IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 27TH DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE C.M. JOSHI

MISCL. FIRST APPEAL NO.200217/2019(MV-D)

BETWEEN:

BRANCH MANAGER,
ROYAL SUNDERAM ALLIANCE INS. CO. LTD.,
S.B. TEMPLE ROAD, GULBARGA,
DIST. GULBARGA,
NOW REPRESENTED THROUGH
THE MANAGER,
ROYAL SUNDARAM ALLIANCE INS. CO. LTD.,
SUBRAMANYAM BUILDING, 2ND FLOOR,
CLUB HOUSE ROAD,
CHENNAI-600 002,
THROUGH AUTHORIZED SIGNATORY.

...APPELLANT

Digitally signed by SHIVALEELA DATTATRAYA UDAGI
Location: HIGH COURT OF KARNATAKA

(BY SRI PREETI PATIL MELKUNDI, ADVOCATE)

AND:

1. NEELAMMA W/O SIDDANNA DESAI,
   AGE: 29 YEARS, OCC: HOUSEHOLD WORK,
   R/O KELLUR, TQ. JEWARGI,
   NOW RESIDING AT DORANHALLI,
   TQ. SHAHAPUR,
   DIST. YADGIR-585 201.

2. VISHWANATH S/O SIDDANNA DESAI,
   AGE: 06 YEARS, MINOR,

REPRESENTED BY
THE NATURAL MOTHER - RESPONDENT NO.1.

3. MANAGING DIRECTOR,
UNITED CROP CARE COMPANY
GULBARGA (KALABURAGI),
PAVANKUMAR S/O SATYANARAYAN BAJAJ,
R/O CHITTAPUR,
DIST. GULBARGA,
NOW R/O SHOP NO. 7-1211,
LAHOTI OIL MILL COMPOUND,
NEAR GUNJ BUS STOP
GULBARG (KALABURAGI),
DIST. GUALBARGA-585 103.

…RESPONDENTS

(BY SRI GANESH NAIK, ADV., FOR R1;
SRI BABU H. METAGUDDA, ADV., FOR R3;
R2-MINOR U/G OF R1)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO SET ASIDE THE JUDGMENT AND AWARD DATED 01.10.2018 PASSED BY THE SENIOR CIVIL JUDGE AND ADDL. MACT AT SHAHAPUR IN MVC NO.173/2015 AND TO ENHANCE BY MODIFYING THE INTEREST AWARDED.

THIS APPEAL COMING ON FOR FURTHER HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE C.M. JOSHI

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE C.M. JOSHI)

1. This appeal is directed against the judgment and award in MVC No.173/2015 dated 01.10.2018 by Senior Civil

Judge and MACT, Shahapur, whereby, the liability to pay compensation was fastened upon the appellant-Insurance Company herein.

2. The factual matrix of the case is as below:

a) The husband of the 1st petitioner, the deceased Siddanna on 21.03.2014 while proceeding in Bolero Jeep No.KA-32/N-4733 as an employee of respondent No.3 – United Crop Care Company met with an accident due to the negligent driving of the driver of the said jeep as it turned turtle by the side of the road, and sustained fracture of the right leg, thigh, waist etc. He was shifted to Kamreddy Hospital, Kalaburagi. While under treatment, his statement was recorded by the Police and the same was treated as source of the information and case was registered by the Police. Ultimately he died on 25.03.2014 in the hospital. The petitioners, contending that the deceased was aged 33 years, working in the said Company and earning Rs.20,000/- per month, filed a claim petition seeking compensation from the owner and insurer of the vehicle.

b) The petition was opposed by the owner-respondent No.1 contending that the deceased was not its employee and that the accident was not due to the negligence on the part of the driver of the said vehicle. The age, income and occupation of the deceased was denied and the relationship of employer and employee was also denied. It was contended that the respondent No.1 is no way concerned to the incident and as such, paying compensation by respondent Nos.1 and 2 does not arise.

c) Respondent No.2 – Insurance Company in its written statement reiterated the contentions of respondent No.1 and also contended that the driver of the jeep did not possess a valid and effective driving license and respondent No.1 allowed the said driver to drive the vehicle and thereby violated terms and conditions of the policy. *Inter alia*, it also contended that a false case has been registered against the driver of the jeep and that the Tribunal had no territorial jurisdiction to entertain the petition.

d) On the basis of the above contentions, appropriate issues were framed by the Tribunal and the 1st petitioner was

examined as PW1, Exs.P1 to P6 were marked in evidence. Respondent No.1 examined its official as RW1 and the official of respondent No.2 – Insurance Company was examined as RW2. Exs.R1 to R6 were marked on their behalf.

e) After hearing the arguments, the Tribunal awarded compensation of Rs.10,08,000/- and fastened the liability on respondent No.2. Being aggrieved by the said judgment, the respondent No.2 – Insurance Company is before this Court in this appeal.

3. The arguments by learned counsel appearing for the appellant-Insurance Company and learned counsel for respondent No.3-owner of the vehicle were heard. Counsel for respondent Nos.1 and 2 (petitioners) did not appear to advance their arguments.

4. Parties would be referred as per their rank before the Tribunal, for the sake of convenience.

5. The learned counsel for appellant – Insurance Company contends that when the petitioner contends that the deceased was employee of respondent No.1, they should have

approached the learned Commissioner under the Workmen's Compensation Act. It is contended that when respondent No.1 in his pleadings as well as evidence denied such relationship, the Tribunal should have concluded that the deceased was an unauthorized passenger in a private car. The vehicle has been used other than social and domestic purpose of the owner and therefore, there is violation of terms and conditions of the policy, resulting in absolving the liability of the appellant. It is contended that the quantum of the compensation awarded under the head of pain and sufferings is not justifiable. She further argues that though the policy issued is package policy, the liability is limited to Rs.1,00,000/- only and therefore, the appeal deserves to be allowed.

