IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 16TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

MISCL. FIRST APPEAL NO.200844 OF 2018 (MV-I)

BETWEEN:

THE MANAGER (LEGAL),
SHRIRAM GENERAL INSURANCE CO. LTD.,
E-8, EPIP, RIICO, SITAPUR,
JAIPUR, RAJASTHAN,
REP. BY AUTHORISED SIGNATORY.

...APPELLANT

(BY SRI. SUBHASH MALLAPUR, ADVOCATE)

AND:

1. DASTEGIR S/O CHANDSAB MULLA,
   AGE: 53 YEARS, OCC: TAILORING,
   R/O VILLAGE MANTHAL, TQ. B.KALYAN,
   DIST. BIDAR-585 401.

2. M.A. AYUB SAB S/O RUKMODDIN,
   AGE: MAJOR, OCC: BUSINESS &
   OWNER OF AUTO NO.KA-39/6614,
   R/O VILLAGE MANTHAL, TQ. B. KALYAN,
   DIST. BIDAR-585 401.

3. GORE S/O HUSSAIN SAB,
   AGE: MAJOR, OCC: BUSINESS & OWNER
   OF AUTO NO.KA-39/4000,
   R/O BUNKAR COLONY, TRIPURANTH,
   NOW AT VILLAGE MANTHAL,
   TQ. B. KALYAN, DIST. BIDAR-585 401.

Digitally signed by LUCYGRACE
Location: HIGH COURT OF KARNATAKA

4. THE DIVISIONAL MANAGER,
UNITED INDIA INSURANCE CO. LTD.,
JAWALI COMPEX, SUPER MARKET,
KALABURAGI-585 102.

…RESPONDENTS

(BY SRI. VARUN PATIL, ADVOCATE FOR
SRI. SHIVANAND PATIL, ADVOCATE FOR R4;
R1 TO R3 – SERVED, BUT UN-REPRESENTED)

THIS MFA IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO ALLOW THE APPEAL AND CONSEQUENTLY SET ASIDE THE JUDGMENT AND AWARD DATED 07.02.2018 PASSED BY THE II ADDL. DIST. AND SESSIONS COURT AND ADDL. MACT, BIDAR, SITTING AT BASAVAKALYAN, IN MVC NO.56/2015.

THIS APPEAL COMING ON FOR FINAL HEARING, 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)

This appeal is directed against the judgment and award dated 07.02.2018 passed in MVC No.56/2015 by the learned II Additional District and Sessions Court and Additional MACT, Bidar, sitting at Basavakalyan (hereinafter referred to as 'the Tribunal' for short).

2. By the impugned judgment, the Tribunal has awarded a sum of Rs.1,69,200/- as compensation together with interest at 9% p.a. and directed the insurance companies - respondent Nos.2 and 4 therein to deposit the same.

3. Heard the learned counsel appearing for the appellant and respondent No.4.

4. The short point that is urged before this Court is that, there is violation of the terms and conditions of the policy by the driver of respondent No.1 and therefore, the appellant-Insurance Company is not liable to pay the compensation as ordered by the Tribunal.

5. The brief facts of the case are that, on 10.06.2014, the petitioner boarded the Ape Auto bearing Reg. No.KA-39/4000 at 4:30 p.m. to go to Manthal village and the said auto rickshaw met with an accident with another Ape Auto bearing Reg. No.KA-39/6614, which was owned by respondent No.1 and insured by respondent

No.2-appellant herein. The petitioner sustained injury in the said accident and filed a claim petition.

6. Respondent Nos.1 and 2 appeared before the Tribunal and contested the matter. Respondent No.1 denied that his vehicle was involved in the accident and if at all any compensation is to be paid, the same be fastened upon respondent No.2, as he was the insurer. Respondent No.2, who is the appellant herein contended that the driver of the insured vehicle was not having a valid driving license and therefore, the terms and conditions of the policy were violated and as such, it's liability be absolved. *Interalia,* it was also contended that the vehicle has been falsely implicated and there was no such accident involving the vehicle insured by it.

7. The Tribunal framed appropriate issues and had allowed the parties to adduce evidence. The Tribunal held that there was contributory negligence by the two auto rickshaws, which were involved in the accident is in equal proportions and therefore, the insurers of both the

vehicles are liable to pay the compensation in equal proportions. What was not considered by the Tribunal is that, the driver of the auto rickshaw was not having a valid driving licence at the time of the accident and as such, an offence involving Section 3 of the Motor Vehicles Act, 1988 was also foisted against him in the charge sheet. After considering the rival contentions, The tribunal came to a conscious decision that both the vehicles are involved in the accident and the contention of the appellant that the vehicle insured by it was never involved in the accident cannot be accepted.

