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Sri A Murali Vs. Paramakusham

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Court : Karnataka

Decided On : Sep-28-2020

Judge : H.P.Sandesh

Appeal No. : MFA 183/2010

Appellant : Sri A Murali

Respondent : Paramakusham

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE28H DAY OF SEPTEMBER, 2020 BEFORE THE HON'BLE MR. JUSTICE H.P. SANDESH M.F.A.No.183/2010 (MV) C/W M.F.A.No.6743/2011 (MV) IN M.F.A.No.183/2010: BETWEEN: SRI A. MURALI, AGED ABOUT38YEARS, S/O ARULDAS R/AT NO.568, OPP. TO BSNL TOWER ANDERSONPET, K.G.F. APPELLANT (BY SMT. SUGUNA R. REDDY, ADVOCATE) AND:

1. PARAMAKUSHAM, MAJOR IN AGE, R/AT NO.2, F-BLOCK, B.C.C. QUARTERS, V.S. GARDEN, PADARAYANAPURA, BENGALURU-560 026.

2. THE BRANCH MANAGER, UNITED INDIA INSURANCE COMPANY LTD., NO.109, S.S.I. AREA, RAJAJINAGAR5H BLOCK, NEXT TO DASASHARAM, 2 DR. RAJKUMAR ROAD, BENGALURU-560 010. ... RESPONDENTS (BY SRI MOHAN KUMAR T., ADVOCATE FOR R-2, R1 - VIDE COURT

ORDER

DATED1812.2014 SERVICE OF NOTICE HELD SUFFICIENT) THIS M.F.A IS FILED UNDER SECTION1731) OF MV ACT AGAINST THE

JUDGMENT
AND AWARD DATED2710.2009 PASSED IN MVC.NO.34/2006 ON THE FILE OF THE PRESIDING OFFICER, FAST TRACK COURT, MACT, K.G.F., PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION. IN M.F.A.No.6743/2011: BETWEEN: THE UNITED INDIA INSURANCE COMPANY LIMITED, NO.109, SSI AREA, RAJAJINAGAR5H BLOCK, NEXT TO DASASHARAM, DR. RAJKUMAR ROAD, BENGALURU-560 010. REPRESENTED BY THE MANAGER UNITED INDIA INSURANCE CO. LTD., REGIONAL OFFICE, 5TH & 6TH FLOOR, KRISHI BHAVAN, NRUPATHUNGA ROAD, BENGALURU-560 001. APPELLANT (BY SRI MOHAN KUMAR T., ADVOCATE) AND:

1. SMT. KRISHTE, AGED ABOUT41YEARS, W/O RAMESH BABU @ AUTO BABU. 3

2. KUM. R. SARANYA, AGED ABOUT20YEARS, D/O LATE RAMESH BABU.

3. MASTER R. RAJESH, ABOUT18YEARS, S/O LATE RAMESH BABU.

4. MASTER R. SURESH, AGED ABOUT16YEARS, S/O LATE RAMESH BABU. RESPONDENTS NO.3 AND4BEING MINORS REPRESENTED BY NATURAL GUARDIAN SMT. KRISHTI- MOTHER - R-1. RESPONDENT NOS.1 TO4ARE RESIDING AT No.A/15, CAR SHAFT, NEAR MEDAL HOUSE, MARIKUPPAM, K.G.F.

5. SRI PARAMA KUSHAM, MAJOR, R/O NO.2, F-BLOCK, B.C.C. QUARTERS, V.S. GARDEN, PADARAYANAPURA, BENGALURU-26. ... RESPONDENTS (BY SRI K. VISHWANATHA AND SRI T.V. NANJEGOWDA, ADVOCATES FOR R-1 TO R-4, R-4 MINOR AND REPRESENTED BY R-1, R-5 - VIDE COURT

ORDER
DATED1611.2015, PAPER PUBLICATION IS ACCEPTED) THIS M.F.A IS FILED UNDER SECTION1731) OF MV ACT AGAINST THE

JUDGMENT
AND AWARD DATED3105.2011 PASSED IN M.V.C.NO.07/2010 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND MACT, K.G.F., AWARDING A COMPENSATION OF Rs.4,70,000/- WITH INTEREST @ 6% P.A. FROM THE DATE OF PETITION. 4 THESE M.F.As. HAVING BEEN HEARD AND RESERVED FOR

JUDGMENT
ON2109.2020, THIS DAY THE COURT PRONOUNCED THE FOLLOWING:

JUDGMENT

M.F.A.No.183/2010 is filed by the claimant challenging the judgment and award dated 27.10.2009, passed in M.V.C.No.34/2006, on the file of the Fast Track Court, KGF (the Tribunal for short), questioning the quantum of compensation awarded.

