



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF APRIL, 2024

BEFORE

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

MFA NO. 1661 OF 2015 (MV-D)

BETWEEN:

SMT. SHAKUNTHALA
W/O LATE CHETHURAM
AGED ABOUT 48 YEARS
R/AT NO.KALPANAHALLI VILLAGE
BHADRAVATHI TALUK
SHIMOGA DISTRICT - 577 201

... APPELLANT

(BY SRI.M.V.MAHESHWARAPPA, ADV.)

AND:

- 1 . SMT BHAGYAMMA
W/O LATE DHANAPPA
AGED ABOUT 32 YEARS
HOUSE WIFE, R/AT ITTIGEHALLI
VILLAGE, BHADRAVATHI TALUK
SHIMOGA DIST-577 201
- 2 . AFROZ
S/O MOHAMMED DASTAGIR SAB
AGED ABOUT 37 YEARS
DRIVER OF TRACTOR AND TRAILOR
R/AT KUDLIGERE VILLAGE
BHADRAVATHI TALUK
SHIMOGA DISTRICT-577 201
- 3 . THE BRANCH MANAGER
THE UNITED INDIA INSURANCE CO LTD.
P.B. NO.123,CHANNAGIRI ROAD
OLD TOWN,BHADRAVATHI
SHIMOGA DIST-577 201

... RESPONDENTS

(BY SRI.M.K.VENKATARAMANA, ADV. FOR R1;
SRI.RAVISH BENNI, ADV. FOR R3;
R2 SERVED)

Digitally signed by
HARIKRISHNA V
Location: HIGH COURT OF
KARNATAKA



THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 25.06.2014 PASSED IN MVC NO.35/2012 ON THE FILE OF THE FAST TRACK COURT, ADDITIONAL MACT-5, BHADRAVATHI, AWARDED A COMPENSATION OF RS.6,12,000/- WITH INTEREST AT 6% P.A., FROM THE DATE OF PETITION TILL THE DATE OF PAYMENT.

THIS MFA HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 18.03.2024 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

In this appeal, the owner of the tractor-trailer has challenged the judgment and award dated 25.06.2014 in M.V.C.No.35/2012 passed by the Fast Track Court and Addl M.A.C.T.-V, Bhadravathi ('the Tribunal' for short).

2. Appellant was respondent No.2, respondent No.1 was the petitioner, respondents No.2 and 3 were respondents No.1 and 3 before the Tribunal For the sake of convenience, the parties shall be referred to as per their status before the Tribunal.

3. Brief facts of the case are, the husband of petitioner by name Danappa (the deceased) was



working as a Loader in a tractor-trailer bearing Reg.No.KA-14/TA-0029-30 under respondent No.2, met with an accident while travelling in the said tractor-trailer on Anaveri-Ittigehalli Road of Bhadravathi Taluk near the house of one Anaveri Guddadamallappa. On 07.02.2010 at about 7:30 pm, due to the impact, the labours who were sitting on the tractor-trailer fell down and the deceased was ran over by the wheel of the tractor. The deceased was brought to the Mc. Gann Hospital, Shivamogga in a 108 Ambulance, where he was declared brought dead. Claiming that the petitioner was earning Rs.5,000/- per month as a loader in the tractor, the petitioner approached the Tribunal for grant of compensation of Rs.5,55,000/-. Claim was opposed by the respondents. Respondents No.1 and 2 have contended that the accident has occurred solely due to the negligence and carelessness on the part of the deceased himself. The Insurance Company has contended that respondent No.2 being the owner has



not obtained the permit for carrying passengers, nor paid any additional premium covering the risk of passengers travelling in the tractor-trailer; the risk of the passengers or coolies of the tractor-trailer were not covered under the policy and the Insurance Company has no liability to indemnify the owner. The Tribunal after taking the evidence and on hearing both the parties, by impugned judgment, awarded the compensation of Rs.6,12,000/- with 6% interest per annum and directed the owner of the tractor-trailer to pay the compensation while dismissing the claim against the driver and the Insurance Company. Aggrieved by the same, the owner of the tractor-trailer has filed this appeal on various grounds.

