

Sri. Gireesh S.J vs Hetero Labs Limited on 16 December, 2016

BEFORE THE COURT OF XXI ADDITIONAL SMALL CAUSES
JUDGE AND THE MOTOR ACCIDENT CLAIMS TRIBUNAL
(SCCH-23) AT BENGALURU

DATED THIS THE 15th DAY OF DECEMBER 2016

PRESENT: Sri.N.N.YALAVATTI, B.Com, LL.B, (Spl).,
XXI A/DDL. SCJ & XIX ACMM
MEMBER - MACT
BANGALORE

M.V.C No.4929 of 2014

PETITIONER: Sri. Gireesh S.J,
S/o Jayaramappa,
Aged about 37 years,
R/at C/o Jayappa,
Kodandarama Nilaya,
Near Srirama temple,
Hulimavu,
Bangalore - 76.

(By Sri. C.Mallikarjunaiah., Advocate)
Vs.

RESPONDENTS: 1. Hetero Labs Limited,
Sy.No. Part of 458,
APIIC Formulations, S E Z,
Jadcherla Mandal, Polepally (V),
Mahabubnagar District,
Telangana State.

By its proprietor (owner of tractor)

(By Sri. A.R.R., Advocate)

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2. Bhaati Axa General Insurance Co. Ltd.,
1st Floor, the Ferns Icon,
Sy.No.28, Doddanekkundi,
Bangalore - 560037.
By its Manager.

Policy cover note No.32929683
From 11.01.2014 to 10.01.2015

(Deleted)

3. Cholamandalam M.S. General
Insurance Company Ltd.,
Unit No.4, 9th Floor,
Golden Heights Complex,
59th 'C' Cross, Industrial Suburb,
Rajajinagar, 4th 'M' Block,
Bangalore - 10.
By its Manager.

(Policy No.3380/00685683/000/00
Valid from 22.02.2014 to 21.02.2015)

(By Sri. B.N. Sreekanta Swamy.,
Advocate)

JUDGMENT

This petition is filed by claimants under Sec.166 of M.V. Act against the respondents claiming compensation of Rs.15,00,000/-.

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2. The brief facts of the case of the petitioner as averred in their respective claim petition is as follows:

On 05.08.2014 the petitioner was travelling as a pillion rider in a motor cycle bearing No.AP-22-AB-8358 from his working place to Jadcherla, when he reached near Hetero Company Main Gate, Jadcherla at about 12:45 p.m. The driver of the tractor trailer bearing No.TS-06-UA-0280 and TS-06-UA-0281 belonging to 1st respondent insured with 3rd respondent, driven it rashly and negligently and all of a sudden take his tractor towards right side without giving signal and dashed to motor cycle in which the petitioner was travelling. Due to this accident, the petitioner fell down and the tractor middle tyre ran over the left leg of the petitioner. The petitioner sustained fracture injuries in his left leg. He was taken to Navodaya Hospital 1 Mahububnagar and later he was shifted to Hosmat Hospital, Bangalore. The petitioner was treated as an inpatient from 07.08.2014 to 11.08.2014. In spite of best and costly treatment, the fracture injuries are not properly united. Due to these injuries sustained in the accident, the petitioner is suffering from physical permanent disability and SCCH-23 unable to do his work. The police have registered the case against the driver of offending tractor and filed the charge sheet. The petitioner was working as an Deputy Manager at Shilpa Medicare Ltd., on a monthly salary of Rs.91,000/-. Now he is unable to do that job. Therefore, he left the job. This accident was occurred due to rash and negligent driving of the driver of the offending vehicle, same was insured with 3rd respondent. Therefore, the 1st and 3rd respondents are liable to pay the

compensation amount and requested to pass the award as prayed.

3. In response to the notice, the 1st and 2nd respondents have appeared through their counsels and resisted the case of petitioner by filing the objection separately.

The 1st respondent has contended that the petitioner has filed this claim petition on imaginary grounds the compensation amount claimed by the petitioner is exorbitant and arbitrary. This respondent has denied about the manner of accident. The 1st respondent has pleaded that this accident was occurred due to SCCH-23 rash and negligent riding of the motor bike in which the petitioner was travelling. The tractor trailer is insured with 3rd respondent. The driver of the offending tractor had a valid and effective driving licence and requested to dismiss the claim petition.