2. M.F.A.No.6743/2011 is filed by the Insurance Company challenging the judgment and award dated 31.05.2011, passed in M.V.C.No.7/2010, on the file of the Principal Senior Civil Judge and MACT, KGF (the Tribunal for short), questioning the maintainability of the petition under Section 163A of the Motor Vehicles Act, 1988 (the Act for short) and granting compensation of Rs.4,70,000/- with interest at the rate of 6% per annum from the date of petition till realization.

3. These two appeals are arising out of the same accident, which took place on 20.9.2006. Hence, both the appeals are 5 taken up for common disposal, even though the judgment and award are distinct.

4. The parties are referred to as per their original rankings before the Tribunal to avoid the confusion and for the convenience of the Court.

5. The factual matrix of the case is that the claimants in M.V.C.No.7/2010 are the legal heirs of the deceased Ramesh Babu @ Auto Babu. The claimant in M.V.C.No.34/2006 is the claimant, who suffered the injury in the accident. The case of the claimants before the Tribunal is that on 20.9.2006, the deceased

Ramesh Babu and the claimant Murali had been to Bengaluru for their personal work and while returning to KGF from Bengaluru in a auto rickshaw bearing registration No.KA-02/4424, the injured traveled as a passenger along with the deceased Ramesh Babu. The said vehicle was driven by Auto Babu. At about 11.30 p.m., they reached a place in between Hudukula Gate - Basaveshwara Solvents on Kolar - Bangarpet Main Road. At that time, the said auto rickshaw came to repair. Ramesh Babu, the driver of the auto rickshaw stopped the auto rickshaw on the left 6 side of the road and got down of the auto rickshaw and he was repairing the same. He instructed the claimant/injured to put the torch at the backside of the auto rickshaw so as to help him in repairing the auto rickshaw. At that time, an unknown 407 tempo came from Kolar side in a rash and negligent manner at high speed and dashed against the injured/claimant and so also the driver of the auto rickshaw. Due to the said impact, both of them sustained injuries and the injured Ramesh Babu succumbed to the injuries. The other claimant sustained injuries and he took treatment by spending huge money.

6. In both the claim petitions, notices were issued against the respondents. Respondent No.1 remained absent and was placed exparte. Respondent No.2 - Insurance Company appeared through their counsel and filed the written statement denying the averments made in the claim petitions and denied the very accident. It also contended that there was no negligence on the part of the driver of the auto rickshaw and the entire negligence is of the unknown tempo. The vehicle was also not having valid permit to drive outside Bengaluru i.e., to drive 7 the vehicle from Bengaluru to Bangarpet. Hence, there is a violation of the terms and conditions of the policy.

7. The claimant in M.V.C.No.34/2006 examined himself as P.W.1 and also examined the doctor as P.W.2 and got marked the documents at Exs.P.1 to 12. The Insurance Company also examined one witness as R.W.1.

8. The claimants in M.V.C.No.7/2010 have examined the first claimant as P.W.1 and got marked the documents at Exs.P.1 to 7. The respondents examined one witness as R.W.1 and got marked the documents at Exs.R.1 and 2.

9. The Tribunal after considering the case in M.V.C.No.34/2006, allowed the claim petition in part granting compensation of Rs.1,40,540/- with interest at the rate of 6% per annum from the date of petition till realization.

10. The Tribunal also allowed M.V.C.No.7/2010 in part granting compensation of Rs.4,70,000/- with interest at the rate of 6% interest per annum from the date of petition till realization. The liability was fastened on the Insurance Company. 8

11. In the appeal filed by the Insurance Company (M.F.A.No.6743/2011) two grounds are mainly urged that the vehicle was plied outside the permit limit. Hence, the Insurance Company is not liable to pay the compensation and the compensation awarded on the other heads cannot exceed Rs.4,500/- since the claim petition is filed under Section 163A of the Act. The other contention of the Insurance Company is that the Tribunal failed to appreciate that the deceased Ramesh Babu had purchased the vehicle in question from the RC book owner and he was driving the vehicle and therefore he becomes the ostensible owner of the vehicle and no claim petition can be maintained by the owner even under Section 163A of the Act.

