KACM020028102022

BEFORE THE MOTOR ACCIDENTS CLAIMS TRIBUNAL AND PRINCIPAL SENIOR CIVIL JUDGE & CJM, CHIKKMAGALURU.

DATED THIS THE 9th DAY OF AUGUST 2024.

Present : Sri C. Veerabhadraiah
M.A., LL.B.,
Prl. Senior Civil Judge and MMACT., Chikkamagaluru.

M.V.C No.358/2022

Petitioner: Smt. Sharadamma.
W/o Sannaiah,
Aged about 60 years,
Coolie, R/o Hosapete,
Thogarihankal Post,
Chikkamagaluru Taluk & District.

(By Sri K.T.S., Advocate)

VERSUS

Respondent : 1. The Manager,
M/s. National Ins. Co. Ltd.,
Yashoram Chambers,
R.G. Road,
Chikkamagaluru.City.

2. Chandra,
S/O.Late Mallaiah,
Aged 50 years,

3. Huliyappa,
S/O.Late Mallaiah,
Aged 47 years,

No.2 and 3 are R/a Hosapete
village, Jagara Hobli,
Chikkamagaluru Taluk & District.

[R-1 by Sri M.Y.S.,Advocate]
[R.2 & 3 Exparte)

sd/-
[C. Veerabhadraiah]
Prl. Senior Civil Judge and
MMACT., Chikkamagaluru.

JUDGMENT

The petitioner has filed the present claim petition as against the respondents by employing the provision under Section 166 of the Motor Vehicles Act, seeking the judgment and award for compensation towards her accidental injuries with costs and interest.

2. The factual matrix epitomized in the petition in nutshell is as below:

It is contended that, on 06.04.2020, at 5.45 AM, on Bynecool dasarahalli road, near the house of Mohan Gowda, situated at Bynecool Dasarahalli, Chiikkamagaluru Taluk, when she was proceeding in a jeep bearing its registration No.KA:20N:6793 from Hosapete towards Chikkamagaluru to attend funeral ceremony of her relative at Mugthihalli, the said jeep which was driven by its driver in a rash and negligent manner so as to endanger to human life and lost his control over his vehicle and dashed to by-side tree. In the result, the accident was taken place and the driver of the vehicle succumbed in the spot itself and in the said accident, he has sustained grievous and fracture injury. Soon after the occurrence of the accident, she was shifted to M.G. Hospital, Chikkamagaluru, for treatment and therein she has extended with treatment as indoor patient for a period of one week and after discharge from the said hospital, she has been under follow up treatment. Still now, she has not been fully recovered and she required to extended with future medical treatment. Prior to the accident, she was very hale and healthy and she was doing coolie work. From the said source of income, she was earning Rs.20,000/- per month. She was able to assist her family from her service and also income. Due to the fractural injury, she could not able to do any kind of work and thereby, she has been suffering from permanent physical disability as well as functional disability. Due to the said circumstances, she detached from earning any income and as such, herself and her family members suffered lot mentally, physically and financially. The accident was taken place due to the rash and negligent driving of the jeep bearing registration No.KA:20:N6793 by its driver by name Shekar. Among the respondents, the respondent No.1 is the insured of the offended vehicle and the respondents No.2 and 3 are the legal heirs of the deceased R.C owner cum driver. Thereby, the respondents are jointly and severally liable to pay compensation to her for a sum of Rs.10,00,000/- with interest at the rate of 12% per annum from the date of suit till realisation of entire amount. Accordingly, it is prayed to allow the petition with costs.

3. Originally, the present petition was filed before the Hon'ble Principal District and Sessions Judge, Chikkamagaluru and after receipt of the petition, the Hon'ble court has registered the petition as numbered above and made over the same before this Tribunal for trial. After receipt of record, this Tribunal has caused notice to the respondents. In pursuance of service of notice, the respondent No.1 has put his appearance before this Tribunal through his counsel. Despite of providing sufficient opportunity, the respondent No.2 and 3 have failed to put their appearance and as such, placed them as exparte. The respondent No.1 has got filed statement of objection.