4. Heard the arguments of Sri. M.V. Maheshwarappa, learned counsel for the owner, Sri. M.K. Venkataramana learned counsel for



the petitioner and Sri. Ravish Benni, learned counsel for the Insurance Company.

5. It is the contention of learned counsel for the owner of the tractor-trailer that the deceased was the loader of the tractor, the tractor was used for construction of the canal work which is a part of agriculture; Ex.R1 is a package policy, which covers the loader of the tractor and Insurance Company is liable to indemnify his liability. To buttress his argument, he has relied upon the judgments of this Court in:

- i) ***National Insurance Company Limited -Vs.- Sri Maruthi and Others¹,***
- ii) ***The Divisional Manager, United India Insurance Co. Ltd., Ballari - Vs.- Smt. Savitri and Others²,***
- iii) ***Sri. Ajjegowda -Vs.- Smt. Latha and Others³.***

¹ ILR 2011 KAR 4139

² ILR 2019 KAR 1743

³ M.F.A.No.4842/2016, decided on 08.09.2021



6. It is the contention of learned counsel for the petitioner that the deceased was working as a Loader in the tractor-trailer; he has met with an accident on account of actionable negligence on the part of respondent No.1; basically, respondents No.1 and 2 are jointly liable to pay the compensation; as the owner of the tractor-trailer obtained the package policy, it covers the risk of death of the deceased and therefore, all the respondents have to pay the compensation.

7. Per contra, learned counsel for the Insurance Company has contended that the tractor was used for commercial purpose; the policy of insurance did not cover the risk of the deceased under Section 147 of the Motor Vehicles Act, 1988; though the policy is a package policy, no premium was collected to cover the risk of the loader or labour of the tractor-trailer; when there was no premium paid, policy was not covering the risk of the labours and the tractor was



used for commercial purposes, the Insurance Company has no legal liability to indemnify the owner. In support of his argument, he has relied the decision in ***Nagaraj -Vs.- Ninge Gowda and Another⁴***.

8. I have given my anxious consideration to the arguments addressed on both sides and also perused the records.

9. The material on record points out that the tractor-trailer bearing Reg.No.KA-14/TA-0029-30 belonging to respondent No.2 on 07.02.2010 at 07:30 pm, was driven by respondent No.1. The said tractor-trailer met with an accident while carrying the sand as well as labourers in the tractor-trailer. Due to the impact, the husband of the petitioner fell down from the tractor-trailer was ran over by the wheel of the tractor, causing him the injuries. The deceased when brought to Mc. Gann Hospital,

⁴ M.F.A.No.6440/2012 (WC), decided on 17.07.2023



Shivamogga for treatment, he was declared brought dead. The petitioner being the wife of the deceased, being a dependant, entitled to claim compensation.

10. As regarding the accident is concerned, the petitioner has relied upon the prosecution papers such as the F.I.R., complaint, spot mahazar, inquest mahazar, I.M.V. report, P.M. report, claim notice, election I.D. card and ration card as per Exs.P1 to P9. The prosecution papers stand in support of the claim made by the petitioner for while the deceased was travelling in the tractor-trailer along with co-coolies, there was an accident, due to which the deceased fell down from the tractor, wheel of the tractor has ran over on his head, resulting his death. The driver of the tractor has been prosecuted by the Holehonnur Police in Crime No.43/2010. Inquest report as well as post-mortem report points out that the cause of death was due to shock as a result of injuries sustained by the deceased. The injury



mentioned in the post-mortem report as well as inquest mahazar is the head injury. Hence, the accident, cause of the accident and actionable negligence on the part of respondent No.1 has been explained.

