

IN THE HIGH COURT OF KARNATAKA

CIRCUIT BENCH AT DHARWAD

DATED THIS THE 31ST DAY OF OCTOBER 2012

BEFORE

THE HON'BLE MR.JUSTICE S. N. SATYANARAYANA

MFA NO 20644 OF 2008 (WC)

BETWEEN

THE ORIENTAL INSURANCE CO LTD
HUBLI
REPRESENTED BY REGIONAL OFFICE
NO 44/45, LEO SHOPPING COMPLEX
RESIDENCY ROAD
BANGALORE-560 025.
BY ITS DULY CONSTITUTED ATTORNY

..... APPELLANT

(BY SRI P H PAWAR, ADV.)

AND

1. SMT NOORJAHAN
AGED 31 YEARS,
W/O LATE AYUB KHAN
OCC HOUSEHOLD
2. KUM. TABASSUM
D/O LATE AYUB KHAN
AGED 15 YEARS,
3. KUM TASMIYA BANU
D/O LATE AYUB KHAN
AGED 13 YEARS,

4. KUM RUKAYA
D/O LATE AYUB KHAN
AGED 9 YEARS,
5. KUM. AFSANA
D/O LATE AYUB KHAN
AGED 5 YEARS,
6. SABARIN
D/O LATE AYUB KHAN
AGED 2 ½ YEARS,
7. RUKSANA
D/O LATE AYUB KHAN
AGED 1 YEAR
8. MEHROONBI
AGED 66 YEARS,
W/O. LATE RASHID SAB
OCC HOUSEHOLD

THE RESPONDENTS no.2 TO 7 ARE MINORS,
REPRESENTED BY THEIR MOTHER AND
NATURAL GUARDIAN, SMT. NOORJAHAN.

THE RESPONDENTS 1 TO 7 ARE
RESIDING AT HUBLI,
PRESENTLY AT ISLMPURA ONI,
RANEBENNUR TQ, HAVERI

8. H M CHANNABASAVAIAH
S/O VEERAIAH HIREMATH
MAJOR,
OWNER OF VEHICLE NO. KA-37-8940,
R/AT MUTT ROAD
HONNALLI
DAVANAGERE

... RESPONDENTS

(BY SRI P.K. SANNIGAMMANAVAR, ADV. FOR R1
R2 TO R7 ARE MINORS REPRESENTED BY R1
NOTICE TO R8 TO R9 ARE DISPENSED WITH
V.C.O.11.10.2012)

THIS MFA IS FILED UNDER SECTION 30(1) WC ACT
AGAINST THE ORDER DATED 12.06.2008 PASSED IN CASE
NO.WCA/F-52/07 ON THE FILE OF THE LABOUR OFFICER
AND COMMISSIONER FOR WORKMEN'S COMPENSATION,
HAVERI DIST., HAVERI.

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

JUDGMENT

The second respondent insurance company in WCA
No.52/2007 on the file of the Commissioner for Workmen's
Compensation, Haveri has come up in this appeal
challenging the judgment and order dated 12.06.2008
passed therein. The brief facts leading to this appeal are as
under:

2. The claimants before the Commissioner for
Workmen's Compensation are respectively the widow and
children of deceased Ayub Khan. The claim petition was filed
seeking compensation for the death of deceased Ayub Khan.
The fact that deceased Ayub Khan was employee under first

respondent as driver of the lorry bearing No.KA-17/8940 is not in dispute. So also the fact that he was driving the lorry bearing No.KA-17/8940 belonging to first respondent before the Commissioner. It is also a fact that at the time of accident he was not having valid driving license to drive heavy goods vehicle. In that view of the matter it is contended though the commissioner was aware of the same has not considered this aspect and wrongly saddled the liability to pay the same on insurance company. Being aggrieved by this, the insurance company has come up in this appeal. On going through the judgment impugned the following substantial questions of law arise:

“Whether the Commissioner for Workmen’s Compensation was justified in saddling the liability on the insurance company to pay the compensation when deceased Ayub Khan was not having valid driving license to drive heavy goods vehicle at the time of accident?”

3. Heard the counsel for the appellant insurance company and the respondent. On re-appreciation of the oral and documentary evidence available on record with reference

to fastening the liability on insurance company, this Court answer the aforesaid substantial question of law in the negative and in favour of insurance company holding that when the deceased admittedly was not having valid driving license, the question of indemnifying to pay any compensation due to his personal injury or death in the course of the employment does not arise. In that view of the matter the finding in saddling the liability on the insurance company is without basis. Accordingly, it is required to be set aside. However, setting aside the liability on the insurance company will not absolve the liability of the owner of the aforesaid lorry to pay the compensation to the respondent claimants herein. Accordingly, the appeal filed by the insurance company is allowed.

4. In view of the appeal being allowed, the amount in deposit is ordered to be released in favour of the insurance company.

SD/-
JUDGE

NAA