

Ravikumar Vs. N Kumar

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Court : Karnataka

Decided On : Jun-08-2023

Judge : Hanchate Sanjeevkumar

Appeal No. : MFA 5338/2010

Appellant : Ravikumar

Respondent : N Kumar

Judgement :

- 1 - R NC:

2023. KHC:19681 MFA No.519 of 2011 C/W MFA No.5338 of 2010 MFA No.520 of 2011 MFA No.521 of 2011 MFA No.11148 of 2011 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE8H DAY OF JUNE, 2023 BEFORE THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR MISCELLANEOUS FIRST APPEAL No.519 OF2011(MV) C/W MISCELLANEOUS FIRST APPEAL No.5338 OF2010(MV), MISCELLANEOUS FIRST APPEAL No.520 OF2011(MV), MISCELLANEOUS FIRST APPEAL No.521 OF2011(MV) & MISCELLANEOUS FIRST APPEAL No.11148 OF 2011 MV) IN MFA No.519/2011 BETWEEN: ORIENTAL INSURANCE CO LTD CITY BANK OFFICE, NO.1, CSI THEJAS COMPLEX, SAYYAJI RAO ROAD, MYSORE THROUGH ITS REGIONAL OFFICE, # 44/45,LEO SHOPPING COMPLEX, RESIDENCY RD, BLORE25REP. BY ITS DEPUTY MANAGER, SRI K. GOVINDARAJAN

APPELLANT (BY SRI. B C SEETHARAMA RAO.,ADVOCATE) AND:

1. SRI RAVIKUMAR AGED ABOUT32YEARS, S/O THIMMAIAH, - 2 - NC:

2023. KHC:19681 MFA No.519 of 2011 C/W MFA No.5338 of 2010 MFA No.520 of 2011 MFA No.521 of 2011 MFA No.11148 of 2011 RESIDING AT NO.303, LOKANAikanAGAR,HEBBAL, MYSORE - 570 004.

2. SRI K. KUMAR, MAJOR S/O KRISHNA SHETTY, RESIDING AT KOPPA VILLAGE, MADDUR TALUK, MANDYA DISTRICT - 571 006. RESPONDENTS (SMT. ARCHANA MURTHY P., ADVOCATE FOR R2 R.1 SERVED) THIS MFA IS FILED U/S1731) OF MV ACT AGAINST THE

JUDGMENT

AND AWARD DATED0304.2010 PASSED IN MVC NO.1293/2006 ON THE FILE OF THE PRESIDING OFFICER, FAST TRACK COURT-IV, ADDITIONAL MACT, MYSORE, AWARDDING A COMPENSATION OF RS.29,000/- WITH INTEREST @ 6% P.A. FROM THE DATE OF PETITION TILL REALIZATION. IN MFA No.5338/2010 BETWEEN: RAVIKUMAR AGED ABOUT31YEARS, S/O THIMMAIAHD.No.303, LOKANAikanAGARA, MYSORE. APPELLANT (BY SRI. M. NAGESH, ADVOCATE FOR SRI.P NATARAJU., ADVOCATE) AND:

1. N KUMAR S/O KRISHNA SHETTY, - 3 - NC:

2023. KHC:19681 MFA No.519 of 2011 C/W MFA No.5338 of 2010 MFA No.520 of 2011 MFA No.521 of 2011 MFA No.11148 of 2011 KOPPA VILLAGE, MADDUR TALUK MANDYA DISTRICT.

2. THE ORIENTAL INSURANCE CO LTD CITY BANK OFFICE NO.1 CSI TEJAS COMPLEX, SAMPANGI RAO RD MYSORE REPRESENTED BY IT'S MANAGER. RESPONDENTS (R1 NOTICE DISPENSED WITH VIDE

