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Eraiah Vs. The Branch Manager

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Court : Karnataka

Decided On : Jun-24-2015

Judge : S.N.Satyanarayana

Appeal No. : MFA 7537/2011

Appellant : Eraiah

Respondent : The Branch Manager

Judgement :

- 1 - IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE24H DAY OF JUNE 2015 BEFORE THE HONBLE MR.JUSTICE S.N.SATYANARAYANA M.F.A.NO.7537/2011(MV) C/W M.F.A.NO.7538/2011(MV) C/W M.F.A.NO.7510/2011(MV) C/W M.F.A.NO.7536/2011(MV) C/W M.F.A.NO.7539/2011(MV) M.F.A.NO.7537/2011: BETWEEN: ERAIAH S/O THOPAIAH AGED ABOUT46YEARS, RESIDENT OF GOORANAHALLY EXTENSION, CHANNARAYAPATNA TOWN AND TALUK, HASSAN DISTRICT - 573 116. APPELLANT (BY SRI GIRISH B.BALADARE, ADVOCATE) AND:

1. THE BRANCH MANAGER THE ORIENTAL INSURANCE CO. LTD., BRANCH OFFICE, JAYADEVA HOSTEL BUILDING, B.H.ROAD, TIPATUR, TUMAKURU DISTRICT - 572 103.

2. A.J.RAVI S/O JAVAREGOWDA RESIDENT OF ANEKERE VILLAGE AND POST, DANDIGANAHALLY HOBLI, CHANNARAYAPATANA TALUK, - 2 - HASSAN DISTRICT - 573 116. RESPONDENTS (BY SRI H.S.LINGARAJ, ADV. FOR R1 R2-SERVED) THIS APPEAL IS FILED UNDER SECTION1731) OF MV ACT AGAINST THE

JUDGMENT
AND AWARD DATED226.2011 PASSED IN MVC.NO.156/2011 ON THE FILE OF PRESIDING COURT, CHANNARAYAPATNA, PARTLY ALLOWING THE CLAIM PETITION SEEKING ENHANCEMENT OF COMPENSATION AND FIXING LIABILITY ON INSURANCE COMPANY. COMPENSATION TRACK OFFICER, FAST FOR AND M.F.A.NO.7538/2011: BETWEEN: SRI KUMARASWAMY S/O LATE JAVARE GOWDA AGED ABOUT43YEARS, RESIDENT OF GANESHANAGAR EXTENSION, CHANNARAYAPATANNA TOWN AND TALUK, HASSAN DISTRICT - 573 116. APPELLANT (BY SRI GIRISH B.BALADARE, ADVOCATE) AND:

1. THE BRANCH MANAGER THE ORIENTAL INSURANCE CO. LTD., BRANCH OFFICE, JAYADEVA HOSTEL BUILDING, B.H.ROAD, TIPATUR, TUMAKURU DISTRICT - 572 103.

2. A.J.RAVI S/O JAVAREGOWDA RESIDENT OF ANEKERE VILLAGE AND POST, DANDIGANAHALLY HOBLI, CHANNARAYAPATANA TALUK, - 3 - HASSAN DISTRICT - 573 116. RESPONDENTS (BY SRI H.S.LINGARAJ, ADV. FOR R1 R2-SERVED AND UNREPRESENTED) OFFICER, FAST THIS APPEAL IS FILED UNDER SECTION1731) OF MV ACT AGAINST THE

JUDGMENT
AND AWARD DATED226.2011 PASSED IN MVC.NO.155/2011 ON THE FILE OF PRESIDING COURT, CHANNARAYAPATNA, PARTLY ALLOWING THE CLAIM PETITION SEEKING ENHANCEMENT OF COMPENSATION AND FIXING LIABILITY ON INSURANCE COMPANY. M.F.A.NO.7510/2011: BETWEEN: COMPENSATION TRACK FOR AND1 SHASHIREKHA @ SHASHIKALA W/O LATE MANOHAR AGED ABOUT43YEARS2 C.M.ARUNESH S/O LATE MANOHAR AGED ABOUT18YEARS3 C.M.GANESH S/O LATE MANOHAR

