R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF DECEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

M.F.A. NO.7043/2014 (MV-I)

BETWEEN:

SRIKANTA M.R.,
S/O LATE M.G. RAMAIAH,
AGED ABOUT 34 YEARS,
R/At. NO.287, V CROSS,
VENKATAREDDY NAGAR,
JAYANAGAR I BLOCK,
BENGALURU-560 011
ELECTION I D CARD ADDRESS
NO.336, GUTTEPALYA,
JAYANAGAR,
BENGALURU-560 011.

... APPELLANT

(BY SRI K.V.SHYAMAPRASADA, ADVOCATE)

AND:

1. GEETHA
W/O K.P.RUDRAPPA,
MAJOR, R/AT NO.415,
7TH MAIN, I S R O LAYOUT,
BENGALURU-560 094.

2. M/S. CHOLAMANDALAM
M S GENERAL INSURANCE CO. LTD.,
NO.135/5, 2ND FLOOR, 15TH CROSS,

J.P.NAGAR III PHASE,
BENGALURU-560 078
REPRESENTED BY ITS MANAGER.

... RESPONDENTS

(BY SRI O.MAHESH, ADVOCATE FOR R2 [THROUGH VC];
VIDE ORDER DATED 19.02.2020,
NOTICE TO R1 IS HELD SUFFICIENT)

THIS M.F.A. IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 25.08.2014 PASSED IN MVC NO.7585/2012 ON THE FILE OF THE III ADDITIONAL SENIOR CIVIL JUDGE AND MOTOR ACCIDENT CLAIMS TRIBUNAL, BENGALURU AND ETC.

THIS M.F.A. HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 15.11.2022 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

J U D G M E N T

This appeal is filed by the claimant challenging the judgment and award dated 25.08.2014 passed in M.V.C.No.7585/2012 on the file of the III Additional Senior Civil Judge and MACT, Bengaluru ('the Tribunal' for short).

2. Heard the learned counsel appearing for the appellant and the learned counsel appearing for respondent No2.

3. The factual matrix of the case of the claimant before the Tribunal is that on 06.10.2012 at about 1.00 a.m., the claimant was driving the autorickshaw, at that time, the driver of the offending vehicle i.e., the lorry suddenly stopped the same in the middle of the road without giving any signal carelessly, due to which, the claimant touched his auto to the lorry as a result, the claimant had sustained injuries and immediately he was shifted to Mallige Medical Center and then, he was shifted to NIMHAS hospital and thereafter, he was shifted to Shekar hospital wherein he has taken treatment as an inpatient for a period of 9 days and again he was referred to NIMHAS hospital and thereafter, he took treatment at Victoria hospital. The claimant in order to substantiate his contention, examined himself as PW1 and got marked the documents at Ex.P1 to P15 and examined another witness as PW2. On the other hand, the respondents have examined one witness as RW1 and got marked the documents at Ex.R1 to R7. The main contention of the

Insurance Company is that the cheque which was issued for policy was dishonoured hence, the Insurance Company is not liable to pay the compensation. The Tribunal after considering both the oral and documentary evidence available on record fastened the liability on the owner and granted the compensation of Rs.1,57,200/- with 8% interest.

4. Being aggrieved by the judgment and award of the Tribunal, the present appeal is filed by the claimant contending that the Tribunal has erred in holding that the second respondent herein has issued proper notice to the first respondent and also to the RTO in respect of dishonour of cheque received by it towards the premium. The learned counsel vehemently contend that the Tribunal has committed an error in relying upon the documents at Ex.R2 to R7 and held that the notice, in question, was deemed to be served on the first respondent and the concerned RTO but the postal acknowledgment for having served the notice is not produced. The Tribunal also committed an error in not awarding just and reasonable compensation and the compensation awarded in all

the heads are very meager when the claimant had suffered the fracture of maxilla, diffuse axonal injury and fright frontal sulcus sub arrchnoid haemorrhage and he was shifted to several hospitals for the treatment and he has taken the treatment as inpatient for 12 days and the Tribunal has not awarded compensation on the head of 'future medical expenses' hence, it requires interference of this Court.

5. Per contra, the learned counsel appearing for the Insurance Company would vehemently contend that the Tribunal has rightly fastened the liability on the insured and exonerated the liability of the Insurance Company since, the cheque which was issued was dishonoured. The counsel also filed a memo along with the copy of Insurance Regulatory and Development Authority notification dated 16.10.2002 and brought to notice of this Court that the regulations 3 as well as 4 are with regard to the manner of premium payments as well as commencement of risk and the counsel would vehemently contend that the attachment of risk to an insurer will be in consonance with the terms of Section 64VB of the Act and except in the cases where

the premium has been paid in cash, in all other cases the insurer shall be on risk only after the receipt of the premium by the insurer. Provided that in the case of a policy of general insurance that where the remittance made y the proposer or the policyholder is not reaslised by the insurer, the policy shall be treated as void ab-initio. Hence, the Insurance Company is not liable to pay the compensation.