12. The learned counsel for the appellant in M.F.A.No.6743/2011 would submit that the claim petition filed by the legal heirs of Ramesh Babu is not maintainable. In support of his contentions, he relied upon the judgment of this Court in the case of SMT. SANGEETHA AND OTHERS v. SRI KRISHNA CHARI AND ANOTHER reported in (2019) 1 KCCR199 Relying upon paragraph No.17 of the said judgment, the 9 learned counsel submits that in the case of an accident where the person who is killed or injured is himself responsible for the accident without the involvement of any other vehicle or agency, no liability qua the insured would arise except where the person who is killed or injured is an employee of the insured and the accident arises out of his employment.

13. The learned counsel also relied upon the Apex Courts judgment in the case of NINGAMMA AND ANOTHER v. UNITED INDIA INSURANCE CO. LTD. reported in 2009 ACJ2020 Referring this judgment, the learned counsel would submit that in a petition under Section 163A of the Act, the claim was not maintainable as there was no tort-feasor involved and no legal representatives of a person driving

a vehicle after borrowing it from the owner meets with accident without involving any other vehicle would be entitled to claim compensation under Section 163A of the Act. It is also held that borrower step into the shoes of the owner and owner cannot himself be a recipient of compensation as liability to pay the same is on him. 10

14. The learned counsel also relied upon the judgment of this Court in the case of ORIENTAL INSURANCE CO. LTD. BANGALORE v. SMT. PANI DEVI AND ANOTHER reported in 2019 (3) KCCR2606 wherein it is held that Section 163A of the Act starts with non-obstante clause allows that in case of death occurring out of use of insured vehicle, the insurer shall be held responsible to compensate victim heirs. Section 163A thus, presumes that claimant cannot be owner and petition on behalf of deceased son of owner cannot be considered as petition by third party. The deceased being son of owner steps into shoes of owner. Hence, claim petition is not maintainable.

15. The learned counsel also relied upon the judgment of this Court in the case of DIVISIONAL MANAGER, UNITED INDIA INSURANCE COMPANY LTD. v. KAMALAMMA reported in LAWS (KAR) 2018 11 134, wherein it is held that claim petitions were not maintainable under Section 163A of the Act for the reason that the claimants in both the cases stepped into the shoes of owner of the vehicle, since the vehicle was borrowed from the real owner of the vehicle. 11

16. The learned counsel also relied upon the judgment of Apex Court in the case of ORIENTAL INSURANCE COMPANY LIMITED v. RAJNI DEVI AND OTHERS reported in (2008) 5 SCC736and brought to my notice paragraph Nos.5, 7, 11 and 12 and contended that the liability under Section 163A of the Act is on the owner of the vehicle since a person cannot be both, a claimant as also a recipient. The heirs of the deceased could not have maintained a claim in terms of Section 163A of the Act.

17. The learned counsel for the Insurance Company has filed I.A.No.1/2020 seeking permission of this Court to produce the additional document i.e., the insurance policy. In support of the application, an affidavit is sworn to that the owner of the auto rickshaw did not appear and contest the case before the

Tribunal. Hence, the Tribunal directed the owner to pay the compensation even though the claim petition was not maintainable under Section 163A of the Act and hence the Insurance Company may be permitted to produce the document.

18. The application is not resisted by filing objections in writing, but is orally opposed contending that the policy issued 12 by the Insurance Company is not in dispute and even if the same is produced, it will not make any changes.

19. The learned counsel for respondent Nos.1 to 4 in M.F.A.No.6743/2011 would contend that the Tribunal has not committed any error in fastening the liability on the Insurance Company even though the claim petition is under Section 163A of the Act. As on the date of the accident, the claimants in M.V.C.No.7/2010 have not stepped into the shoes of the deceased and the RC was in the name of the earlier owner and the same was not transferred in favour of deceased Ramesh Babu.