4. **The contents of statement of objection set out by the respondent No.1 in nutshell is as below:-**

Therein, the respondents No.1 has admitted the fact that, the issuance of insurance policy to Mahendra jeep bearing its registration No.KA:20:N:6793 vide policy bearing No.60380031191000 5674 and as on the date of the accident, the said policy was valid by indemnifying the risk and responsibility of Joseph Dominic D. Souza S/o Micheal D. Souza, subject to the terms, conditions, exceptions and limitation thereof. In the way, the said policy is liability only policy. Therefore, the claim made by the petitioner is not tenable in the eye of law. Whereas, the respondent No.1 has called upon the petitioner to prove the fact and factum of accident without showing any admission. It is further contended that, at the time of accident, the driver of the insured vehicle was not holding the valid and effective driving licence and thereby, the law in this regard is contravened. On this score also his company is not liable to pay the compensation to the petitioner. The petitioner has sought excessive compensation with flimsy ground and whatever ground urged by the petitioner towards her age, occupation, quantum of income nature of injury, expenditure incurred are baseless and made such assertion with intention to grab compensation. The petition is suffering from non-joint of necessary party, since the nature of the insurance policy issued to the insured vehicle bearing No.KA:20:N:6793 is liability only policy, the petitioner will not covers the said policy. The insured vehicle is a private vehicle and not a commercial vehicle to transport the passengers and thereby, the terms and conditions of the insurance policy is violated. The insurance policy was standing in the name of Joseph Dominic D. Souza S/o Micheal D. Souzaas as on the date of the accident and the petitioner has not impleaded the said insured to the present proposition. As such, the petition is not tenable. Accordingly, it is prayed to dismiss the petition with exemplary costs.

5. Based on the above said rival pleadings, this Tribunal has framed below issues for determination:-

ISSUES

1) Whether the petitioner proves that she has sustained grievous injuries in a road traffic accident that had taken place on 06.04.2020, due to the rash and negligent driving of jeep bearing registration No.KA:20:N:6793 by its driver?

2. Whether the petitioner is entitle for compensation. If so, how much and from whom?

3. What order?

6. In order to substantiate his claim, the petitioner got examined herself as PW-1 and in support of her evidence, she has produced 7 documents and got marked those documents at Ex.P-1 to 7. On the other hand, the authorised officer of respondent No.1 got examined himself as RW-1 and in support of his evidence, he has produced 2 documents and got marked those documents at Ex.R-1 and 2.

7. Heard the arguments from both side counsel and perused the materials on record.

8. My findings to the aforesaid issues as below:

Issue No.1	:	In the Affirmative
Issue No.2	:	Partly in the Affirmative
Issue No.3	:	As per final order, for the following;

REASONS

9. **Issue No.1**: The petitioner has vehemently contended that, on 06.04.2020, at 5.45 AM, on Dasarahalli – Chikkamagaluru road, near the house of Mohan Gowda, situated at Bynecool village, Chikkamagaluru Taluk, the accident was taken place and in the said accident, she has sustained actionable injury. It is also the stand of the petitioner that, the accident took place due to the rash and negligent driving of the driver of the jeep bearing registration No.KA:N:20:6793 by name Shekhar, who succumbed in the accident. Whereas, the respondent No.1 has not shown any admission towards the fact and factum of accident and per contra, the said respondent has called upon the petitioner to prove the same. Thereby, the issue taken up emerged and burden to prove the said issue is placed on the shoulder of the petitioner.

10. The petitioner has come up with oral and documentary evidence to discharge her burden and the said material is available on record to determine the present context. The petitioner has vehemently contended that, she was proceeding in Mahindra

