

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31st DAY OF MAY 2016

BEFORE

THE HON'BLE MR. JUSTICE B.MANOHAR

MFA No.2035/2011 (MV)

BETWEEN:

1. SMT NARASAMMA
W/O LATE PANDURANGAIAH
AGED ABOUT 33 YEARS,
2. SRI RAMACHANDRA
S/O LATE PANDURANGAIAH
AGED ABOUT 22 YEARS,
3. KUM RAMYA
D/O LATE PANDURANGAIAH
AGED ABOUT 17 YEARS,

3RD MINOR CLAIMANT IS REPRESENTED
BY NEXT FRIEND, MOTHER, 1ST APPELLANT

ALL ARE RESIDING
N.R.COLONY, TUMKUR

... APPELLANTS

(BY SRI N.GOPALKRISHNA, ADV.,)

AND:

1. SRI HANUMANTHRAYAPPA
S/O LATE HANUMAIAH
MAJOR IN AGE,
R/A KALIDASA BADAVANE,
KORATAGERE TOWN,
TUMKUR DISTRICT - 572129
2. NATIONAL INSURANCE CO., LTD.,
BRANCH OFFICE:G.MUDDAPPA COMPLEX,
1ST FLOOR, VIVEKANANDA ROAD,

TUMKUR-572 101
REP. BY ITS MANAGER

... RESPONDENTS

(BY SRI A.K.BHAT, ADV., FOR R2
R1-NOTICE HELD SUFFICIENT V/C/O DT.13.12.2013)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED:27.10.2010 PASSED IN MVC NO.343/2008 ON THE FILE OF THE ADDITIONAL CIVIL JUDGE (SR.DN), & CJM, TUMKUR, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

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

JUDGMENT

Appellants are the claimants, being not satisfied with the quantum of compensation and also fastening the liability on the owner of the vehicle to compensate the claimants in the judgment and award dated 27.10.2010 made in MVC.No.343/2008 passed by the Additional Civil Judge (Sr.Dn) & CJM, Tumkur, (hereinafter referred to as the Trial Court), filed this appeal.

2. The appellants herein filed a claim petition contending that on 6.11.2007 the deceased Pandurangaiah who is the husband of 1st appellant and father of appellants No.2 and 3 went to coolie work i.e.,

for the purpose of loading of sand to the tractor and trailer bearing Registration No.KA.06.A.5913-14 belonging to the first respondent/Hanumantharayappa. At about 2.45 p.m., after loading the sand, while he was proceeding on the road, the said tractor and trailer dashed against the deceased Pandurangaiah. Due to the accident, he sustained grievous injuries and immediately, he was taken to the Koratagere Government Hospital. However, during the course of treatment he died on 11.11.2007.

3. The wife and children of the deceased filed a claim petition contending that he was working as a coolie and earning Rs.5,000/- per month. In view of death of the bread earner in the road traffic accident, the family has lost the bread earner. Hence, sought for compensation of Rs.6,00,000/-.

4. In pursuance of the notice issued by the Trial Court, though the owner of the tractor and trailer was served with notice, he remained unrepresented. 2nd respondent-Insurance Company has filed the written

statement denying the entire averments made in the claim petition and also contended that the tractor and trailer is insured under the category of miscellaneous and special type of vehicle which is to be used only for agricultural purpose. In view of violation of terms and conditions of the policy, the tractor and trailer was used for commercial purposes. Hence, the Insurance Company is not entitled to indemnify the liability and sought for dismissal of claim petition.

5. On the basis of the pleadings of the parties, the Trial Court framed necessary issues. The claimants in order to prove their case examined Ramachandra, one of the sons of the deceased as P.W.1 and further examined one of the eye witnesses that is the co-worker as P.W.2 and got marked documents as Exs.P.1 to P.11. On behalf of the respondents, one of the official of the Insurance Company was examined as R.W.1 and got marked the documents as Exs.R.1 and R.2.

