



**IN THE HIGH COURT OF KARNATAKA,**

**KALABURAGI BENCH**

**DATED THIS THE 31<sup>ST</sup> DAY OF JULY, 2024**

**BEFORE**

**THE HON'BLE MR. JUSTICE N.S.SANJAY GOWDA**

**MISCL. FIRST APPEAL NO.201521 OF 2017 (MV-D)**

**C/W**

**MISCL. FIRST APPEAL NO.201391 OF 2017 (MV-D)**

**IN MFA NO.201521/2017:**

**BETWEEN:**

THE ORIENTAL INSURANCE CO. LTD.,  
BY ITS BRANCH MANAGER,  
OFFICE AT K.K. COMPLEX,  
CITY TALKIES ROAD, RAICHUR,  
NOW REPRESENTED BY  
THE SENIOR DIVISIONAL MANAGER,  
THE ORIENTAL INSURANCE CO. LTD.,  
1<sup>ST</sup> FLOOR, N.G. COMPLEX, MAIN ROAD,  
KALABURAGI.

...APPELLANT

(BY SRI SANJAY M. JOSHI, ADVOCATE)

**AND:**

1. SMT. ZAINAB BROCHAWALA  
W/O LATE SHABBIR BROCHAWALA,  
AGE: 51, OCC: HOUSEHOLD,
2. RASHEEDA  
D/O LATE SHABBIR BROCHAWALA ,  
AGE: 24 YEARS, OCC: STUDENT,

Digitally signed  
by RENUKA

Location: HIGH  
COURT OF  
KARNATAKA



BOTH ARE R/O. BRESTWARPET,  
NEAR CITY TALKIES RAICHUR,  
BOTH ARE R/O BABA NAGAR,  
TQ. DIST: VIJAYAPUR-586101.

3. SRI PULLAIAH S/O PITCHAIAH,  
AGE: MAJOR, OCC: LORRY DRIVER,  
R/O. H.NO.3-8-223/1, PRAKASHANAGAR,  
KAMMAM A.P-507001.
4. SRI B. VEERA SWAMY S/O VENKAIAH,  
AGE: MAJOR, OCC: NILL,  
R/O. H.NO.2-99, YERUPALAM VILLAGE,  
YERUPALEM MANDALAMA,  
KAMMAM, DIST: A.P-507001.
5. THE NEW INDIA ASSURANCE CO.LTD.,  
BY ITS BRANCH MANAGER,  
BRANCH AT GUNJ ROAD,  
RAICHUR-584101.

...RESPONDENTS

(BY SRI BASAVARAJ R. MATH, ADV. FOR R1 AND R2;  
SRI S. S. ASPALLI, ADV. FOR R5;  
NOTICE TO IN RESPECT OF R3 AND R4 IS DISPENSED  
WTIH)

THIS MFA IS FILED U/S. 173(1) OF MV ACT, PRAYING TO  
PRINCIPAL DISTRICT JUDGE AND MACT, AT RAICHUR, ON  
THE FILE OF MVC NO.89/2016, DECIDED ON 21.06.2017, AND  
SET ASIDE THE SAID JUDGMENT AND AWARD, IN SO FAR AS  
THE LIABILITY OF RS.5,08,000/- (BEING 50% OF THE  
AWARDED COMPENSATION) IS SADDLED UPON THE  
APPELLANT INSURANCE COMPANY.

**IN MFA NO.201391/2017 :**

**BETWEEN:**

THE NEW INDIA ASSURANCE CO. LTD.,  
BY ITS BRANCH MANAGER,  
BRANCH GUNJ ROAD,



RAICHUR,  
NOW REPRESENTED BY ITS  
DVNL. MANAGER.

...APPELLANT

(BY SRI S.S. ASPALLI, ADVOCATE)

**AND:**

1. SMT. ZAINAB  
W/O LATE SHABBIR BROCHAWALA,  
AGE: 51, OCC: HOUSEHOLD WORKS,
2. RASHEEDA  
D/O LATE SHABBIR BROCHAWALA,  
AGE: 24 YEARS, OCC: STUDENT,  
BOTH ARE R/O. BRESTWARPET,  
NEAR CITY TALKIES, RAICHUR -584101.
3. SRI PULLAIAH S/O PITCHAIAH,  
AGE: MAJOR, OCC: LORRY DRIVER,  
R/O. H.NO.3-8-223/1,  
PRAKASH NAGAR,  
KAMMAM A.P-507001.
4. SRI B. VEERA SWAMY S/O VENKAIAH,  
AGE: MAJOR, OCC: NILL,  
R/O. H.NO.2-99,  
YERUPALAM VILLAGE,  
YERUPALEM MANDALAMA,  
KAMMAM, DIST: A.P-507001.
5. THE ORIENTAL INSURANCE CO.LTD.,  
BY ITS BRANCH MANAGER,  
OFFICE AT K.K. COMPLEX,  
CITY TALKIES ROAD, RAICHUR-584101.

