



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF NOVEMBER, 2024

BEFORE

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

MISCELLANEOUS FIRST APPEAL NO. 10968 OF 2012 (MV)

C/W

MISCELLANEOUS FIRST APPEAL NO. 10485 OF 2012 (MV)

IN MFA NO. 10968/2012

BETWEEN

SRI. VIKAS BAJAJ,
S/O. S.K. BAJAJ,
NOW AGED ABOUT 30 YEARS,
R/O. 391, HIG, RMV II STAGE,
BANGALORE 560 094.

... APPELLANT

(BY SRI. GANESH BHAT Y.H., ADVOCATE)

AND

1. SRI. MAHANEETH
S/O. SRI. NANJUNDAIAH,
NOW AGED ABOUT 31 YEARS,
NO. 180, 11TH CROSS, 3RD MAIN,
BDA HIG, RMV II STAGE,
BANGALORE - 560 094.
2. M/S. KHODAY ENGINEERING
NO.54 KAMMANAYAKANA
AGRAHARA, ANJANAPURA POST,
BANGALORE.
3. THE ORIENTAL INSURANCE CO. LTD.,
HAVING ITS BRANCH OFFICE



AT JAYALAKSHMI MANSION,
NEAR NAVRANG THEATRE,
DR.RAJKUMAR ROAD, 4TH BLOCK,
RAJAJINAGAR, BANGALORE 560 010,
REPRESENTED BY
ITS REGIONAL MANAGER.

...RESPONDENTS

(BY SRI. N.Y.VIJAY, ADVOCATE FOR R1;
SRI. VIGHNESHWAR SHASTRY, SR. ADV. FOR
SRI N.SHANKAR RANGAREJI, FOR R2;
SRI. A.N. KRISHNA SWAMY, ADVOCATE FOR R3)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT
AGAINST THE JUDGMENT AND AWARD DATED 31.07.2012
PASSED IN MVC NO.2600/2001 ON THE FILE OF THE IX
ADDITIONAL SENIOR CIVIL JUDGE, MEMBER, MACT-7, COURT
OF SMALL CAUSES, BANGALORE, PARTLY ALLOWING THE
CLAIM PETITION FOR COMPENSATION AND SEEKING
ENHANCEMENT OF COMPENSATION.

IN MFA NO. 10485/2012

BETWEEN:

ORIENTAL INSURANCE CO. LTD.,
BRANCH OFFICE, JAYALAKSHMI MANSON
NEAR NAVRANG THEATRE,
DR.RAJKUMAR ROAD, 4TH BLOCK,
RAJAJINAGAR, BANGALORE 560 010,
NOW REPRESENTED BY
ITS REGIONAL MANGER,
ORIENTAL INSURANCE CO. LTD.,
REGIONAL OFFICE, #44/45, LEO
SHOPPING COMPLEX, RESIDENCY ROAD,
BANGALORE 560 025.

... APPELLANT

(BY SRI. A.N. KRISHNA SWAMY, ADVOCATE)



AND:

1. VIKAS BAJAJ,
S/O. S.K. BAJAJ,
NOW AGED ABOUT 30 YEARS,
#391, HIG, RMV II STAGE,
BANGALORE 560 094.
2. N. MAHANEETH
S/O. NANJUNDAIAH,
NOW AGED ABOUT 31 YEARS,
180, 11TH CROSS, III MAIN,
BDA HIG, RMV II STAGE,
DOLLARS COLONY,
BANGALORE 560 094.
3. M/S KHODAY ENGINEERING
NO.54 KAMMANAYAKANA
AGRAHARA, ANJANAPURA POST,
BANGALORE.

