IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 1ST DAY OF APRIL, 2025

PRESENT

THE HON'BLE MR. JUSTICE K. NATARAJAN

AND

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

MISCL. FIRST APPEAL NO.200879/2022 (MV-D)

C/W.

MISCL. FIRST APPEAL NO.201694/2021(MV-D)

IN MFA.NO.200879/2022:

BETWEEN:

1. YALLAWWA W/O RAMAPPA MACHAKNUR,
   AGE: 53 YEARS, OCC: NIL,

2. MALLAWWA W/O LAXMAN TELI,
   AGE: 37 YEARS, OCC: HOUSEHOLD WORK,

3. CHANDRASHEKHAR S/O RAMAPPA MACHAKNUR,
   AGE: 35 YEARS, OCC: COOLIE,

4. JAGADISH S/O RAMAPPA MACHAKNUR,
   AGE: 33 YEARS, OCC: COOLIE,

   ALL ARE R/O GANI, TQ. JAMAKHANDI,
   DIST.BAGALKOT-586107.

...APPELLANTS

(BY SRI BAPUGOUDA SIDDAPPA, ADVOCATE)

Digitally signed by RAMESH MATHAPATI
Location: HIGH COURT OF KARNATAKA

AND:

1. SUSHANT
   S/O SHRISHAIL CHIGADUL,
   AGE: 44 YEARS, OCC: HOUSEHOLD WORK,
   R/O BIJJARAGI,
   TQ. AND DIST. VIJAYAPURA-586104.

2. THE BRANCH MANAGER,
   THE NATIONAL INSURANCE CO. LTD.,
   1ST FLOOR, HERALAGI BUILDING,
   BEHIND SIDDESHWAR TEMPLE,
   VIJAYAPURA-586101.

…RESPONDENTS

(BY SRI SHIVANAND PATIL, ADVOCATE FOR R2;
R1-V/O. DATED 31.07.2024 NOTICE HELD SUFFICIENT)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MV ACT, PRAYING TO MODIFY THE JUDGMENT AND AWARD DATED 18.01.2020 PASSED IN MVC NO.213/2018 ON THE FILE OF THE COURT OF THE III ADDL. DIST. JUDGE AND MEMBER MOTOR ACCIDENT CLAIMS TRIBUNAL NO.IV, VIJAYAPURA, AT VIJAYAPURA, AND ALLOW THIS APPEAL BY ENHANCING THE COMPENSATION AMOUNT BY RS.42,57,256/- ONLY AS CLAIMED BY THE APPELLANTS BEFORE THIS COURT AND THAT THE LIABILITY MAY BE FIXED ON THE RESPONDENT NO.2 I.E., INSURANCE COMPANY.

IN MFA.NO.201694/2021:

BETWEEN:

1. DAMAJI S/O KESU CHAVAN,
   AGE: 67 YEARS, OCC: NIL,

2. RASHMI W/O SUNIL RATHOD,
   AGE: 36 YEARS, OCC: HOUSEHOLD WORK,

3. SHRINIVAS S/O DAMAJI CHAVAN,
   AGE: 31 YEARS, OCC: COOLIE,

ALL ARE R/O GANGANAGAR,
NIMBARAGI LAYOUT,
NEAR AL-AMEEN HOSPITAL,
VIJAYAPURA-586101.

…APPELLANTS

(BY SRI BAPUGOUDA SIDDAPPA, ADVOCATE)

AND:

1. SUSHANT S/O SHRISHAIL CHIGADUL,
   AGE: 44 YEARS, OCC: HOUSEHOLD WORK,
   R/O BIJJARAGI,
   TQ. & DIST. VIJAYAPURA-586104.

2. THE BRANCH MANAGER,
   THE NATIONAL INSURANCE CO. LTD.,
   1ST FLOOR, HERALAGI BUILDING,
   BEHIND SIDDESHWAR TEMPLE,
   VIJAYAPURA-586101.

…RESPONDENTS

(BY SRI DEEPAK V. BARAD, ADVOCATE, FOR R2;
R1-V/O DATED 23.09.2024 NOTICE HELD SUFFICIENT)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MV ACT, PRAYING TO MODIFY THE JUDGMENT AND AWARD DATED 18.01.2020 PASSED IN MVC NO.1026/2017 ON THE FILE OF THE COURT OF THE III ADDL. DIST. JUDGE AND MEMBER MACT NO.IV, VIJAYAPUR, AT VIJAYAPUR AND ALLOW THIS APPEAL BY ENHANCING THE COMPENSATION AMOUNT BY RS.7,57,623/- ONLY AS CLAIMED BY THE APPELLANTS BEFORE THIS COURT AND THAT THE LIABILITY MAY BE FIXED TO THE RESPONDENT NO.2 I.E. INSURANCE COMPANY.