20. The learned counsel for the appellant/claimant in M.F.A.No.183/2010 would submit that the Tribunal has committed an error in not awarding just and reasonable compensation and the compensation awarded is very meager and the medical bills are also not allowed. Hence, it requires interfere of this Court. 13

21. The learned counsel would also submit that policy discloses for having received the premium in respect of the passengers also and the claimant is a third party. The learned counsel in support of her arguments relied upon the judgment of this Court in the case of RAMA BOMMAYYA NAIK AND OTHERS v. ANILKUMAR AYYAPPAN PILLAI reported in 2018 (4) AKR17and would contend that the claim petition filed under Section 163A of the Act when the income is within the limit of Rs.40,000/-, the claimants are entitled for a compensation under structured formula and requirement to prove rash and negligent driving on the part of the driver is not necessary. This Court also relied upon the judgment of GURUANNA VADI AND ANOTHER v. GENERAL MANAGER, KARNATAKA STATE ROAD TRANSPORT CORPORATION AND ANOTHER reported in AIR 2001 KAR275 wherein it is held that the deceased driving the motor vehicle after borrowing from real owner - defence of insurer that deceased himself being tort-feasor, stepped into shoes of owner - insurer cannot raise defence with regard to negligence on part of deceased in the proceedings under Section 163-A of the Act.

22. The learned counsel also relied upon the judgment of the Apex Court in the case of NATIONAL INSURANCE COMPANY LIMITED v. SINITHA AND OTHERS reported in (2012) 2 SCC356 Referring the said judgment, the learned counsel submits that under Section 140 of the Act, both claimant and defence are precluded from raising ground of fault. Section 163A of the Act are independent and have overriding effect on all provisions of the Act. Hence, the claimants can maintain the petition.

23. The learned counsel also relied upon the judgment of the Apex Court in the case of SAPNA v. UNITED INDIA INSURANCE CO. LTD. AND ANOTHER reported in AIR 2008 SC2281and brought to my notice paragraph No.11 of the judgment wherein it is held that what would, however, be just and fair amount of compensation is required to be determined having regard to the facts and circumstances of the case involved. Hence, the Tribunal has not awarded just and reasonable compensation in a case of injury. 15

24. The counsel also contend that the very contention of the Insurance Company that the petition is not maintainable under Section 163A of the Act, cannot be accepted for the reason that in the written statement nowhere it is contended that the claim petition is not maintainable and in the written statement contention was taken with regard to the violation of permit. Hence, the appellant Insurance Company cannot raise the issue of maintainability of the petition under Section 163A of the Act.

25. The learned counsel for the Insurance Company would submit that though there was a pleading that both of them have traveled as passengers, it is emerged in the evidence that the injured/claimant is the friend of the deceased and when he was proceeding as a friend and not as a passenger, the claim petition filed by the injured claimant is also not maintainable and he steps into shoes of the owner. Hence, both the Tribunals have committed an error in entertaining the claim petition.

26. Having heard the arguments of the learned counsel for the appellant in both the appeals and the learned counsel for 16 the respondents and on perusal of material on record, the points that arise for the consideration of this Court are: (i) Whether both the Tribunals have committed an error in entertaining the claim petitions and it requires interfere of this Court?. (ii) Whether the Tribunal has committed an error in fastening the liability on the Insurance Company even though there was a violation of the permit conditions?. (iii) Whether the Tribunal has committed an error in not awarding just and reasonable compensation as contended in M.F.A.No.183/2010?. (iv) Whether the Insurance Company has made out a ground to allow the application filed under Order 41 Rule 27 of CPC to produce the additional document?. Point No.(i):

27. On perusal of both the claim petitions, it is clear that the petitions are filed under Section 163A of the Act. In M.V.C.No.34/2006, it was pleaded that both the claimant and the deceased were returning from Bengaluru after attending to 17 their personal work, in the auto rickshaw. In M.V.C.No.7/2010, the legal heirs of the deceased have pleaded that the deceased Ramesh Babu @ Auto Babu along with his friend Murali had been to Bengaluru for purchasing the auto rickshaw for his livelihood. After having purchased the same, they were returning from Bengaluru to KGF in the auto rickshaw and the said auto rickshaw was not in order and in order to repair the same, they got down from the auto rickshaw. At that time, an unknown 407 tempo came in a rash and negligent manner and dashed against both of them. As a result, they sustained injuries.

