IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 14TH DAY OF FEBRUARY, 2025

BEFORE

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

MISCL. FIRST APPEAL NO.202489/2018(ECA)

BETWEEN:

THE MANAGER,
IFFCO-TOKIO GENERAL INSURANCE CO. LTD.,
G1, G2, G12, G13, ASIAN ARCADE,
NEAR ANAND HOTEL, S.B. TEMPLE ROAD,
KALABURAGI,
THROUGH AUTHORISED SIGNATORY.

...APPELLANT

(BY SRI SUBHASH MALLAPUR, ADVOCATE)

AND:

Digitally signed by LUCYGRACE
Location: HIGH COURT OF KARNATAKA

1. DASHRATH S/O MONAPPA,
   AGE: 51 YEARS, OCC: NIL,

2. KALLAMMA W/O DASHRATH,
   AGE: 51 YEARS, OCC: HOUSEHOLD,

   BOTH R/O VILLAGE MARKUNDA,
   TQ. & DIST. BIDAR-585 401.

3. CHANNAVASWA REDDY S/O VEERAPPA REDDY,
   AGE: MAJOR, OCC: AGRICULTURE,

R/O VILLAGE MARKUNDA,
TQ. & DIST. BIDAR-585 401.

…RESPONDENTS

(BY SRI SANDEEP V. PATIL, ADV., FOR R1 & R2 (ABSENT);
SRI S.V. DESHMUKH, ADV., FOR R3 (ABSENT))

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 30(1) OF THE EMPLOYEE'S COMPENSATION ACT, PRAYING TO CALL FOR RECORDS IN ECA NO.1/2017 ON THE FILE OF THE COMMISSIONER EMPLOYEE'S COMPENSATION AND PRL. SENIOR CIVIL JUDE AND CJM AT BIDAR, AND TO ALLOW THE APPEAL BY SETTING ASIDE THE JUDGMENT AND ORDER DATED 20.07.2018 PASSED IN ECA NO.1/2017.

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)

1. This appeal is by the Insurance Company being aggrieved by the judgment and award dated 20.07.2018 passed in ECA No.1/2017 passed by the Commissioner for Employees Compensation, Bidar and Principal Senior Civil Judge and CJM at Bidar, (for short 'the Commissioner').

2. Heard learned counsel for the appellant and perused the material available on record.

3. There is no representation on behalf of the respondents.

4. The substantial question of law that has been raised by this Court is as below:

> *"Whether the Commissioner is justified in holding that the deceased was traveling in the Trolley of Tractor despite other records showing that he was traveling on the Engine of the Tractor?"*

5. The factual matrix of the case that is relevant for the purpose of this appeal is that the deceased Shivkumar was the son of the petitioners, working as a labourer in a tractor-trolley bearing No.KA-38/T-1292 and T-1293 under the employment of respondent No.1 – Channavaswa Reddy. On 24.04.2014 when he was working as a Coolie under respondent No.1 he along with other loaded the tractor-trolley with fodder and they were sitting on the trolley, while the tractor was to cross a river in the slope leading to the river, the driver applied the brakes, as a result, the deceased - Shivkumar fell down, sustained injuries and died.

6. The petitioners, who are the parents of the deceased, approached the Commissioner contending that the deceased-Shivkumar was earning Rs.500/- per day and therefore, they are entitled for compensation from the employer and the insurer of the vehicle. On being served with the notice, respondent No.1 appeared and admitted that the deceased was his employee and labourer and he also admitted that the accident occurred due to the negligence on the part of the driver of the tractor. Respondent No.2 - Insurance Company appeared and contented that the tractor was insured, but there is violation of the terms and conditions of the policy. It was contended that the deceased was sitting on the engine of the tractor and therefore, it having only one seating capacity the deceased was barred from sitting over it and as such, the Insurance Company is not liable to pay the compensation.

7. After framing of the appropriate issues, the Commissioner recorded the testimony evidence of PW1 and

Exs.P1 to 8 were marked in the evidence. Respondent No.2 examined it's official as RW1 and Exs.R1 to 7 were marked.

8. After hearing both sides, the Commissioner held that the deceased was sitting in the trolley, but not on the engine of the tractor and therefore, the Insurance Company is liable to pay the compensation and awarded sum of Rs.6,90,620/-. Against which, the Insurance Company is before is this Court.

9. Learned counsel appearing for the appellant-Insurance Company submits that the further statement of petitioner No.1 before the Investigating Officer, which is produced at Ex.P4 would show that the deceased was sitting by the side of the driver on the engine of the tractor along with two others. The Insurance Company is not liable to cover such persons, who were not permitted to sit on the tractor. The seating capacity, as per the policy document being '01', the deceased was barred from sitting over it and therefore, there is fundamental breach of the policy conditions. This aspect has not been considered by the

Commissioner and therefore, he seeks indulgence of this Court. It is submitted that the Commissioner has not discussed anything about the contents of Ex.P4 and contents of the charge-sheet.

10. The perusal of the records of the Commissioner would show that in the complaint by petitioner-PW1 at Ex.P2 mentioned that the deceased Shivkumar was the sitting on the trolley. The complaint was filed on 24.04.2014 and it is under the signature of PW1. In the cross-examination of PW1 it is elicited by respondent No.2 that after reading the contents of Ex.P2 he had put his signature.

11. Subsequently on 30.04.2014, it appears that the Investigating Officer had recorded further statement of PW1 as per Ex.P4. Based on the said further statement, charge-sheet came to be filed as per Ex.P8, wherein it is mentioned that the deceased-Shivkumar was sitting on the engine by the side of the driver and he fell down and sustained injuries, resulting in his death. It is relevant to note that in the cross-examination of the PW1, he has denied that he had given

any further statement to the Investigating Officer. Therefore, in the cross-examination PW1 having denied his further statement, there is material to show that the Investigating Officer is not justified in relying on the further statement of PW1. Except these police papers, no other documents are available before this Court to show that the deceased was sitting on the engine by the side of the driver. The Ex.P4 and the charge-sheet state that the deceased was sitting on the engine have been denied by PW1, it is not known how the Investigating Officer came to the conclusion that he was a sitting on the engine.

12. The testimony of the RW1, who is an official of the Insurance Company places reliance on the police papers only. He does not have any first hand information as to whether the deceased was sitting on the tractor or on the trolley. Under these circumstances, even though the Commissioner do not discuss anything about the Ex.P4 and the charge-sheet, the conclusions of the Commissioner cannot be faulted with. The Commissioner was justified in holding that the deceased was traveling in the trolley of the

tractor, but not on the engine of the tractor. In that view of the matter, the appeal is bereft of any merits. Therefore, the same is liable to be dismissed and it is accordingly dismissed.

Sd/-
(C.M. JOSHI)
JUDGE

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List No.: 1 Sl No.: 72
CT: AK