6. Having heard the arguments of the respective counsel appearing for the parties and also on perusal of the material on record, the points that would arise for consideration of this Court are:

1. Whether the Tribunal has committed an error in not awarding just and reasonable compensation as contended by the claimant?
2. Whether the Tribunal has committed an error in fastening the liability on the insured instead of insurer and whether it requires interference of this Court?
3. What order?

Point No.1:

7. Having heard the arguments of the respective counsel appearing for the parties and also on perusal of the material on record it is not in dispute with regard to the accident and in order to prove the same, the claimant has relied upon the documents at Ex.P1 to P5 and the Tribunal also given the finding with regard to the accident and the same has not been questioned by the Insurance Company.

8. The main contention of the claimant that he had suffered the fracture of maxilla and also other injuries as a result, he has suffered permanent disability and also he was unable to attend the duty of driver for a period of 4 months. Having considered the material available on record, it discloses that the accident was occurred in the year 2012 and the records also reveals that he was taken the treatment at Mallige hospital i.e., immediately after the accident wherein he was an inpatient only for one day and then he was shifted to NIMHANS and then he was referred to Shekar hospital wherein he was an inpatient for a period of 9 days and again he was referred to NIMHANS

wherein also he took treatment and thereafter at Victoria hospital and the same is evident from the document at Ex.P11-discharge summary wherein it discloses that he was an inpatient from 16.10.2012 to 19.10.2012 and thereafter he was discharged. Hence, it is clear that he was an inpatient for a period of 12 days and having considered the nature of injuries and also he was referred to NIMHANS hospital since he has suffered facial injury and head injury and Ex.P6-wound certificate discloses that he has suffered fracture of maxilla, diffuse axonal injury and fright frontal sulcus sub arrchnoid haemorrhage and though the doctor has opined that the injury No.1 is grievous in nature and injuries No.2 and 3 are simple in nature, he was referred to NIMHANS hospital and also he was taken to Shekar hospital with the history of loss of conscious and there was a bleeding in the ear and there was omitting and once again he was referred to the NIMHANS hospital on 13.10.2012 and he took treatment at Victoria hospital for a period of 4 days and the Tribunal has failed to take note of the said fact into consideration and awarded the compensation of Rs.35,000/-

towards pain and sufferings hence, it requires to be enhanced to Rs.45,000/- as against Rs.35,000/-.

9. The Tribunal has awarded an amount of Rs.97,200/- towards medical expenses and the same is based on the documentary evidence hence, it does not require any interference.

10. The Tribunal has awarded an amount of Rs.5,000/- towards loss of income during laid up period. When the claimant had suffered the fracture of maxilla and head injury which requires to be reunite and he has to take rest for the same, the Tribunal ought to have considered the period of treatment which has been required though he was an inpatient for a period of 12 days. The accident is of the year 2012 and the notional income would be Rs.7,000/- and rightly pointed out by the claimant counsel that it requires minimum 4 months to reunite the fracture. Hence, taking the income of Rs.7,000/- for a period of 4 months, it comes to Rs.28,000/- (7,000 x 4) as against Rs.5,000/-.

11. The Tribunal has awarded only Rs.10,000/- towards nourishment, conveyance and attendant charges and records also reveals that immediately after the accident, the claimant was taken to the Mallege hospital, then NIMHANS hospital and thereafter he was taken to Shekar hospital and once again he was shifted to NIMHANS hospital and then he took treatment as an inpatient at Victoria hospital hence, it is appropriate to enhance the same as Rs.15,000/- as against Rs.10,000/-.

12. The claimant has not examined any doctor with regard to disability is concerned and no material is placed before the Tribunal to show that he had suffered the permanent disability or not on account of the said injuries and the Tribunal also rightly comes to the conclusion that when the doctor has not been examined with regard to assessing the disability, the question of awarding the compensation towards 'future loss of income' does not arise. However, the Tribunal would have taken note of the nature of the injuries though it cannot be assessed by way of permanent disability, ought to have awarded the compensation considering the nature of fracture and also the

head injury hence, it is appropriate to award the compensation on the head of disability in the absence of medical evidence to the tune of Rs.50,000/-.

13. The Tribunal has awarded the compensation of Rs.10,000/- towards loss of amenities and he was aged about 32 years at the time of the accident and hence, it is appropriate to enhance the same to Rs.15,000/- as against Rs.10,000/-. In all, the claimant is entitled for an amount of Rs.2,50,200/-. Hence, Point No.1 is answered accordingly.