4. The 3rd respondent has contended that the petitioner has filed this claim petition on imaginary grounds the compensation amount claimed by the petitioner is exorbitant and arbitrary. This accident was occurred due to rash and negligent riding of the motor bike. The driver of the offending vehicle had only LMV (NT). So, as per the provisions of IMV Act there must be specific endorsement on the driving licence of the driver to drive commercial vehicle. The owner of the offending tractor knowingly and willfully entrusted this vehicle to the driver who did not have a valid and effective driving licence to drive LMV (T) and committed the breach of policy conditions. The 3rd respondent has denied the injuries, income and medical expenses of the petitioner and requested to dismiss the claim petition.

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5. On the basis of the pleadings of the parties, my learned Predecessor framed the following:

Issues

1. Whether the petitioner proves that the accident dated 05.08.2014 at about 12:45 p.m., near Hetero Company, Jedcherla Telangana, was due to the rash and negligent driving of the driver of the Tractor and trailer bearing No.TS-06-UA-

0280 and TS-06-UA-0281 and that he has sustained the injuries due to the said accident?

2. Whether the petitioner is entitled for compensation as claimed? If so, to what amount and from whom?

3. What order?

6. In order to prove the case of the petitioner, petitioner got himself examined as PW-1, PW-2 and PW-3 are examined on his behalf and documents Ex.P-1 to Ex.P-28 are got marked.

In order to prove the defence of 3rd respondent, the RW-1 and RW-2 are examined and documents Ex.R-1 to Ex.R-4 are got marked.

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7. I have heard lengthy arguments from both sides.

8. After assessing the oral and documentary evidence and after hearing the arguments, my findings to the above issues are as under:

Issue No.1: Affirmative Issue No.2: Petitioner is entitled compensation of Rs.5,68,236/-from the 3rd respondent with 6% p.a, interest on the said amount from the date of petition, till deposit of amount before the Court, Issue No.3: As per final order, For the following:

REASONS

9. Issue No.1: I have carefully scrutinized the oral evidence of PW-1 along with the documents pertaining to the criminal case. The copy of FIR, complaint, charge sheet are reveals that the driver of the offending tractor drove it rashly and negligently and all of a sudden without given any signal take his vehicle towards his right side and dashed against the motor bike in which the petitioner had travelling. The evidence of PW-1 are corroborating with the documents pertaining to the criminal case.

SCCH-23 Therefore, the evidence of PW-1 and PW-3 are sufficient to say that this accident was occurred due to rash and negligent driving of the driver of the offending tractor and sustained injuries in the above accident. Hence, I answered all these issues Accordingly.

10. Issue No.2: I have carefully scrutinized the oral evidence of PW-1 along with discharge summary, x-ray films which are marked at Ex.P-18 and Ex.P-19. I have carefully gone through the evidence of PW-3 who has assessed the physical permanent disability of the petitioner and treated the petitioner when he was inpatient. As per the evidence of doctor and hospital records, the petitioner was admitted from 07.08.2014 to 11.08.2014 and from 12.09.2015 to 15.09.2015. He underwent surgery on 08.08.2014 for uniting of fracture injuries and underwent surgery on 09.09.2015 for removal of implants. The wound certificate reveals that both bones in the left leg of the petitioner are fractured. Therefore, he was an inpatient for taking treatment. Considering the nature of injury, seriousness, period of SCCH-23 treatment, it is just and proper to award Rs.50,000/- under the head of "pain and sufferings".

11. The advocate for the 3rd respondent strenuously contending before me that the petitioner is not entitle compensation amount under the head of "loss of his future earnings" by relying the cross-examination of PW-1, PW-2 and hospital records. I have given careful consideration to the points raised by advocate for 3rd respondent Sri. BNS. Here we shall turn our attention on cross-examination of PW-1 recorded on 03.06.2016. The PW-1 in his cross-examination he is categorically admitting as "accident was occurred in the year of 2014 afterwards he was working

