KABC0B0009542020

BEFORE THE MACT & XV ADDL., JUDGE,
COURT OF SMALL CAUSES,
MAYO HALL UNIT, BENGALURU. (SCCH-19)

Dated this the 9th day of February 2023

Present: **Smt. Rajeshwari-J-Puranik,**
B.A.LL.B. (Spl.)
XV Addl. Small Causes Judge
& XXIII ACMM, Bengaluru

MVC. No. 571 /2020

Petitioner: Lakkamma, W/o Lakshmaiah,
aged 39 years,
Residing at:
Shivakote Village,
Hesaraghatta hobli,
Bangalore North Taluk,
Bangalore – 560089.
(By Pleader Sri.Muniyappa-D-Naveen)

-V/s-

Respondents: 1. Hanume Gowda,
S/o Dodda Basappa,
No.430, Hormavu agra,
Horamavu Post,
Bangalore-560043.
RC owner of Car bearing
No.KA-53/N-6789.
(Exparte)

2. HDFC Ergo General Insurance Co. Ltd., Unit No.14, 108, 109 110 & 111, 1st floor,
HM Geneva House,
Cunningham Road,
Bangalore-560052.

Policy No.2311201712296302000
Valid from 20.03.2019 to 19.3.2020.
(Pleader by Sri.Madhukiran)

3. The New India Assurance Co. Ltd., Mahalakshmi Complex, MG.Road, Opp.Metro Railway station, Bangalore-27,

Policy No.67210631180100000222
Valid from 3.09.2018 to 2.9.2019
(Pleader by Sri.K. Nagaraja)

4. Jayaramappa,
S/o Late Chodappa,

5. Smt. Chikkanarasamma
W/o Jayaramappa,

4, 5 Both are Residing at:
No.59, Kondavalahalli village,
Daparthi Post, Gudibande Taluk,
Chikkaballapur District-561209

(RC Owner Motor cycle bearing No. KA-40/EB-3963)

(Pleader by Sri.Siddalingegowda K.G. for 4 & 5)

* * * * *

JUDGMENT

The Petitioner filed this petition under Sec.166 of Motor Vehicles Act 1989 for claiming compensation of Rs.10,00,000/-.

2. Brief facts of Petitioner's case is as follows:

It is stated that, on 26-06-2019 at about 04-30 p.m, the Petitioner was traveling as a passenger along with her family members in a Car bearing Reg.No.KA-53/N-6789 proceeding from Devanahalli towards Bangalore, when they reached near Kannamangala gate, on B.B. Road, Devanahalli at that time, driver of the said vehicle drove the same, in a rash and negligent manner so as to endanger human life and lost the control over the same and dashed to one motor cycle bearing Reg.No.KA-40/EB-3963 from behind and then again dashed to road side grills. As a result of forced impact the Petitioner sustained grievous injuries.

3. It is stated that, immediately after the accident she was shifted to CMI Aster Hospital Hebbal, wherein he took treatment as an inpatient and undergone surgery and spent Rs.1,00,000/- towards medical expenses, transportation, conveyance and other charges.

4. It is stated that, prior to the accident she was hale, healthy and a House wife and without any aid she sued to wash clothes, clean the house cook for her family members by which she used to save a sum of Rs.15,000/- p.m. and due to accidental injuries she is not able to carry on her duties as before the accident. It is stated that this accident occurred due to rash and negligent driving of the driver of the Car bearing Reg.No.KA-53/N-6789 hence, the BIAL Police registered a case against driver of said vehicle in crime No.088/2019. It is stated that, 2 & 3 Respondents are being Insurers and 1, 4 and 5 Respondent are being RC Owners of the vehicles involved in the accident are jointly and severally liable to pay compensation to the Petitioner. Hence, prayed to grant compensation.