11. On the basis of petitioner being the dependent, the Tribunal considered the income of the deceased at Rs.4,000/-, effected 1/3rd deduction towards personal expenses, awarded loss of dependency at Rs.5,76,000/-. Towards loss of estate, loss of love and affection and loss of consortium, Rs.10,000/- each and funeral expenses at Rs.6,000/-, in all, Rs.6,12,000/- was awarded. Since the petitioner has not filed the appeal seeking enhancement, this appeal is only confined to the aspect of liability.

12. Respondents No.1 and 2 being the driver and owner are liable to pay the compensation. The Insurance Company though disowned its liability, it



has produced policy of insurance as per Ex.R1. On perusal of contents of Ex.R1, the policy is in force at the time of accident. But, the policy is named as 'Miscellaneous and Special Type of Vehicles Package Policy'. The schedule of premium points out the third-party liability, premium for trailer, compulsory PA to owner-driver, WC to employee 1. For 1 employee, the policy takes the premium of Rs.25/-. Under these circumstances, whether the Insurance Company is liable to indemnify the owner has to be considered.

13. Ex.R1 points out that the policy was issued subjected to I.M.T. endorsements: 7, 21, 48, 36, 24 and 40. These entries refer:

"IMT.7. Vehicles subject to Hypothecation Agreement

IMT.21. SPECIAL EXCLUSIONS AND COMPULSORY DEDUCTIBLE (Applicable to all Commercial Vehicles excluding taxis and



motorized two wheelers carrying passengers for hire or reward.)

IMT.24. ELECTRICAL / ELECTRONIC FITTINGS (Items fitted in the vehicle but not included in the manufacturers listed selling price of the vehicle – Package Policy only)

IMT.36. Indemnity to Hirer – Package Policy – Negligence of the insured or Hirer.

IMT.40. Legal Liability to paid driver and/or cleaner employed in connection with the operation of Motor vehicle. (For buses, taxis and motorized three/four wheelers under commercial vehicles tariff)

IMT.48. Agricultural and Forestry Vehicles And Other Miscellaneous vehicles with Trailers attached – Extended Cover.”

14. Now, in the light of the details of the policy referred supra, let us examine the position of law. In **Maruthi's** case (supra), while dealing with the matter under Section 30 of the Workmen's Compensation Act, 1923, the Division Bench of this Court at paras No.31, 37 and 40, laid down as follows:



"31. By reading Sections 147 and 149, it is clear that the Legislative intent was that the insurer has to compulsorily cover all the risks arising out of and use of motor vehicle and the liability of the insurer is co-extensive with that of insured. However, this is subject to the limitations envisaged under Section 147(1)(b). It is also clear that the coolies who are employees carried in a goods vehicle are to be compulsorily covered under Section 147(1)(b).

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37. The wordings of the fully worded policy makes it clear that the vehicle in question is a goods vehicle. Therefore, the respondents were justified in saying appellant cannot plead other than what is stated in the policy. If the general exception in the policy were to exclude the liability of the insurer to cover the coolies employed for loading and unloading then the argument of the appellants was justified. Though the fully worded policy refers to the terms of contract between the parties, IMT 7, 21, 24, 36 and 48, on perusal of the same except IMT 36 none of the other IMTs. are relevant. As a matter of fact IMT 7 & 48 do not find a place in the fully worded policy. IMT 21 refers to exclusion of riots, strikes and terrorism coverage. IMT 24 refers to replacement of parts. When the very policy is referred to as a special package policy, unless the insured was fully made known the exact terms of contract by including them in the terms of policy, it is nothing but with-holding necessary and important information from the insured. Depending upon the user of the vehicle whether for agricultural purpose or for commercial purpose, the liability of the insurer



would be decided. When the intention of the Legislation was to cover compulsorily all the risk arising out of the use of the motor vehicle and that the liability of the insurer is co-extensive with that of the insured subject to Section 147 (1)(b), coolies or employees are compulsorily covered. Therefore, the argument that Rule 100(6) r/w Rule 226 of the Karnataka Motor Vehicles Rules is relevant is rejected and the same will not authorise or permit the insurer to avoid the liability.