next financial year". It goes to shows that the petitioner was working in next financial year i.e., 2014-15. It is true that the PW-1 has categorically admitting that there is no advise of the doctor to give resignation to his job. It means that he himself voluntarily give resignation to his job not for the injuries sustained in the accident. Sri. BNS again draw a attention on the cross-examination of PW-3, who is the doctor and SCCH-23 assessed the disability of the petitioner. The PW-3 in his cross- examination at page No.5 he has categorically admitting that the petitioner did not complain about bending of his leg fully. So, there is no restrictions in the leg of petitioner on the date of assessment made by the PW-3. The PW-3 in his cross- examination at page No.7 has categorically spoken that he did not advised the petitioner has not to do the job. The petitioner has not spoken before the PW-3 about unable to do his work on the date of assessment of disability. It goes to shows that the petitioner did not have any problem or disability to do his work in the company where he was working on the date of accident. It has come in the cross-examination of PW-1 that after the accident he was working in the same company in subsequent financial year without facing any problems. He got increment in that year. There is no reduction in his salary in that particular financial year. Then what more is required to us to say that the petitioner do not have any disability to do his work as working prior to the accident. If at all he had a problem or disability, he would have spoken before the PW-3 when the PW-3 has assessed his disability. All SCCH-23 these surrounding circumstances are sufficient to say that there is a force or merit in the argument canvassed by BNS advocate for 3rd respondent. As per hospital records, the fracture injuries are properly united. The implants and screw are removed. The evidence of PW-3 reveals that he did not taken follow up treatment. Considering all these surrounding circumstances and the evidence of PW-1 and PW-3 it is sufficient to say that the PW- 1 is not suffering from the physical permanent functional disability. The PW-1 can do the work as working prior to the accident. Therefore, the petitioner is not entitle any amount under the head of "loss of his future earnings".

12. Here we shall turn our attention on the cross- examination of PW-2, who is working as a Senior Officer, H.R. Department, Shilpa Medicare Ltd. As per his cross-examination PW-1 did not received any salary from 06.08.2014 to 30.10.2014. Sri. BNS vehemently argued that non receiving of salary is not at all mentioned in form No.16. The petitioner do not produced any documents to show that the petitioner has sustained loss of salary SCCH-23 during the laid up period. I am not accepting the line of argument canvassed by Sri. BNS. The cross-examination of PW-1 and documents produced by the PW-2 are sufficient to say that the company did not pay three months salary to the petitioner as he was absence to his work. Therefore, the petitioner is entitle three months salary as he sustained loss of salary during the laid up period. As per the available records including the evidence of PW-1, PW-2 and form No.16, the petitioner was receiving Rs.91,000/- p.m., as his salary. Out of this, we have to deduct Rs.20,000/- towards conveyance allowance including income tax and Rs.600/- towards professional tax. Therefore, the net monthly income of the petitioner would become Rs.91,000 - 20,600/- = Rs.70,400/-. Therefore, the petitioner is entitle loss of his salary for a period of three months i.e., Rs.70,400/- X 3 = Rs.2,11,200/-. Hence, I am awarding Rs.2,11,200/- under the head of "loss of earnings during the laid up period".

13. Due to the injuries sustained in the above accident, the petitioner became disabled and he has been crippled. The SCCH-23 permanent disability sustained by petitioner would come in the way of petitioner enjoying his normal and full life. The petitioner has to leave rest of his life with

frustration, disappointment, unhappiness and dis-comfort including in conveyance. Looking into the facts and seriousness of injuries sustained by the petitioner it is just and proper to award Rs.25,000/- towards "loss of happiness, frustration and in conveyance".

14. The petitioner has produced 90 medical bills worth of Rs.1,72,597/- at Ex.P-7 and 13 medical bills worth of Rs.59,439/- i.e., Rs.2,32,036/-. I have carefully scrutinized the entire medical bills of the petitioner. All the medical bills are appears to be genuine. Hence, I am awarding Rs.2,32,036/- towards "medical expenses".

15. In addition to this, I am going to award Rs.25,000/- towards "conveyance and other charges" and Rs.25,000/- towards "nutritious food and nourishment".

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16. In all I award Rs.5,68,236/- under the following heads:

Sl.

No.	Particulars	Amount
1	Pain and sufferings	Rs.50,000/-
2	Loss of earnings during the Rs.2,11,200/- laid up period	
3	Medical expenses	Rs.2,32,036/-
4	Loss of happiness, Rs.25,000/-	
5	Conveyance and other charges	Rs.25,000/-
6	Nutritious food and nourishment	
	Total	Rs.5,68,236/-