5. In pursuance to the notice, Respondent No.1 did not appear before the Tribunal and hence he was placed exparte. The Respondent No.2 appeared through it's counsel. Thereafter, the Respondent no.2 insurance company filed I.A. Under Order 1 Rule 10 CPC to implead the Owner of motor cycle bearing Reg.No.KA-40/EB-3963 and its insurance company as Respondent No.3 and 4. After service of I.A. notice the proposed

Respondent no.4 insurance company appeared but, notice issued to proposed Respondent no.3 who was owner of the bike returned as dead. So, Respondent no.2 got impleaded parents of proposed Respondent no.3 as Respondent no.4 and 5. The Respondent no.3 insurance company filed its Written statement, Respondent no.4 and 5 parents of proposed Respondent no.3 filed Written statement.

6. *Brief averments of the Written statement of Respondent No.2 are as under:*

The petition is not maintainable either in law or on facts of the case. While admitting about issuance of insurance policy in respect of Car bearing Reg.No.KA-53/N-6789 this Respondent restricted its liability to the terms and conditions of the policy. Further it is contended that, driver of the said vehicle did not possess valid D.L. and also did not possess valid FC and permit as on the date of the accident. Hence there is a violation of terms and conditions of the insurance policy. Further this respondent contended that 11 people were traveling in a Car including 11 year Kid, due to gratuitous passenger, the driver of said Car lost his control and caused the accident. This accident occurred due to negligence of both driver of Car and rider of bike. Hence police filed charge sheet against both driver and rider of vehicles. Hence, the Petition is bad for mis-joinder of necessary parties.

7. Brief averments of the Written statement of Respondent No.3 are as under:

The petition is not maintainable either in law or on facts of the case. While admitting about issuance of insurance policy in respect of motor cycle bearing Reg.No.KA-40/EB-3963 this Respondent restricted its liability to the terms and conditions of the policy. Further contended that, rider of the said vehicle did not possess valid D.L. as on the date of the accident. Hence there is a violation of terms and conditions of the insurance policy. Further this Respondent contended that the driver of Car bearing Reg.No.KA-53/N-6789 did not posses valid D.L. and the accident occurred due to rash and negligent driving of the Car only.

8. Brief averments of the Written statement of Respondent No.4 & 5 are as under:

The petition is not maintainable either in law or on facts of the case. The respondents contended that the accident occurred due to sole negligence on the part of the driver of Car bearing Reg.No.KA-53/N-6789 and not on the part of the rider of the motor cycle bearing Reg.No.KA-40/EB-3963. Further stated that, they got insured said vehicle with Respondent No.3 and same was in force as on the date of the accident and under said circumstances they are not necessary and proper parties to the petition.

Further the respondents 2 to 5 denied the age, income and occupation of the Petitioner, medical expenses incurred by her and disability caused to her and also contended that, claim of the petitioner is excessive and exorbitant. Hence, prayed to dismiss the petition with costs.

9. On basis of the Pleadings and materials, this tribunal framed the following:

ISSUES

1. Whether the Petitioner proves that, on 26-06-2019 at about 04-30 p.m, when she was traveling as a passenger along with her family members in a Car bearing Reg.No.KA-53/N-6789 proceeding from Devanahalli towards Bangalore, when they reached near Kannamangala gate, on B.B. Road, Devanahalli at that time, driver of the said vehicle drove the same, in a rash and negligent manner so as to endanger human life and lost the

control over the same and dashed to one motor cycle bearing Reg.No.KA-40-EB-3963 from behind and then again dashed to road side grills. As a result of forced impact the Innova car turtle and the Petitioner sustained grievous injuries?

2. Whether the Petitioner is entitled for compensation? If so, to what amount and from whom?

3. Whether order or award?

10. In order to prove the case, Petitioner got examined herself as PW.1 and got examined one witness as PW.2. They got marked in total 16 documents as Ex.P1 to Ex.P16. On the other hand, Respondent No.2 & 3 got examined two witnesses as Rw.1 and 2. They had not got marked any documents on their behalf.