ORDER

DATED2702.2012; SRI. B.C. SEETHARAMA RAO, ADVOCATE FOR R2) THIS MFA IS FILED U/S1731) OF MV ACT AGAINST THE

JUDGMENT

AND AWARD DATED 03/04/2010 PASSED IN MVC NO.1293/2006 ON THE FILE OF PRESIDING OFFICER, FAST TRACK COURT-IV & ADDITIONAL MACT, MYSORE, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION. IN MFA No.520/2011 BETWEEN: ORIENTAL INSURANCE CO., LTD., CITY BANK OFFICE NO.1, CSI THEJASCOMPLEX, SAYYAJI RAO ROAD, MYSORE THROUGH ITS REGIONAL OFFICE # 44/45 LEO SHOPPING COMPLEX, RESIDENCY RD, BANGALORE - 560 025. REREP. BY ITS DEPUTY MANAGER SRI, K. GOVINDARAJAN APPELLANT (BY SRI. B C SEETHARAMA RAO.,ADVOCATE) - 4 - NC:

2023. KHC:19681 MFA No.519 of 2011 C/W MFA No.5338 of 2010 MFA No.520 of 2011 MFA No.521 of 2011 MFA No.11148 of 2011 AND:

1. SMT MEENAKSHI AGED ABOUT 37 YEARS, W/O MOHAN SINGH, RESIDING AT NO.303, LOKANAIKANAGAR, HEBBAL, MYSORE - 570 021.

2. SRI K. KUMAR MAJOR S/O KRISHNA SHETTY RESIDING AT KOPPA VILLAGE, MADDUR TALUK, MANDYA DISTRICT RESPONDENTS (BY SRI. M. NAGESH, ADVOCATE FOR SRI.P NATARAJU, ADVOCATE FOR R1) THIS MFA IS FILED U/S 1731) OF MV ACT AGAINST THE

JUDGMENT

AND AWARD DATED 03/04/2010 PASSED IN MVC NO.1294/2006 ON THE FILE OF THE PRESIDING OFFICER, FAST TRACK COURT-IV, ADDITIONAL MACT, MYSORE, AWARDED A COMPENSATION OF Rs.5,000/- WITH INTEREST @ 6% P.A. FROM THE DATE OF PETITION TILL DEPOSIT. IN MFA No.521/2011 BETWEEN: ORIENTAL INSURANCE CO LTD CITY BRANCH OFFICE, NO.1, CSI THEJAS COMPLEX, SAYYAJI RAO ROAD, MYSORE THROUGH ITS REGIONAL OFFICE # 44/45, LEO SHOPPING COMPLEX, RESIDENCY RD BLORE 56002 REP BY ITS DEPUTY MANAGER SRI K. GOVINDARAJAN APPELLANT (BY SRI. B C SEETHARAMA RAO.,ADVOCATE) - 5 - NC:

2023. KHC:19681 MFA No.519 of 2011 C/W MFA No.5338 of 2010 MFA No.520 of 2011 MFA No.521 of 2011 MFA No.11148 of 2011 AND:

1. SRI NAGARAJU AGED ABOUT 47 YEARS, S/O MAYANNA, RESIDING AT No.303, LOKANAikanagar, HEBBAL, MYSORE - 570 021.

2. SRI K. KUMAR MAJOR, S/O KRISHNA SHETTY RESIDING AT KOPPA VILLAGE, MADDUR TALUK, MANDYA DISTRICT - 571 201. RESPONDENTS (BY SRI. ARCHANA MURTHY P. ADVOCATE FOR R2; R1 SERVED) THIS MFA IS FILED U/S1731) OF MV ACT AGAINST THE

JUDGMENT

AND AWARD DATED 03/04/2010 PASSED IN MVC NO.1295/2006 ON THE FILE OF THE PRESIDING OFFICER, FAST TRACK COURT-IV, ADDITIONAL MACT, MYSORE, AWARDED A COMPENSATION OF Rs.7,000/- WITH INTEREST @ 6% P.A. FROM THE DATE OF PETITION TILL DEPOSIT. IN MFA No.11148/2011 BETWEEN: THE ORIENTAL INSURANCE CO.LTD BRANCH OFFICE, TAPCMS COMPLEX K M ROAD, CHIKMAGALUR, REP BY THE REGIONAL MANAGER, THE ORIENTAL INSURANCE CO .LTD. REGIONAL OFFICE, 2ND FLOOR, - 6 - NC:

2023. KHC:19681 MFA No.519 of 2011 C/W MFA No.5338 of 2010 MFA No.520 of 2011 MFA No.521 of 2011 MFA No.11148 of 2011 SUMANAGALA COMPLEX, LAMINGTON ROAD, HUBLI- 20 APPELLANT (BY SRI.S.V. HEGDE MULKHAND., ADVOCATE) AND:

1. SRI MANJU @ MANJUNATH AGED ABOUT 33 YEARS S/O SANNEGOWDA BUSINESS, R/O HIRE BIDARE VILLAGE, THOGARIHANKAL POST CHIKMAGALUR TALUK.

