

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.31560 OF 2010 (MV)

C/W

MFA NO: 31669/2010 (MVC)

IN M.F.A.No.31560 OF 2010 (MV)

BETWEEN:

ORIENTAL INSURANCE CO.LTD
NO.107, JAIN ESTATE,
NANA KINGS, HOTEL LANE,
SECUNDRABAD AP,
THROUGH RAICHUR,
BR. AT RAICHUR

Now Represented by
Divisional Manager

...APPELLANT

(BY SRI.S.S. ASPALLI, ADVOCATE)

AND:

1. BASAMMA W/O LATE HANMANTHAPPA
MUSTUR, AGE: 43 YEARS,
OCC: HOUSEHOLD, COOLIE.
2. AMBANNA S/O LATE HANMANTHAPPA
MUSTUR, AGE: 24 YEARS,
OCC: AGRICULTURE
3. VENKATESH S/O LATE HANMANTHAPPA
MUSTUR, AGE: 23 YEARS,
OCC: AGRICULTURE

4. LAKSHMI D/O LATE HANMANTHAPPA
MUSTUR, AGE: 20 YEARS
5. RAMANNA S/O LATE HANMANTHAPPA
MUSTUR, AGE: 17 YEARS
6. LAKSHMANA S/O LATE HANMANTHAPPA
MUSTUR AGE: 16 YEARS,

PETITIONER NOS.5 & 6 ARE MINORS
U/G OF PETITIONER NO.1
THEIR NATURAL MOTHER,
ALL R/O JAWALAGERA VILLAGE,
TQ: SINDHANUR, DIST: RAICHUR.

7. EARAPPA S/O SHIVAPPA HUGAR
DRIVER OF BUS NO.KA-37/3624,
R/O SARIGINAL TQ: YALBURGA,
DIST: KOPPAL.

8. S VENKATESHWAR RAO
S/O Y RAGHAVENDRA RAO
OWNER OF BUS NO.KA-37/3624
R/O MUNIRABAD DAM,
MUNIRABAD, DIST: KOPPAL

...RESPONDENTS

(BY SRI.BASAVARAJ R.MATH, ADVOCATE FOR R-1 TO R-3 -
ABSENT, R-5 & 6 ARE MINORS REPRESENTED BY R-1)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER
SECTION 173(1) OF MOTOR VEHICLES ACT AGAINST THE
JUDGMENT AND AWARD DATED 12.03.2010 PASSED IN MVC
NO.44/2007 ON THE FILE OF THE MOTOR ACCIDENT
TRIBUNAL AT LINGASUGUR, PARTLY ALLOWING THE CLAIM
PETITION AND AWARDED COMPENSATION OF RS.5,90,000/-
WITH INTEREST AT 6% P.A.

IN MFA NO: 31669/2010 (MVC)
BETWEEN

ORIENTAL INSURANCE CO.LTD
NO.107, JAIN ESTATE,
NANA KINGS, HOTEL LANE,
SECUNDRABAD AP,

THROUGH RAICHUR,
BR. AT RAICHUR

NOW REPRESENTED BY
DIVISIONAL MANAGER
GULBARGA

...APPELLANT

(BY SRI. S.S.ASPALLI, ADVOCATE)

AND

1. SMT. MALLAMMA
W/O LATE BEERAPPA,
AGE: 59 YEARS,
OCC: NIL,
R/O JAWALAGERA VILLAGE,
TQ: SINDHANUR, DIST: RAICHUR.

2. EARAPPA S/O SHIVAPPA HUGAR
DRIVER OF BUS NO.KA-37/3624,
R/O SARIGINAL TQ: YALBURGA,
DIST: KOPPAL.

3. S.VENKATESHWAR RAO
S/O Y RAGHAVENDRA RAO,
OWNER OF BUS NO.KA-37/3624,
R/O MUNIRABAD DAM,
MUNIRABAD, DIST: KOPPAL.

..RESPONDENTS

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT AGAINST THE JUDGMENT AND AWARD DATED 12.03.2010 PASSED IN MVC NO.12/07 ON THE FILE OF THE COURT OF MOTOR ACCIDENT TRIBUNAL LINGASUGUR, PARTLY ALLOWING THE CLAIM PETITION AND AWARDED COMPENSATION OF RS.84,285/- WITH INTEREST AT 6% P.A.

THESE APPEALS COMING ON FOR ORDERS THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

These two appeals are by the Insurance company questioning the correctness and legality of the judgment and award dated 12.3.2010 passed in MVC.Nos.44/2007 and 12/2007 on the file of the MACT, Lingasugur, whereunder claim petitions were allowed in part and liability is fastened on the appellant.

2. Heard learned counsel appearing for appellant and learned counsel appearing for respondents/claimants. Though notices had been ordered on application filed seeking condonation of delay in these appeals, same is taken up for final disposal since it is submitted by the learned advocates appearing for parties that issue involved in these appeals is no more res-integra and same is covered by the judgment of Hon'ble Apex Court ***in the case of Uttar Pradesh State Road Transport Corporation Vs. Kulsum and others*** reported in ***2011(8) SCC 142***.



3. Issue in this appeal relates to the liability fastened on the Insurance company. It has been held by the tribunal by taking into consideration the agreement of contract between owner of the Bus and Corporation whereunder the owner of the offending vehicle has agreed to discharge any claim arising out of road accidents and as such the liability has been fastened on the Insurance Company. Admittedly, vehicle in question was insured and the Insurance 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 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."*

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4. 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 therein is squarely applicable to the facts on hand.

5. 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 dismissed by confirming the judgment and award passed by the Tribunal. Hence, following order is passed:

ORDER

1. Applications for condonation are dismissed and consequently appeals are dismissed.
2. Judgment and award passed by the Tribunal is affirmed.
3. Registry to draw the award accordingly.



4. Amount in deposit before this Court is ordered to be transmitted to the Jurisdictional Tribunal for being disbursed to claimants in accordance with the judgment and award of the Tribunal.
5. Insurance company is hereby directed to deposit the balance 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.

**Sd/-
JUDGE**

PL