11. Heard the arguments and Perused the materials available on record.

<u>12. For the following reasons, I answer the above Issues as under:-</u>

Issue No.1: In the Affirmative,

Issue No.2: Partly in the Affirmative

Issue No.3: As per final order

for the following:

R E A S O N S

13. **Issue No.1:-** It is specific case of the Petitioner that, on 26-06-2019 at about 04-30 p.m, the Petitioner was traveling as a passenger along with her family members in a Car bearing Reg.No.KA-53/N-6789 proceeding from Devanahalli towards Bangalore, when they reached near Kannamangala gate, on B.B. Road, Devanahalli at that time, driver of the said vehicle drove the same, in a rash and negligent manner lost the control over the same and dashed to one motor cycle bearing Reg.No.KA-40/EB-3963 from behind and then again dashed to road side grills. As a result of forced impact the Petitioner sustained grievous injuries.

14. In order to substantiate her case the Petitioner got examined herself as PW.1 and filed her affidavit in lieu of chief examination. In her chief examination affidavit, she had reiterated the entire averment of the Petition. Further, got marked 13 documents as Ex.P1 to Ex.P13. Ex.P1 is the Copy of F.I.R. Ex.P2 is the Copy of Complaint, Ex.P3 is the Copy of Spot Mahazar, Ex.P4 is the Copy of Spot Sketch, Ex.P5 is the

Copy of IMV report, Ex.P6 is the Copy of Wound Certificate, Ex.P7 is the Copy of Charge sheet, Ex.P8 is the two Colour photographs, Ex.P9 is Notarized copy of Aadhaar Card, Ex.P10 is the Discharge summary, Ex.P11 is the Medical bills, Ex.P12 is the lab reports and Ex.P13 is the X-rays.

15. one witness Smt.Manju Bargavi the Medical Record Officer, got examined as Pw.2. Further produced three documents marked as Ex.P14 to 16. Ex.P14 is the authorization letter, Ex.P15 is the Case sheet and Ex.P16 is the Hospital bill.

16. One Witness Sri.Suresh the Authorized Signatory of respondent No.2 Insurance company got examined as Rw.1 and filed his affidavit in lieu of chief examination and in his chief examination affidavit he had reiterated the averments of the Written statement.

17. Another witness Sri.Bikram Singh Rana the Administrative Officer of Respondent No.3 Insurance company got examined as Rw.2 and filed his affidavit in lieu of chief examination and in his chief examination affidavit he had reiterated the averments of the Written statement.

18. On perusal of the Charge sheet it discloses that, on BB road from Devanahalli towards Bangalore driver of Car bearing Reg.No.KA-53/N-6789 drove the same in rash and negligent manner and dashed to one Motor cycle and again dashed to road side grill and caused the accident. It also discloses that the rider of said motor cycle bearing Reg.No.KA-40/EB-3963 was not wearing the Helmet and also did not possess the D.L. as on the date of the accident. Hence, the BIAL Traffic P.S. filed charge sheet against driver of Car as **A1** and rider of motor cycle as **A2** for the offence punishable u/sec.279, 337, 338, 304(a) IPC Sec., 129 R/w Sec/177 of IMV Act, Sec.3 R/w 177 of IMV Act.

19. The Rw.1 categorically admitted in the Cross examination that, "it is true to suggest that, our insured vehicle driver had D.L. It is true to suggest that, Charge sheet is filed against our insured vehicle driver. Witness voluntarily says that Charge sheet is also filed against deceased who was riding the bike. " Further, the Rw.2 also admitted in the Cross examination that, "Charge sheet is filed against both vehicles."

20. In the petition for compensation U/Sec.166 of Motor Vehicles Act.1988 the claimant has to prove the incident only on the preponderance of the probabilities and standard of proof beyond all reasonable doubt is not required as held by the Hon'ble APEX Court in the decision reported in 2011 SAR(Civil) 319 ***Kausum and others V/s Satbir and others***.