jeep bearing its registration No.KA:20:N:6793 towards Chikkamagaluru as inmate at the time of accident and due to the accident, she has sustained injury. The respondent No.1 has not at all made any specific stand by disputing the fact and factum of accident produced by the petitioner. The respondent No.1 has not produced any iota of document to contradict the fact and factum of accident. Even on careful considered the statement of objection set out by the respondent No.1, it is very clear that, on the alleged date, time and place, the accident was taken place and the petitioner being inmate of the offended vehicle bearing registration No.KA:20:N:6793 has sustained injury. The petitioner has tendered her evidence by reproducing the petition averments and thereby, she has keep consistency in her stand taken towards the fact and factum of accident. The petitioner has directed the witnesses to the accident and she sustained injury in the accident, then the evidence of PW.1 is carry with more probative value. In addition to her oral testimony, the petitioner has produced FIR, first information, spot mahazar, photo, Motor vehicle accident report, charge sheet, wound certificate and got marked the said documents at Ex.P-1 to 7. According to those documents, the jurisdictional police so as to the Rural police, Chikkamagaluru, has registered Cr.No.101/2020 by assailing the driver of the offended vehicle as the accused for the offences punishable under sections 279, 337, 338, 304-A of IPC. It shows that, the above referred materials clearly indicates that on the alleged date, time and place, the accident taken place and the accident took place due to the rash and negligent driving of the driver of the offended vehicle. The petitioner has produced the crime detail form with sketch pertaining to place of accident and photo. Those materials are clearly demonstrate that on the alleged date, time and place, the accident took place due to rash and negligent driving of the Mahindra jeep bearing registration No.KA:20:N:6793 by its driver. The photos available on record clearly reveals that the driver of the offended vehicle taken his vehicle out of track and dashed to by-side tree and caused accident. In order to falsify all these aspect, the respondent No.1 has not come up with any iota of document. Though the respondent No.1 has put PW-1 into cross-examination, but nothing is elicited to discard his stand taken by the petitioner towards the fact and factum of accident. On overall considered the material placed on record, it clearly shows that, the petitioner is able to prove her stand taken towards the fact and factum of accident. It is further clear from the material on record that the petitioner has sustained injury in the accident and extended with treatment. As such, this Tribunal is answered the Issue No.1 in the Affirmative .

11. **ISSUE NO.2**: The petitioner has claimed to award compensation for a sum of Rs.10,00,000/- with interest thereon. It is contended that, the petitioner has sustained Type III-B open fracture and radial head dislocation of right ulna (Monteqqie - fracture type IV). It is also the stand of the petitioner that, prior to the accident, she was hale and healthy and due to the fracture injury, she could not able to work and she is suffering from permanent and physical disability and functional disability. The petitioner has produced the wound

certificate and got marked the same at Ex.P-7 and the said document is discloses the description of wound as cut and lacerated wound in right fore arm and pain and deformity in right fore arm. It is further mention that, "referred to orthopeditian" and according to x-ray No.283 / 6.4.20, type III B open fracture redial dislocation of right ulna (monteqqie fracture type IV). The author of Ex.P-7 has opined that the injury at serial No.2 is grievous in nature and injury at Serial No.1 is simple in nature. The petitioner has contended that, as on the date of the accident, she was aged 60 years. The documents contemplate the age of the petitioner as 60 years. It is also the stand of the petitioner that, prior to the accident, she was very hale and healthy and she was doing coolie work for gain and from her source of income, she was earning income for a tune of Rs.30,000/- per month. Though the petitioner has contended that, she has been suffering from permanent physical impairment and the said position has impacted on her earning capacity. But, the petitioner has not come up with any disability certificate and substantial evidence thereon from any expert by certifying with any percentage of disability. There through, the petitioner has not come up with any percentage of permanent disability and functional disability and the petitioner has not proved the said disability has impacted on her earning capacity. Then, the claim made by the petitioner is liable to the considered by awarding global compensation. In the absence of particular percentage of disability and substantial evidence thereon, determination of other factors does not arise and claim made by the petitioner as determinable in the manner of global compensation. Though the petitioner has contended that she has incurred expenditure towards the medical expenditure of Rs.50,000/-, she has not produced any documentary evidence. She has taken treatment at M.G. Hospital and the said hospital is a government hospital, then it shows that, the petitioner has extended with treatment on charity base, as such, she has not produced any iota of documents. According to the wound certificate, the petitioner has sustained one grievous injury and one simple injury and she has not produced any medical bill to show that, she has incurred any expenditure in this regard. By considering the nature of the injury sustained and other aspect, the petitioner is awarded with compensation of Rs.1,00,000/- by way of global compensation.

