

IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT GULBARGA

DATED THIS THE 13TH DAY OF NOVEMBER 2008

BEFORE

THE HON'BLE MR.JUSTICE JAWAD RAHIM

M.F.A. NO. 7816/2006 (WC) c/w
M.F.A. Nos. 7817/2006(WC) and 7818/2006(WC)

IN M.F.A. NO. 7816/2006

BETWEEN

BAJAJ ALLIANZ GENERAL INSURANCE CO., LTD.,
G.E. PLAZA AIRPORT ROAD,
YARAWADA, PUNE 411 006.
BY REGIONAL OFFICE NO.105A,
CEARS PLAZA, 1ST FLOOR, 136,
RESIDENCY ROAD, BANGALORE 25,
BY IT'S MANAGER

... APPELLANT

(BY SRI. VEERESH B. PATIL, ADV.,)

AND

1. KASAPPA S/O ADIVEWWAA SINGE
AGED 42 YEARS,
2. KASTURA BAI W/O KASAPPA SINGE
AGED 40 YEARS,

BOTH R/O KUMASIGE VILLAGE
SINDHAGI TQ., BIJAPUR DISTRICT.

3. EERAGONDA S/O BASAPPA ALLIMARA,
AGED 42 YEARS,
OCC: BUSINESS,
R/O INCHEGERI, INDI TQ.,

BIJAPUR DISTRICT.

... RESPONDENTS

(BY SRI.SANGANAGOUDA V. BIRADAR FOR R1 & R2
SRI BAPU GOUDA SIDDAPPA FOR R3, ADVS.,)

MFA FILED U/S 30(1) OF WC ACT AGAINST THE ORDER DATED: 26.4.2006 PASSED IN WCA/SR. NO. 143/2004 ON THE FILE OF THE LABOUR OFFICER AND COMMISSIONER FOR WORKMEN'S COMPENSATION, SUB-DIVISION-1, BIJAPUR, AWARDED COMPENSATION OF RS. 2,32,540/- WITH INTEREST @ 12% P.A FROM 24.7.2004 TO 26.4.2006 AND DIRECTING THE APPELLANT HEREIN TO DEPOSIT THE SAME.

IN MFA NO. 7817 OF 2006

BETWEEN

BAJAJ ALLIANZ GENERAL INSURANCE CO., LTD.,
G.E PLAZA, AIRPORT ROAD,
YARAWADA, PUNE - 411 006,
BY REGIONAL OFFICE, NO 105A,
CEARS PLAZA, 1ST FLOOR, 136,
RESIDENCY ROAD, BANGALORE - 560 025
BY ITS MANAGER

... APPELLANT

(BY SRI.VEERESH B. PATIL, ADV.,)

AND

1. SMT. SHAKUNTALA W/O NINGAPPA MALLI,
AGED ABOUT 47 YEARS,
2. SHARANAPPA,
AGED 26 YEARS,
S/O NINGAPPA MALLI
3. ANNARAYA,
AGED 21 YEARS,

S/O NINGAPPA MALLI,

4. SMT. LAXMIBAI
AGED 77 YEARS
W/O VIRUPAXA MALLI,

ALL ARE R/O KUMASIGE VILLAGE,
SINDHGI TQ, BIJAPUR DIST.

5. EERAGONDA,
AGED 42 YEARS,
S/O BASAPPA ALLIMARA
OCC: BUSINESS
R/O INCHEGERI, INDI TQ,
BIJAPUR DISTRICT.

... RESPONDENTS

(BY SRI. UMESH V. MAMADAPUR, SRI. BAPUGOUDA
SIDDAPPA FOR R5, BAPU H META GUDDA FOR R3 & R4,
ADVS.,)

MFA FILED U/S 30(1) OF WC ACT AGAINST THE
ORDER DATED: 26.4.2006 PASSED IN WCA/SR. NO.
155/2004 ON THE FILE OF THE LABOUR OFFICER AND
COMMISSIONER FOR WORKMEN'S COMPENSATION, SUB-
DIVISION-1, BIJAPUR, AWARDED COMPENSATION OF RS.
1,58,065/- WITH INTEREST @ 12% P.A FROM 24.7.2004 TO
26.4.2006 AND DIRECTING THE APPELLANT HEREIN TO
DEPOSIT THE SAME.

IN MFA NO. 7818 OF 2006

BETWEEN

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD
G.E.PLAZA, AIRPORT ROAD,
YARAWADA, PUNE - 411 006,
BY REGIONAL OFFICE NO.105A CEARS
PLAZA, 1ST FLOOR, 136, RESIDENCY ROAD,

BANGALORE 25,
BY IT'S MANAGER.

... APPELLANT

(BY SRI.VEERESH B. PATIL, ADV.,)
AND

1. SHARANAPPA S/O BHIMAPPA KAMATHIGI
AGED 42 YEARS,
R/O SHIRASHAYDA, INDI TQ.,
BIJAPUR DISTRICT.
2. EERAGONDA
S/O BASAPPA ALLIMARA
AGED 42 YEARS,
OCC: BUSINESS,
R/O INCHEGERI, INDI TQ.,
BIJAPUR DISTRICT.