...RESPONDENTS

(BY SRI. N.V.VIJAY, ADVOCATE FOR R2;
SRI. VIGNESHWAR SHASTRY, SENIOR ADVOCATE FOR
SRI. N.SHANKAR RANGAREJI, FOR R3;
SRI. GANESH BHAT Y.H., ADVOCATE FOR R1)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 31.07.2012 PASSED IN MVC NO.2600/2001 ON THE FILE OF THE IX ADDITIONAL SENIOR CIVIL JUDGE, MEMBER, MACT-7, COURT OF SMALL CAUSES, BANGALORE, AWARDED A COMPENSATION OF RS.5,11,000/- WITH INTEREST @ 6% P.A. FROM THE DATE OF PETITION.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 20.08.2024 AND COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT', THIS DAY, THIS COURT PRONOUNCED THE FOLLOWING:



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

CAV J U D G M E N T

In these appeals, the petitioner is questioning disallowing of the claim regarding medical bills incurred towards future medical expenses, whereas the Insurance Company is questioning its liability to pay the compensation.

2. The rank of the parties shall be referred to as per their status before the Tribunal.

3. Brief facts of the case are, on 08.11.1998 while the petitioner was traveling in the Maruti Gypsy bearing Reg.No.KA-05/M-276 along with his friend driven by the first respondent on Sankey road, near Le Meridian Hotel at 8.20 p.m., the said vehicle was met with an accident, due to which he sustained injuries. After taking treatment, he has approached the Tribunal for grant of Rs.56,00,000/- under Section 166 of the Motor Vehicles Act, 1988. Claim was opposed by the owner and insurer of the Maruti Gypsy



vehicle. The Tribunal, after taking the evidence and hearing both the parties, allowed the claim petition on 11.07.2006 by awarding compensation of Rs.9,27,000/-. Pleading inadequacy and seeking enhancement, the petitioner has filed MFA.No.12439/2011.

3.1. In the said appeal, the petitioner has filed I.A. under Order XLI Rule 27 of CPC for production of medical bills seeking reimbursement of future medical expenses. This Court, confirming the order dated 11.07.2006 by its judgment dated 06.09.2011 remanded the matter for fresh disposal giving an opportunity to the petitioner as well as the respondent to lead additional evidence regarding reimbursement of medical expenses, the medical records produced by the petitioner have been transmitted to the Tribunal. The Tribunal has considered the same placed by the petitioner and by the impugned judgment and award dated 31.07.2012 directed respondent Nos.2 and 3 to pay Rs.5,11,000/- with interest at 6% p.a. in addition to Rs.9,27,000/- awarded on



11.07.2006. The petitioner alleging that some of the medical claims were disallowed, he sought for enhancement.

3.2. The Insurance Company contending that, the policy of insurance was an 'Act policy', the petitioner is a friend passenger, the policy of insurance does not cover the risk of an occupant of the Maruti Gypsy and therefore it is entitled to recover compensation of Rs.9,27,000/- along with interest already deposited as per order dated 11.07.2006 and also questioned liability to pay the compensation of Rs.5,11,000/- with interest as per order dated 31.07.2012.

4. Heard the arguments of Sri Ganesh Bhat Y.H., learned counsel for the petitioner, Sri A.N. Krishna Swamy, learned counsel for the Insurance Company and Sri Vighneshwar Shastri, learned Senior counsel appearing on behalf of Sri N. Shankar Rangareji, learned counsel for the owner of the vehicle.



5. It is the contention of learned counsel for the petitioner that, in spite of placing of sufficient evidence in the form of Exs.P36 to P47, the Tribunal did not consider all the medical bills and considered only Rs.5,11,000/-. To buttress his arguments, he has relied on the judgment of Hon'ble Apex Court in ***Sidram –vs- Divisional Manager, United India Insurance Co. Ltd. and Anr.***¹

6. *Per contra*, learned counsel for the Insurance Company has contended that, the policy of insurance was an 'Act policy'. The petitioner is a gratuitous passenger in the vehicle, he is not a third party to cover the risk. The Tribunal without considering these aspects fastened liability and Insurance Company has to be exonerated from its liability. It is further contended that as the risk of the petitioner was not covered under the policy, the amount already paid by it to the extent of Rs.9,27,000/- has to be returned to it by the petitioner and he has to go against the owner of the vehicle.