28. Having considered the pleadings of both the petitions in M.V.C.No.34/2006 the pleadings are that both of them were returning as passengers in the auto rickshaw. But the story of M.V.C.No.7/2010 is different that after purchasing the auto rickshaw they were returning. It is important to note that in the cross-examination, though the claimant in M.V.C.No.34/2006 has pleaded that they were returning as passengers, he categorically admits that after having purchased the auto rickshaw, the accident had taken place. Hence, in view of the 18 pleadings in M.V.C.No.7/2010 and admission in M.V.C.No.34/2006, it is clear that they were returning after purchasing the auto rickshaw. On perusal of the complaint Ex.P.1, which was given against the driver of the unknown tempo, an allegation is made

against the driver of the unknown tempo and case is also registered against the driver of the tempo. The document Ex.P.2 - IMV report discloses the damage caused to the auto rickshaw. The complainant is none other than the claimant in M.V.C.No.34/2006 and in the complaint he has specifically pleaded that both of them went to Bengaluru and purchased auto rickshaw from one Baba and paid the amount of Rs.14,500/- as advance out of the sale consideration of Rs.25,000/- and remaining amount was to be paid on Monday. Hence, it is clear that the vehicle was purchased from one Baba and they were returning in the said auto rickshaw.

29. Having perused both oral and documentary evidence placed on record, it is clear that they were traveling in the auto rickshaw after purchasing the auto rickshaw and other injured claimant was a friend of Ramesh Babu. It has to be noted that 19 R.W.1 is also examined on behalf of the Insurance Company and it is specifically sworn to an affidavit that there was no valid permit and the vehicle was plied in the jurisdiction of Bangarpet and permit was given to operate within Bengaluru Corporation area. R.W.1 was subjected to cross-examination.

30. In the cross-examination, he admits that he did not witness the accident and based on the documents he is deposing. He further says that the Company has investigated the matter after the accident, but they have not produced any investigation report. It is admitted that in the police document, they have not written that there is no permit and driving licence. He also admits that auto rickshaw was insured with the Company and policy was in force as on the date of the accident. He further admits that on the date of the accident, the petitioner was traveling in the auto rickshaw as a passenger.

31. Having taken note of the material available on record, it is clear that both of them were returning in the auto rickshaw after purchasing the auto rickshaw. 20

32. Now the question before this Court is whether both the claimants can maintain the petition for seeking the compensation. The claimants in M.V.C.No.7/2010 are the legal heirs of the deceased Ramesh Babu. A specific pleading was there in the pleading as well as in the evidence that the vehicle was purchased by Ramesh Babu and he was retuning to his Village and out of the consideration of Rs.25,000/-, Rs.14,500/- was paid in terms of the complaint of injured Murali.

33. In the judgment referred by the learned counsel for the Insurane Company in the case of Sangeetha (supra) there is no dispute with regard to the fact that Section 163A of the Act is not maintainable without involvement of any other vehicle or agency where the injured himself is responsible for the accident. The factual aspects of the reported case is not applicable to the case on hand. Here is a case of involvement of two vehicles and no doubt the other vehicle involved in the accident was not traced. The principles laid down in the judgment of Ningammas case (supra) is also not applicable. In the said case, the Apex Court held that the borrower of the vehicle steps 21 into the shoes of the owner and in this case he is not the borrower.

34. This Court in the case of Pani Devi (supra) has held that either the owner or the deceaseds son cannot maintain a petition under Section 163A of the Act. It further held that the deceased being the son of owner steps into shoes of owner and petition cannot be maintained. This Court in the judgment in the case of Kamalamma (supra) has held that claim petitions are not maintainable under Section 163A of the Act for the reason that the claimants in both the cases stepped into the shoes of the owner of the vehicle, since the vehicle was borrowed from the real owner of the vehicle.

35. The Apex Court in the judgment in the case of Rajni Devi (supra), has held that the liability under Section 163A of the Act is on the owner of the vehicle as a person cannot be both, a claimant and also a recipient.

36. Having considered the principles laid down in the judgments referred (supra) by the respective learned counsel 22 and also the material on record, this Court would like to refer to the judgment of the Apex Court in the case of NAVEEN KUMAR v. VIJAY KUMAR AND OTHERS reported in (2018) 3 SCC1 The Apex Court in this judgment referring Sections 2(30), 50, 166, 168, 173, 146(1) and 196 of the Act, categorically held with regard to the definition of owner and this Court would like to emphasis the relevant paragraph Nos.13 and 14 of the judgment. Paragraph Nos.13 and 14 of the judgment reads as follows: 13. The consistent thread of reasoning which emerges from the above decisions is that in view of the definition of the expression owner in Section 2(30), it is the person in whose name