... RESPONDENTS

(BY SRI. BAPUGOUDA SIDDAPPA FOR R2,
BAPU H META GUDDA FOR R3 & R4, ADVS.,)

MFA FILED U/S 30(1) OF WC ACT AGAINST THE
ORDER DATED: 26.4.2006 PASSED IN WCA/SR. NO.
156/2004 ON THE FILE OF THE LABOUR OFFICER AND
COMMISSIONER FOR WORKMEN'S COMPENSATION, SUB-
DIVISION-1, BIJAPUR, AWARDING COMPENSATION OF RS.
83,974/- WITH INTEREST @ 12% P.A FROM 24.7.2004 TO
26.4.2006 AND DIRECTING THE APPELLANT HEREIN TO
DEPOSIT THE SAME.

THESE APPEALS COMING ON FOR ADMISSION THIS
DAY, JAWAD RAHIM J., DELIVERED THE FOLLOWING

J U D G M E N T

These three appeals are by the insurer of the tractor-
trailer bearing No.TMP/268/MH 14 against the awards

granting compensation to the legal heirs of two individuals who died and to the person who suffered injuries in a motor vehicle accident on 24.6.2004.

2. M.F.A.7816/06 is directed against the award passed in WCA.143/04 in favour of the 1st respondent and his wife-Kastura Bai regarding the death of their son-Ningappa Kasappa Singe. M.F.A.7817/06 is directed against the award passed in WCA.155/04 in favour of the wife and children of Ningappa Malli and also Lakshmibai-mother of the deceased. M.F.A.7818/06 is directed against the award passed in WCA.156/04 in favour of Sharanappa granting him compensation for the injuries suffered by him.

3. Heard Mr.Veeresh B.Patil for the appellants and Sri Sanganagouda V.Biradar and Sri Bapugouda Siddappa for the respondents, and perused records in supplementation thereto which reveal:

a) WCA.143/04 was filed by Kasappa Singe and his wife-KasturaBai seeking compensation for the death of their son-Ningappa Kasappa Singe. WCA.155/04 was filed by

Shakuntala along with Sharanappa, Annaraya (children) and Laxmibai (mother-in-law) seeking compensation for the death of her husband-Ningappa Malli, s/o Virupakshappa Malli WCA.156/04 was filed by Sharanappa seeking compensation for the injuries sustained by him on the assertive contention that they were all employees of the insured owner of the vehicle, i.e. tractor-trailer bearing No.TMP/268/MH/14 for loading and unloading the materials transported in the vehicle, and while under such employment, when they were travelling in the said vehicle on 24.6.2004, due to sheer negligence of the driver of the vehicle, the accident occurred resulting in Ningappa Kasappa Singe and Ningappa Malli suffering fatal injuries and injuries to Sharanappa.

b) It is their specific case that the victims were travelling as employees of the insured owner and thus the legal heirs of the victims who died as also the victim who suffered injuries were entitled to compensation under the provisions of the Workmen's Compensation Act. It is also their specific case that they were employed by the insured

owner of the vehicle-Eeragonda on a monthly salary of Rs.4,500/-.

c) The circumstances in which the accident occurred reveals that under the instructions of Eeragonda, the victims travelled in the tractor on 24.6.2004 to unload stones on the land of one Chandrashekar. They had completed the first trip and when they were on the second trip, due to recklessness of the driver, the vehicle capsized.

d) In the claim petitions filed before the Commissioner for Workmen's Compensation, they brought into the party array Eeragonda and also the appellant herein as respondents and they were duly notified.

e) Eeragonda did not dispute the assertive contention of the claimants that the victims were employees under him and the unfortunate accident resulted in the death of two individuals and injuries to one. The insured owner also did not dispute that the victims were employed by him in relation to loading and unloading of the vehicle insured.

f) The appellant-insurer resisted the claim on the ground victims were gratuitous passengers and thus were not permitted to be carried in the insured vehicle which was used at the time of the accident for transporting the goods. It is their case that the vehicle having been used as a goods vehicle, carrying of passengers is prohibited and consequently the insurance company is absolved of the liability.

g) In the enquiry that ensued before the Commissioner for Workmen's Compensation, the Commissioner found no favour with the defence of the appellants and rejecting their contention, held the victims were employees of the insured owner and were entitled to compensation, and that the claim petitions were maintainable. However, the Commissioner took the view that the wages paid to the deceased victims was Rs.2,000/- p.m. and applying the factor of 225.22, awarded compensation to the legal heirs in a sum of Rs.2,32,540/- and Rs.1,58,065/- respectively. As regards the injured victim, it held that it established the injuries suffered

resulting in 40% disability and taking his income at Rs.2,065/-, awarded him compensation in a sum of Rs.83,975/-.

h) Aggrieved by the order of the Commissioner, the insurer is in appeal.

