IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 7TH DAY OF MARCH, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

MISCL. FIRST APPEAL NO.201433 OF 2015 (MV-D)

BETWEEN:

THE BRANCH MANAGER,
UNITED INDIA INSURANCE CO. LTD.,
MAIN ROAD, NEAR AMBEDKAR CIRCLE, BIDAR,
NOW REPRESENTED THROUGH,
DIVISIONAL MANAGER, KALABURAGI.

...APPELLANT

(BY SRI. MANVENDRA REDDY, ADVOCATE)

AND:

1. SMT. PARAMMA
W/O LATE MALLAPPA MEHETRE,
AGE: 61 YEARS, OCC: HOUSEHOLD,
R/O CHIKKALCHAND,
TQ. BHALKI, DIST. BIDAR.
NOW RESIDING AT NAUBAD,
BIDAR.

2. VAIJANATH S/O VISHWANATH PANCHAL,
SINCE DECEASED BY LRS,
(AMENDED AS PER V/O DATED 20.01.2025)

2(A). RAMESHWARI W/O LATE VAIJINATH PANCHAL,
AGE. 54 YEARS, OCC: HOUSEHOLD,
R/O BEERI (K) VILLAGE, TQ. BHALKI,
DIST. BIDAR.

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Location: HIGH COURT OF KARNATAKA

2(B). RAMLING S/O LATE VAIJINATH PANCHAL,
AGE: 34 YEARS, OCC: BUSINESS,
R/O BEERI (K) VILLAGE, TQ. BHALKI,
DIST. BIDAR.

2(C). SHALIVAN S/O LATE VAIJINATH PANCHAL,
AGE: 33 YEARS, OCC: BUSINESS,
R/O BEERI (K) VILLAGE, TQ. BHALKI,
DIST. BIDAR.

3. MAHANANDA W/O LATE JAGANNATH,
AGE: 21 YEARS, OCC: HOUSEHOLD,
R/O CHIKALCHANDA,
NOW AT BHAGYA NAGAR, BHALKI,
DIST. BIDAR.

…RESPONDENTS

(R1-SERVED;
V/O DTD. 14.10.2022, APPEAL AGAINST R2 STANDS ABATED;
R2(A) TO R2(C) ARE SERVED;
V/O DTD. 24.08.2023, NOTICE TO R3 IS DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO SET ASIDE THE JUDGMENT AND AWARD DATED 09.12.2014 PASSED BY THE II ADDITIONAL MACT AND ADDITIONAL DISTRICT AND SESSION JUDGE, BIDAR, IN MVC NO.524/2012 BY ALLOWING THE APPEAL AS PRAYED FOR.

THIS APPEAL COMING ON FOR FINAL 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)

Heard the learned counsel Sri.Manvendra Reddy appearing for the appellant. No representation for the respondents despite service of notice.

2. The learned council appearing for the appellant insurance company would submit that the policy produced by the petitioners at Ex.P10 shows that it was an act policy and therefore, the insurance company was not liable to pay the compensation in respect of death or injury of an inmate of the said vehicle. It is submitted that the tribunal failed to appreciate this aspect and has fastened the liability upon the appellant-insurance company and therefore there is a need for indulgence by this Court.

3. The factual matrix of the case is that on 27.02.2012 the deceased Jagannath along with his wife that is respondent No.3 before the tribunal was traveling in Mahindra Jeep bearing number KA-39/M-996 owned by respondent No.1 and insured by respondent No.2. Near

Sangameshwar temple, the said Jeep met with an accident as its driver lost control of the same and a dashed to a bus which was coming from the opposite direction. The disease Jagannath died at the spot and the complaint was lodged and ultimately, it seems a charge sheet was laid against the driver of the Jeep. The charge sheet has not been produced in that case.

4. The mother of the deceased Jagannath filed a claim petition arraying the wife of Jagannath as respondent No.3.

5. The owner respondent No.1 did not appear and was placed ex-parte. The respondent No.2-insurance company contended that the driver was not having a valid driving licence and that it was an Act Policy and therefore the inmate of the vehicle is not covered by the insurance. The tribunal after perusal of the evidence, held that the insurance company is liable and directed it to pay the sum of Rs.10,68,000/- to the petitioner and respondent No.3.

6. The fact that the deceased Jagannath was travelling in the said Jeep at the time of the accident is borne out of the FIR and the complaint, which are at Ex.P1 & P2. The complaint was lodged by none else than the petitioner Paramma. The records also reveal that the said Jeep had dashed against a bus. It is worth to note that the policy, produced by the petitioners at Ex.P10 would clearly indicate that it is an Act Policy and no premium was paid to cover the inmates of the Jeep. Therefore, it is evident that the insurance company was not liable to pay the compensation to the petitioners but liability should have been fastened upon respondent No.1 owner of the jeep. In this regard, he relies upon the judgment in the case of General Manager, United India Insurance Co. Ltd. V/s M. Laxmi and others[1], and in the case of Parappa and others V/s Bhimappa and another[2], to contend that the impugned judgment is erroneous. It is pertinent to note that in umpteen number of judgments, it has been held

[1] 2009 ACJ 104 SC

[2] ILR 2008 Kar. 1840

that the act policy would not cover the inmates of the vehicles. The judgment of a Division Bench of this Court in the case of The Branch Manager V/s Mahadev Pandurang Patil[3], is clearly on this aspect and there is no reason for the Tribunal to fasten the liability on the appellant herein. Under the circumstances, the submission of the learned counsel appearing for the appellant having considerable force, the same needs to be upheld. The tribunal has not bestowed its attention on the contention taken up by the insurance company in its written statement. It also did not bestow its attention on Ex.P10 the copy of the policy. Hence, the appeal deserves to be allowed and as such the following:

ORDER

Appeal is allowed.

The appellant-insurance company is absolved from paying the compensation amount to the petitioner. The respondent No.1 before the tribunal, who is the owner of

[3] ILR 2012 Karnataka 1841

the Jeep is held liable to pay the compensation amount as determined by the tribunal.

Amount in deposit is ordered to be refunded to the appellant-insurance company.

Sd/-
(C M JOSHI)

SMP
List No.: 1 Sl No.: 60
CT: AK