

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF NOVEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

M.F.A.NO.5197/2014 (MV-I)

BETWEEN:

THE REGIONAL MANAGER
UNITED INDIA INSURANCE COMPANY LIMITED,
REGIONAL OFFICE,
NO.5 AND 6TH FLOOR,
KRUSHIBHAVAN HUDSON CIRCLE,
NRUPATHUNGA ROAD,
BEHIND CMM ROAD
BENGALURU-560 001

... APPELLANT

(BY SRI O.MAHESH, ADVOCATE [THROUGH VC])

AND:

1 . MASTER THARUN C. GOWDA
AGED ABOUT 12 YEARS, MINOR
S/O CHANDRASHEKAR

SINCE MINOR, REPRESENTED BY
FATHER AND NATURAL GUARDIAN
CHANDRASHEKAR
S/O CHIKKA THANGEGOWDA,
AGED 43 YEARS
R/AT ABALAVADI VILLAGE
KOPPA HOBOLI, MADDUR TALUK
MANDYA DISTRICT-571 401

NOW R/AT NO.8, 2ND CROSS
VRUSHABHAVATHINAGAR
KAMAKSHIPALYA, BENGALURU-560 079.

2 . SRI AMBALAL M. PATEL
M/S. KAVERI TRADERS
MANIPAL ROAD, KUNJI BETTU
UDUPI DISTRICT-576101.

3 . SRI MURGADAS @ RAMADASU
NO.30/A, 2ND CROSS
KRISHNANANDA NAGAR,
NANDINI LAYOUT,
BENGALURU-560 096.

... RESPONDENTS

(BY SRI P.S.KAILASH SHANKAR, ADVOCATE FOR R1;
SRI K.PRASANNA SHETTY, ADVOCATE FOR R2;
R3 IS SERVED)

THIS M.F.A., IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 01.04.2014 PASSED IN MVC NO.224/2011 ON THE FILE OF THE 11TH ADDITIONAL JUDGE, MACT, COURT OF SMALL CAUSES, BENGALURU, AWARDING A COMPENSATION OF RS.1,45,630/- WITH INTEREST @ 6% P.A FROM THE DATE OF PETITION TILL THE DATE OF REALIZATION.

THIS M.F.A., COMING ON FOR FINAL HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING:

J U D G M E N T

Heard the learned counsel appearing for the appellant-Insurance Company, the learned counsel appearing for respondent No.1 and the learned counsel appearing for respondent No.2.

2. This appeal is filed challenging the judgment and award dated 01.04.2014 passed in M.V.C.No.224/2011 on the

file of Small Causes, Bengaluru City (SCCH-12) ['the Tribunal' for short].

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

4. The factual matrix of the case of the claimant before the Tribunal is that a student, who is aged about 8 years, met with an accident. On 26.12.2010 at about 2:30 p.m, the petitioner after carefully observing the traffic movements was a pedestrian on the extreme left side on Koppa to Hosagavi road, Abalavadi Village, in front of the house of the petitioner, the driver of Tata Ace 207 Tempo bearing registration No.KA-02-A-9301, came from Hosagavi road side in a rash and negligent manner, dashed against him, as a result, he had sustained injuries. Immediately he was shifted to Vikram Hospital at Mandya, wherein, after the first aid treatment he was referred to Vikram Jeeva Hospital at Mysuru, wherein, he took treatment as an inpatient.

5. The claimant in order to substantiate his contention, he examined through his natural guardian-father as P.W.1, and examined another witness as P.W.2 and also examined the Doctor as P.W.3 and got marked the documents as Exs.P1 to P17. On the other hand, the respondents have examined three witnesses as R.Ws.1 to 3 and got marked the documents as Ex.R1 to R7.

6. The Tribunal after considering both oral and documentary evidence placed on record, allowed the claim petition in part and fastened the liability on the Insurance Company. Hence, the present appeal is filed by the appellant - Insurance Company.

7. The main contention of the learned counsel appearing for the appellant - Insurance Company in his arguments is that, the driver was not having the valid driving license and the driving license, which was marked, is a fake driving license. Exs.R1 to R6, which are marked through RW.2, clearly discloses that the documents were fake documents. It is also the contention that Exs.R1 to R6 clearly establishes that the driving license produced at Ex.R7 by the Insured was fake and

the burden was on him to prove the same; the same has not been done. Instead of that, the Tribunal has committed an error that the RTO has not been examined. Hence, it requires an interference of this Court.

8. Per contra, the learned counsel appearing for the respondents would submit that Ex.R7 is the original driving license. The Tribunal rightly disbelieved the case of the respondents since they have not proved the same by examining the author of the document. The learned counsel also would submit that Ex.R3, which is produced before the Court discloses in respect of A.S. Natarajan and the driver of the vehicle is only A. Natarajan. Hence, an endorsement-Ex.R3 was given. Ex.R3 will not come to the aid of the respondents.

9. Having heard the respective counsel and on perusal of the material available on record, the respondents mainly rely upon the documents - Exs.R4 to R7. On perusal of the endorsement issued by the Davanagere Assistant RTO Officer dated 22.08.2012 discloses that they have examined FDL No.5829/08-09 and the candidate name is A.S.Natarajan and no such license was issued. But on perusal of Ex.R7, it is clear

that the applicant is one Sri A. Natarajan and not Sri A.S.Natarajan. On perusal of Ex.R7, it is valid from 21.07.2008 to 20.07.2028. In the endorsement – Ex.R3, they have verified the document in respect of A.S.Natarajan not 'A. Natarajan'.

10. Apart from that, it is rightly pointed out by the counsel appearing for the respondent that the author of the document has not been examined in a case of specific contention was urged by the Insurance Company that the document was a fake document and relies upon the document in support of their claim, ought to have proved the same by examining the author of the document. The Tribunal while considering the material on record, particularly, in paragraph No.32, observed that the same has not been proved by examining the author of the document. Mere taking of defense that the driving license is fake is not enough and the same has to be proved. In paragraph No.32 of the judgment, the Tribunal had taken note of Ex.R6 as well as Ex.R7 and also taken note of the validity of the period and Ex.R7 clearly shows that the RTO, Davanagere has issued the driving license to A.Natarajan on 21.07.2008. It is further observed that the burden casted on the respondent – Insurance Company

to establish that whether this driving license is valid driving license or not, the same has not been done. Respondent No.3, who is the owner of the offending vehicle, has produced Ex.R7- Original Driving License. Ex.R7, clearly discloses that on the date of the accident, the driver was holding the valid driving license. But the Insurance Company failed to dis-prove the document – Ex.R7 and also the endorsement Ex.R3. Ex.R3, is in respect of A.S.Nataranjan and not in respect of A.Natarajan. In the absence of proving of the document that the same is a fake document, the question of interfering with the finding of the Tribunal does not arise. The burden lies on the Insurance Company to prove the same except relying upon the endorsement, nothing is placed on record and also the author of the document has not been examined. Under the circumstances, I do not find any force in the contention of the Insurance Company that the driving license was a fake document. Unless the same is proved as a fake document, the shifting of the liability on the owner does not arise.

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

ORDER

- (i) The appeal is dismissed.
- (ii) The amount in deposit, if any, be transmitted to the concerned Tribunal forthwith.
- (iii) The Registry is directed to transmit the records to the concerned Tribunal, forthwith.

**Sd/-
JUDGE**

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