4. Sri Veeresh B.Patil would reiterate the same defence urged before the Commissioner to contend that the policy issued by the appellant was to cover the risk of the tractor-trailer to be used only for agricultural activity, but since the vehicle was used for transportation of stones when the accident occurred, user of the vehicle had changed from agricultural purpose to goods vehicle, and therefore there was violation of the terms of the policy. He would submit as the vehicle was used for carrying goods at the relevant point of time, the victims travelling in it being gratuitous passengers are not covered statutorily under the policy to indemnify the owner's liability. Therefore he contends that the direction of the Commissioner to the appellant to

discharge the award is wholly unsustainable and has made reference to the insurance policy issued.

5. As regards the injured claimant is concerned, he would submit the evidence tendered by him does establish he had suffered injuries resulting in physical disability of 40% and therefore grant of compensation to him was also not permissible.

6. Against such proposition of the appellant-insurance company, learned counsel appearing for the victims/claimants would submit that the insurance policy issued by the appellant is a Farmers Package Policy and the appellant has collected a premium of Rs.510/- which is over and above the tariff provided by law. Therefore collection of extra premium has rendered the policy enlarged to cover the liability of the claimants. In this regard they would submit that even though the accident has occurred while the victims were travelling in the trailer portion of the vehicle, since it was propelled by the tractor, it becomes

immaterial whether stones were being carried or agricultural produce.

7. Sri Sangnagouda Biradar and Sri Bapugouda Siddappa have advanced arguments on similar lines to negate the contention of Sri Veeresh B.Patil.

8. Keeping in mind the contentions of both sides, I have examined the material made available on record.

9. Firstly it must be noticed that occurrence of the accident on 24.6.2004 involving the vehicle insured by the appellant is not in dispute. It is also not in dispute that in such unfortunate accident, Ningappa Kasappa Singe and Ningappa Malli died leaving behind claimants referred to above as their legal heirs. Similarly Sharanappa-one of the persons travelling suffered injuries. Therefore the fact of death of two individuals and sufferance of injuries by one is well established. It is also established that the insurance policy issued by the appellant was valid as on the date of the accident.

10. Police investigation records would reveal that the victims were made to sit on the heap of stones when the unfortunate accident occurred when the vehicle capsized. The moot question is, in what capacity they were travelling. Whether they were gratuitous passengers or loaders employed by the insured owner? This is a question of fact.

11. Learned counsel, Sri Veeresh B.Patil would refer to the police records to show there is material on record indicating the victims were travelling as passengers. In support of such material, there is no ocular or documentary evidence produced by the insurance company before the Commissioner. We are, therefore, left with the sworn testimony of the claimants who have, in unequivocal terms deposed to the fact that Ningappa Kasappa Singe and Ningappa Malli were employed by the insured owner and there is direct evidence of Sharanappa-victim to say he was employed by the insured owner. Such sworn statement though was subjected to cross-examination by the insurance company, they could salvage nothing. Therefore, it has remained unimpeached.

12. It is also material to note, insured owner has not disputed victims were his employees. In this fact situation, we expect the insurance company to lead evidence to substantiate that the victims were not employees of the insured owner and they were not travelling in the capacity of loaders when the incident occurred. All that the insurance company is contending is, the policy issued is a Farmers Package Policy and not a goods vehicle policy. It is true that the policy reads as 'Farmers Package Policy' but the question is, so far as the victims are concerned, could such a plea be accepted?

13. It must be noticed the provision of Section 147 of the Motor Vehicles Act provides a remedy in law to victims of a motor vehicle accident who are travelling in a goods vehicle as loaders, or such of the employees of the insured who were employed in relation to the vehicle insured. The test therefore, is: If the victims were employed by the insured owner in whatever capacity, either as loaders or in relation to the use of the vehicle, then by virtue of Section 147 of

the Motor Vehicles Act, even if it is a goods vehicle, the insurance company is statutorily liable to indemnify the insured.

14. At least the insurance company could have summoned the insured owner as a witness even though he has not taken part in the proceedings, or the investigating officer who has investigated the case. On this basis, it could be said merely because the victims died while travelling in the vehicle, for loading and unloading stones, it will not absolve the insurance company. Also it must be held, merely because the vehicle was given by the insured owner for transporting stones for one Chandrashekar, it does not absolve the insurance company so long as it is established that the victims died while doing the assignment of the insured owner in relation to the vehicle.

15. It must also be noticed the maximum basic premium prescribed for a trailer by Tariff Regulatory Authority of India (TRAII) is Rs.300/-. The insurance company has collected Rs.510/- which is Rs.210/- in excess of the basic

premium. Therefore, the company is liable to explain to cover which risk they had collected Rs.210/-. The answer is obvious. Collection of extra premium of Rs.210/- renders the policy to be treated as a contractual policy attracting the provisions of sub-section (5) of Section 147 of the Motor Vehicles Act.

16. In the circumstances, viewed from any angle, I do not find any of the grounds urged in the appeals against the substantial question of law for decision and the defence of the insurance company that there is violation of terms of the insurance policy find no support from the material available on record.

17. In the result, I do not find any infirmity in the award passed by the Commissioner for Workmen's Compensation in WCA. Nos.143/04, 155/04 and 156/04 impugned in these appeals. The awards are confirmed. The appeals are dismissed with no order as to costs.

Sd/-
JUDGE

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