> *The so-called reason that as the name of Dheeraj Kumar was not mentioned in the FIR, so it was not possible for Dheeraj Kumar to see the incident, is not a proper assessment of the fact-situation in this case. It is well known that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind.*
>
> *10. Reference in this connection may be made to the decision of this Court in Bimla Devi and others V/s Himachal Road Transport Corporation and others (2009) 13 SCC 530, in which the relevant observation on this point has been made and which is very pertinent and is quoted below:-*
>
> > *"In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touch stone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."*

21. After careful scrutiny of Ex.P1 - F.I.R. Ex.P2 - Complaint, Ex.P3 - Spot Mahazar, Ex.P4 - Spot Sketch, Ex.P5 - IMV report, & Ex.P7 - Charge sheet & admissions of Rw.1 and 2 it appears that, the accident occurred due to rash and negligent driving of the driver of Car bearing Reg.No.KA-53/ N-6789 and bike riding by the bike rider of motor cycle bearing Reg.No.KA-40/EB-3963 without having D.L. Accordingly, I answer the Issue No.1 in the Affirmative.

22. **Issue No.2**:- The Petitioner claimed the compensation amount of Rs.10,00,000/-. The Petitioner produced Wound certificate. The Respondents had not denied the said document. As per Ex.P6 Wound certificate the Petitioner sustained 4 injuries. The doctor had opined that, above said injuries No.1 to 4 are grievous in nature. Hence, by considering the nature of injuries sustained by the Petitioner, I am of the opinion that, the Petitioner is entitled for amount of **Rs.40,000/-** as reasonable compensation under the head of pain and suffering.

23. The Petitioner had produced medical bills and hospital bills, which are marked as **Ex.P11**.

The respondents had not denied the bills. There is no any contradictions to disbelieve the bills produced by the Petitioner. Hence, by considering the bills, the Petitioner is entitled to claim the amount of **Rs.78,812/-** under the head of medical expenditure.

24. As per Ex.P10 discharge summary the Petitioner took treatment at Aster CMI Hospital from 26-06-2019 to 29-06-2019 for 3 days. The respondents had not denied the said document. Therefore, by considering the period of treatment taken as inpatient this tribunal awarded reasonable compensation of **Rs.5,000/-** under the head Transportation, Nourishment and conveyance charges.

25. To prove the assessment of disability, neither the Petitioner got examined her treated doctor, nor produced disability certificate. Hence, the Petitioner is not entitled for any compensation under the head loss of future income on account of permanent disability.

26. The Petitioner sustained grievous injury and took as treatment as inpatient. As per Ex.P8 photographs, the Petitioner sustained injury to her

hand. The Petitioner is the House wife and due to accidental injuries her household work was hampered. Therefore, by considering this aspect and the nature of injuries sustained by the Petitioner, this tribunal awarded the amount of **Rs.20,000/-** as reasonable compensation under the head of loss of amenities.

27. Considering oral evidence coupled with documentary evidence, it is just and proper to grant compensation as follows:

Under the Heads		Amount	
1.	Pain and sufferings	Rs.	40,000-00
2.	Medical expenses	Rs.	78,812-00
3.	Transportation, Nourishment, Conveyance and attendant charges.	Rs.	5,000-00
4.	Towards loss of amenities of life	Rs.	20,000-00
	Total	**Rs.**	1,43,812-00

The Petitioner is entitled for total compensation of Rs.1,43,812/-. It is rounded off to **Rs.1,43,900/-**.

28. **Interest**:

For awarding interest, in MFA.No.103557/2016 (between Sriram General Insurance Co. ltd., V/s Smt. Lakshmi & others, dd 20-03-2018) the Hon'ble High Court of Karnataka, held that as per Sec.34 of CPC the rate of interest that can be awarded in MVC Cases, cannot be more than **6% p.a.** Hence, I am of the opinion that, the petitioner is entitled for interest **@6%** p.a., from the date of petition till the date of payment.