...RESPONDENTS

(BY SRI BASAVARAJ R. MATH, ADV. FOR R1 AND R2;  
R4 AND R5 -SERVED; APPEAL STAND DISMISSED AGAINST  
R3)



**NC: 2024:KHC-K:5491**  
**MFA No. 201521 of 2017**  
**C/W MFA No. 201391 of 2017**

THIS MFA IS FILED U/S. 173(1) OF MV ACT, PRAYING TO SET ASIDE THE JUDGMENT AND AWARD DATED 21.06.2017 IN MVC NO.89/2016 PASSED BY THE PRL. DISTRICT JUDGE AND MACT RAICHRU BY ALLOWING THE ABOVE APPEAL IN THE INTEREST OF JUSTICE AND EQUITY.

THESE APPEALS COMING ON FOR ORDERS THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE N.S.SANJAY GOWDA

**ORAL JUDGMENT**

(PER: HON'BLE MR. JUSTICE N.S.SANJAY GOWDA)

These two appeals are filed by the Insurance Companies.

2. In respect of an accident which took place between a car (insured by the appellant in M.F.A.No.201521/2017) and a truck (insured by the appellant in M.F.A.No.201391/2017), the Tribunal has awarded a sum of ₹10,16,000/- to the claimants.

3. The claimants have accepted the award inasmuch as they have not preferred an appeal.



4. The only question to be considered in these appeals is as to 'whether the insurer of a Truck is to be made liable or the insurer of the Car is to be made liable ?'

5. The Tribunal by the impugned order has made the insurer of the Car and the Truck liable to the extent of 50% each. As a consequence, both Insurance Companies are before this Court challenging the fixation of liability on them.

6. The insurer of the Car contends that the accident occurred was solely due to the negligence of on the part of the Truck driver and hence, the insurer of the Truck could not be liable.

7. The insurer of the Truck on the other hand contends that the police after investigation had formed an opinion that the driver of the Car was rash and negligent and had caused the accident and they



had also proceeded to file an abated charge-sheet against the driver of the deceased Car and therefore the fixation of liability on the insurer of the Truck to an extent was incorrect.

8. In an accident involving a Car and a Truck, the best witnesses to talk about the rash and negligence would obviously be the drivers of the car and the Truck. In this case, the driver of the Car was killed in the accident and hence the question of examining him would not arise. Admittedly, the driver of the Truck was available and yet neither the insurer nor the owner of the Truck chose not to examine the driver. In my view, the evidence of the Truck driver would have been a direct piece of evidence and would clearly demonstrate as to who was rash and negligent.

9. The argument that the police have made an investigation and laid a charge-sheet against the driver of the Car who was killed in the accident and



therefore negligence is to be attributed to him cannot be accepted.

10. It is settled law that even the statements made in the FIR and in the charge-sheet are to be established before the court in the manner known to law and merely because the investigating agency has formed an opinion regarding negligence of one party, that cannot be conclusive evidence and those statements would bind the Tribunal. Since there is absolutely no evidence forthcoming from the best source of evidence i.e., the driver of the Truck an adverse inference would have to be drawn and it will have to be held against him that the driver of the Truck was liable for the accident.

11. It also have to be kept in mind that in an accident between a smaller vehicle and a larger vehicle, there is always an implied presumption that



the larger vehicle could have avoided the accident and it would therefore have to accept responsibility.

12. In that view of the matter, in my view, it would be appropriate to hold that the driver of the Truck was responsible for the accident and thereby fasten the liability on the insurer of the Truck i.e., the appellant in M.F.A.No.201391/2017.

13. Consequently, M.F.A.No.201521/2017 filed by the Insurer of the Car is allowed and the liability fastened on it is set-aside.

14. M.F.A.No.201391/2017 is dismissed and it is made clear that the Insurer of the Truck i.e., the appellant in M.F.A.No.201391/2017 would be entirely liable for payment of compensation.

The appeals are accordingly disposed of.

The amount in deposit by the insurer of the Car in M.F.A.No.201521/2017 shall be refunded to it.





**NC: 2024:KHC-K:5491**  
**MFA No. 201521 of 2017**  
**C/W MFA No. 201391 of 2017**

The amount in deposit by the insurer of the Truck shall be transferred to the Tribunal for disbursement in terms of the award.

**Sd/-**  
**(N.S.SANJAY GOWDA)**  
**JUDGE**

SN  
List No.: 1 SI No.: 14  
CT: VD