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40. The combination of tractor-trailer is nothing short of a goods carriage. Therefore, when once it is held as goods carriage vehicle, by virtue of Section-II-1(1) of fully worded policy and also provisions of Section 147, the claim of the claimants on hand is covered. The claimants in the present case have rightly approached the Workmen's Commissioner and the Commissioner was justified in holding that the injured claimants were coolies under the owner viz., the insured. In the present case, they were carrying stones for constructing a ridge in the land belonging to the insured so as to store the water. This is nothing but part and parcel of agricultural operations. The Claimants were neither gratuitous passengers nor persons who were travelling in the tractor-trailer for the purpose other than agricultural operations. Looking to the avocation of the claimants, the computation of the compensation by the Commissioner is just and proper. Viewed from any angle, we do not find any good ground to interfere with the awards of the Commissioner. Therefore the claimants



in the present case were rightly held as covered under Ex.R-2 policy."

15. While dealing with a tractor-trailer which was used for agricultural operations and the inmates were not gratuitous passengers or they were travelling for the purpose other than the agricultural operations, the Co-ordinate Bench of this Court in **Savitri's** case (supra) at para No.26, held referring to the deceased was travelling in a tractor as a coolie and for the act of driver, the owner of the vehicle is liable and the Insurance Company cannot avoid its liability.

16. In **Ajjegowda's** case (supra), while dealing with the inmates of the tractor-trailer who are alleged to be the gratuitous passengers referring to the policy is a Miscellaneous and Special Type of Vehicles – Package Policy, this Court has not accepted that the injured was not the gratuitous passenger, he was a collie, the Insurance Company



is liable to pay the compensation. At paras No.32 and 33, it has held as follows:

"32. In the case on hand also, it has to be noted that the very pleadings of the claimants that on the date of the accident, the deceased Malleshagowda was proceeding in the tractor-trailer as loader and unloader for loading sugarcane, which has been grown in the land of the insured and the insured, who appeared before the Court also did not object the same. He admitted that he was working as loader and unloader in the tractor from the last six months and the vehicle is also used for agricultural purpose not for any other purposes violating the conditions of the policy. The policy is a Miscellaneous and Special Type of Vehicles Package Policy. When such being the case, the vehicle is combination of tractor-trailer is nothing short of a goods carriage. Once it is held as goods carriage vehicle, by virtue of Section-II-1(1) of fully worded policy and also provisions of Section 147, the claim of the claimants on hand is covered. The claimants in the present case have rightly approached the Workmen's Commissioner i.e., subsequent to amendment, Employees' Workmen Commissioner and the Commissioner held that the deceased was a coolie under the insured. In the present case also, the deceased was travelling in the tractor-trailer in order to load the sugarcane in the land belonging to the insured, the same is nothing but a part and parcel of agricultural operations.



33. The contention of the Insurance Company is that the deceased was a gratuitous passenger cannot be accepted. The deceased was travelling for the purpose of agricultural operations not for any other purpose Having considered the avocation of the deceased as a loader and unloader and in view of the principles laid down in the judgment of this Court referred supra, I am of the opinion that the Commissioner has committed an error in fastening the liability on the owner instead of the Insurance Company. Hence, it requires an interference of this Court. Hence, I answer issue No.(ii) as 'affirmative'."

17. In **Nagaraj's** case (supra), the Co-ordinate Bench of this Court while discussing that the policy of insurance is taken for the agricultural purpose, whereas the owner giving a statement that the tractor was given to one K.S. Raju on hire basis for carrying out the P.W.D. works, under such circumstances, it was held that there is a violation of conditions of the policy and liability has to be fastened against the owner of the tractor-trailer. At para No.7, it has held as follows:

"7. Admittedly, insurance policy issued is for agriculture purpose but the owner himself had



stated while giving statement before the police that he has given his Tractor- Trailer to one contractor K.S.Raju on hire basis for carrying 'out PWD works. The said contractor K.S.Raju had stated in the complaint before the police that he has taken the Tractor- Trailer on hire basis from the respondent No.1 for carrying out PWD work. Therefore, these evidence produced before the learned Commissioner proves that the contractor had used the Tractor-Trailer for PWD work, which amounts to violation of condition of policy. Therefore, learned Commissioner is correct in holding that there is violation of condition of policy and accordingly, fastened liability on the owner of the Tractor- Trailer. Hence, this finding of learned Commissioner is correct which needs no interference by this Court."