12. Liability to pay compensation:

The petitioner has contended that, the respondent No.1 is the insurer of the offended vehicle and indemnified bond was created with the respondent No.1 in reference to the offended vehicle through insurance policy. It is also the stand of the petitioner that, at the time of accident, the offended vehicle was belonging to Shekhar and he was driving the said vehicle at the time of accident. The petitioner has contended that the respondents are jointly and severally liable to pay compensation. Whereas the respondent No.1 has contended that, the nature of the insurance policy issued to the offended vehicle was “liability only” policy and his company is not liable to pay compensation to the petitioner and the petitioner is not entitled to claim compensation. It is undisputed the fact that the petitioner was inmate at the time of accident. It is also the stand of the respondent No.1 that the insurance policy issued in the name of Joseph Dominic D. Souza S/o Micheal D. Souza and the said party has not been impleaded to the present petition. The respondents No.2 and 3 have not at all raised any voice in this regard. The respondent No.1 has produced the insurance policy and the terms and conditions of the insurance policy and got marked the policy at Ex.R-1 and 2. On careful looked into the insurance policy produced, it is very clear that the offended vehicle extended with “liability only policy” at the time of accident. Though the petitioner has put the RW-1 into the cross-examination, but nothing is elicited to discredit the defence urged by the respondent No.1 towards the liability. Thereby, it shows that the insurance policy is at the nature of “liability only policy”. For the present context, it is benefit to rely upon the decision reported in **MFA No.4246/2009 (National Insurance Company Limited Vs. Srinivasa and others)** wherein it was held by placing reliance on the various decision that:

Therefore, liability foisted on the insurance company cannot be sustained and accordingly, it is hereby set-aside.

The Hon'ble Supreme Court in the judgment of THILAK SINGH case referred to above while examining the liability of the insurer to pay the compensation under Section 147 of the Motor Vehicles and extent of its liability at paragraphs 20 and 21 has held as under:

The view expressed in Satpal Singh case however, has been specifically overruled in the subsequent judgment of a Bench of three judges in New India Assurance Co. Ltd., v Asha Rani [2003] 2 SCC 223. In that case the discussion arose in connection with carrying passengers in a goods vehicle. This Court after referring to the terms of section 147 of the 1988 Act, as contrasted with section 95 of the 1939 Act, held that the judgment in Satpal Singh case had been incorrectly decided and that the insurer will not be liable to pay compensation. In the concurring judgment of Sinha, J. after contrasting the language used in the 1939 Act with that of the 1988 Act, it has been observed (vide SCC p 235, paras 25 and 27):

"25. Section 147 of 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily

injury to any passenger of ' public service vehicle'. Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a `goods carriage'.

Furthermore, sub-clauses (i) of Clause (b) of sub-section (1) of Section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. Whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle against the death of or bodily injury to any passenger of a public service caused by or arising out of the use of the vehicle in a public place."

In our view, although the observation made in Asha Rani case were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant-insurance company that it owed no liability toward the *injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger.*

Further, the Division Bench of Madras High Court in the judgment reported in 2016 ACJ 5 in the case of NEW INDIA ASSURANCE CO. LTD. v/s S.KRISHNASAMY AND OTHERS while examining the liability under Section 147(1) of the Motor Vehicles held as under:

" Claimants contended that deceased was a third party and there was no need to pay additional premium to cover his risk - Tribunal found that deceased was a passenger in private car and owner of car has violated policy condition and directed the insurance company to pay compensation and recover the amount from owner - Whether the deceased was a third party, his risk was covered under the policy and insurance company is liable - Held: no; no direction to pay and recover could be issued to the insurance company; owner of vehicle alone is liable; case-law discussed."

The judgments relied upon by Sri.Suresh M Lathur, learned counsel appearing for the appellant are not applicable to the case on hand. In the said case, the *victim is a gratuitous passenger traveling in a goods vehicle. The Hon'ble Supreme Court relying upon the judgment reported in NATIONAL INSURANCE COMPANY LIMITED v/s SAJU P PAUL whereby the Hon'ble Supreme Court directed the insurance company to pay compensation amount and recover the same from the owner of the vehicle. On peculiar facts and circumstances of the case, the said order was passed invoking article 142 of the Constitution of India. The said judgment is not applicable to the facts of the present case.*

The judgments referred to above clearly disclose that in case of the inmate traveling in a private car where the vehicle is covered by the Act Policy, the insurance company is not liable to compensate the claimant unless additional premium is paid. In the instant case, no document has been produced to show that the owner of the vehicle has paid additional premium to cover the risk of inmates of the car. Hence, the judgment and award passed by the Tribunal is not sustainable. The owner of the vehicle has to compensate the claimant.