AGED ABOUT16YEARS, 4. C.P.ERANNACHAR S/O LATE PUTTACHAR, AGED ABOUT78YEARS, 5. SMT.KAMAKSHAMMA W/O C.P.ERANNACHAR, AGED ABOUT60YEARS, APPELLANT NO.3 IS MINOR REPRESENTED BY HER MOTHER APPELLANT NO.1 AS NATURAL GUARDIAN.-. 4 - ALL THE APPELLANTS NO.1 TO5ARE RESIDING AT RAMAMANDIRA ROAD, KEREBIDI, WARD NO.22, CHANNARAYAPATANNA TOWN HASSAN DISTRICT - 573 116. APPELLANTS (BY SRI GIRISH B.BALADARE, ADVOCATE) AND:

1. THE BRANCH MANAGER THE ORIENTAL INSURANCE CO. LTD., BRANCH OFFICE, JAYADEVA HOSTEL BUILDING, B.H.ROAD, TIPATUR, TUMAKURU DISTRICT - 572 103.

2. A.J.RAVI S/O JAVAREGOWDA RESIDENT OF ANEKERE VILLAGE AND POST, DANDIGANAHALLY HOBLI, CHANNARAYAPATANA TALUK, HASSAN DISTRICT - 573 116. RESPONDENTS (BY SRI H.S.LINGARAJ, ADV. FOR R1 R2-SERVED) THIS APPEAL IS FILED UNDER SECTION1731) OF MV ACT AGAINST THE

JUDGMENT
AND AWARD DATED226.2011 PASSED IN MVC.NO.74/2011 ON THE FILE OF PRESIDING COURT, CHANNARAYAPATNA, PARTLY ALLOWING THE CLAIM PETITION SEEKING ENHANCEMENT OF COMPENSATION AND FIXING LIABILITY ON INSURANCE COMPANY. COMPENSATION TRACK OFFICER, FAST FOR AND - 5 - M.F.A.NO.7536/2011: BETWEEN: JAYAMMA W/O S.V.OBANAYAKA AGED ABOUT43YEARS, RESIDENT OF CHANNAIGARAYYA EXTENSION, CHANNARAYAPATANNA TALUK, HASSAN DISTRICT - 573 116. APPELLANT (BY SRI GIRISH B.BALADARE, ADVOCATE) AND:

1. THE BRANCH MANAGER THE ORIENTAL INSURANCE CO. LTD., BRANCH OFFICE, JAYADEVA HOSTEL BUILDING, B.H.ROAD, TIPATUR, TUMAKURU DISTRICT - 572 103.

2. A.J.RAVI S/O JAVAREGOWDA RESIDENT OF ANEKERE VILLAGE AND POST, DANDIGANAHALLY HOBLI, CHANNARAYAPATANA TALUK, HASSAN DISTRICT - 573 116. RESPONDENTS (BY SRI H.S.LINGARAJ, ADV. FOR R1

R2-SERVED AND UNREPRESENTED) THIS APPEAL IS FILED UNDER SECTION1731) OF MV ACT AGAINST THE

JUDGMENT
AND AWARD DATED226.2011 PASSED IN MVC.NO.154/2011 ON THE FILE OF PRESIDING COURT, CHANNARAYAPATNA, PARTLY ALLOWING THE CLAIM PETITION SEEKING ENHANCEMENT OF COMPENSATION AND FIXING LIABILITY ON INSURANCE COMPANY. COMPENSATION TRACK OFFICER, FAST FOR AND - 6 - M.F.A.NO.7539/2011: BETWEEN: LAKKAPPAGOWDA S/O HUCHEGOWDA AGED ABOUT64YEARS, RESIDENT OF CHANNAPURA VILLAGE, DANDIGANAHALLY HOBLI, CHANNARAYAPATANA TALUK, HASSAN DISTRICT - 573 116. APPELLANT (BY SRI GIRISH B.BALADARE, ADVOCATE) AND:

1. THE BRANCH MANAGER THE ORIENTAL INSURANCE CO. LTD., BRANCH OFFICE, JAYADEVA HOSTEL BUILDING, B.H.ROAD, TIPATUR, TUMAKURU DISTRICT - 572 103.