2. SRI H B MEENAKSHEGOWDA AGED ABOUT 30 YEARS S/O H BHADREGOWDA R/O HIRE BIDARE VILLAGE, THOGARIHANKAL POST CHIKMAGALUR TALUK RESPONDENTS (BY SRI. N R RAVIKUMAR ., ADVOCATE FOR R2; R1 SERVED) THIS MFA IS FILED U/S1731) OF MV ACT AGAINST THE

JUDGMENT

AND AWARD DATED 23.09.2011 PASSED IN MVC NO.91/2008 ON THE FILE OF PRINCIPAL DISTRICT JUDGE & MACT, CHIKMAGALUR, AWARDED A COMPENSATION OF RS.34,000/- WITH INTEREST @ 6% P.A. FROM THE DATE OF PETITION TILL REALISATION. THESE APPEALS, COMING ON FOR FURTHER ARGUMENTS, THIS DAY, THE COURT DELIVERED THE FOLLOWING: - 7 - NC:

2023. KHC:19681 MFA No.519 of 2011 C/W MFA No.5338 of 2010 MFA No.520 of 2011 MFA No.521 of 2011 MFA No.11148 of 2011

JUDGMENT

MFA No.519/2011 is filed by the Insurance Company challenging the judgment and award dated 03.04.2010 passed in M.V.C.No.1293/2006 on the file of the Presiding Officer, FTC & MACT, Mysuru fastening the liability on the insurance company to pay the compensation.

2. MFA No.520/2011 is filed by the insurance company challenging the judgment and award dated 03.04.2010 passed in M.V.C.No.1294/2006 on the file of the Presiding Officer, FTC & MACT, Mysuru fastening the liability on the insurance company to pay the compensation.

3. MFA No.521/2011 is filed by the insurance company challenging the judgment and award dated 03.04.2010 passed in M.V.C.No.1295/2006 on the file of the Presiding Officer, FTC & MACT, Mysuru fastening the - 8 - NC:

2023. KHC:19681 MFA No.519 of 2011 C/W MFA No.5338 of 2010 MFA No.520 of 2011 MFA No.521 of 2011 MFA No.11148 of 2011 liability on the insurance company to pay the compensation.

4. MFA No.11148/2011 is filed by the insurance company challenging the judgment and award dated 23.09.2011 passed in M.V.C.No.91/2008 on the file of the Prl. District Judge and MACT, Chikmagaluru (hereinafter referred to as the Tribunal for brevity) fastening the liability on the insurance company to pay the compensation. MFA No.5338/2010 is filed by the claimant seeking enhancement of compensation.

5. Brief facts in MFA Nos.519/2011, 5338/2010, 520/2011 and 521/2011 are: (a) On 23.02.2006 at about 3.30 a.m., when the claimants were moving in Tata Sumo Bearing Reg. No.KA- 03/N-2754 from Maranagere to JSS hospital, Mysore, the driver of the Tata Sumo drove the same in a rash and negligent manner and high speed and dashed against the - 9 - NC:

2023. KHC:19681 MFA No.519 of 2011 C/W MFA No.5338 of 2010 MFA No.520 of 2011 MFA No.521 of 2011 MFA No.11148 of 2011 electrical pole due to which, the claimants suffered grievous injuries and first shifted to K.R.Hospital and thereafter to JSS hospital Mysuru. In MFA No.11148/2011 (b) On 18.12.2005 the petitioner was proceeding on the motorbike bearing registration No.KA-14/H-8496 driven by respondent No.1 in a rash and negligent manner with high speed and at about 9.00 p.m., when they reached Bhaktharahalli near coffee estate of one Mr. Sampath, the said motorcycle fell into a roadside ditch, due to which the claimant sustained grievous injuries below his left eye and fracture to his left femur. He was taken to M.G.Hospital, Chikmagaluru and from there he was shifted to Ashraya Hospital, Chikmagaluru where he took treatment.