the motor vehicle stands registered who, for the purposes of the Act, would be treated as the owner. However, where a person is a minor, the guardian of the minor would be treated as the owner. Where a motor vehicle is subject to an agreement of hire purchase, lease or hypothecation, the person in possession of the vehicle under that agreement is treated as the owner. In a situation such as the present where the registered owner has purported to transfer the vehicle but continues to be reflected in the records of the registering authority as the owner of the vehicle, he would not stand absolved of liability. Parliament has 23 consciously introduced the definition of the expression owner in Section 2(30), making a departure from the provisions of Section 2(19) in the earlier 1939 Act. The principle underlying the provisions of Section 2(30) is that the victim of a motor accident or, in the case of a death, the legal heirs of the deceased victim should not be left in a state of uncertainty. A claimant for compensation ought not to be burdened with following a trail of successive transfers, which are not registered with the registering authority. To hold otherwise would be to defeat the salutary object and purpose of the Act. Hence, the interpretation to be placed must facilitate the fulfilment of the object of the law. In the present case, the First respondent was the owner of the vehicle involved in the accident within the meaning of Section 2(30). The liability to pay compensation stands fastened upon him. Admittedly, the vehicle was uninsured. The High Court has proceeded upon a misconstruction of the judgments of this Court in Reshma and Purnya Kala Devi.

14. The submission of the petitioner is that a failure to intimate the transfer will only result in a fine under Section 50(3) but will not invalidate the transfer of the vehicle. In T V Jose, this Court observed that there can be transfer of title by payment of consideration and delivery of the car. But for the purposes of the Act, the person whose name is reflected in the records of the registering authority is the owner. The owner within the meaning of 24 Section 2(30) is liable to compensate. The mandate of the law must be fulfilled.

37. Having considered the principles laid down in the judgment referred (supra), it is clear that the Apex Court in view of the definition of the expression owner in Section 2(30) of the Act held that for the purposes of the Act, in whose name the vehicle stands, would be treated as the owner. The Apex Court also further

discussed in paragraph No.13 of the judgment that the Parliament has consciously introduced the definition of the expression owner in Section 2(30), making a departure from the provisions of Section 2(19) in the earlier 1939 Act. The principle underlying the provisions of Section 2(30) is that the victim of a motor accident or, in the case of a death, the legal heirs of the deceased victim should not be left in a state of uncertainty. Hence, the very contention that the subsequent purchaser stands in the definition of owner, cannot be accepted. No doubt in the case on hand, there was a sale transaction and part payment was made, but the document stands in the name of the original owner and not in the name of the subsequent owner and for the purpose of the Act as defined and held by the 25 Apex Court, the RC owner should be treated as the owner. Hence, the contention of the Insurance Company that the legal heirs of the deceased cannot claim the compensation as they are the legal heirs of the owner, cannot be accepted. It is only an agreement between the parties and the same does not confers any right, unless the document is transferred in the name of the prospective purchaser. There are chances of rescinding the contract also and unless the document is transferred, they cannot step into the shoes of the owner and they are not the owner as on the date of the accident as per law. Hence, the Insurance Company cannot absolve its liability. Apart from that, admittedly two vehicles are involved in the accident and the claim petition is filed under Section 163A of the Act and no doubt the other vehicle involved in the accident was not traced. When the petition is filed under Section 163A of the Act, the victim can claim the compensation from any owner of the vehicle. In the case on hand, there is insurance and liability has to be fastened against the insured. 26

38. Insofar as M.V.C.No.34/2006 is concerned, there is no doubt that the injured/claimant was a friend of the deceased Ramesh Babu. The very contention of the learned counsel for the Insurance Company that the said petition is also not maintainable, cannot be accepted. Merely because he was a friend, he cannot step into shoes of the owner and he has not borrowed the vehicle from the owner or he is the legal representatives of the owner. The ownership is also not changed and only there was a sale transaction and the same is also not completed and for the purpose of owner, the RC owner is the owner as held by the Apex Court. Hence, he is a third party who has traveled in the auto rickshaw and R.W.1

categorically admitted that he was a passenger.

39. On perusal of the policy, which is now sought to be produced shows that the premium is paid in respect of the passengers and apart from that R.W.1 who has been examined before the Tribunal has categorically admitted that the injured Murali was traveling as a passenger. Hence, the Insurance Company cannot blow hot and cold in one breath that he 27 stepped into shoes of the owner and also he was using the vehicle as a friend of the owner. Hence, the Tribunal has not committed any error in entertaining the claim petition of the injured Murali, who was petitioner in M.V.C.No.34/2006.

