IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 30TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

MISCL. FIRST APPEAL NO.201158 OF 2019 (MV-I)

BETWEEN:

MALLAMMA W/O LATE SHIVRAJ KAMTHANA,
AGE: 53 YEARS, OCC: HOUSEHOLD AND LABOUR,
R/O CHITTAWADI, TQ. & DIST. BIDAR-585 412.

…APPELLANT

(BY SRI. JAIRAJ K. BUKKA, ADVOCATE)

AND:

1. SHAMUEL @ SHAMSUNDAR S/O SHIROMANI,
   AGE: MAJOR, OCC: BUSINESS,
   R/O # 32, KHANAPUR, TQ. AURAD-B,
   DIST. BIDAR-585 406,
   (OWNER OF VEHICLE BEARING
   REGN. NO.KA.38.4046).

2. BRANCH MANAGER OF NATIONAL
   INSURANCE COMPANY LIMITED,
   ADDRESS: D.NO.8/10/135, 1&1A,
   VEERBHADRESHWAR CHAMBERS,
   OPP. NEHARU STADIUM, BIDAR,
   KARNATAKA-585 401.

…RESPONDENTS

(BY SMT. SANGEETA BHADRASHETTY, ADV. FOR R2;
V/O DTD. 31.01.2023, NOTICE TO R1 IS DISPENSED WITH)

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THIS MFA IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO ALLOW THIS APPEAL AND AWARD COMPENSATION OF RS.13,30,000/- (EXCLUDING THE AMOUNT AWARDED BY THE TRIBUNAL) ALONG WITH INTEREST @ 12% P.A. BY MODIFYING THE JUDGMENT AND AWARD PASSED BY LEARNED PRINCIPAL DISTRICT AND SESSIONS JUDGE AND PRL. M.A.C.T. AT BIDR DATED 05.03.2019 IN M.V.C. NO.430/2016, BY FIXING THE ENTIRE LIABILITY OF PAYING COMPENSATION ON RESPONDENT NO.2, INSTEAD OF FIXING IT ON RESPONDENT NO.1.

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)

Though the appeal is listed for admission, by the consent of learned counsel appearing for both the parties, the matter is taken up for final disposal.

This appeal is directed against the judgment and award dated 05.03.2019 in MVC No.430/2016 passed by learned Principal District and Sessions Judge and Principal MACT, Bidar (hereinafter referred to as 'the Tribunal' for short).

2. By the impugned judgment and award, the Tribunal has allowed the claim petition in part and awarded a sum of Rs.70,000/- as compensation and directed the owner of the auto rickshaw to deposit the same.

3. The factual matrix of the case is not much in dispute. The petitioner, a lady aged about 50 years, a housewife and labourer by profession was earning Rs.8,000/- per month and she met with an accident on 01.09.2015, while she was travelling in auto rickshaw bearing No.KA-38-4046 near Sidharth College, Bidar. Due to the negligent driving of the driver, the auto rickshaw turned turtle, where she suffered injuries and was shifted to District Hospital and then to Guru Nanak Hospital, Bidar. The petitioner was treated conservatively and had to take treatment for prolonged time and therefore, she claimed a compensation of Rs.14,00,000/- from the owner and insurer of the auto rickshaw.

4. The petition was opposed by the respondents, contending that the compensation claimed is highly exorbitant and imaginary and they denied the age, occupation and income of the petitioner. Respondent No.1 contended that the vehicle was insured with respondent No.2 and as such, the liability to pay the compensation is to be fastened upon respondent No.2. On the other hand, respondent No.2 contended that there is violation of Sections 3, 4 and 180 of the Motor Vehicles Act, 1988 and the driver had no valid driving licence to drive a transport vehicle as on date of the accident and therefore, the liability to pay the compensation has to be fastened upon respondent No.1 only.

5. The Tribunal framed appropriate issues and also framed an additional issue and allowed the parties to adduce the evidence. The petitioner was examined as PW.1 and Exs.P1 to 13 where marked. Respondent No.2 examined two witnesses as RWs.1 and 2 and Exs.R1 to R9 were marked.

6. After hearing the arguments by both sides, the Tribunal awarded the compensation of Rs.70,000/- to the petitioners and directed respondent No.1 to deposit the compensation amount under different heads as below:

Mental agony, pain & suffering	Rs.30,000/-
Hospital expenses and medical expenses	Rs.20,000/-
Attendant, transportation charges and other miscellaneous expenses	Rs. 2,000/-
Loss of earning and her service to the family members during the period of rest	Rs.18,000/-
Total	Rs.70,000/-

Further, the Tribunal dismissed the petition as against respondent No.2 and directed respondent No.1-owner to pay the compensation.

7. Being aggrieved by the same, the petitioner is before this Court, seeking enhancement of compensation awarded by the Tribunal as well as questioning the liability fastened on respondent No.1.

8. Heard the learned counsel for the appellant and learned counsel for respondent No.2-Insurance Company.

9. Learned counsel appearing for the appellant would submit that the fastening of the liability on respondent No.1 is not proper and correct, since the case is covered by the principles laid down by the Apex Court in the case of ***Mukund Dewangan v/s Oriental Insurance Company Limited***[1]. He submits that the driver of the auto rickshaw had a valid driving licence for LMV and there was no necessity for him to obtain a license to drive a transport vehicle and therefore, fastening of the liability on respondent No.1 alone is not justifiable. His second contention is that, the quantum of compensation awarded by the Tribunal is on the lower side and the nature of the injuries sustained are not properly appreciated by the Tribunal. The Tribunal failed to compensate the petitioner under the head of loss of amenities in life, since she had suffered fracture of pubic ramus.