8. Now being aggrieved by the said judgment, the appellant-Insurance Company, who was respondent No.2 before the Tribunal has approached this Court. Learned counsel appearing for the appellant would argue that the involvement of the vehicle insured by it is doubtful for there being delay in filing the complaint and that the absence of the driving licence was not considered by the Tribunal.

9. Per contra, learned counsel appearing for respondent No.4, who is the insurer of the another vehicle submits that he has no grievance as against the impugned judgment of the Tribunal. The claimant has not appeared before this Court.

10. In para 22 of the impugned judgment, the Tribunal comes to a categorical conclusion that the elicitations in the cross-examination of PW.1 clearly indicate that the said vehicle was also involved in the accident. A careful perusal of the records would show that the Tribunal categorically comes to the conclusion that the vehicle insured by the appellant was very much involved in the accident. Therefore, at no stretch of imagination, it can be held that the Ape Auto bearing No.KA-39/6614 was not involved in the accident, since the finding of the Tribunal is not perverse or arbitrary. The chargesheet produced at Ex.P8 clearly show that the driver of the said auto rickshaw was not having a valid driving licence. It is

pertinent to note that in paragraphs 22 and 24, the Tribunal holds as below:

> *"22. This could have been appreciated had the involvement of two vehicles was denied. Even the Respondent No.4 who is the insurer of the another vehicle, wherein the petitioner was traveling has admitted the involvement of the vehicle. Apart from that, the first cross-examination portion conducted by the learned counsel for the Respondent No.2, is an answer to the defence set-up by Respondent No.2 itself. Counsel for Respondent No.2, has rather elicited the involvement of the vehicle, but has tried only to avoid its liability, by making a suggestion that the actionable wrong was, only on the part of the vehicle in which the petitioner was travelling and not on the part of the opposite vehicle. Therefore in my considered view, it cannot be said that it is a fake accident. Had the allegation only against the driver of the offending vehicle then the principle laid in the ruling one relied upon by the Respondent No.2 rendered by our own High Court in* ***MFA No.11540/2011(MV)*** *between* ***A.R.Ashok Vs. Sathisha and another****, could have been applied to the facts of the present case. But it is not so. Right from the statement of the petitioner recorded in the Umerga Hospital by Maharashtra Police, he has categorically stated that the driver of*

the vehicle in which, he was travelling was also driving the vehicle in zigzag manner and the driver of the auto which came from opposite side was also rash and negligent.

24. If we read the contents of the complaint, what it goes to show that both these vehicle while negotiating one another and more particularly, when this driver of the auto bearing Regn.No.KA-39/6614 was taking turn towards the right side, has come so close to the auto, wherein this petitioner was traveling, has dashed the right hand which appears to have been protruding outside the auto and it went way. That appears to be the reason why there are no visible damages observed by the Motor Vehicle Inspector on both the vehicles, as is clear from Ex.P-7. Therefore, I am of the considered opinion that, the drivers of both the vehicles are equally responsible for this accident, wherein this petitioner being the inmate of Auto bearing Regn.No.KA-39/4000, suffered injuries. Hence, I answer Issue No.1 in Affirmative holding that drivers of both the vehicles are equally responsible for this accident."

After coming to such conclusion, the Tribunal has missed to consider the fact that the driver of the auto rickshaw was not having a valid driving licence as per the

chargesheet. Evidently, respondent No.2, who is the owner of the vehicle had appeared before the Tribunal and had contested the matter. Therefore, in view of the judgment of the Apex Court in the case of ***Pappu and Others vs. Vinod Kumar Lamba and Another***[1], the insurer has to pay the compensation and then he is at liberty to recover the same from the owner. It is also pertinent to note that respondent No.1 though contended that he had a valid driving licence, he did not produce such driving licence before the Tribunal. Therefore, in view of the ratio in the case of ***Pappu and Others*** *supra,* the appellant-Insurance Company has to pay the compensation to the claimant and then it is at liberty to recover the same from its insured.

11. The contributory negligence on the part of the vehicle insured by the appellant has also been dealt and considered by the Tribunal at length. No fault can be found in respect of the same in the light of the chargesheet having been filed only against the driver of the auto

[1] (2018) 3 SCC 208

rickshaw insured by the appellant herein. There is no grievance by respondent No.4, who is the insurer of the auto rickshaw, in which the claimant was traveling. Hence, no interference is required in respect of the contributory negligence that has been held by the Tribunal.

12. For the above reasons, the appeal deserves to be allowed in part. Hence, the following:

ORDER

(i) The appeal is allowed in part.

(ii) The appellant-Insurance Company shall pay the compensation to the claimant as determined by the Tribunal and then it is at liberty to recover the same from its insured i.e., respondent No.1 before the Tribunal.

(iii) Rest of the order passed by the Tribunal remains unaltered.

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

Sd/-
(C M JOSHI)
JUDGE

LG
List No.: 1 Sl No.: 72