



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 31ST DAY OF AUGUST, 2024

BEFORE

THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

MFA NO. 25462 OF 2011 (WC)

BETWEEN:

THE AREA MANAGER, BAJAJ ALLIANZ
GENERAL INSURANCE COMPANY LIMITED
V.A. KALBURGI MANSION, 4TH FLOOR
IN FRONT OF MUNICIPAL CORPORATION
LAMINGTON ROAD, HUBLI
NOW REPRESENTED BY AUTHORIZED OFFICER.

... APPELLANT

(BY SRI. S.K. KAYAKAMATH, ADV.)

AND:

- 1 . SMT. RATNAVVA W/O. IRAPPA @ VEERESH HULIHALLI
R/O: HEDIYAL, TQ: RANEBENNUR, DIST: HAVERI
- 2 . NAVEEN S/O. IRAPPA @ VEERESH HULIHALLI
R/O: HEDIYAL, TQ: RANEBENNUR, DIST: HAVERI
- 3 . NAIANA D/O. IRAPPA @ VEERESH HULIHALLI
R/O. HEDIYAL TQ: RANEBENNUR, DIST:HAVERI.

2ND AND 3RD RESPONDENTS ARE MINORS,
REP. BY THEIR GUARDIAN AND NATURAL
MOTHER RESPONDENT NO.1

- 4 . SMT. PARVATEVVA W/O. HANUMANTAPPA HULIHALLI
R/O: HEDIYAL TQ: RANEBENNUR, DIST:HAVERI
- 5 . SRI. NAYAJUDDIN S/O. M.K.SHIRAJUDDIN
R/O: BADA MAKAN, HORPET, CHITRADURGA.

... RESPONDENTS

(BY SRI. PRUTHVI K.S., ADV. FOR R1;
R2 AND R3 MINOR REPRESENTED BY R1;
NOTICE TO R5 SERVED; R4 DECEASED)

THIS MFA IS FILED UNDER SECTION 30(1) OF THE
W.C.ACT 1923, AGAINST THE JUDGMENT AND AWARD DATED
12.04.2011 PASSED IN W.C.A.F.-146/2008 ON THE FILE OF THE

Digitally signed by
PRAJWAL A
Location: HIGH COURT
OF KARNATAKA



LABOUR OFFICER AND COMMISSIONER FOR WORKMEN COMPENSATION, HAVERI DISTRICT HAVERI, AWARDED THE COMPENSATION OF RS.4,07,700/- WITH INTEREST AT THE RATE OF 12% P.A., FROM THE DATE OF THE PETITION AND SHALL BE DEPOSITED WITHIN ONE MONTH FROM THE DATE OF ORDER.

THIS APPEAL HAVING BEEN RESERVED FOR JUDGMENT COMING ON FOR PRONOUNCEMENT THIS DAY, **T.G.SHIVASHANKARE GOWDA, J.,** DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA

CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA)

In this appeal, the insurance company is challenging the judgment and award dated 12.04.2011 in WCA/F.146/2008 passed by the Commissioner for Workmen's Compensation, Haveri ('the Commissioner' for short).

2. For the sake of convenience, the rank of the parties will be referred to as stood before the Commissioner.

3. Brief facts of the case are, one Erappa @ Veeresha Hulihalli, the deceased, who is the husband of first petitioner, father of petitioner Nos.2 and 3 and son of fourth petitioner, while working under first respondent



as a driver in the lorry bearing Reg.No.KA-16/A-5293, carried the onion load from Chitradurga to Goa. In his return journey, on 12.06.2008 on Ramanagara-Alnavara road canal Bridge No.56/1, after parking the lorry by the side of the road while taking bath in the canal was slipped, drowned and died. The petitioners being dependants of the deceased have approached the Commissioner for grant of compensation. Claim was opposed by the respondents. The Commissioner after taking the evidence and hearing on both the parties, by the impugned judgment and award allowed the claim of the petitioners awarding compensation of Rs.4,07,700/- with interest @ 12% per annum, directed the respondents to deposit the compensation. Aggrieved by the same, the insurance company is before this Court raising the several substantial questions of law.

