NC: 2025:KHC-K:2843
MFA No. 201773 of 2019

HC-KAR

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 4TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

MISCL. FIRST APPEAL NO.201773 OF 2019 (MV-I)

BETWEEN:

THE MANAGER
CHOLAMANDALAM-MS GENERAL
INSURANCE CO. LTD.,
SOLAPUR BRANCH,
SOLAPUR, MAHARASHTRA
(THROUGH AUTHORISED SIGNATORY)

...APPELLANT

(BY SRI SUBHASH MALLAPUR, ADVOCATE)

AND:

Digitally signed by RAMESH MATHAPATI
Location: HIGH COURT OF KARNATAKA

1. NAGESH
S/O BASAPPA SAJJANSHETTY,
AGE: 36 YEARS,
OCC: KIRANAN SHOP, NOW: NIL,
R/O: HALBURGA,
TQ: BHALKI,
DIST: BIDAR – 585 401.

2. MOHAN
S/O RAMCHANDRA
AGE: MAJOR,
OCC: OWNER OF TEMPO NO.3050
M.M.BEARING NO.KA-27/M-1988,
R/O: AT POST: SONTH,
TQ & DIST: KALABURAGI – 585 102.

3. THE MANAGER SHRIRAM TRANSPORT CO. LTD.,
KALABURAGI – 585 102.

…RESPONDENTS

(BY SRI SYED FAYAZUDDIN, ADVOCATE FOR R1;
SRI D.P.AMBEKAR, ADVOCATE FOR R3;
NOTICE TO R2 IS SERVED BUT UN-REPRESENTED)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173 (1) OF THE MOTOR VEHICLES ACT, PRAYING TO ALLOW THE ABOVE APPEAL AND CONSEQUENTLY BE PLEASED TO SET ASIDE THE JUDGMENT AND AWARD DATED 02.03.2019 PASSED BY THE ADDITIONAL M.A.C.T. AND ADDITIONAL DISTRICT AND SESSIONS JUDGE, BIDAR IN M.V.C.NO.69/2013, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS MISCELLANEOUS FIRST APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL JUDGMENT

Challenging judgment and award dated 02.03.2019 passed by Addl. MACT and Addl. District and Sessions Judge, Bidar in MVC no.69/2013, this appeal is filed.

2. Sri Subash Mallapur, learned counsel for appellant submitted that appeal is by insurer challenging award on liability and that occurrence of accident, involving insured vehicle and sustaining injuries therein are not in dispute.

3. . It is submitted that at time of drawing up of Ex.P-3 (Spot Panchanama), police had recorded statement of driver, who had stated that he had taken fair paying passengers from Bidar to Bhalki. It was submitted that policy issued to vehicle was a private car policy. Therefore, its usage for hire or reward would be in violation of policy condition. It was nextly contended that said driver had also stated that claimant-injured was traveling on footward at backside of insured vehicle. Therefore, contributory negligence has to be apportioned on claimant to entire extent. On said ground, prayed for allowing the appeal.

4. On other hand Sri Syed Fayazuddin, learned counsel for respondent no.1 and Sri D. P. Ambekar , learned counsel for respondent no.3 would oppose appeal.

5. Heard learned counsel and perused judgment and award.

6. From above, since, insurer is challenging award only on liability and not quantum, occurrence of accident, involvement of vehicle and claimant sustaining injury are not in

dispute. Sole point for consideration would be "Whether fixation of liability on appellant by Tribunal was justified?"

7. Burden to establish insured vehicle was used for hire and reward, would be on insurer, having taken specific contention in that regard. It is however seen that insurer did not lead any evidence. It is also not pointed out by learned counsel for appellant-insurer about any admission of claimant traveling in said vehicle as fair paying passenger having been elicited. Though, counsel seeks to rely upon statement of driver recorded at time of drawing up of spot panchanama, without examination of driver or investigation officer, who had drawn spot panchanama, statement would not be considered as evidence.

8. Even contention that claimant was traveling on footward of vehicle and as such, contributed for accident is also based on statement of driver. For aforesaid reason, even same cannot be considered.

9. Therefore, point for consideration is answered in negative.

Consequently, appeal is ***dismissed***.

Amount in deposit, if any, is ordered to be transmitted to Tribunal for payment.

Sd/-
(RAVI V HOSMANI)
JUDGE

NJ
List No.: 1 Sl No.: 46
Ct;Vk