THESE APPEALS, COMING ON FOR ADMISSION THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE K. NATARAJAN
AND
HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE K. NATARAJAN)

Though these appeals are listed for admission, with the consent of learned counsel for the parties, the same are taken up for final disposal.

2. Both these appeals are filed by the petitioners-claimants, against the common judgment and award dated 18.01.2020 passed in MVC Nos.1026/2017 and 213/2018 by the Member, MACT-IV, Vijayapur, (for short 'the Tribunal'), challenging the quantum of the compensation awarded and fixing of the liability on respondent No.1 – owner of the offending vehicle by exonerating the liability of the Insurance Company.

3. The parties herein are referred to as per their rank before the Tribunal.

4. We have heard the arguments of learned counsel for the parties.

5. The factual matrix of the case for the purpose of disposal of these appeals are as under:

i) The appellants-claimants in MFA No.200879/2022 had filed MVC No.213/2018 and the appellants-claimants in MFA No.201694/2021 had filed MVC No.1026/2017 under Section 166 of M.V. Act, claiming compensation of Rs.50,00,000/- each, respectively, for the death of Ramappa S/o. Nandeppa Machaknur and Sarojini W/o. Damaji Chavan, in a road traffic accident that occurred on 28.09.2015 at about 9.30 p.m. It was alleged by the claimants that on the said date when the deceased Ramappa and Sarojini and other inmates of the vehicle were traveling in the vehicle bearing No.KA-28/6444 towards Tikota side and due to the rash and negligent driving by its driver, the said vehicle dashed to the oncoming motorcycle bearing Reg.No.KA-34/T-5697, resulting in the death of Sarojini as well as Ramappa and the rider of the motorcycle Sidram Mamane. Due to untimely death of the deceased persons, their

dependents approached the Tribunal seeking compensation under various heads.

ii) Upon service of notice, the respondent No.2 – Insurance Company appeared through counsel and files statement of objections, denying rash and negligent driving of the vehicle and further the age, income and occupation of the deceased persons. It was contended that the claim of the petitioners are excessive and that the driver of the vehicle did not have any valid and effective Driving License to drive the vehicle at the time of accident. It was specifically contended that at the time of accident the vehicle was carrying more passengers than the permissible capacity of 12 + 1, hence, he prayed to dismiss the petition. But the respondent No.1 – owner of the offending vehicle did not appear and hence, he was placed ex-parte before the Tribunal.

iii) Based upon the pleadings, the Tribunal framed separate issues in both the claim petitions, as under:

*"**In MVC-213/2018***

1) *Whether the claimants prove that on 28.9.2015 at 9.30 hours, near Tikota village, on Vijayapura-Tikota road, the deceased Ramappa S/o. Nandeppa Machaknur sustained injuries due to use travels vehicle bearing No.KA-28/6444 and succumbed to said injuries?*

2) *Whether the respondent No.2 proves that the petition suffers from non-joinder of necessary parties?*

3) *Whether the respondent No.2 proves that respondent No.1 has violated the policy conditions?*

4) *Whether the claimants are entitled to the compensation as claimed?*

5) *Who is liable to pay the compensation?*

6) *What order or award?*

In MVC-1026/2017

1) *Whether the claimants prove that on 28.9.2015 at about 9.30 hours, near on Tikota village on Vijayapura-Tikota road deceased Sarojini W/o. Damaji Chavan sustained injuries due to rash or negligent use of travels vehicle bearing No.KA-28/6444 belonging to respondent No.1 and succumbed to said a injuries*

2) *Whether the respondent No.2 proves that petition suffers from non-joinder of necessary parties?*

3) Whether the respondent No.2 proves that respondent No.1 has violated the policy conditions?

4) Whether the claimants are entitled to the compensation as claimed?

5) Who is liable to pay the compensation?