17. The advocate for 3rd respondent Sri.BNS strenuously argued by relying on the definitions of Section 2(21), 2(35), 2(47), 3, 10(2) (d) of IMV Act. Sri. BNS submits that the driver of offending vehicle was having driving licence to drive LMV (NT) on the date of accident. Therefore, the driver is not entitled to drive LMV (T). A combined reading of Sections 2 and 3 of the Act demonstrate that a person having a licence to drive a particular type/class of vehicle is not entitled to drive different type of SCCH-23 vehicles. Section 10 of the Act deals with forms and contents of the licence. He further submits that the driver did not get any endorsement in the driving licence to drive tractor trailer. It is a mandatory under Section 10(2) of IMV Act. In support of his argument, he has relied on a decisions reported in (1) MFA Nos.30903/2009 (MV) in the High Court of Karnataka

(Gulbarga Bench) (2) MFA No.135/2009 C/w MFA No.134/2009 (MV) Decided on 19.03.2014 in the High Court of Karnataka and (3) R.P.No.1083/2012 Pronounced on 21.02.2013 in the National Consumer Disputes Redressal Commission, New Delhi. On the other hand, the advocate for 1st respondent strenuously contending before me by relying on Section 2(21), 2(35), 2(47), 3, 10(2) (d) of IMV Act and submits that a driver who had a valid licence to drive LMV is authorized to drive a light goods or commercial vehicle as well. In support of his argument, he has relied on a decisions reported in (1) 2015(2) SCC 186 (2) 2011 ACJ 481 and AIR 2008 SC 1418.

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18. The crucial question that falls for consideration at this juncture is "whether driving of LMV (T) by driver having licence to drive LMV (NT) amounts to fundamental breach of terms and conditions of the policy so as to absolve the liability of the insurer". I have gone through the citations cited by the Sri. BNS. The Hon'ble High Court has relied on decision of Oriental Insurance Co. LTd., V/s Angad Kol, 2009 ACJ 1411 (SC) and held that a specific endorsement is required on the driving licence to drive LMV (T). (A) the facts of decisions cited by the advocate for 3rd respondent and facts of the case on hand are in different. Therefore, the law laid down in the citations relied on by Sri. BNS are not applicable to the case on hand. Here we shall turn our attention on a decision of Hon'ble Supreme Court reported in Magashetty V/s United India Insurance Complainant, 2001 ACJ 1441(SC). In the above decision it is held as the tractor was used for carrying goods. The goods will be carried in a trailer attached to it. Thus it was held that the holder having an effective driving licence can drive a tractor, if used for carrying goods. He would not become disqualified to drive a tractor if a trailer is SCCH-23 attached. Here we shall turn our attention on Kulwant Singh and others V/s Oriental Insurance Company Ltd., 2014 ACJ 2873 by referring the decisions of Hon'ble Supreme Court i.e., S.Iyyapan, 2013 ACJ 1944 (SC) and Annappa Ireppa Nesaria, 2008 ACJ 721 (SC) held as "when one driver is holding a licence to drive light motor vehicle he can drive commercial vehicle of that category". So, the decision reported in 2014 ACJ 2873 is recent one then Angad Kol case and binding up on this court.

19. Now, we shall turn our attention on a decision reported in 2016 ACJ 383 in the High Court of Judicature at Hyderabad Motor Vehicles Act, 1988, section 149(2) (a) (ii) read with Sections 2 (21) and 10 (2) (d) - Motor Insurance - Driving Licence - Liability of insurance company - Insurance company disputes its liability on the ground that driver of offending vehicle was possessing licence to drive light motor vehicle (non-transport) but he was driving tractor-trolley which is a light motor vehicle but a transport vehicle - Driver SCCH-23 had licence to drive LMV and he was driving same class/type of vehicle - Driving skill required to drive LMV (NT) proximate cause for the accident was not having a valid and effective driving licence - Whether mere absence of obtaining necessary endorsement/badge on the licence by itself would amount to fundamental breach of policy so as to absolve insurance company from liability - Held: no; section 10(2) (d) does not specifically provide different forms of licences in respect of light motor vehicle. (2013 ACJ 1944 (SC) and 2014 ACJ 2873 (SC) followed).

20. The facts of the above decision and the facts of the case on hand are one and same. Therefore, the law laid down in the above decision is squarely applicable to the case on hand.

