

IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT GULBARGA

DATED THIS THE 19TH DAY OF DECEMBER, 2011

BEFORE

THE HON'BLE MR. JUSTICE ARAVIND KUMAR

M.F.A.No.30316 OF 2011 (MV)

BETWEEN:

The Managing Director,
KSRTC, KH Double Road,
Shanti Nagar,
Bangalore,
Now Represented by
The Chief Law Officer,
NEKRTC, Gulbarga.

...APPELLANT

(BY SANTHOSH BIRADAR, ADVOCATE)

AND:

1. M/s.KPR Travels,
Through its Proprietor,
Sri K.V. Shivaji, Aged: Major,
Occ: Transport Business,
R/o Balaji Nagar,
Yadgiri,
Dist: Gulbarga - 585 101.
2. The National Insurance Co. Ltd.,
Sharma Site, Office 2-A,

Prakasm Road,
T-Nagar,
Chennai.

3. Kalyanarao
S/o Annarao Deshpande,
Aged about: 56 Years,
Occ: Nil,
4. Shaila @ Sarita
W/o Kalyanrao Deshpande,
Aged about: 51 Years,
Occ: Household,

Both R/o Adarsh Nagar,
Bijapur.

...RESPONDENTS

(BY SRI SANGANAGOUDA V.BIRADAR, ADV FOR R3 & R4
ABSENT, SMT PREETI PATIL, ADVOCATE FOR R2
NOTICE TO R1 DISPENSED WITH V/C/O DATED 14.12.2011)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER
SECTION 173(1) OF MOTOR VEHICLES ACT AGAINST THE
JUDGMENT AND AWARD DATED 15.11.2010 PASSED IN MVC
NO.91/2005 ON THE FILE OF THE MOTOR ACCIDENT CLAIMS
TRIBUNAL & FAST TRACK COURT-I/II, BIJAPUR, PARTLY
ALLOWING THE CLAIM PETITION AND AWARDED
COMPENSATION OF ₹ 3,39,000/- WITH INTEREST AT 6% P.A.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY,
THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is by the Corporation questioning the correctness and legality of the judgment and award dated 15.11.2010 passed in MVC.No. 91/2005 by the MACT & FTC-I/II, Bijapur, whereunder claim petition was allowed in part and liability has been fastened on the appellant.

2. Heard learned counsel appearing for appellant and learned counsel appearing for respondent No.2. Notice to respondent No.1 has been dispensed with. Though R3 & R4 are served, they are un-represented. Perused the judgment and award passed by the Tribunal.

3. Though matter is listed for admission same is taken up for final disposal since it is submitted by the learned advocates appearing for parties that issue involved in this appeal is no more res-integra and same is covered by the judgment of Hon'ble Apex Court **in the**

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case of Uttar Pradesh State Road Transport Corporation Vs. Kulsum and others reported in **2011(8) SCC 142.**

4. Issue in this appeal relates to the liability fastened on the Corporation. Tribunal has fastened liability on the appellant-Corporation on the ground that vehicle in question had been taken on hire and there was no privity of contract between passengers travelling in the Bus and the Insurance Company. Admittedly, claimants are third parties and the Insurance Company cannot escape its liability since vehicle in question was insured and policy was in force as on the date of the accident. The Hon'ble Supreme Court in Kulsum's case referred to supra at Paragraph 45 has held as under:


45. *"Thus, looking to the matter from every angle, we are of the considered opinion that Insurance Company cannot escape its liability of payment of compensation to Third*

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Parties or claimants. Admittedly, owner of the vehicle has not violated any of the terms and conditions of the policy or provisions of the Act. The owner had taken the insurance so as to meet such type of liability which may arise on account of use of the vehicle."

5. In fact, Division Bench of this Court in MFA.No.8444/2007 and other connected matters disposed of on 21.09.2010 has held that liability to pay compensation is on the Insurance company and it cannot be absolved of its liability. The principles laid down in these judgments are squarely applicable to the facts on hand.

6. In view of the law laid down by the Apex Court as well as this Court in the judgments referred to supra, I am of the considered view that present appeal deserves to be allowed by modifying the judgment and award passed by the Tribunal. Hence, following order is passed:



ORDER

1. Appeal is allowed.
2. Judgment and award passed by the Tribunal is modified and liability is fastened on the Insurance Company. The appellant is absolved of its liability.
3. Registry to draw the award accordingly.
4. Amount in deposit before this Court is ordered to be refunded to the appellant-corporation by registry.
5. Insurance company is hereby directed to deposit the award amount with interest upto date before the Jurisdictional Tribunal within an outer limit of six weeks from the date of receipt of certified copy of this order.

Smt. Preeti M Patil, learned counsel is permitted to file vakalathnama on behalf of respondent No.2 within three weeks from today.

Sd/-
JUDGE

PL