On careful considered the aforesaid principle of law and apply the same with the terms and conditions of the insurance policy, then it shows that the accident is not covers by the insurance policy. The respondent No.1 has contended that, the petitioner was passenger of the insured vehicle which meant for private use. But the respondent No.1 has not at all come up with any iota of proof to shows that, the petitioner was passenger of offended vehicle at the time of accident. However, the status of petitioner in the offended vehicle at the time of accident either considered to be paid passenger or considered to be inmate as gratitude passenger or she was family member of owner of vehicle, when th nature of policy is liability only policy, the respondent No.1 is not at all liable to pay compensation to the petitioner on operation of indemnified contract. Therefore, the respondent No.1 is not liable to pay compensation. In the result, the respondents No.2 and 3 being the legal representatives of the deceased owner of the offended vehicle are jointly and severally liable to pay the compensation. As such the liability is saddled on the respondent No.2 and 3.

13. **Interest awarded:** The petitioner has claimed to award interest at the rate of 12% per annum from

the date of petition till realisation of entire amount. The contested respondent No.1 has raised adverse voice in this regard. Therefore, it is necessary to determine the interest awardable on the compensation which claimed towards accidental injuries. In order to determine this aspect, it is necessary to place reliance on the law laid down by our **Hon'ble High Court of Karnataka in a decision reported in *MFA No.100090/2014 dated 7-3-2018 in the matter of (Vijay Ishwar Jadhav and others V/s. The Divisional manager, Bajaj allianz General Insurance company Ltd .,*** *) that :*

> *However, the provisions of* Section 149(1) *of the Act to the extent they speak of interest payable on the compensation amount is in the nature of an exception to the general law enacted in 169 of the M.V.Act and therefore, the provisions of Section 34 of CPC to that extent become invocable on the general principles of construction of statutes namely the special law overrides the general law. Therefore, in the absence of any other law relating to interest on Judgments, the MACT has to follow the provisions of Section 34 of CPC, 1908. Thus, in the given circumstances of this case, interest at the rate of more than 6% could not have been awarded.*

In the light of aforesaid principles of law the petitioner is entitled to interest at the rate of 6% on the compensation awarded. As such the petitioner is awarded interest at the rate of 6% per annum from the date of petition till realisation of entire amount on the compensation awarded. Accordingly, the respondent No.2 and 3 are liable to pay compensation to the petitioner as determined above with the interest at the rate of 6% per annum from the date of petition till realisation of entire amount. Accordingly, this tribunal answered issue No.2 in partly Affirmative.

15. **Issue No.3:** For foregoing findings on issue No. 1and 2 with the reasons assigned thereon, I proceed to pass the following:

O R D E R

The petition filed by the petitioner under Section 166 of the Motor Vehicles Act, is hereby allowed, in part, with costs.

The petitioner is entitled for a total compensation of Rs.1,00,000/- (Rupees one lakh only) towards the accidental injuries.

The respondents No.2 and 3 are jointly and severally liable to satisfy the awarded amount with interest at the rate of 6% per annum from the date of petition till realization of entire amount.

After such deposit of amount is made, release the entire amount in favour of the petitioner.

The Advocate fee is fixed at Rs.1000/-.

Draw up award accordingly.

(Dictated to the stenographer, transcribed by her, transcription corrected and then pronounced by me in open court on this the 9th day of August 2024).

sd
[C. Veerabhadraiah]
Prl. Senior Civil Judge and MMACT.,
Chikkamagaluru.

ANNEXURES

List of witnesses examined for the petitioner:

PW.1 : Smt. Sharadamma.

List of witnesses examined for the respondents:

RW.1 : Yashodhara J.K.Rao

List of documents marked for the petitioner:

Ex.P.1 : Copy of F.I.R.

Ex.P.2 : Copy of complaint

Ex.P.3 : Copy of Mahazar

Ex. P.4 : CC of photo

Ex.P.5 : CC of Vehicle Inspection report.

Ex. P.6 : CC of charge sheet.

Ex. P.7 : Wound certificate

List of documents marked for the respondents:

Ex.R.1 : CC of Insurance Policy

Ex. R.2 : CC of terms and conditions of policy

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C VEERABHADRAIAH

Digitally signed by C VEERABHADRAIAH
Date: 2024.08.29 13:44:03 +0530

[C. Veerabhadraiah]
Prl. Senior Civil Judge and MMACT.,
Chikkamagaluru.

*mvp/-