6. Heard arguments of the learned counsel for the Insurance Company and the learned counsel for claimants and perused the materials on record.-. 10 - NC:

2023. KHC:19681 MFA No.519 of 2011 C/W MFA No.5338 of 2010 MFA No.520 of 2011 MFA No.521 of 2011 MFA No.11148 of 2011 7. In all these appeals, the common question of law is involved, which reads as under: Whether the premium collected under the caption 'extra loading' amounts to payment of extra premium, which covers the risk of pillion rider of the motorcycle/inmates in the car, where the insurance policy is liability only policy/Act policy/statutory policy?.

8. The learned counsel for the insurance company submitted that, in these cases, the insurance policy is a "liability only" policy, but not comprehensive policy. The collection of extra premium under the caption 'extra loading' does not cover the risk of pillion rider of the motorcycle/inmates in the private car. He submits that the collection of premium under the caption 'extra loading' amounts to adverse past claims experience faced by the vehicle when the private vehicle met with accident and based on that, extra loading premium is collected. Further, - 11 - NC:

2023. KHC:19681 MFA No.519 of 2011 C/W MFA No.5338 of 2010 MFA No.520 of 2011 MFA No.521 of 2011 MFA No.11148 of 2011 the learned counsel submitted that, in these cases, extra premium is not collected covering the risk of pillion rider of the motorcycle and inmates in the private car. Therefore, risk is not covered under the insurance policy. Hence, the owners of the vehicles are liable to pay compensation. But the observation of the Tribunal that the amount collected under the caption 'extra loading' covering the risk of pillion rider of the motorcycle and inmates in the private car is a misconceived observation. Therefore, he prays to modify the judgment and award by fastening the liability on the owners of the vehicles and to exonerate the Insurance Company.

9. Admittedly, in these appeals, the insurance policy issued is liability only policy/statutory policy. As per the documents produced before the Tribunal, extra amount is collected under the caption extra loading. "Whether this collection of amount under the caption extra loading is towards covering the risk of the pillion rider of - 12 - NC:

2023. KHC:19681 MFA No.519 of 2011 C/W MFA No.5338 of 2010 MFA No.520 of 2011 MFA No.521 of 2011 MFA No.11148 of 2011 the motorcycle/inmates in the private car?." is the question to be considered.

10. The learned counsel for the insurance company places reliance upon the decisions of the Hon'ble High Court of Kerala in Oriental Insurance Company Limited v. Thilakan¹ and The New India Assurance Co. Ltd. v. Daisy Paul and Ors².

11. On the other hand, learned counsel for owner of the vehicle contended that the extra amount collected under the caption 'any extra loading' is towards covering the risk of the pillion rider/occupants in the car. He further contended that even though the insurance policy is a liability only policy/statutory policy/Act policy, but the risk of inmates/pillion rider is covered. Hence, he submitted that the Tribunal is correct in fastening the liability on insurance company. ¹ reported in ILR2021(4) Kerala 268 ² reported in ILR2021(2) Kerala 346 - 13 - NC:

2023. KHC:19681 MFA No.519 of 2011 C/W MFA No.5338 of 2010 MFA No.520 of 2011 MFA No.521 of 2011 MFA No.11148 of 2011 12. The Tribunal in its judgment at para No.25 had observed that insurance policy is a comprehensive policy. The observation of the Tribunal in this regard is not correct. The insurance policies produced before the Tribunal are liability only policy/statutory policy/Act policy. The Tribunal had committed error in observing and coming to wrong conclusion that insurance policies are comprehensive policies. But it is proved that the policies are liability only policy/statutory policy/Act policy.