¹ AIR Online 2022 SC 890



7. Sri Vighneshwar Shastri, learned Senior counsel appearing on behalf of the owner has contended that, the Insurance Company, in the statement of objection filed on the claim petition, the policy of insurance was admitted, and the risk of the petitioner was admitted subject to terms and conditions of the policy and the driving licence. As there is no dispute regarding the driving licence of the driver, the Insurance Company has admitted the policy, the Tribunal has rightly fastened liability. The Insurance Company has already satisfied the award. When once the Insurance Company has satisfied the award accepting the policy, it cannot blow hot and cold and now asking this Court to determine the liability which was already satisfied. The appeal is filed after 6 years of satisfying the award. The order passed by this Court while remanding the claim petition was only to the extent of considering the future medical expenses, post award that has been determined by the Tribunal and the Insurance Company is bound to satisfy the award and liability cannot be taken out against the Insurance Company.



8. I gave my anxious consideration to the arguments addressed by the learned counsel for both the parties and perused the records.

9. There is no dispute as to the claim petition filed by the petitioner which came to be disposed of on 11.07.2006 awarding a sum of Rs.9,27,000/- with interest at 6% p.a. Seeking enhancement of compensation, the petitioner has approached this Court in MFA.No.12439/2006 (MV). This Court, by order dated 06.09.2011 allowed the appeal and remanded the matter to the extent of producing additional documents disclosing future medical expenses incurred by the petitioner. It is relevant to extract the order of this Court, which reads as follows:

"The appeal is allowed in part. Impugned judgment and award is modified and matter is remitted back to the Tribunal with a direction to afford sufficient opportunity to the claimant and to the contesting parties to lead their evidence in support of the documents that have been produced by way of additional documents disclosing the additional expenses incurred towards medical expenses and



thereafter to dispose of the case in accordance with law.

Registry is directed to forward the application along with the documents that have been produced by the claimant before this court to the Tribunal”.

10. By virtue of additional records produced by the petitioner, which have been transmitted to the Tribunal along with the application filed under Order XLI Rule 27 of CPC, to determine further medical expenses incurred by the petitioner, post-remand, the parties have appeared before the Tribunal and on behalf of the petitioner, PWs.1, 9 and 10 have been further examined and medical records are produced as per Exs.P36 to P47. No evidence was let in on behalf of the Insurance Company. The Tribunal, after hearing both the parties by the impugned judgment, awarded a sum of Rs.5,11,000/- in addition to the award already passed with interest at 6% p.a. Pleading inadequacy and questioning omission of certain medical bills, the petitioner is before this Court in appeal MFA.No.10968/2012 whereas the Insurance Company is



questioning the original order dated 11.07.2006 as well as the impugned judgment has filed MFA.No.10485/2012.

11. In the light of the above, two points that arise for consideration are:

- (i) *Whether the award passed by the Tribunal in a sum of Rs.5,11,000/- is proper?*
- (ii) *Whether the Insurance Company has the legal right to question the liability after satisfying the award?*

Re. Point No.(i):-

12. As regarding the award of compensation of Rs.9,27,000/-, it was confirmed by this Court and satisfied by the Insurance Company. This appeal only pertains to the medical bills incurred towards further medical expenses and with a limited scope, the matter was remanded accordingly. The petitioner has led further evidence by examining PWs.1, 9 and 10 and Exs.P36 to P47 are records pertain to medical bills. On this aspect, the Insurance Company has further cross-examined the



witnesses. The medical bills at Ex.P36 carries 285 bills amounting to Rs.3,80,224/- which includes the Air ticket bills where the petitioner was traveled from Bengaluru to Mumbai and Mumbai to Bengaluru for an amount of Rs.13,269/-. Hence the contention of the petitioner that the same was not considered by the Tribunal is incorrect. The petitioner also produced Ex.P42 comprises 42 bills amounting to Rs.1,73,999/-. Ex.P47 carries 8 bills amounting to Rs.8,991/- and remaining are the OPD slips, discharge summaries, admission slips, prescriptions and review sheets which do not carry any bills along with it. Hence, the total amount of bills which the petitioner has produced comes to Rs.3,80,224/-, Rs.1,73,999/- and Rs.8,991/-. On perusal of the cross-examination of the witnesses nothing has brought out that these are the amounts were not spent by the petitioner and hence these bills are considered as conveyance bills also. The total bills comes to Rs.5,63,214/- wherein the Tribunal has considered it at Rs.5,11,000/-, thereby a sum of Rs.52,214/- was left out by the Tribunal which the



petitioner is entitled to. Apart from this, there is no other evidence available on record to consider the request of the petitioner for awarding future medical expenses or to reimburse any medical expenses. Accordingly, the petitioner is entitled for enhanced compensation of Rs.52,214/-. Hence, point No.(i) is answered accordingly.