2. A.J.RAVI S/O JAVAREGOWDA RESIDENT OF ANEKERE VILLAGE AND POST, DANDIGANAHALLY HOBLI, CHANNARAYAPATANA TALUK, HASSAN DISTRICT - 573 116.

3. B.T.NAGARAJU S/O THIMMEGOWDA AGED ABOUT32YEARS, AUTO DRIVER, JUNJANAHALLY VILLAGE, SHANTHIGRAMA HOBLI, HASSAN TALUK AND DISTRICT - 573 201. RESPONDENTS (BY SRI H.S.LINGARAJ, ADV. FOR R1 R2-SERVED) - 7 - THIS APPEAL IS FILED UNDER SECTION1731) OF MV ACT AGAINST THE

JUDGMENT
AND AWARD DATED226.2011 PASSED IN MVC.NO.169/2011 ON THE FILE OF PRESIDING COURT, CHANNARAYAPATNA, PARTLY ALLOWING THE CLAIM PETITION SEEKING ENHANCEMENT OF COMPENSATION. COMPENSATION TRACK OFFICER, FAST FOR AND THESE APPEALS COMING ON FOR THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

Claimants in MVC.Nos.74, 154, 155, 156 and 169/2011 on the file of MACT, Channarayapatna have come up in these appeals seeking modification of the common judgment and award dated 22.6.2011, wherein the claim petitions filed by claimants seeking compensation for the injuries suffered in road traffic accident dated 1.1.2008 involving autorickshaw bearing registration No.KA-13/A.341 are allowed and liability to pay compensation is saddled on the first respondent in said common judgment, who is the owner of aforesaid autorickshaw. Though these appeals have come up for admission, since lower court record is received, at the request of counsel for parties, they are taken up for final disposal.-. 8 - 2. Admittedly, as on the date of accident the driver of offending autorickshaw was not having valid driving licence to drive the same. In that view of the matter, the tribunal while fastening the liability to pay compensation has decided to saddle the same on the owner of autorickshaw. The claimants being aggrieved by the same have come up in these five appeals seeking modification of the aforesaid judgment and award, seeking to shift the liability to pay compensation on insurance company and also for enhancement of compensation.

3. Heard the learned counsel for the parties and perused the judgment impugned, pleadings, oral and documentary evidence available on record with reference to lower court record. On going through the same, it is seen that admittedly, the liability of insurance company is based on contractual obligation between the owner and insurer of vehicle, wherein insurer agrees and undertakes to indemnify the liability of owner provided, he complies with all the obligations in the policy issued and one of that is entrusting the vehicle to a person having valid driving licence. When once the owner has failed to adhere to the terms and conditions and when he - 9 - allows there to be breach in the terms and conditions between himself and insurer-indemnifier, then he loses his right to seek indemnification from the insurance company.

4. Now coming to the right of claimants is concerned, primarily the right of claimants to seek compensation is against the tort feasor, namely driver of autorickshaw, who caused the accident. Since the autorickshaw was entrusted to the driver by its registered owner, he is vicariously liable to answer the claim. In that view of the matter, first respondent before the tribunal, who is the owner of

autorickshaw is answerable to the claimants. He can only seek indemnification of said obligation from the insurance company provided, he has adhered to the policy conditions. In the absence of the same, question of shifting liability on insurance company either with an observation that insurance company should pay compensation and thereafter to recover from the owner is not permissible. This Court has absolutely no right of whatsoever nature under any statutory law to fasten such liability on insurance company when admittedly the insurance company has no obligation to indemnify the liability of owner. Therefore, this - 10 - Court has no right to direct the insurance company to pay compensation and to direct the insurer to litigate against the owner to recover the same. In that view of the matter, this Court find that no justifiable grounds are made out to consider these five appeals filed by the claimants seeking to shift the liability to pay compensation on the insurer of offending vehicle.

5. So far as enhancement of compensation is concerned, on going through the common judgment and award, it is seen that the tribunal on proper appreciation of material on record has rightly awarded compensation to each of the claimants. In that view of the matter, interference with the same is not called for. Accordingly, these five appeals are dismissed. nd/- SD/- JUDGE

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