13. The collection of amount under the caption 'any extra loading' creates confusion as to whether it is a collection towards occupants of the car/pillion rider of the motorcycle or for any other reason. In this regard, the provisions of Indian Motor Tariff Regulations has to be looked into. As per the Indian Motor Tariff Regulations, GR -03 reads as under: - 14 - NC:

2023. KHC:19681 MFA No.519 of 2011 C/W MFA No.5338 of 2010 MFA No.520 of 2011 MFA No.521 of 2011 MFA No.11148 of 2011 GR.3. Policy Forms: Policies insuring Motor Vehicles are to be issued only as per the Standard Form(s) given in Section 6 of the INDIA MOTOR TARIFF. A. Types of Policies There are two types of Policies : (i) Liability Only Policy: This covers Third Party Liability for bodily injury and/ or death and Property Damage .Personal Accident Cover for Owner-Driver is also included. (ii) Package Policy: This covers loss or damage to the vehicle insured in addition to (i) above. Restricting the scope of cover under Section-I (loss of or damage to the vehicle insured) of the Package policy without any reduction in Tariff rates is permitted. Excepting this, no alteration or extension of any of the Covers, Terms, Conditions, Exclusions, etc. of any of the Policies/Endorsements laid down in this tariff is permitted without prior approval of the TAC.-. 15 - NC:

2023. KHC:19681 MFA No.519 of 2011 C/W MFA No.5338 of 2010 MFA No.520 of 2011 MFA No.521 of 2011 MFA No.11148 of 2011 B. Rating: Rates provided under this Tariff are minimum rates. Loading on tariff premium rates by 100% may be applied for adverse claims experience of the vehicle insured and individual risk perception as per the insurer's assessment. If the experience continues to be

adverse, a further loading of 100% on the expiring premium may be applied. No further loading shall apply.

14. As per the rating in the said Regulation i.e. GR No.3, the tariff rates are based on the adverse claims experience of vehicles insured and individual risk perception as per the insurer's assessment. Therefore, the collection of amount under this tariff is for adverse claims experience as assessed by the insurer. This past experience means adverse claims to the insurers i.e., whether the vehicle met with an accident frequently or not, the maximum tariff is fixed at 100% on the expiry of last paid premium. The collection of amount on this "extra loading" means regarding past claims experience faced by the vehicle which is adverse to the insurer's assessment.-. 16 - NC:

2023. KHC:19681 MFA No.519 of 2011 C/W MFA No.5338 of 2010 MFA No.520 of 2011 MFA No.521 of 2011 MFA No.11148 of 2011 Therefore, certainly collection of amount under the caption 'any extra loading' does not mean that covering risk of the pillion rider of motorcycle/inmates of the car where the insurance policy is liability only policy/statutory policy/Act policy.

15. The Kerala High Court on similar question in Thilakan's case (supra) at para No.11 has observed as follows:

"Coming to the second question, in fact, collection of amount under the head "extra loading" by the insurance company while issuing policies inclusive of statutory policies, created confusion. Therefore, what is meant by `extra loading' in the insurance law is a matter which requires explanation. Loading, according to insurers, is an additional cost built into the insurance policy to cover the losses, which are higher than anticipated for the company arising from issue, ensuring a person who is prone to a formal risk. Loading as a concept, thus comes into play when an insurance company is dealt with has- sled candidates and is resorted to by insurance companies in cases where the - 17 - NC:

2023. KHC:19681 MFA No.519 of 2011 C/W MFA No.5338 of 2010 MFA No.520 of 2011 MFA No.521 of 2011 MFA No.11148 of 2011 risk to the individual is higher than the ordinary circumstances. In this connect- ion I have perused the circular

dated 22.04.2006 issued by the IRDA wherein it was stated that insurers may 'load' the insurers' assessment. If the experience continues to be bad, then a further loading of 100% on the expiring premium can be charged. Insurers may not 'load' the premium further. Going by the definition of 'extra loading' as explained above, Rs.16/- collected under the head 'extra loading' could not be held as premium collected in addition to cover the risk of third parties; viz. pillion rider and it might have been collected to compensate the extra amount paid during the previous policy. Therefore, I have no hesitation to hold that Ext.B1 policy would not cover the risk of the 1st respondent/the petitioner in O.P(MV) and therefore the Tribunal went wrong in negating the contentions raised by the insurance company. Therefore, the Tribunal is not justified in holding that Ext.B1 would cover the premium of pillion riders also, as Rs.16/- under the head 'extra loading' was collected in addition to the premium amount for third party risk.