6. The Trial Court after appreciating the oral and documentary evidence and taking into consideration the

spot mahazar, IMV report, inquest report, copy of the complaint and FIR held that due to rash and negligent driving of the tractor and trailer belonging to the 1st respondent the accident had occurred. The claimants are the dependents of the deceased. Hence, they are entitled for the compensation. With regard to quantum of compensation is concerned, though the claimants claimed that the deceased was earning Rs.5,000/- per month by doing coolie work, no documents are produced to prove the said fact. The accident has occurred in the year 2007. In view of that, the Trial Court taking into consideration the income of the deceased as Rs.3,000/- per month, deducting 1/3rd towards his personal expenses and applying the multiplier of 14, awarded a sum of Rs.3,36,000/- towards loss of dependency and Rs.50,000/- towards conventional heads. In all, the Trial Court awarded compensation of Rs.3,86,000/- with interest at 6% p.a. With regard to the liability is concerned, the Trial Court held that the tractor and trailer was used for commercial purpose i.e., transportation of sand for

sale, in violation of terms and conditions of the policy. Hence, the insurer is not liable to compensate the claimants and fixed the liability on the owner of the vehicle.

7. Being aggrieved by the judgment and award passed by the Trial Court, the claimants have filed this appeal seeking enhancement of compensation and also challenging that portion of the order fastening the liability on the owner of the vehicle to compensate the claimants.

8. Sri N.Gopalkrishna, learned advocate appearing for the appellants contended that the judgment and award passed by the Trial Court is contrary to law. There is no material to show that the tractor and trailer was used for transportation of sand for commercial purposes. P.W.1 who is the eye witness has categorically stated that the sand is used for the agricultural purpose. On the basis of the presumption and surmises the Trial Court held that the sand is being used for the commercial purposes violating the terms and conditions

of the policy and fastened the liability on the owner which is contrary to law. Further taking into consideration the income of deceased at Rs.3,000/- per month, the Trial Court has awarded the lower compensation. Hence, sought for enhancement of compensation.

9. On the other hand, Sri A.K.Bhat, learned advocate appearing for 2nd respondent-Insurance Company argued in support of the judgment and award passed by the Trial Court contending that though the owner of the vehicle was served with notice, he remained absent and has not defended his case. If the sand is used for agricultural purposes nothing prevented the owner of the vehicle to step into the witness box and state the same. Hence, the Trial Court has drawn the presumption that the sand which was transported in the tractor and trailer was used for commercial purposes. Therefore, there is no infirmity in the order passed by the Trial Court and the compensation awarded is just and fair compensation. Hence, sought for dismissal of the appeal.

10. I have carefully considered the arguments addressed by the learned counsel for the parties and perused the judgment and award as also oral and documentary evidence let in by the parties.

11. The records clearly disclose that the husband of the 1st appellant and father of appellants No.2 and 3 has sustained grievous injuries in the road traffic accident occurred on 6.11.2007 and subsequently, he died on 11.11.2007 during the course of treatment. The occurrence of the accident is due to rash and negligent driving of the tractor and trailer and death of the deceased is not in dispute. Though, the claimants claim that the deceased was earning a sum of Rs.5,000/- per month by doing coolie work, no material has been produced to establish the same.

12. The accident occurred in the year 2007. The Trial Court taking into consideration the minimum wages being paid to the coolies and taking into consideration the income of the deceased at Rs.3,000/- p.m and deducting 1/3rd towards his personal expenses

awarded just and fair compensation. I find there is no infirmity or irregularity with regard to the quantum of compensation awarded. Insofar as liability is concerned, the specific case pleaded by P.W.1 and one of the witnesses is that they were working as coolies for the purpose of loading of sand for agricultural land belonging to the owner of tractor and trailer. One of the co-employee who was examined as P.W.2, in his evidence has clearly stated that he was working as a coolie for the purpose of loading of sand for agricultural purposes. Though, the Insurance Company examined one of the officer, no material has been placed to show that the said sand is being used for commercial purpose except vague statement that the tractor and trailer is being used for the commercial purposes. On the basis of the said presumption, the Trial Court held that the vehicle was used for commercial purposes. The Trial Court overlooked the evidence let in by P.Ws.1 and 2. In the absence of necessary material, it has to be held that the sand is used for agricultural purposes and the tractor and trailer is used only for agricultural

purposes. Hence, the judgment and award passed by the Trial Court fastening the liability on the owner of vehicle is liable to be set aside. Hence, the insurance company has to indemnify the claimants.

Accordingly, I pass the following

ORDER

The appeal is allowed in part. The judgment and award dated 27.10.2010 made in MVC.NO.343/2008 passed by Trial Court is set aside insofar as fastening the liability on the owner of the vehicle and the liability is fastened on the insurance company to compensate the claimants. Insofar as quantum of compensation is concerned, the appeal is dismissed.

**Sd/-
JUDGE**

PB