Re. Point No.(ii):-

13. It is the contention of the Insurance Company that Maruti Gypsy was issued with the 'Act policy'. The petitioner being the passenger of the Gypsy is not a third party and therefore it has no liability to pay the compensation. For the first time, such an argument is placed in this appeal. On careful perusal of the statement of objection filed by the Insurance Company, it is specifically admitted that there was a policy issued to the vehicle and liability on the part of the Insurance Company is subject to the valid driving licence. Since there is no issue regarding driving licence of the driver, the Tribunal has fastened liability against the Insurance Company.



14. Interesting to note that either in the first round or in the additional round of litigation, the Insurance Company has not produced policy of insurance nor led any evidence explaining before the Tribunal that the policy of insurance is an Act Policy and it will not cover the risk of the petitioner. Without there being any pleadings and evidence, the order of Tribunal cannot be blamed. Accordingly, the Insurance Company has satisfied the award of Rs.9,27,000/- with interest passed by the Tribunal. After 6 years of satisfying the award, it cannot now question its liability to pay the compensation. When the Insurance Company has satisfied the award and same was paid to the petitioner, if the Insurance Company having any grievance, it has to work out its remedy against the owner of the vehicle and it cannot ask the petitioner to deposit the compensation before the Court.

15. Again, interesting to note that post remand, the Insurance Company though claiming that the policy of insurance is an Act Policy, it has no liability, the officers of



the Insurance Company have not stepped into the witness box nor led any evidence. The Hon'ble Apex Court in ***Oriental Insurance Company Ltd. v. Surendra Nath Loomba and Ors.***², held that when there is a dispute regarding nature of policy without production of the certificate of insurance it cannot be ascertained. Here in this case, without any pleadings, without producing the policy of insurance and without leading any evidence, the Insurance Company is pleading that the policy is an 'Act Policy' which cannot be accepted.

16. The Hon'ble Apex Court in ***Oriental Insurance Co. Ltd. v. Sudhakaran K.V. and others***³ held that in case of insurance Policy is an Act Policy, it does not cover the risk of the occupants of the vehicle that, they are not the third party to cover their risk. In order to apply the said principle, the Insurance Company is required to lead evidence by producing the policy of insurance. Without doing so, after satisfying the award, the Insurance

² AIR 2013 SC 483

³ 2008 ACJ 2045 SC



Company blaming the petitioner is not acceptable. Since the Insurance Company has already satisfied the award in the first round, it is required to satisfy this award also and if there is any grievance about liability on account of Act Policy, the Insurance Company has to work out its remedy against the owner of the vehicle in an appropriate forum. Hence, point No.(ii) is answered accordingly.

17. In view of the findings on point Nos.(i) and (ii), the appeal filed by the Insurance Company is devoid of merits and the appeal filed by the petitioner merits consideration, in the result, the following:

ORDER

- i. MFA.No.10968/2012 filed by the petitioner is **allowed in part**;
- ii. MFA.No.10485/2012 filed by the Insurance Company is **dismissed**;
- iii. The impugned judgment and award is modified;
- iv. The petitioner would be entitled to enhanced compensation of Rs.52,214/- with interest at



6% p.a. from the date of petition till the date of deposit;

- v. The Insurance Company is directed to deposit enhanced compensation along with interest within 8 weeks from the date of receipt of certified copy of this judgment;
- vi. Rest of the order of Tribunal is kept in tact;
- vii. Amount in deposit shall be transmitted to the Tribunal along with records forthwith;
- viii. As regarding liability is concerned, it is open to the Insurance Company to work out its remedy against the owner of the vehicle in a separate proceedings.

Sd/-
(T.G. SHIVASHANKARE GOWDA)
JUDGE