

IN THE HIGH COURT OF KARNATAKA AT BANGALOREDATED THIS THE 25TH DAY OF MAY, 2012.: **BEFORE :****THE HON'BLE MR. JUSTICE N.K. PATIL**M.F.A.NO.10809 OF 2008 (MV)Between:

The New India Assurance Co., Ltd.,
No.160/1, Narasaraja Road,
Davanagere, Rep. by its
Senior Divisional Manager at
DO.XII, Mayur Complex,
KIADB Main Road, Peenya,
Bangalore-58.

... Appellant

(By Shri. A.K.Bhat, Advocate)

And:

1. D. Rajashekar Gowda,
Aged about 50 years,
R/o. No.1656/34, S.S. Layout,
Davanagere-577 001.
2. Shankarappa,
Aged about 22 years,
S/o. Shivanna,
C/o. Indira, Hemavathi Quarters,
Tumkur-572 101.

... Respondents

(Notice to R1 & R2 is held sufficient
v/o. dated 02/01/2012)

This MFA is filed U/S 173(1) of MV Act, against the Judgment and Award dated: 09/05/2008 passed in MVC No. 572/2006 on the file of the Principal Civil Judge(Sr.Dn), Additional Motor Accident Claims Tribunal, Tumkur,

awarding a compensation of ₹26,565/- with interest at the rate of 6% p.a. from the date of petition till realisation.

This MFA coming on for Hearing this day, the Court delivered the following:

J U D G M E N T

This appeal by the Insurer is directed against the judgment and award dated 9th May 2008 passed in MVC No. 572/2006 by the Principal Civil Judge(Sr.Dn), Additional Motor Accident Claims Tribunal, Tumkur, (for short, 'Tribunal'), awarding compensation of ₹26,565/- in favour of the first respondent/ claimant, on the ground that the Tribunal is not justified in fastening the liability on the insurer to first satisfy the award passed by Tribunal and thereafter to recover the same from the owner of the offending vehicle.

2. The facts in brief are that, the first respondent/injured claimant had filed the claim petition under Section 166 of the Motor Vehicles Act, contending that at about 5:30 P.M, on 01-02-2006, when he was travelling in Hero Honda as a pillion rider on Motor bike bearing Registration No.KA-18/L-5026, towards Gubbi



and when they were coming on NH-206 road near the garden of Jagadeesh on left side of the road, a Lorry bearing Registration No.KA-17/9172 came a very high speed in a rash and negligent manner from Gubbi side and dashed against the said Hero Honda motor bike. On account of the accident, he sustained multiple bleeding injuries all over the body. Immediately he was shifted to Gubbi Hospital and then was shifted to General Hospital, Tumkur, where he was admitted for some days and thereafter shifted to Sanjay Gandhi Hospital, where he took treatment as in-patient for about 20 days.

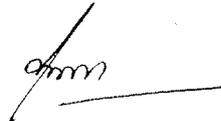
3. On account of the injuries sustained in the accident, the claimant filed the claim petition before the Tribunal, seeking compensation of a sum of ₹3.00 lakhs against the appellant, Insurer and the owner of the offending vehicle. The said claim petition had come up for consideration before the Tribunal on 9th May, 2008. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and



documentary evidence, allowed the claim petition in part, awarding a sum of ₹26,565/- under different heads, with 6% interest per annum, from the date of petition till the date of deposit and directed the Insurer to satisfy the award and thereafter to recover the same from the owner of the offending vehicle. Being aggrieved by the liability fastened first on the Insurer to satisfy the award and thereafter to recover the same from the owner of the offending vehicle, the Insurer is in appeal before this Court, seeking to modify the impugned judgment and award passed by Tribunal by setting aside the liability fastened on it and direct the owner of the vehicle only, at the first instance to satisfy the award.

4. I have gone through the grounds urged in the memorandum of appeal and the impugned judgment and award passed by Tribunal and heard the learned counsel appearing for the appellant/insurer.

5. Shri.A.K. Bhat, learned counsel appearing for appellant Insurer vehemently submits that the Tribunal



seriously erred in fastening the liability on the Insurer, for the reason that, as on the date of accident, the driver of the offending vehicle did not possess a valid and effective Driving licence to drive the heavy transport vehicle. Further, he submits that there is breach of the conditions of the policy and therefore, the liability fastened is liable to be set aside and the impugned judgment and award passed by Tribunal is liable to be modified.

6. After hearing the learned counsel appearing for appellant Insurer, after perusal of the impugned judgment and award passed by Tribunal and on going through the judgment of the Apex Court in catena of decisions, I am of the considered view that there is no error or illegality as such committed by Tribunal in awarding the compensation and also fastening the liability on the insurer to satisfy the award, at the first instance and thereafter reserving liberty to the insurer to recover the same from the owner of the offending vehicle. Further, it can be seen that the Tribunal, at



paragraph 11 of its judgment has categorically observed that the driver of the offending vehicle, in fact, had a valid and effective driving licence, but to drive a light motor vehicle. Whereas, the vehicle driven by him was a Lorry, what is a heavy motor vehicle and as per the policy, gross vehicle weight is 880. Under the circumstances, in view of the decision of the Hon'ble Supreme Court, reported in AIR 2008 SC P.1073, it is the bounden duty of the Insurance Company to prove the ownership where that licence was fake and still permitted the driver to drive the vehicle. Therefore, I am of the considered view that the Tribunal is justified in fastening the liability on the Insurer to first satisfy the award and thereafter to recover the same from the owner of the offending vehicle. The reasoning given by the Tribunal is based on the oral and documentary evidence available on file coupled with the reliance on the rulings of the Apex Court. Hence, interference in the impugned well considered judgment passed by Tribunal is uncalled for.



7. Further, having regard to the age, avocation, nature of injuries sustained, nature and duration of treatment, etc, I am of the opinion that the quantum of compensation awarded by Tribunal is also just and reasonable and it does not call for interference.

8. In the light of the discussion made above, the appeal filed by Insurer is liable to be dismissed as devoid of merits. Accordingly, it is dismissed.

Office is directed to transmit the amount in deposit to the jurisdictional Tribunal, forthwith.

Office to draw the award, accordingly.

Sd/-
JUDGE

BMV*