29. **Liability**:-

As per the Petition, the Respondent No.1 & 2 are the RC Owner & Insurer of the Car bearing Reg.No.KA-53/N-6789. The respondent No.2 took specific contention that 11 people were traveling in a Car including 11 year Kid. On perusal of Insurance policy of the Car which discloses that the offending vehicle is Innova Car and it's seat capacity is of 8. As per Charge sheet 8 persons were traveling in said vehicle. Hence, the respondent No.2 failed to prove that 11 persons were traveling in the said Car.

30. Respondent No.3 is the Insurer of motor cycle bearing Reg.No.KA-40/EB-3963. The owner of bike is dead, But bike rider was riding the bike without D.L. so he is also negligent in riding the bike and causing the accident. The charge sheet is filed against bike rider for not having D.L. The

bike rider is the owner of said bike, but he died in the accident. Though the Respondent no.2 insurance company got impleaded the Respondent no.4 and 5 who are the parents of deceased bike rider-cum-owner, but they are not the RC owners of bike. Neither the Petitioner, nor the Respondent no.2 produced the R.C. of bike after the death of bike owner. The Respondent no.4 and 5 being the parents of owner of the bike cannot be held liable to pay the compensation.

31. Though the bike is insured with Respondent No.3 insurance company but, the bike rider was riding the bike without D.L. Though the present owner of bike is not brought on record after the death of original owner, but the Respondent no.3 being the insurer of motor cycle bearing Reg.No.KA-40/EB-3963 is not liable to pay compensation as the bike rider was not having D.L. At this stage the Learned Counsel for the Petitioner relied upon the citation reported in AIR 2015 Supreme Court 2261 in Civil Appeal No.4244/2015 arising out of SPL (C) No.14015/2010) between Khenyei V/s New India Assurance Co., ltd., and others., wherein it is held that,

***Para.11**. A Full Bench in KSRTC v. Arun @ Aravind (supra) while answering aforesaid questions has observed that it was a case of composite negligence and the liability of tort feasors was joint and several. Hence, even if there is non-impleadment of one of tort feasors, the claimant was entitled to full compensation quantified by the Tribunal. The Full Bench referred to the decision of a Division Bench of the Gujarat High Court in Hiraben Bhaga & Ors. v. Gujarat State Road Transport Corporation [1982 ACJ (Supp.) 414 (Guj.)] in which it has been laid down that it is entirely the choice of the claimant whether to implead both the joint tort feasors or either of them. On failure of the claimant to implead one of the joint tort feasors, contributory liability cannot be fastened upon the claimant to the extent of the negligence of non-impleaded joint tort feasors. It is for the joint tort feasors made liable to pay compensation to take proceedings to settle the equities as against other joint tort feasors who had not been impleaded. It is open to the impleaded joint tort feasor to sue the other wrong doer after the decree or award is given to realize to the extent of others' liability. It has been laid down that the law in Ganesh's case (supra) has been rightly laid down and it is not necessary to implead all joint tort feasors and due to failure of impleadment of all joint tort feasors, compensation cannot be reduced to the extent of negligence of non- impleaded tort feasors. Non-impleadment of one of the joint tort feasors is not a defence to reduce the compensation payable to the claimant. In our opinion, the law appears to have been correctly stated in KSRTC v. Arun @ Aravind (supra).*

***Para.18**. This Court in Challa Bharathamma & Nanjappan (supra) has dealt with the breach of policy conditions by the owner when the insurer was asked to pay the compensation fixed by the tribunal and the right to recover the same was given to the insurer in* *the executing court concerned if the dispute between the insurer and the owner was the subject-matter of determination for the tribunal and the issue has been decided in favour of the insured. The same analogy can be applied to the instant cases as the liability of the joint tort feasor is joint and several. In the instant case, there is determination of inter se liability of composite negligence to the extent of negligence of 2/3rd and 1/3rd of respective drivers. Thus, the vehicle – trailor-truck which was not insured with the insurer, was negligent to the extent of 2/3rd. It would be open to the insurer being insurer of the bus after making payment to claimant to recover from the owner of the trailor-truck the amount to the aforesaid extent in the execution proceedings. Had there been no determination of the inter se liability for want of evidence or other joint tort feasor had not been impleaded, it was not open to settle such a dispute and to recover the amount in execution proceedings but the remedy would be to file another suit or appropriate proceedings in accordance with law.*

What emerges from the aforesaid discussion is as follows :

(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort feasors and to recover the entire compensation as liability of joint tort feasors is joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tort feasors vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

(iii) In case all the joint tort feasors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers.

