



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF OCTOBER, 2024

BEFORE

THE HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA

MFA NO. 4392 OF 2016 (MV-I)

BETWEEN:

SMT. SIDDAMMA
W/O LATE MALAGA SIDDIAIAH
AGED ABOUT 52 YEARS
R/AT DODDABEEDI
SATHEGALA VILLAGE
KOLLEGALA TALUK
CHAMARAJANAGAR DIST - 570 414

... APPELLANT

(BY SRI.MAHENDRA SWAMY P., ADV.)

AND:

1. RANJANA SUBRAMANYA
W/O NARAYANA SUBRAMANYA
AGED ABOUT 37 YEARS
R/AT FLAT NO.2153, 1ST FLOOR
SHOBHA TULEEP BUILDING
24TH MAIN ROAD, J.P.NAGAR
6TH PHASE, BENGALURU - 560 078

2. THE DIVISIONAL MANAGER
UNITED INDIA INSURANCE CO. LTD.
CHAMARAJA DOUBLE ROAD
MYSURU - 570 023

... RESPONDENTS

(BY SRI.O.MAHESH, ADV. FOR R2;
VIDE ORDER DATED 1.9.2022
SERVICE OF NOTICE TO R1 HELD SUFFICIENT)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT
AGAINST THE JUDGMENT AND AWARD DATED 17.03.2015
PASSED IN MVC NO.483/2014 ON THE FILE OF THE SENIOR
CIVIL JUDGE, JMFC, KOLLEGAL, PARTLY ALLOWING THE CLAIM

Digitally signed by
PRAJWAL A
Location: HIGH COURT
OF KARNATAKA



PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF
COMPENSATION.

THIS APPEAL HAVING BEEN RESERVED FOR JUDGMENT
COMING ON FOR PRONOUNCEMENT THIS DAY,
T.G.SHIVASHANKARE GOWDA, J., DELIVERED/PRONOUNCED
THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA)

In this appeal, the petitioner apart from seeking
enhancement is questioning the liability fastened
against the owner of the vehicle.

2. For the sake of convenience, the rank of the
parties shall be referred to as per their status before
the Tribunal.

3. Brief facts of the case are, on 06.05.2014 at
12.30 p.m., while the petitioner was walking on the left
side of the road on Bengaluru-Kollegala main road near
Mallikarjuna Traders at Sathegala Village, a car bearing
No.KA-05/MB-8213 hit against the petitioner, due to
which she has sustained injuries. After taking
treatment, she has approached the Tribunal for grant



of compensation of Rs.9,85,000/-. Claim was opposed by the Insurance Company. The Tribunal, after taking evidence and hearing both the parties, allowed claim petition granting compensation of Rs.1,40,151/- with interest at 6% p.a. and directed the owner of the car to pay the compensation. Aggrieved by the same, the petitioner is before this Court on various grounds.

4. Heard the arguments of Shri.Mahadevaswamy P., learned Counsel for the petitioner and Shri.O.Mahesh, learned counsel for the Insurance Company.

5. It is the contention of the learned counsel for the petitioner that, the petitioner has suffered fracture of right humerus and right pubic rami, she was under hospitalization for 18 days. She being 50 year old lady was earning more than Rs.10,000/- per month by doing agriculture and the Tribunal did not award adequate compensation and sought for enhancement.



5.1. It is further contended that the Tribunal has erroneously fastened the liability against the owner of the car, but at the time of accident, the driver of the car was holding DL issued by California, USA, he was not holding Indian DL as he came from America to India. The DL issued by America is more quality than that of India and it is sufficient to drive the car in question and therefore the Insurance Company cannot avoid its liability.

6. Per contra, learned counsel for the Insurance Company has contended that, the driver was not holding effective driving licence at the time of accident. He was not authorised to drive the said vehicle holding California driving licence and it is also not proved. In a case of no driving licence, pay and recovery does not arises, the Tribunal has rightly fastened liability against the owner. The appeal is only for enhancement and liability aspect is not urged and he has supported the impugned Judgment.



7. I have given my anxious consideration to the arguments addressed on behalf of both parties and perused the records.

8. Material on record goes to show that there was an accident on 06.05.2014 involving the petitioner and the car in question wherein the petitioner has sustained injuries. The medical records show that the petitioner has suffered fracture of right humerus and right pubic rami, she was treated at Government Hospital, Kollegal, under hospitalization for 18 days.

9. In order to explain the disability, the petitioner has relied on the evidence of PW.2-Dr.P.Puttaswamy who has evaluated her and assessed that she has suffered 21% of whole body disability, the Tribunal has taken the disability only at 7%. The Cross-examination of the petitioner did not bring out anything, but doubted the veracity that the driver of the car was prosecuted by the Police. Hence, the negligence on the



part of the driver of the car has been explained and also the nature of injuries sustained and disability also.

10. As regarding percentage of disability is concerned, the Cross-examination of PW.2 has brought out that he has made the assessment of disability on the basis of some guidelines and his evidence did not point out the nature of work that the petitioner is doing and what was the disability or the inconvenience for her to do her nature of work. Under such circumstances, the evidence of PW.2 that the petitioner has sustained 21% of whole body disability is not proper and it has to be treated as disability to the limb. If that is so, the whole body disability has to be taken 1/3 of it as 8% instead of 7% taken by the Tribunal. In the year 2014, a person with no proof of income will earn not less than Rs.8,500/- per month whereas the Tribunal has taken at Rs.5,000/-. Hence, the notional income of the petitioner is taken at Rs.8,500/- per month.