4. After hearing the arguments of Shri. S.K.Kayakamath, leaned counsel for the insurance company and Shri.Pruthvi K.S., learned counsel for the petitioners, the following substantial questions of law:



(i) Whether the Commissioner is justified in saddling the liability against the insurance company holding there exists relationship of employee and employer between deceased and first respondent?

(ii) Whether the Commissioner is justified in accepting the final report of the police in holding that the death of the deceased was by use of insured vehicle?

5. It is contended by the learned counsel for the insurance company that there is no relationship of employee and employer between the deceased and the owner of the lorry. Acceptance of the final report by the Commissioner is contrary to the statutory provision. There is no involvement of the vehicle in question as the death was occurred due to drowning. When the vehicle in question was not involved and the relationship of employee and the employer is under dispute, the Commissioner erroneously accepted the relationship and also assessed the compensation and fastened the liability against the insurance company.

5.1. To support his contention, he has relied on the judgment of Hon'ble Apex Court in **Mamtaj Bi Bapusab Nadaf and Ors v. United India Insurance Co. and**



Ors¹ and Mallikarjun G. Hiremath v. The Branch Manager, Oriental insurance company Ltd.² the judgment of the Coordinate Bench of this Court in MFA.No.5142/2010 and MFA.No.21749/2010.

6. Per contra, learned counsel for the petitioners has contended that the deceased was working as a driver under first respondent for 2-3 years prior to the incident. The deceased was carried onion load from Chitradurga to Goa, while returning near Ramanagara he has parked the lorry by the side of the road and gone for bath, slipped and drowned inside the canal. The incident took place during the course of employment. Under such circumstances, the case laws relied upon by the insurance company not applicable to the case on hand.

6.1. To buttress his arguments, he has relied on the judgment of the Hon'ble Apex Court in **Poonam Devi and Others v. Oriental Insurance Company Ltd.**

¹ Manu/SC/0725/2010

² Manu SC/0202/2009



**Civil Appeal No.1836/2020 (arising out of SLP(C)
No(s).33445 of 2014).**

7. I have given my anxious consideration to the arguments addressed on behalf of both parties and perused the records.

8. With respect to the first Question of law is concerned, the evidence on record goes to show that 4 months prior to the incident, the deceased was employed by first respondent as driver of his lorry. The prosecution papers clearly goes to show that at the time of accident, the deceased was returning from Goa to Chitradurga. One Basavraju reported the death of the deceased in the canal on 13.06.2008. Based on the same, Ex.P2-FIR came to be registered under Section 174C of Cr.P.C and ultimately final report under Ex.P3 came to be filed. The summary of said report that the deceased while working as driver of the lorry was drowned in the canal as he was taking bath by parking the lorry by the side of the road. During the course of inquest, the statements of witnesses have been recorded wherein it is specifically stated that



the deceased was the driver of the lorry and he was drowned in the canal while taking bath when he was driving back the lorry to Chitradurga from Goa.

9. The officer examined on behalf of the insurance company, during the course of cross-examination, has categorically admitted that prosecution papers have not been challenged by the insurance company. The material on record is very clear at the time of dead body of the deceased was traced, the lorry in question was parked by the side of the road near the canal.

10. During the course of cross-examination of the first petitioner who is examined as PW.1, nothing is elicited that the deceased was not a driver nor he was working under first respondent. The place where the deceased was drowned is an unknown place, it is on the middle of the route between Goa to Chitradurga. When the death of the deceased was reported to the police, the family members were not knowing anything about cause of death. To explain that the deceased was the driver, his DL is placed before the Commissioner. The Commissioner



has re-appreciated all these factors and came to the right conclusion that the deceased was died when he was returning to Chitradurga from Goa having drowned in the canal at Ramanagara.

11. On behalf of first respondent no evidence is placed before the Commissioner that the deceased was not employed by him. If the first respondent has not employed the deceased how the lorry belonging to first respondent carried the onion load from Chitradurga to Goa and it was returned without a driver. The evidence on record is sufficient to accept that at the time of incident, the deceased was the driver of the lorry in question. Accordingly, substantial question of law No.1 is answered.