"I am unable to accept the submission of Sri.BNS. It is an admitted fact that the driver had a valid and effective driving licence to driver a tractor. Undoubtedly under Section 10, a licence is granted to drive specific categories of motor vehicles. The question is whether merely because a SCCH-23 trailer was attached to the tractor and the tractor was used for carrying goods, the licence to drive a tractor becomes ineffective. If the argument of Sri.BNS is to be accepted, then every time an owner of a private car, who has a licence to drive a light motor vehicle, attaches a roof carrier to his car or a trailer to his car and carries goods thereon, the light motor vehicle would become a transport vehicle and the owner would be deemed to have no licence to drive that vehicle. It would lead to absurd results. Merely because a trailer is added either to a tractor or to a motor vehicle by itself does not make that tractor or motor vehicle a transport vehicle. The tractor or motor vehicle remains a tractor or motor vehicle. If a person has a valid driving licence to drive a tractor or a motor vehicle, he continues to have a valid licence to drive that tractor or motor vehicle even if a trailer is attached to it and some goods are carried in it. In other words, a person having a valid driving licence to drive a particular category of vehicle does not become disabled to drive that vehicle merely because a trailer is added to that SCCH-23 vehicle the 3rd respondent has collected premium towards tractor trailer. The policy was in force. The driver of the offending vehicle had a valid and effective driving licence on the date of accident. Therefore, the 3rd respondent being the insurer of offending vehicle has to indemnify the 1st respondent - owner of tractor trailer. Hence, the 3rd respondent is directed to deposit the compensation amount. Hence, I answered Issue No.2 accordingly.

21. Issue No.3 - In view of the discussion made supra, I proceed to pass the following :

ORDER The claim petition U/Sec., 166 of Motor Vehicles Act filed by the petitioner is hereby allowed in part with cost.

The claim petitioner against 2nd respondent is hereby dismissed.

The petitioner is awarded total compensation of Rs.5,68,236/- with interest at the rate of 6% p.a. from the date of petition till the deposit of the amount in the tribunal.

SCCH-23 The 3rd respondent is liable to pay compensation to the petitioner.

The 3rd respondent shall deposit the compensation amount in the tribunal within the two months from the date of this decree.

After deposit of the compensation amount, out of share of petitioner, 50% of the same shall be kept in FD in his name in Karnataka Bank, City Civil Court branch, Bangalore for a period of five years and the balance amount shall be released to him through account payee cheques.

Advocate fee is fixed at Rs.1000/-. Draw award accordingly.

(Dictated to the stenographer, transcript thereof is corrected and then pronounced by me in the Open Court on this the 15th day of December 2016) (N.N.YALAVATTI) XXI ADDL. SMALL CAUSES JUDGE, BANGALORE.

ANNEXURE LIST OF WITNESSES EXAMINED ON BEHALF OF THE PETITIONER
PW-1: Gireesh S.J PW-2: Y. Anjaneyalu SCCH-23 PW-3: Dr. Chethan.A LIST OF DOCUMENTS MARKED ON BEHALF OF THE PETITIONER Ex.P-1: FIR Ex.P-2: Complaint Ex.P-2(a): Translated copy of complaint Ex.P-3: Wound certificate Ex.P-4: Charge sheet Ex.P-5:

And Discharge summaries
Ex.P-6:
Ex.P-7: 90 medical bills for Rs.1,72,597/-
Ex.P-8: 20 medical prescriptions
Ex.P-9:
And Salary certificate and salary slip
Ex.P-10:
Ex.P-11: Attendance register
Ex.P-12: 16 x-rays
Ex.P-13: Authorization letter
Ex.P-14: ID card of Anjanavelu

Ex.P-15: Muster role for the month of August, September 2014-15 and October
Ex.P-16: ID card of applicant Ex.P-17: 13 medical bills Ex.P-18: Discharge summary SCCH-23 Ex.P-19: 4 medical prescriptions of Fortis Hospital Ex.P-20: 3 x-rays
Ex.P-21: Appointment letter Ex.P-22: Relieving letter dated 17.12.2015 Ex.P-23: Service certificate Ex.P-24: Inpatient record Ex.P-25: Outpatient record Ex.P-26: One x-ray Ex.P-27: Form No.16 for the year 2013-14 Ex.P-28: Form No.16 for the year 2014-15 LIST OF WITNESSES EXAMINED ON BEHALF OF THE RESPONDENTS
RW-1: G.Suresh RW-2: Peddaiah LIST OF DOCUMENTS MARKED ON BEHALF OF THE RESPONDENTS:

Ex.R-1: Policy
Ex.R-2: DL extract
Ex.R-3: Authorization letter
Ex.R-4: Copy of driving licence extract

(N.N.YALAVATTI)
XXI ADDL. SMALL CAUSES JUDGE,
BANGALORE.