11. Having regard to the nature of injuries, her age and avocation, the petitioner has to be compensated with Rs.50,000/- towards pain and suffering, medical bills produced for a sum of Rs.10,551/-, same has to be reimbursed, Rs.15,000/- towards incidental expenses such as attendant, food and nourishment and conveyance charges, Rs.30,000/- towards loss of amenities and discomfort. She was laid up for minimum 3 months, Rs.25,500/- is assessed towards loss of income during laid up. Taking the notional income at Rs.8,500/-, applying multiplier at 13 for her age group, future loss of income will be $\text{Rs.8,500/-} \times 12 \times 13 \times 8\% = \text{Rs.1,06,080/-}$. Total compensation comes to Rs.2,36,631/- as against Rs.1,40,151/- assessed by the Tribunal, thereby enhancement of Rs.96,480/-. It is the just compensation which the petitioner is entitled to in the facts and circumstances of the case.

12. As regarding liability is concerned, the material on record clearly goes to show that the driver



of the car was not holding Indian DL to drive the light motor vehicle (LMV). He was holding DL issued by California (USA) to drive LMV. The same is not sufficient to drive the vehicle in India. No material is placed to show that holding California DL is sufficient to drive LMV. Learned counsel for the Insurance Company has contended that the driver has to be treated as a person with no DL and it is not a case for applying principle of pay and recovery.

13. Learned counsel for the petitioner has relied on the judgment of the Hon'ble Apex Court in **Pappu and Ors. v. Vinod Kumar Lamba and Anr.**¹, **Rishi Pal Singh v. New India Assurance Co. Ltd., and others**² and also the judgment of the Division Bench of this Court in **Priyanka @ Pamila v. Sanwar Khan and Ors.**³ Whereas the Insurance Company relying on the judgment of this Court in **Hemalatha @ Hema @**

¹ 2018 (3) SCC 208

² 2022 ACJ 1868

³ MFA.201982/2019



***Hemavathi and Others v. Bajaj Allianz General Insurance Co. Ltd. and Another.*⁴**

14. The Hon'ble Apex Court in **Pappu's case (supra)** as well as in **Rishi Pal Singh's case (supra)**, referring to the judgment in **National Insurance Co. Ltd. v. Swaran Singh and Others**⁵, has held that in case of no DL, the principle of pay and recovery though be applied it must be very cautiously applied. In **Rishi Pal Singh's case (supra)** as well as in **Pappu's case (supra)**, the principle of pay and recovery has been applied.

15. Herein this case, the driver of the car was holding the DL issued by the RTO, California (USA), he was not holding the DL of India. It is not a case of no DL and the Division Bench of this Court, referring to the judgment of **Rukmani and others v. New India Assurance Co. and others**⁶, **Pappu and others, New India Assurance Co. Ltd. v. Yallavva and**

⁴ M.F.A.No.6154/2019 (MV-D) DD 14.12.2023

⁵ AIR 2004 SC 1531

⁶ 1998 (9) SCC 160



others⁷, Balu Krishna Chavan v. The Reliance Geneal Insurance Co. Ltd. & Ors.⁸, Adilakshammamma and others v. Raju B. and Another⁹, Swaran Singh's case (supra) and Shamanna and Another v. Divisional Manager, Oriental Insurance Co. Ltd. And Others¹⁰ and also Singh Ram v. Nirmala and Others¹¹, held that in a similar circumstances, the principle of pay and recovery is adopted and ordered.

16. The Full Bench of this Court in **Yallavva's** case (supra), held that in case of no DL, it is a fundamental breach where the Insurance Company can avoid its liability, but pay and recovery can be applied. Accordingly, the insurer was directed to deposit the compensation and to recover the same from the owner of the vehicle.

⁷ MFA.No.30131/2019 DD.12.05.2020

⁸ SLP(C) No.33638/2017

⁹ MFA No.3297/2019 DD.13.04.2023

¹⁰ 2018 (9) SCC 650

¹¹ 2018 (3) SCC 800



17. The Division Bench of this Court in **Hemalatha @ Hema @ Hemavathi's** case (supra) referring to the judgment of **Pappu, Shamanna, Geeta Devi** and **Swaran Singh** at para 27, held that the above judgments are not pertains to no DL and the Insurance Company is exonerated from paying the compensation. But the judgments so referred by the Division Bench of this Court clearly point out that they are all pertains to no DL in the factual matrix of the case, wherein pay and recovery has been ordered. Hence, the arguments of the Insurance Company that the pay and recovery cannot be ordered is not persuasive in nature. Since it is not a case of no DL, the driver under impression that he was holding DL issued by the California, USA to drive the car and therefore, the Insurance Company can avoid its liability as it is a fundamental breach. But it is a case for applying principle of pay and recovery.

18. In view of the above discussion, appeal merits consideration, in the result, the following:



ORDER

- (i) The appeal is **allowed in part**;
- (ii) The impugned judgment and award is modified;
- (iii) The petitioner would be entitled to enhanced compensation of Rs.96,480/- with interest at 6% p.a. from the date of petition till the date of deposit;
- (iv) The owner of the car is held liable to pay the compensation;
- (v) The Insurance Company shall deposit entire compensation with interest within eight weeks from the date of receipt of certified copy of this judgment with liberty to recover the same from the owner of the car in the same proceedings.

**SD/-
(T.G.SHIVASHANKARE GOWDA)
JUDGE**

MKM