Point No.2:

14. The main contention of the counsel appearing for the claimant that though notice was issued against the insured and the same has not been served and when the cancellation of policy has not been notified to the insured, the insurer cannot absolve its liability and no doubt, RW1 who has been examined by the company who is a Legal Manager, in his evidence in paragraphs 3 to 5 contended that the policy was not in force and the cheque issued was dishonoured and in the cross-examination of RW1, he categorically admits that when the claim was made

before the Court, they used to give the details of the insured but he claims that notice was issued to him but no such copy of notice is produced. It is also elicited that when the cheque was bounced, the same was not intimated to the Rajajinagar RTO. It is also admitted that if the notice was sent through RPAD, they used to give the receipt but the same is also not produced. But claims that Ex.R5 is produced and admits that in Ex.R5 nowhere it is mentioned that the same was addressed to the RTO and also for having served Ex.R4, they have not having any document. The witness volunteers that the liability is subject to honouring of the cheque and admits that they can produce the proposal application and whether they have served the notice to the said address or not, he cannot tell. But in the further cross-examination, he admits that he cannot produce the proposal application and admits that for having given the notice to the insured they have not produced acknowledgment for the same since they have not received the acknowledgment and further he admits that after the bouncing of cheque also they have not personally met the insured and made an attempt to inform the same to the insured. The admissions which have been elicited

from the mouth of RW1 has not been discussed by the Tribunal while considering the issue involved between the parties but the Tribunal while considering the issue of liability, in paragraph 28 only considered the document at Ex.R3 – bank's memo regarding the dishonour of cheque and comes to the conclusion that the Insurance Company has intimated about the dishonour of cheque as well as cancellation of policy to the owner of the offending vehicle but not discussed whether it was served or not and simply comes to the conclusion that the policy was not in force and also comes to the conclusion that the respondent No.2 is not liable to pay compensation to the claimant and fails to consider the evidence of RW1 in toto. No material before the Court that they have intimated the same to the insured.

15. The counsel for the respondent also brought to notice of this Court the manner of receipt of premium regulations of 2002 and I have already discussed regulation Nos.3 and 4 with regard to mode of payment as well as commencement of risk. The issue involved between the parties also considered by the Apex Court in the case of **ORIENTAL INSURANCE CO.**

LTD., vs INDERJIT KAUR AND OTHERS reported in **(1998) 1 SCC 371**. The counsel would contend that the Apex Court has not discussed the same but in this judgment particularly Insurance Act, 1938, Section 64VB was discussed by the Apex Court regarding liability of insurer when cheque received towards premium dishonoured but policy not avoided. Insurer issuing insurance policy on receiving cheque towards premium, cheque dishonoured, insurer informing the insured that the cheque having been dishonoured, the insurer would not be at risk. In such circumstances, the insurer, even if he was entitled to avoid the policy for not having received the premium, held, nonetheless liable for third party risks as the public interest served by an insurance policy must prevail over the insurer's interest. It is further observed that the insurance policy, left open, public interest. It is held that despite the bar created by Section 64VB of the Insurance Act, the appellant, an authorized insurer, issued a policy of insurance to cover the bus without receiving the premium therefore. By reason of the provisions of Sections 147(5) and 149(1) of the Motor Vehicles Act, the appellant became liable to indemnify third parties in respect of

the liability which that policy covered and to satisfy award of compensation in respect thereof notwithstanding its entitlement (upon this question the supreme Court did not express any opinion) to avoid or cancel the policy for the reason that the cehque issued in payment of the premium thereon had not been honoured.

16. It is further held that the policy of insurance that the appellant issued was a representation upon which the authorities and third parties were entitled to act. The appellant was not absolved of its obligations to third parties under the policy because it did not receive the premium. It remedies in this behalf lay against the insured. It is further held that it was the appellant-insurer itself who was responsible for its predicament. It had issued the policy of insurance upon receipt only of a cheque towards the premium in contravention of the provisions of Section 64VB of the Insurance Act. The public interest that a policy of insurance serves must, clearly, prevail over the interest of the appellant. In view of the principles laid down in the said judgment, the very contention of the Insurance Company that in

view of the regulations, the company liability has to be exonerated cannot be accepted and the terms of Section 64VB of the Insurance Act also considered by the Apex Court.

