L. can be renewed anywhere by other RTO. What it*

[1] *AIR 2020 SUPREME COURT 4424*

> *goes to show is that the D.L. can be renewed by any competent RTO. Moreover, the offending vehicle driver is not charge sheeted for the offence punishable U/s. 3 r/w section 181 of the M.V. Act. So, it is held that the respondent No.2 has failed to prove that at the time of accident, the offending vehicle driver had no a valid and effective DL. Therefore, keeping in mind the principles laid down in the above referred decisions, it is held that the respondent No.2 has failed to prove this issue. Therefore, I have answered this issue in the NEGATIVE."*

7. It is worth to note that as on the date of the accident *i.e.,* on 14.03.2015 the driver of the car was not having valid driving license. Of course, such driving license could have been renewed. When there was no valid driving license as on date of the accident, obviously there is violation of the terms and conditions of the policy. It is evident that respondent No.1 - owner of the vehicle had appeared before the Tribunal and therefore, when he had appeared before the Tribunal, the Insurance Company should have invoked the provisions of Section 170 of the

M.V. Act, to take up all such defences as are available to it. There is no such reference to an application filed under Section 170 of the M.V. Act, in the impugned judgment. Under these circumstances, it is evident that when the invalid driving license was placed before the Tribunal in the form of Ex.D3, the Tribunal could not have fastened the liability fully upon the appellant herein. The interse dispute about validity of the driving license between the appellant and respondent No.2 herein should be left to be decided among themselves. But there being a valid insurance policy and the claimant being a third party cannot be forced to seek compensation only from the owner of the vehicle. In that view of the matter, the propositions of law laid down by the Apex Court in ***PAPPU DEO YADAV***'s case referred supra are squarely applicable to the case on hand.

8. *Insofar* as the quantum of the compensation is concerned, as rightly pointed out by the learned counsel for respondent No.1, there is no such ground pleaded in

the appeal memo. The learned counsel for the appellant would urge that despite there being no such ground in the pleadings, the discretion may be exercised by this Court and the ground that the compensation is on the higher side may be looked into.

9. The Tribunal going through the injuries suffered by a minor boy, aged about 5 years and on noticing the law laid down by the Apex Court in the case of ***Master Mallikarjun vs. Divisional Manager, The National Insurance Company Limited and Anr.[2], -*** has granted the compensation as below:

Towards pain and suffering	₹80,000/-
Towards loss of amenities and enjoyment in life	₹25,000/-
Towards loss of future income	₹1,00,000/-
Towards attendant's charges, food, nourishment and conveyance expenses	₹1,500/-

[2] *(2014) 14 SCC 396*

Total	₹2,06,500/-

10. It is pertinent to note that the Tribunal has awarded a sum of Rs.1,500/- under the head attendant charges, food nourishment, etc. Obviously, it had not considered the time and energy spent by the parents of the petitioner in attending the petitioner while treatment. Therefore, even though there is a slight variation by the Tribunal in awarding the compensation as laid down by the Apex Court in the case of ***Master Mallikarjun***, it is not necessary for this Court to venture into re-assessment of the compensation amount awarded by the Tribunal.

11. In view of the above observations, the following:

O R D E R

i) The appeal is allowed in part.

ii) The compensation awarded by the Tribunal is ordered to be paid by the appellant-Insurance

Company to the petitioner at the first instance with liberty to recover the same thereafter from the owner of the Car, *i.e.,* respondent No.2 herein.

iii) The rest of the terms and conditions regarding deposit etc., ordered by the Tribunal remain unaltered.

iv) The amount in deposit before this Court is ordered to be transmitted to the Tribunal.

Sd/-
(C M JOSHI)
JUDGE

SBS
List No.: 1 Sl No.: 51
CT: AK