18. As held in **Nagaraj's** case (supra), if the vehicle was hired for P.W.D. work, it amounts to violation of conditions of the policy and the owner has to pay the compensation. If the tractor-trailer is used for agricultural purpose, the Insurance Company is liable to pay the compensation. In view of this, let us consider whether the policy of insurance under Ex.R1 covers the risk of the husband of the petitioner or not.



19. On perusal of the material on record, particularly the complaint filed under Ex.R3, the statement of witnesses which is marked at Exs.R3 to R12 and the deposition of one Thippesha before the learned J.M.F.C., Bhadravathi in C.C.No.703/2011 marked at Ex.R13 points out that the deceased was travelling in the tractor-trailer at the time of accident. The vehicle was hired to one Ravi, respondent No.1 was the driver of the tractor-trailer, respondent No.2 was the owner of the tractor-trailer. Ex.R8 is the statement of respondent No.2 before the Police clearly speaks out that on 07.02.2010, the tractor-trailer was taken by respondent No.1 to supply sand for canal repair work. Now, it is clear that the tractor-trailer was hired for supply of sand for canal repair work.

20. Whether the hire of the tractor-trailer covers the risk of the claim needs reading of the IMT conditions attached to the policy. In particular,



IMT.36 deals with the hire. It is necessary to read IMT.36 in full:

"IMT.36. Indemnity to Hirer – Package Policy – Negligence of the insured or Hirer.

It is hereby declared and agreed that the company will indemnify any hirer of the vehicle insured against loss, damage and liability as defined in this Policy arising in connection with the vehicle insured by reason of the negligence of the within named insured or of any employee of such insured while the vehicle insured is let on hire"

Now, irrespective of the fact that the tractor-trailer was hired or not, the terms of the policy clearly points out that payment of additional premium of Rs.25/- to cover the risk of 1 employee. Under IMT.36, the Insurance Company agreed to indemnify the hirer also. Under such circumstances, the policy of insurance covers the risk of 1 employee arising out of the accident in question.

21. The Tribunal while dealing with the liability aspect, admitted that respondents No.1 and 2 are the driver and the owner of the tractor-trailer, Ex.R1



is the policy, tractor-trailer was hired for supply of sand for canal repair work, but it has recorded that the risk of the deceased was not covered under the policy as the Insurance Company has not collected any additional premium. Contrary, the recitals of Ex.R1 referred supra points out that the Insurance Company has collected additional premium of Rs.25/- to cover the risk of 1 employee and IMT.36 clearly speaks that the Insurance Company will indemnify the loss, damage and liability as defined under the policy even to the hirer. Under such circumstances, the finding recorded by the Tribunal that the risk of the deceased is not covered under the policy is erroneous. The Insurance Company when undertakes to indemnify the hirer, it has liability to indemnify the owner and it cannot raise a defence which is contrary to the terms of the policy. Hence, the appeal merits consideration. In the result, the following:



ORDER

- i) Appeal is ***allowed-in-part***;
- ii) Order of dismissal of claim petition against respondents No.1 and 3 is set aside;
- iii) Respondents No.1 and 2 are jointly and severally liable to pay the compensation. Respondent No.3/ Insurance Company is directed to indemnify the insured;
- iv) Accordingly, the Insurance Company is directed to deposit the compensation within 8 weeks from the date of receipt of certified copy of the judgment;
- vi) Amount in deposit, if any, shall be transmitted to the Tribunal along with records forthwith.

**SD/-
JUDGE**