40. The judgments relied upon by the learned counsel for the claimants are not applicable to the case on hand for the reason that there is no dispute with regard to the accident and also it is not the claim of the Insurance Company that they are the tort-feasors and no doubt this Court held that in a petition under Section 163A of the Act, the insurer cannot raise the defence with regard to the negligence and no dispute with regard to the said fact. In the case on hand also two vehicles are involved in the accident and when the provisions of Section 163A of the Act is invoked, only the Court has to look into the use of the vehicle. The principles laid down in the judgment referred in the case of Sinitha (supra) is also not applicable to the case on hand since the claim petition is filed under Section 163A of the Act that too by the legal heirs of the owner, who had purchased the vehicle. 28

41. In view of the discussions made above, I answer point (i) in the negative. Point No.(ii):

42. The main contention of the learned counsel for the Insurance Company is that the vehicle was plied beyond the permit area and permit was given to operate the vehicle within Bangalore city. The accident took place outside the jurisdiction of Bengaluru i.e., in between Bengaluru and Bangarpet Road and there is no dispute that the vehicle was plied outside the permit area.

43. This Court would like to refer to the judgment of a Co- Ordinate Bench of this Court in the case of DURUGAMMMA v. S.G.NARESH AND OTHERS reported in 2017 (1) KLR251 This Court referring Section 207 of MV Act held that Section 207

empowers any police officer or other authorized person to seize and detain the vehicle for the contraventions of Sections 3, 4 or 39 or without the permit required by sub-section (1) of Section 66 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which 29 the vehicle may be used. This Court also observed that violation of permit condition are contemplated in Section 86 of the Act where the permit can be cancelled, penalty can be imposed under Section 192-A of the Act. Section 207(1) of the Act contemplates power to detain vehicles used without certificate of registration permit.

44. The Co-ordinate Bench of this Court in the case of THE DIVISIONAL MANAGER, UNITED INDIA INSURANCE CO. LTD., v. SMT. JAYAMMA AND OTHERS reported in ILR 2018 KAR1849also held that the deviation does not amount to fundamental breach and the same cannot be a infraction and hence the Insurance Company is liable to pay the compensation.

45. The Co-ordinate Bench of this Court in the case of S.N. KENCHANNA v. SMT. ANITHA AND OTHERS reported in ILR 2018 KAR3921in paragraph Nos.26, 27 and 28 has held that the deviation of route permit would not absolve the liability of the insurer as the same did not come within the purview of Section 149(2) of the Act. Apart from fact that the exemption under Section 66(2)(p) would be applicable in the present facts, 30 even otherwise, violation of permit conditions such as violation of route permit would not result in exoneration of the liability of the insurer.

46. Having perused the material available on record and also the principles laid down in the judgments referred (supra), if there is any deviation, the same does not amount to infraction and the same is not a fundamental breach. Hence, even though there was a deviation, the Insurance Company is liable to pay the compensation. In the case on hand, there was a deviation of the vehicle from Bengaluru to Bangarpet and the records also discloses that they were taking the auto rickshaw after purchasing the same. Hence, the Company is liable to pay the compensation. Hence, I answer point (ii) as negative. Point No.(iii):

47. The Tribunal has awarded compensation of Rs.1,40,540/- with interest at the rate of 6% per annum from the date of petition till realization, the break-up of which is as follows: Rs.90,000/- towards pain and sufferings, Rs.12,540/- towards diet and attendant charges, Rs.5,000/- towards food 31 and nourishment, Rs.25,000/- towards disability and unhappiness and Rs.8,000/- towards loss of wrist power.

48. The claimant examined himself as P.W.1 and also examined the doctor as P.W.2 and got marked the documents at Exs.P.1 to 12. The claimant particularly relied upon the wound certificate - Ex.P.4. In terms of the wound certificate, he has suffered comminuted fracture shaft of right humerus with supra condylar fracture, comminuted fracture of right humerus, bimalleolar fracture of right ankle with dislocation, fibula fracture long oblique, tibia comminuted right lower end with soft tissue injuries right calf, radial nerve injury to right side. The claimant has produced the discharge summary at Exs.P.6, 7 and 10 and has also produced the case sheet, which is marked as Ex.P.11. The doctor in the evidence says that he cannot lift his right wrist and assessed the disability to the extent of 22%. Ex.P.6 - discharge summary reveals that he was an inpatient at R.L. Jalappa Hospital from 21.09.2006 to 16.10.2006. Ex.P.7 another discharge summary shows that he took treatment at P.E.S. Medical College, Kuppam from 23.04.2008 to 10.05.2008 and 32 Ex.P.10 discloses that he was inpatient from 12.05.2007 to 31.05.2007.

