

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 01ST DAY OF SEPTEMBER, 2022

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BEFORE

THE HON'BLE MR.JUSTICE HANCHATE SANJEEVKUMAR

M.F.A.No.4945/2014 (MV)

BETWEEN:

A BANU PRAKASH

... APPELLANT

(BY SRI VINOD GOWDA., ADVOCATE)

AND:

1. THIMMA SETTY

2. KRISHNA

3. THE BRANCH MANAGER
UNITED INDIA INSURANCE COMPANY LTD.,

BRANCH OFFICE, HUNASOOR CLUB COMPLEX,
HUNSOOR-577101.

... RESPONDENTS

(BY SMT. AISHWARGA HEGDE, ADV. FOR
SRI VIGNESHWARA S SHASTRI, ADV. FOR R1;
R2-SERVED &
SRI JWALA KUMAR, ADV. FOR R3)

THIS APPEAL IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 1.3.2014 PASSED IN MVC NO.392/2010 ON THE FILE OF THE I ADDITIONAL DISTRICT JUDGE, MACT, CHIKMAGALUR, AWARDING A COMPENSATION OF RS.59,500/- WITH INTEREST @ 6% P.A FROM THE DATE OF PETITION TILL THE DATE OF REALIZATION.

THIS APPEAL COMING ON FOR FURTHER ARGUMENTS THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is filed by the owner/appellant under Section 173(1) of Motor Vehicles Act, 1988 (hereinafter referred to as 'MV Act' for short), challenging the judgment and award passed in MVC No.392/2010 dated 01.03.2014, by the I Additional District Judge and MACT, Chikmagalur (hereinafter referred to as the 'Tribunal' for short), wherein the Tribunal has awarded a compensation of Rs.59,500/- along with interest at 6% p.a. and holding respondent Nos.1 and 2 jointly and severally liable to pay the compensation. The petition

against respondent No.3-Insurance Company is dismissed.

2. The brief facts of the case are as under:

The claim petition came to be filed under Section 166 of the MV Act in MVC No.392/2010, contending that on 13.04.2010 at about 10.00 p.m., the claimant had been to Kalasapura in order to attend the festival. After attending the festival, he was proceeding in a Maruthi Omni bearing Reg.No.KA-01-M-7359 driven by respondent No.1 from Kalasapura to his village. While he was so proceeding, two kilometers away from Kalasapura, respondent No.1 being the driver of Maruthi Omni drove the said vehicle in a rash and negligent manner in a high speed. As a result, the vehicle toppled. Due to the accident, the claimant sustained grievous injuries. Immediately, the claimant was taken to MG Hospital, Chikmagalur where he took treatment as inpatient and after discharge from the hospital, he took treatment as out patient. He spent more than

Rs.30,000/- towards medical and other incidental expenses. Due to the injuries sustained in the accident, he could not attend to his duty for about one and half months and thereby, lost his income. Therefore, he has preferred a claim petition in MVC No.392/2010, seeking compensation under Section 166 of the MV Act.

3. Learned counsel for the appellant/owner submitted that the Tribunal has fastened the liability on the appellant/owner on the ground that the driver of the omni car was not holding driving license as on the date and time of the accident. But the driver was having driving license. Therefore, submitted that without considering this aspect, the Tribunal has wrongly fastened the liability on the owner of the vehicle and prays for exoneration of liability on the owner/appellant and to fasten the liability on the Insurance Company since there was a valid and effective driving license, as on the date of accident. Hence, prays to allow the appeal.

4. On the other hand, learned counsel for respondent No.3 - Insurance Company submitted that the Tribunal has fastened the liability on the owner/appellant on the ground that the appellant/owner has failed to prove that the driver of the offending vehicle was holding driving license as on the date of the accident. It is submitted that the driver of the offending vehicle or the owner of the offending vehicle had not produced valid and effective driving license. Further, the learned counsel submitted that the maruthi omni car was used for hire/commercial purpose but the vehicle was private vehicle. Therefore, in this regard, the claimant has admitted that they have offered Rs.20/- to drop him to Belur and therefore, the claimant is passenger. Hence, the Insurance Company is not liable hence it is rightly considered by the Tribunal. Hence, submitted that the judgment and award passed by the Tribunal in fastening the liability on the owner of the offending vehicle is justified. Hence, prays to dismiss the appeal.

5. The learned counsel for respondent No.1-claimant submitted that an order of pay and recovery may be made since the claimant is third party. Therefore, it is submitted that even though the insurance company is successful in establishing his defence under Section 149 of the M.V.Act, but as per Section 149(1) of the M.V.Act, an order of pay and recovery can be made and in this regard, he places reliance on the judgment of the Hon'ble Apex Court in the cases of ***Pappuu and others Vs. Vinod Kumar Lamba and another*** reported in ***(2018) 3 SCC 208*** and also in the case of ***New India Assurance Company Vs. Yellavva and another reported in 2020 ACJ 2560 (HCK)***. Therefore, he prays for modification of the award of pay and recovery as above stated.

