



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

MISCELLANEOUS FIRST APPEAL NO.8033 OF 2016 (MV-I)

BETWEEN:

SRI NARESH CHOWTHA DARJI
S/O LATE GOPALDAS CHOWTHA,
AGED ABOUT 33 YEARS,
R/O NO.402, DELIGHT RESIDENCY,
8TH CROSS, 2ND MAIN, S.G. PALYA,
CV. RAMANA NAGAR POST,
BANGALORE-560093.

...APPELLANT

(BY SRI JAYAPRAKASH SHETTY B., ADVOCATE)

AND:

1. SRI V. KRISHNA
S/O LATE VENKATAPPA,
R/AT 11, 6TH CROSS,
6TH MAIN ROAD, N.H. COLONY,
YESHWANTHPURA,
BANGALORE-560022.
2. THE BRANCH MANAGER
FUTURE GENERAL INDIA INS. CO. LTD.,
REGISTERED OFFICE AT 6TH FLOOR
TOWER-3 INDIABULLS,
FINANCE CENTRE, SENOPATTI
BAPAT MARG, ELPINSTONE ROAD,
MUMBAI-400013
MAHARASHTRA.

...RESPONDENTS

(R1 IS SERVED AND UNREPRESENTED;
BY SRI P.B. RAJU, ADVOCATE FOR R-2.)



THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 08/09/2016 PASSED IN MVC NO.5289/2014 ON THE FILE OF THE II ADDITIONAL SMALL CAUSES JUDGE AND XXVIII ACMM, BENGALURU (SCCH-13), AWARDED COMPENSATION OF RS.73,400/- WITH INTEREST AT THE RATE OF 6% P.A. FROM THE DATE OF PETITION TILL THE DATE OF DEPOSIT IN COURT.

THIS APPEAL COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE C M JOSHI

ORAL JUDGMENT

Heard the learned counsel for the appellant and the respondent. The short point that arise in this appeal is,

whether the Tribunal is justified in fastening liability on the appellant on the ground that the driver of the vehicle was the wife of the appellant but not the appellant?

2. The appellant happens to be the respondent No. 1, owner of the offending vehicle before the Tribunal. The claimant- V.Krishna filed a claim petition before the Tribunal stating that he suffered injuries in an accident



dated 04.07.2014 at about 05.30 A.M when he was walking on the side of the road towards C.V.Raman Nagar near Yeshwantpura Bridge. The car driven by a lady driver came in a rash and negligent manner and dashed into him causing accident and he suffered injuries and he was shifted to Columbia Asia Hospital and later he was shifted to ESI Hospital. The Yeshwantapura Traffic Police registered the case in Crime No. 112 of 2014 on the same day for the offence punishable under Sections 279 and 337 of IPC against the driver of the car. The complaint mentioned that the driver of the car was a lady. The police investigated the matter and came to the conclusion that the vehicle was driven by one Suvida Shetty, who was the wife of the appellant. On the date of the accident itself, the police had issued a notice under Section 133 of the Motor Vehicles Act to the appellant/owner of the vehicle to disclose the name of the driver of the vehicle. On the same day he had also replied to the police that it was his wife Suvida Shetty who was not having a valid driving



licence. Accordingly, police investigated the matter and despite the appellant had sent a letter on 07.07.2014 to the police that it was he who was driving the vehicle, the police filed the charge sheet against the wife of the appellant and also the appellant for the offences under various provisions of the IPC as well as the Motor Vehicles Act.

3. The claimant filed a claim petition before the Tribunal seeking compensation. In the said petition, the present appellant who was arrayed as respondent No. 1 contended that the car was being driven by himself but not his wife and also that the accident occurred due to the negligence on the part of the claimant himself, who negligently was crossing the road. The insurance company also resisted the petition contending that the driver was a lady, who is the wife of respondent No. 1 and she was not having a valid driving licence and as such the liability has to be fastened upon the respondent No. 1 only and its liability to pay the compensation be absolved.



4. The Tribunal framed appropriate issues and the evidence was led before it. The appellant herein deposed before the Tribunal as RW2. In his affidavit also he contended that it was he who was driving the car, but not his wife.

5. After hearing both the sides and on perusing the evidence available on record, the Tribunal came to the conclusion that the claimant is entitled for a compensation of Rs.91,750/-. and it fastened the liability upon the appellant herein, absolving the liability of the insurance company. Being aggrieved, the appellant (respondent No.1 before the Tribunal) is before this Court seeking his absolvment of the liability.

6. Learned counsel appearing for the appellant would submit that the Tribunal erred in fastening the liability upon respondent No. 1 despite there being material on record to show that it was the appellant who was driving the vehicle. He submits that the records reveal



that the appellant had taken the contention that he was driving the vehicle on 07.07.2014 and it was not at all considered by the Investigating Officer. He submits that the criminal case has ended in acquittal of his wife and therefore the Tribunal erred in fastening liability upon the appellant. In this regard he places reliance on the judgment of the Apex Court in the case of ***Pappu and Others vs Vinod Kumar Lamba***¹, which has been reiterated in various judgments by this Court as well as the other High Courts.