10. Per contra, learned counsel appearing for respondent No.2 fairly concede that the principles laid

[1] 2017 (14) SCC 663

down in the case of ***Mukund Dewangan*** *supra* are applicable. She also submit that in view of the violation of the permit conditions, the principles laid down in the case of ***Amrut Paul Singh and another*** vs. ***Tata AIG General Insurance Co. Ltd. and others***[2] are applicable and as such, an order of pay and recovery has to be made. Regarding quantum, it is submitted that the Tribunal is justified in awarding a sum of Rs.70,000/- to the petitioner.

11. A perusal of the driving licence of respondent No.1, who also happens to be the owner of the vehicle, produced at Exs.R7 and R8 and also the original driving licence at Ex.P13 would show that respondent No.1 was authorised to drive a non-transport vehicle from 16.12.1998 to 15.12.2018. However, the validity to drive the transport vehicle i.e., a cab was only from 23.01.2001 to 22.01.2004. The accident having happened on 01.09.2015, respondent No.1 was not having a licence to

[2] (2018) 7 SCC 558

drive a transport vehicle on that day. Evidently, the category of the vehicle is an auto rickshaw, the unladen weight of which is less than 7500 kgs. Therefore, in view of the principles laid down by the Apex Court in the case of ***Mukund Dewangan*** *supra*, it has to be held that there was no such violation of the terms and conditions of the policy. Respondent No.1 was authorised to drive the auto rickshaw and therefore, the liability has to be fastened upon respondent No.2-Insurance Company.

12. The second aspect which affects the question of liability is regarding the violation of the permit conditions. The Tribunal has rightly relied upon the judgment of the Apex Court in the case of ***Amrut Paul Singh*** *supra*, wherein it is held that if there is violation of the permit conditions, the insurer is liable to pay the compensation and then is at liberty to recover the same from the insured. Therefore, respondent No.2 is liable to pay the compensation to the petitioner and then recover the same from respondent No.1-owner of the vehicle.

13. Coming to the quantum of compensation, the Tribunal has deducted certain amount, even though the receipts for medical expenses were produced. On a careful examination of the receipts produced, it cannot be said that they are the fake receipts. Though the petitioner was admitted to Guru Nanak Hospital, she might have taken the medicines from various other pharmacies. Therefore, the observation of the Tribunal that certain bills are not permissible cannot be accepted. It is pertinent note that the total medical bills produced by the petitioner accrued for about Rs.35,000/-. Therefore, the same has to be awarded to the petitioner under the head of medical expenses.

14. The petitioner had suffered cut lacerated wound on the forehead and fracture of right superior pubic ramus. Though the petitioner had contended that she had undergone surgery, the nature of the treatment was conservative and there were no surgeries. This aspect is also observed by the Tribunal in detail. Therefore, when

there are two injuries i.e., one simple and another grievous, the award of Rs.30,000/- towards pain and suffering appears to be on the lower side and the same is enhanced to Rs.40,000/-.

15. The petitioner is aged 50 years, a housewife and the Tribunal has awarded a sum of Rs.18,000/- towards loss of earning and her service to the family members. The notional income considered by the Tribunal appears to be on the lower side than the wages fixed under the Minimum Wages Act. Therefore, the same is considered at Rs.8,000 x 3 = Rs.24,000/-.

16. The Tribunal has awarded a sum of Rs.2,000/- only towards attendant, transportation charges and other miscellaneous expenses, even though the petitioner was inpatient for about five days. It appears that the Tribunal has considered the inpatient treatment at Guru Nanak Hospital only. Therefore, it would be appropriate to award a sum of Rs.5,000 under this head.

17. The Tribunal has not awarded any compensation under the head of loss of amenities in life. Obviously, the petitioner has not claimed any disability. Therefore, she has to be compensated adequately under the head of loss of amenities in life, keeping in view that she is going to suffer the injury for the rest of her life and she being aged about 50 years. Hence, a sum of Rs.30,000/- is awarded under this head.

18. Therefore, the appellant is entitled for the modified compensation under different heads as below:

Mental agony, pain and suffering	Rs. 40,000/-
Hospital expenses and medical expenses	Rs. 35,000/-
Attendant, transportation charges and other miscellaneous expenses	Rs. 5,000/-
Loss of earning and her service to the family members during the period of rest	Rs. 24,000/-
Loss of amenities	Rs. 30,000/-
Total Less: awarded by Tribunal Enhancement	Rs.1,34,000/- Rs. 70,000/- **Rs. 64,000**/-

Thus, the appellant is entitled for enhanced compensation of Rs.64,000/- with interest and therefore,

the appeal deserves to be allowed in part. Hence, the following:

ORDER

(i) The appeal is allowed in part.

(ii) The impugned judgment and award passed by the Tribunal is modified by awarding a sum of **Rs.64,000**/- in addition to what has been awarded by the Tribunal together with interest at 6% p.a. from the date of petition till its realization.

(iii) Respondent No.2 - Insurance Company is directed to deposit the entire compensation amount within a period of six weeks from the date of this order and then recover the same from respondent No.1.

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

Sd/-
(C M JOSHI)
JUDGE

LG
List No.: 1 Sl No.: 46