> *However, determination of the extent of negligence between the joint tort feasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/ extent of their negligence has been determined by the court/tribunal, in main case one joint tort feasor can recover the amount from the other in the execution proceedings.*
>
> *(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tort feasors. In such a case, impleaded joint tort feasor should be left, in case he so desires, to sue the other joint tort feasor in independent proceedings after passing of the decree or award.*

Therefore as per above said citation, it is entirely the choice of the Claimant, whether to implead both the joint tort feasers or either of them. On failure of the Claimant to implead one of the joint tort feaser, the contributory liability cannot be fastened upon the Claimant to the extent of negligence of non impleaded joint tort feaser. Hence, in present case after the death of bike owner, the liability cannot be fastened on the parents of the deceased bike owner and Respondent No.3 Insurance company. Therefore, the Respondent No.1 and 2 being the owner and insurer of the offending vehicle are liable to pay the compensation to the Petitioner. Further the Respondent No.2 is being Insurer of the Car bearing Reg.No.KA-53/N-6789 is primarily held liable to pay the compensation amount with interest to the Petitioner. Accordingly, I answer Issue No.2 Partly in the Affirmative.

32. **Issue No.3**: for the foregoing reasons, I proceed to pass the following:-

ORDER

The claim petition filed by the Petitioner under Section 166 of the Motor Vehicles Act is hereby Partly allowed with cost as hereunder.

The Petitioner is entitled for compensation amount of **Rs.1,43,900/-** interest @ **6% p.a**., from the date of petition till its realization.

The Respondent **No.1 & 2** jointly and severally liable to pay compensation to the Petitioner. Further, **Respondent No.2** being insurer of the offending vehicle is directed to deposit the compensation amount together with **6%** interest within ***30 days*** from the date of this order.

After deposit, entire compensation amount with interest shall be released in favour of the Petitioner with proper identification.

The petition against Respondent No.4 & 5 is hereby dismissed.

Advocate fee is fixed at Rs.1,000/-.

Draw the award accordingly.

(Dictated to the Stenographer directly on computer, then corrected by me and pronounced in open court on this the 9th day of February 2023)

(Rajeshwari-J-Puranik)
XV ASCJ & Member, MACT,
Court of Small Causes,
Mayo Hall Unit, Bengaluru.

A N N E X U R E:

List of witnesses examined for Petitioner:

Pw.1	:	Smt.Lakkamma
Pw.2	:	Smt. Manju Bargavi

List of documents marked for Petitioner:

Ex.P1	:	Copy of F.I.R.
Ex.P2	:	Copy of Complaint,
Ex.P3	:	Copy of Spot Mahazar,
Ex.P4	:	Copy of Spot Sketch,
Ex.P5	:	Copy of IMV report,
Ex.P6	:	Copy of Wound Certificate,
Ex.P7	:	Copy of Charge sheet,
Ex.P8	:	Two colour photos,

Ex.P9	:	Notarized copy of Aadhaar Card,
Ex.P10	:	Discharge summary,
Ex.P11	:	Medical bills,
Ex.P12	:	lab reports
Ex.P13	:	X-rays
Ex.P14	:	Authorization letter,
Ex.P15	:	Case sheet
Ex.P16	:	Hospital bill.

List of witnesses examined for Respondents:

RW.1 : Sri. Suresh
RW.2 : Sri. Bikram Singh Rana

List of documents marked for Respondents:

- Nil -

(Rajeshwari-J-Puranik)
XV ASCJ & Member, MACT,
Court of Small Causes,
Mayo Hall Unit, Bengaluru.