16. As per Section 147 of the Motor Vehicles Act, 1988, statutory policy is compulsory so as to cover the risk of third parties. If any extra coverage is desired by the - 18 - NC:

2023. KHC:19681 MFA No.519 of 2011 C/W MFA No.5338 of 2010 MFA No.520 of 2011 MFA No.521 of 2011 MFA No.11148 of 2011 insured and if any premium is paid, then the contractual obligation is on the part of insurer. The minimum requirement of the policy and liability is that the compulsory coverage of risk of third parties. If any extra premium is collected explicitly and specifically covering the risk of pillion rider of motorcycle/inmates of car, is a contractual obligation on the part of insurer. But the premium is not paid in the present case. So, whatever the amount collected under the caption any extra loading is by virtue of regulations of Indian Motor Tariff i.e. GR.03 is for the adverse past experience faced by the insured vehicle as assessed by the insurer. The 'adverse past experience' means the insurer has faced the situation to pay the compensation on account of multiple accident caused previously making burden on the insurer. Therefore, based on the adverse past experience of the vehicle insured, the insurer makes assessment as to what is the adverse past experience based on the minimum tariff which is computed not crossing extent of 100% and - 19 - NC:

2023. KHC:19681 MFA No.519 of 2011 C/W MFA No.5338 of 2010 MFA No.520 of 2011 MFA No.521 of 2011 MFA No.11148 of 2011 accordingly, it is collected. Therefore, collection of any amount under the caption 'any extra loading' certainly does not mean covering the risk of pillion rider of the motor cycle/inmates of the car where there exists liability only policy/statutory policy/Act policy. Hence, in this regard, the finding given by the Tribunal fastening liability on the insurance company is set aside. Consequently, the owner of the vehicle shall pay the compensation to the claimants. In MFA No.5338/2010 (MVC No.1293/2006) :

17. In the present case, the Tribunal has granted compensation under various heads as under: SL. PARTICULARS AMOUNT No.(IN.RS.) 1. Pain and suffering 12,000.00

2. Medical expenses & other 6,000.00 incidental charges 3. Loss of income during the 3,000.00 period of treatment Total 21,000.00 - 20 - NC:

2023. KHC:19681 MFA No.519 of 2011 C/W MFA No.5338 of 2010 MFA No.520 of 2011 MFA No.521 of 2011 MFA No.11148 of 2011 18. The claimant has suffered loss of eye sight to some extent. It is not the evidence of doctor that the claimant had lost the right eye sight completely becoming opaque. But through right eye, he is able to see to some extent. As such, the claimant has not lost his right eye sight completely. There is no evidence of the doctor with regard to the percentage of loss of vision to right eye. But the right eye of the claimant is affected partially and he is able to see only through his left eye. The claimant is an Electrician by profession. Therefore, considering the nature of injuries sustained and condition of the claimant, it is just and proper to award additional compensation of Rs.25,000/- in addition to what has been awarded by the Tribunal.

19. Accordingly, I proceed to pass the following:

ORDER

i. The appeals in MFA Nos.519/201, 520/2011, 521/2011 & 11148/2011 filed by the insurance company are allowed.-. 21 - NC:

2023. KHC:19681 MFA No.519 of 2011 C/W MFA No.5338 of 2010 MFA No.520 of 2011 MFA No.521 of 2011 MFA No.11148 of 2011 ii. The judgments dated 03.04.2010 passed in MVC Nos.1293/2006, 1294/2006, 1295/2006 by the Presiding Officer, FTC & MACT, Mysuru and the judgment and award dated 23.09.2011 passed in M.V.C.No.91/2008 on the file of the Prl. District Judge and MACT, Chikmagaluru, are hereby modified holding that the owner of the offending vehicles i.e., Tata Sumo and motorcycle respectively are liable to pay compensation to the claimants exonerating the insurance company from paying the compensation. iii. The judgment in MFA No.5338/2010, is modified by holding that the claimant is entitled for enhanced compensation of Rs.25,000/- in addition to what has been awarded by the Tribunal. iv. The amount in deposit shall be refunded to the insurance company.-. 22 - NC:

2023. KHC:19681 MFA No.519 of 2011 C/W MFA No.5338 of 2010 MFA No.520 of 2011 MFA No.521 of 2011 MFA No.11148 of 2011 v. Ordered accordingly. vi. The other observations and findings of the Tribunal are kept in tact. Sd/- JUDGE SA,SSD

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