6. *Per contra*, learned counsel appearing for the respondent No.1 – owner of the vehicle would contend that though it has contended that there is no relationship of employer and employee, the liability determined by the Tribunal cannot be interfered with. He submits that the owner of the vehicle has denied the negligence of the driver and if a non-employee of the owner is traveling in the said vehicle, he is obviously covered by the policy issued by the appellant, since

he had paid the additional premium to cover the inmates of the jeep. Therefore, he contends that the coverage cannot be restricted to Rs.1,00,000/- and as such, sought dismissal of the appeal.

7. In this regard, he placed reliance on the judgment of this Court in the case of ***DIVISIONAL MANAGER, ORIENTAL INSURANCE CO., LTD., Vs. MAHADEVI*** in ***MFA No.45/2005*** dated ***11.11.2008***. He also relied on the judgment in the case of ***Mr. Ramchandra Vs. Vilas S/o. Chendru Pawar*** in ***MFA No.31466/2009*** dated ***27.01.2014***.

8. It is trite law that a private car policy would cover the unnamed passengers, who are traveling in the car with the consent of the owner. If the vehicle is used for hire or reward purpose, then the policy conditions get violated. In such circumstance, the liability on the Insurance Company can be absolved. Now the question is when respondent No.1 had denied that the deceased Siddanna was not its employee, whether the terms and condition of the policy are violated. It is also trite law that an inmate of the car is at liberty to choose the forum under the provisions of Employees' Compensation

Act or under the provisions of the Motor Vehicle Act. This aspect is no more *res-integra*.

9. A perusal of the FIR at Exs.P1 and P2 would indicate that the deceased while taking treatment at Kamreddy Hospital had given a statement to the ASI of Jewargi Police Station that he was an employee of United Crop Care Company and the vehicle belonged to the said Company. The accident occurred due to the negligence of the driver Bhimashankar and he had sustained the injuries. Based on the said information, case was registered and ultimately charge-sheet was filed against the driver and it was found that driver had a valid driving license. Such driving license is also produced at Ex.R3. Therefore, the contention of the Insurance Company that the driver was not having a valid driving license was not established.

10. The next contention of the appellant is that the policy is a private car package policy and therefore, the deceased was not permitted to travel. It is not the case of respondent No.3 herein, the owner of the car that he had not allowed the deceased to travel in the car. Though the written

statement is not happily worded, it is not denied that there was no such accident. Negligence of its driver was denied in the written statement. The policy produced at Ex.P6 would show that the policy covers use of the vehicle for any purpose other than hire or reward and few other limitations, which is not relevant for this case. It also mentions that the policy covers un-named passengers as per IMT-16 and the limit is Rs.1,00,000/-.

11. In the case on hand, it is the not the case of the appellant-Insurance Company that the driver – Bhimashankar had allowed the deceased to travel as a fare paying passenger, no such contention is also spoken to by RW1 in his testimony. Therefore, when the police papers clearly indicate that the deceased was traveling in the said vehicle, the Insurance Company cannot contend that the deceased was a gratuitous passenger or a fare paying passenger. There is no material on record to establish this factual aspect.

12. The argument of the learned counsel for the appellant that the vehicle has to be used only for domestic and social purposes, but the company used it for some other

purpose is an absurd argument. A company, which is a legal entity, obviously will own a car for the purpose of the business that has to be carried out by its employees. One cannot expect that it should be used for domestic and social purposes only by the Company. Moreover, there is no such condition in the policy document. Hence, this contention is liable to be rejected.

13. The judgment of this Court in the case of ***MAHADEVI*** referred *supra*, considers the covenants under IMT-16 (earlier IMT-71) concerning the coverage of the unnamed passengers. In Para 6 of the said judgment the Division Bench of this Court has held as below:

> *"6. In the instant case, we are dealing with the case of fatal accident and therefore, endorsement-5 of IMT-71 fastens upon the appellant with liability of discharging the award at 100%, with no restriction of any limit. Since Ex.R1 contains endorsement-5 of IMT-71, the entry made in column-D of the schedule mentioning Rs.1,00,000/- i.e. limited liability, therefore become redundant. This is so, because when there is ambiguity in any of the terms of the policy, as held by the Apex Court in the case of General Assurance Society Ltd. Vs. Chandmul Jain*

> *And Another reported in AIR 1966 SC 1644 (V 53 C 327), the terms and conditions is to be construed contra proferentem that is against insurance company and in favour of the insured. The principles of the said doctrine is applicable to the facts of the instant case since there is clear indication of covering of risk to all the passengers, which does not restrict the liability of the insurance company and we are satisfied that the insurance company is liable to discharge the award."*

14. Therefore, the Insurance Company cannot take shelter under IMT-16 any longer to contend that there is a limit for the coverage. Moreover, a circular issued by the IRDA in the year 2009, also directs the Insurance Companies to pay the compensation to the inmates of the vehicle, wherever, a package policy is issued. This aspect was noticed and observed in Para 6 by a Collateral Bench of this Court in the judgment of ***Ramchandra*** referred *supra*. Under these circumstances, the argument of the learned counsel appearing for the appellant that the policy did not cover the inmate of the car on the ground that he was not the employee of the respondent No.1 – owner and that the deceased was a gratuitous passenger is not

sustainable in law. The appeal being bereft of any merits is liable to be dismissed. Hence, the following:

ORDER

i) The appeal is dismissed.

ii) The amount in deposit, if any, before this Court be transmitted to the Tribunal.

Sd/-
(C.M. JOSHI)
JUDGE

SBS
List No.: 1 Sl No.: 50