49. Having taken note of the nature of injuries, the Tribunal has rightly awarded an amount of Rs.90,000/- towards pain and sufferings. However, the Tribunal has awarded an amount of Rs.17,540/- under the head diet and attendant charges and food and nourishment. Having taken note that he was an inpatient for a period of 64 days, the compensation awarded by the Tribunal is just and reasonable.

50. The doctor has assessed the disability at 22% to the whole body. The claimant is aged about 35 years and he has to lead his rest of his life with 22% disability. The Tribunal has committed an error in awarding only an amount of Rs.25,000/- under the head disability and unhappiness. The Tribunal failed to take note of the nature of the injures, particularly the comminuted fracture in respect of upper limb and lower limb. Hence, it is an appropriate case to award an amount of Rs.50,000/- under the head loss of amenities. 33

51. No compensation is awarded under the head future loss of income. The Tribunal failed to award any compensation under the head loss of income during laid up period and he was an inpatient for a period of 64 days. The claimant in his affidavit in paragraph No.4 has sworn to that he was earning Rs.3,000/- per month by working in BEML, KGF as a TCL employee in fire service. He claims that as a result of the injuries sustained by him, he became permanently crippled and not in a position to attend to his job and as such he has taken leave without salary, resulting in loss of earnings.

52. In the cross-examination, he admits that he has not produced any documents to show that he was an employee of BEML and also admits that he has not produced any documents to show that he was getting Rs.100/- per day. The claimant has also not produced any documentary proof with regard to his employment.

53. Having taken note of the fact that the accident took place in the year 2006 and the petition is filed under Section 163A of the Act, this Court can take the income as Rs.100/- per 34 day, which comes to Rs.3,000/- per month. The claimant has also not produced any documents to prove that he discontinued the job. A perusal of the discharge summary, which is marked as Exs.P.6, 7 and 10 discloses that he was an inpatient from 21.09.2006 to 16.10.2006, 23.04.2008 to 10.05.2008 and 12.05.2007 to 31.05.2007. No documents are produced before the Court that he was on leave on loss of salary. When the claimant has pleaded that he was an employee, he ought to have produced the leave certificate. Hence, this Court can take note of only 64 days, which is evident from the discharge summary and hence it is appropriate to award loss of income for a period of three months taking into note that he needs rest for one month also. Loss of income for laid up is considered for three months at the rate of Rs.3,000/- per month. Now loss of income for laid up period comes to Rs.9,000/- (Rs.3,000/- x 3). The amount of Rs.8,000/- awarded under the head loss of wrist power does not arise since he continued the job. 35

54. The claimants in M.V.C.No.7/2010 have not filed any appeal questioning the quantum of compensation awarded in the case and hence the same cannot be

reconsidered. Point No.(iv):

55. Having heard the arguments of the respective counsel and also the reasons assigned in the affidavit, admittedly there is no dispute with regard to the fact that the policy was in force as on the date of the accident. The only contention raised before this Court is that the owner did not choose to produce the copy of the policy. Hence the Insurance Company sought for production of the copy of the policy. This Court while answering point Nos.(i) and (ii) has held that the deviation will not come in the way of absolving the liability of the Insurance Company. It is further held that the petition is maintainable under Section 163A of the Act. When such being the case, when the policy is in force, which is admitted, even if the document is allowed, it will not change the result of the liability. Hence, I do not find any merit in the application to entertain the application in view of the discussions made above in detail considering the question of law. 36 Hence, the application is liable to be rejected. Hence, I answer point (iv) as negative.

56. In view of the discussions made above, I pass the following:

ORDER

(i) M.F.A.No.183/2010 is allowed partly. (ii) The impugned judgment and award of the Tribunal dated 27.10.2009, passed in M.V.C.No.34/2006, is modified granting compensation of Rs.1,66,540/- as against Rs.1,40,540/- with interest at 6% per annum from the date of petition till deposit. (iii) M.F.A.No.6743/2011 is dismissed. (iv) The amount in deposit, if any, be transmitted to the concerned Tribunal, forthwith. (v) The Registry is directed to send the records to the concerned Tribunal, forthwith. Sd/- JUDGE MD

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