6. The contention of the learned counsel for the Insurance Company is that if the owner has appeared and contested the claim petition and also preferred an appeal before the appellate Court, then the order of pay

and recovery cannot be made. In respect of his contention he has placed reliance on the judgment of this Court in **MFA.No.8607/2010** dated **09.12.2020** in the case of **M.R.Gangadhar V/s Smt. G.Mallika and others.**

7. In the present case, the Tribunal has awarded the compensation but fastened the liability on the appellant/owner of the offending vehicle on the ground that the appellant has violated the policy conditions by allowing the driver to use the said vehicle for some other purpose. Since the offending vehicle was used for hire basis as admitted by PW.1 in his evidence that the driver of the offending vehicle demanded Rs.20/- as fair to travel in the said vehicle, the tribunal has assigned that the vehicle was used for hire/commercial purpose. Therefore, exonerated the insurance company by fastening liability on the appellant/owner of the vehicle.

8. Considering the contention of the Insurance Company that the offending vehicle was used for hire / commercial purpose, the evidence of PW.1 is considered. The PW.1 in the course of cross-examination, admitted that he had paid Rs.20/- to the driver of the maruthi omni car and has travelled from Kanakapura Village to Beluru. Therefore, it is proved that the said maruthi omni car is used for hire/commercial purpose by receiving the fare and there is a violation of the conditions of insurance policy. Therefore, the Insurance Company has successfully established the defence as the driver used the offending vehicle for commercial purpose. In this regard, the appreciation of evidence made by the Tribunal is correct and justified. Therefore, the appellant/owner is primarily liable to pay the compensation and the Insurance Company is liable to be exonerated from indemnifying the owners and for payment of the compensation.

Pay and Recovery:

9. In M.R.Gangadhar's case *supra*, this Court has observed that in case the owner had contested the claim petition before the Tribunal or files appeal, then the principle of pay and recovery cannot be applied.

10. This ratio cannot be accepted for the reason that when the claimants/the victims of the motor accident are third parties, then rights of the third party is statutorily protected as per sub-section(1) of Section 149 of the M.V.Act. Therefore, this right of the third party cannot be fluctuated or oscillated according to the conduct of the owner or any other parties. The owner may contest the claim petition or not, or may prefer an appeal or may not prefer appeal, that cannot decide the rights of third party. The principle of pay and recovery is a beneficial provision to the victims who are third parties. The motor vehicle Act is a beneficial legislation to the claimants being third party who are sufferers of

the motor vehicle accident. They are not concerned with whether the owner has contested or not contested before the Tribunal or in the appeal. But the paramount thing is to be considered is the rights of the third parties are to be protected as per Statute. Therefore, just because the owner has contested the claim before the Tribunal or/and preferred appeal before this Court, that cannot affect rights of the third parties who are victims in the road traffic accident. Therefore, the principle that once the right is granted/protected unless there is express provision contrary to that, the rights of third parties are not affected in this regard. This Court cannot accept the contention of the Insurance Company as above stated. Therefore, this Court inclines to protect the rights of the claimants/third parties in the present case by applying principle of pay and recovery.

11. Admittedly, in the present case, the claimant is a third party. Therefore, the interest of the third party, who is the victim in the motor vehicle accident is

statutorily protected under Section 149 of the M.V.Act. As per clause (i) sub-section (2) of Section 149 of the Act, if the Insurance Company has successfully established the defence, then the Insurance Company has to satisfy the claim of third party at first instance and recover the same from the owner of offending vehicle. On the principle of pay and recovery, the Hon'ble Apex Court in the cases of **Pappu** and this Court in the case of **Yellavva** (supra), this Court has laid down guidelines. Therefore, an order of pay and recovery is made directing the Insurance Company to pay the compensation amount at the first instance and then recover the same from the owner of the offending vehicle as per the decision of the Hon'ble Apex Court in the catena of decision.

12. Therefore, it is ordered that the Insurance Company shall pay the compensation amount as awarded by the Tribunal at first instance and recover the

same from the owner of the maruthi van as per law.

Hence, I proceed to pass the following:

ORDER

- i. The appeal is hereby ***allowed in part.***
- ii. The judgment and award passed in MVC No.392/2010 dated 01.03.2014, by the I Additional District Judge and MACT, is modified to the extent that the third respondent shall pay the compensation amount as determined by the Tribunal along with interest at first instance and then recover the said amount from the owner of the maruthi omni No.KA-01-M-7359, in accordance with law.
- iii. No order as to costs.
- iv. Draw award accordingly.
- v. The amount deposited by the appellant/owner shall be transmitted to the Tribunal and the Tribunal is directed to release the same in favour of the

claimants and then the Insurance Company shall pay the balance amount.

**Sd/-
JUDGE**

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