12. As regarding 2nd Question of law is concerned, the Commissioner has considered the age of the deceased at 32 and applied the formula as per Column 4(1) of the Workmen's Compensation Act by selecting the factor 203.85 and taken



the income at Rs.4,000/-.

$Rs.4,000/2=2,000*203.85=Rs.4,07,700/-$.

13. As regarding liability is concerned, the main contention of the insurance company is that there is no connection between the vehicle and death of the deceased and the insurance company is not liable to indemnify the owner. As discussed above, the lorry was parked by the side of the road and the deceased was taking the bath when he was drowned. The Hon'ble Apex Court in **Malikarjuna G. Hiremath** as well as **Mamtaj Bi Bapusab Nadaf** dealing with factual situation where the driver of the lorry was reached the destination and thereafter the incident had taken place. It goes to indicate that the employment of the driver was completed as he was no more the driver of the lorry. Under such circumstances, it was held that the insurance company is not liable.

14. The Coordinate Bench of this Court in **The Divisional Manager v. Smt.Chandbi and others** in **MFA.No.21749/2010** relying on the judgment in **Bajaj**



Allianz General Insurance Company Bellary v. Kiranmai and others in **MFA.No.5142/2010** by order dated 16.06.2022 held that insurance Company is not liable. The facts in **Chandbi** is that the driver of the lorry was sleeping on the load, died because of fall therefrom to the ground. The thin line difference is that driver has already reached destination, in order to protect the goods he was sleeping on the lorry. Therefore, the principles of **Malikarjuna G. Hiremath and Mamtaj Bi Bapusab Nadaf** (supra) not applicable to the facts of this case. The facts of the case in **Kiranmai** (supra) is not clear.

15. The Hon'ble Apex Court in **Poonam Devi's** discussed that during the course of employment the incident has occurred. The facts is that the driver was in the transit. Before reaching the destination due to roaring temperature of 42.6°C in Yamunagar (Haryana) he has parked the lorry and went to the canal to fetch water for himself as well as the lorry, where he was drowned. The Hon'ble Apex Court extends theory of



notional extension as the incident was on the middle of transit.

16. The Hon'ble Apex Court further referring to the judgment in **B.E.S.T. Undertaking v. Agnes³** and **Leela Bai and anr. v. Seema Chouhan and anr.⁴** held that the facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment to give effect the theory of notional extension.

17. In **Mallikarjun G. Hiremath** it was distinguished that, the deceased had completed his journey from Siraguppa to Gurugunta Angreshwar temple, after which he went to the pond and while taking a bath slipped and drowned. It is identical to the case of **Mamtab Bi's** case. In **Poonam Devi's** case and in this case facts are identical in nature. **Mamtaj Bi Bapusab Nadaf, Mallikarjuna G. Hiremath, Kiranmai** as well as

³ AIR 1964 SC 193

⁴ (2019) 4 SCC 325



Chandbi's cases were decided on a different set of facts. The employment of the deceased was in force at the time of incident as he was in transit and theory of notional extension came to the aid of the petitioners.

18. Referring to the judgment of the House of Lords in **Quinn v. Leathem** 1901 A.C. 495 Co-ordinate bench of this Court observed that a decision is an authority for the proposition that is actually laid down in a given fact matrix and not for all that which logically follows from what has been laid down, which means to say that the principles laid down in each judgment is on the set of facts of that case and it cannot be universally applied to all the cases where the facts are different.

19. The appellant relaying the Judgments decided on different set of facts which are not imparting the impugned order of the Commissioner. There is no error or illegality in the order of the Commissioner.

20. In view of the above findings, both the substantial questions of law are answered against the



insurance company. The appeal is devoid of merits, in the result, the following:

ORDER

- (i) Appeal is ***dismissed***;
- (ii) The insurance company is directed to satisfy the award;
- (iii) The office shall transmit the statutory deposit to the Commissioner for disbursement;
- (iv) The insurance company shall deposit the balance compensation, if any with interest within 4 weeks from the date of receipt of certified copy of this judgment.

SD/-
(T. G. SHIVASHANKARE GOWDA)
JUDGE

MKM
List No.: 19 SI No.: 1