17. The Apex Court also in the judgment reported in **(2012) 5 SCC 234** in the case of **UNITED INDIA INSURANCE COMPANY LIMITED vs LAXMAMMA AND OTHERS** wherein also discussed Section 149, 146 and 147 with regard to the insurer's liability against the third party risk. Wherein discussed extent of, when cheque issued for payment of premium was dishonoured and subsequent to the accident, insurer cancelled the policy of insurance, held, in such circumstances, statutory liability of insurer to indemnify third parties which policy covered subsists and insurer has to satisfy award of compensation unless policy of insurance was cancelled by insurer and intimation of such cancellation had reached insured before the accident. It is further discussed with regard to the facts of the case that the owner of bus obtained policy of insurance from insurer who cancelled insurance policy only after the accident on ground of dishonour of cheque, hence, appellant insurer became liable to

satisfy award of compensation passed in favour of claimants. It is observed that no interference with High Court's order called for, insurer, however, could prosecute its remedy to recover amount paid by it to claimants, from insured. In this judgment also, the Apex Court has discussed with regard to Insurance Act, 1938 and Section 64VB.

18. The Apex Court also in the judgment reported in **(2001)3 SCC 151** in the case of **NATIONAL INSURANCE CO. LTD. vs SEEMA MALOTRA AND OTEHRS** held that in a case of bouncing of cheque discussed with regard to Section 64VB in a case of contract of insurance, held, consists of a reciprocal promise, therefore if the insured fails to pay the promised premium or his cheque is returned dishonoured by the bank, the insurer is under no obligation to perform his part of the contract, except in relation to his statutory liabilities in respect of third parties. Further held that in case insurer has disbursed the amount insured to the insured before cheque was dishonoured, insurer is entitled to be reimbursed.

19. The Apex Court in the judgment reported in **2013 SCC ONLINE SC 592** in the case of **NATIONAL INSURANCE CO. LTD. vs BALKAR RAM AND OTEHRS** held that in a similar circumstances of bouncing of cheque, liability of Insurance Company to indemnify claimants policy for failure on the part of Insurance Company to give intimation regarding the dishonour of the cheque and cancellation of policy to the policy-holder before the date of the accident. The defence that the policy of insurance was not valid since the cheque had been dishonoured prior to the accident, would not exonerate Insurance Company.

20. The Apex Court referring the judgment of **Laxmamma**'s caseheld that the Insurance Company is liable to satisfy the award if the intimation with regard to the dishonour of cheque and cancellation of policy is intimated to the policy holder after the date of the accident. Thus, the defence of the Insurance Company that the policy of insurance was not valid since the cheque had been dishonoured prior to the accident would not exonerate them for making payment of compensation.

22. Having considered the principles laid down in the judgments referred supra and these are the judgments considered by the Apex Court after the regulations of 2002 which have been pointed out by the counsel for the Insurance Company. The Apex Court also discussed with regard to Section 64VB of the Insurance Act and the judgment of **Balkar Ram** and **Laxmamma** and also the earlier judgments which have been referred, it is very clear that the Court has to take note of the public interest in respect of third parties are concerned and ordered to pay the compensation. In the case on hand also the claimant is a third party who was the driver of the auto and offending vehicle was suddenly stopped as a result, he went and dashed against the said lorry and sustained injuries and when the claimant is a third party, as observed by the Apex Court in the judgment of **Inderjit Kaur held** that even if he was entitled to avoid the policy for not having received the premium, held, nonetheless liable for third party risk as the public interest served by an insurance policy must prevail over the insurer interest and hence, I do not find any force in the contention of the counsel for the Insurance Company that the Insurance

Company is not liable to pay compensation. In the subsequent judgment of **Seema Malotra**' case, the Apex Court held that the insurer is under no obligation to perform his part of the contract, except in relation to his statutory liabilities in respect of third parties. Hence, it is clear that it is a statutory liability in relation to third parties. The Apex Court also in the judgment of **Laxmamma's** case it is held that the statutory liability of insurer to indemnify third parties which policy covered subsists and insurer has to satisfy award of compensation unless policy of insurance was cancelled by insurer and intimation of such cancellation had reached insured before the accident. In the case on hand also I have already pointed out that no document is placed for having given the intimation and the same was acknowledged by the insured and unless the same is reached the insured the Insurance Company cannot avoid the liability and I have already pointed out that the Tribunal has not discussed anything about reaching of notice to insured. Under the circumstances, the contention of the Insurance Company cannot be accepted and the Tribunal has committed an error in fastening the liability on the insured instead of insurer. Hence,

the claimant has made out the case to fasten the liability on the Insurance Company. Hence, I answer point No.2 accordingly.

Point No.3:

22. In view of the discussion made above, this Court pass the following:

ORDER

(i) The appeal is allowed in part.

(ii) The impugned judgment and award of the Tribunal dated 25.08.2014 passed in M.V.C.No.7585/2012 is modified granting compensation of Rs.2,50,200/- as against Rs.1,57,200/- with interest at 6% per annum from the date of petition till deposit.

(iii) The liability fastened on the insured is set aside and the Insurance Company is directed to pay the compensation amount with interest within six weeks from today.

(iv) The Registry is directed to transmit the records to the concerned Tribunal, forthwith, if any.

Sd/-
JUDGE

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