7. *Per contra*, learned counsel appearing for the respondent-insurance company would submit that the first response of the appellant on 04.07.2014 disclose that it was his wife Suvida Shetty, who was driving the vehicle and on that basis the investigation has been done. He also points out that none of the investigation papers, including the statement of the witnesses under Section 161 of the Cr.P.C would disclose that it was the appellant who was

¹ AIR 2018 SC 592



driving the vehicle. He points out that for the first time the appellant had taken up the contention that he was driving the vehicle on 07.07.2014. The letter dated 07.07.2014 has not been marked as exhibit before the Tribunal. It is submitted that if at all such a letter was given by the appellant to the police, the Investigating Officer would have considered that aspect of the contention also. On the other hand, the entire charge sheet papers which have been produced at Exhibit P3 and its reply would show that it was Suvida Shetty who was driving the vehicle. Therefore, he contends that when the reply given by the appellant to the Investigating Officer under Section 133 of the Motor Vehicles Act clearly show that his wife was not at all having any driving licence, the principle of pay and recovery enunciated in the case of **Pappu** (supra) would not come into play.

8. A careful perusal of the records would reveal that the accident took place at about 05.30 A.M on 04.07.2014 and the complaint was lodged by the injured



on the same day at about 01.30 P.M. In the complaint it is clearly mentioned that the driver of the car was a lady. The spot mahazar as per Exhibit P4 was also conducted on the same day by the police at about 04.30 P.M. On the same day, a notice (Ex.P13) was issued by the police to the appellant herein, since he being the owner of the vehicle, to disclose the name of the driver. The appellant gave a reply on the same day disclosing the fact that the driver was one Suvida Shetty, wife of Naresh Chowtha Darji. It is pertinent to note that in the said reply, it was mentioned that she was not having a driving licence **"without DL"**. However, it appears that on subsequent date, the driving licence number of the appellant has been written, which can easily be made out as it is in a different handwriting. This reply dated 04.07.2014 has not at all been referred and explained to either in the statement made by the appellant before the Tribunal or elsewhere.

9. Further the learned counsel appearing for the appellant has tried to impress upon this Court with



reference to a letter dated 07.07.2014. The said letter has not been marked. Obviously it is a xerox copy and there is no acknowledgment which is separately produced to show that the said letter was received by the IO. Thus it is evident that subsequent to the date of happening of the accident, an effort has been made to show that it was the appellant who was driving the vehicle but not his wife. This evidence has been appreciated by the Tribunal and it has come to the conclusion that the appellant was not driving the vehicle.

10. An Appellate Court cannot interfere with the judgment of the trial Court simply because another proposition is permissible and such an inference could be drawn from the evidence. The appreciation of the evidence is primarily the domain of the trial Court and the Appellate Court would not interfere in the same unless it is apparently perverse. The credence given by the trial Court to the deposition of the witnesses cannot be interfered with since it is the trial Court which has the advantage of



seeing the demeanor of the witnesses. Therefore, when the Tribunal on the basis of the material available on record has come to the conclusion that the appellant was not the driver of the vehicle, but it was Suvida Shetty who was the driver of the vehicle, the same cannot be interfered with.

11. Insofar as the contention of pay and recovery is concerned, it may be noted that the judgment of the Apex Court in the case of **Pappu** (supra) squarely relies upon the judgment in the case of **National Insurance Company Limited vs Swaran Singh and Others**². The Apex Court in the case of **Pappu** (supra) observed that if at all the owner of the vehicle had appeared and taken up the contention that the driver had a licence when the vehicle was entrusted, but he did not verify that it had expired or any such circumstance where the owner could take up a defence that he was unaware of expiry or otherwise of the driving licence, the liability has to be

² [(2004) 3 SCC 297]



fastened upon the insurance company with liberty to recover the same from the owner of the vehicle. In the case on hand, either the principles laid down in the case of ***Swaran Singh*** (supra) or in the case of ***Pappu*** (supra) are applicable for the reason that the driver of the car was not at all having any driving licence. The number of the driving licence which appears to have been written in the reply given by the appellant under Section 133 of the Motor Vehicles Act on a subsequent date is that of the driving licence of the appellant, which is at Exhibit R5. Therefore, such insertion of the number of the driving licence would not replace or falsify the name of the driver mentioned in the said reply notice. In that view of the matter, the principles laid down by the Apex Court in the case of ***Pappu*** (supra) would not be applicable to the case on hand.

12. In the result, the appeal is bereft of any merits and therefore the same is ***dismissed***.



NC: 2026:KHC:2601
MFA No. 8033 of 2016

The amount in deposit before this Court is ordered to be transmitted to the Tribunal.

The TCR also to be returned back to the Tribunal.

Sd/-
(C M JOSHI)
JUDGE

CKL
List No.: 1 Sl No.: 4