6) What order or award?"

iv) In order to prove their contentions, the husband of Sarojini examined himself as PW1 and the wife of Ramappa examined herself as PW3 and got marked 23 documents. On behalf of the respondent No.2, its Authorized Officer was examined as RW1 and got marked 09 documents.

v) After hearing the arguments of both the sides, the Tribunal answered issue No.1 in the affirmative, issue No.2 in the negative, issue No.3 in the affirmative, issue No.4 in the partly affirmative and finally awarded compensation in both the petitions as under:

In MVC No.213/2018:

Compensation heads	Compensation amount
1. Loss of dependency	Rs.6,53,400/-
2. Medical Expenses	Rs.19,344/-
3. Loss of consortium	Rs.40,000/-
4. Loss of Estate	Rs.15,000/-
5. Funeral Expenses	Rs.15,000/-
TOTAL	Rs.7,42,744/-

In MVC No.1026/2017:

Compensation heads	Compensation amount
1. Loss of dependency	Rs.41,72,377/-
2. Loss of consortium	Rs.40,000/-
3. Loss of Estate	Rs.15,000/-
4. Funeral Expenses	Rs.15,000/-
TOTAL	Rs.42,42,377/-

vi) The Tribunal fixed the liability on the respondent No.1 – owner of the offending vehicle to pay compensation and exonerated the insurer from liability.

6. Being aggrieved by the same, the petitioners in MVC No.213/2018 have filed MFA No.200879/2022 and the petitioners in MVC No.1026/2017 have filed MFA No.201694/2021, seeking enhancement of compensation

and to apply the principle of 'pay and recover' laid down by the Apex Court in the case of ***National Insurance Company Ltd. v. Swaran Singh***[1].

7. Learned counsel for the appellants-petitioners in both these appeals have contended that the Tribunal erred in exonerating the Insurance Company from the liability and payment of compensation to the claimants though the vehicle was insured as on the date of the accident, without considering the principles laid down by the Apex Court in the case of ***Swaran Singh***. In the said decision, it has been held that the Insurance Company is liable to pay the compensation amount to the claimants at the first instance, with liberty to the Insurance Company to recover the same from the owner of the offending vehicle in accordance with law. The said principle was not considered in the instance case, hence, on this sole ground he prays for interference of this Court.

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[1] (2004) 3 SCC 297

8. *Per contra*, respondent No.2 – Insurance Company supported the impugned judgment and award passed by the Tribunal fixing the liability on respondent No.1 and prayed for dismissal of the appeals.

9. The only point arises for consideration in these appeals:

> "Whether the Tribunal is justified in fixing the liability on the respondent No.1 the owner of the vehicle by exonerating the liability of the respondent No.2 - Insurance Company which call for interference?"

10. Having heard the counsels for the parties and on perusal of the records, the accident resulting in the death of the deceased persons is not in dispute. Even the quantum of the compensation awarded by the Tribunal in favour of the claimants in both the petitions was not in dispute.

11. A perusal of evidence of the RW1 reveals that on the date of accident the vehicle was carrying more than

permitted number passengers. As can be seen from the records that though the permitted number of passengers is 12+1, but at the time of accident more than 20 passengers were carried in the vehicle. The evidence of the RW1 also reveals that the charge-sheet has been filed against the driver of the vehicle owned by respondent No.1 and that the driver does not have any valid and effective Driving License as on the date of the accident. The respondent No.1 had neither contested the matter before the Tribunal nor produced the Driving License pertaining to the driver of the vehicle. It is clear from the evidence of the respondent No.2 that, on the date of accident though the vehicle was carrying more than the permitted number of passengers and there is violation of the terms and conditions of the policy, but the policy was in force.

12. In the view of law laid down by the Hon'ble Supreme Court in the case of ***Swaram Singh*** referred to *supra* and also in the case ***Pappu Vs. Vinod Kumar***

Lamba[2], since in the instant case the respondent No.2 – Insurance Company admitted coverage of insurance to the vehicle as on the date of accident, the respondent No. 2 - Insurance Company is liable to pay the compensation to the claimants at the first instance with liberty to recover the same from the respondent No.1.

13. In view of the principles laid down by the Apex Court in the above said decisions, the respondent No.2 – Insurance Company is liable to pay the compensation to the claimants at the first instance, then it has to recover the same from the owner of the offending vehicle. Hence, the finding of Tribunal exonerating liability of the insurer is required to be inferred. Accordingly, we answer the point raised in the affirmative. Hence, the following:

ORDER

(i) The appeal filed by petitioners-claimants are allowed in part.

[2] (2018) 3 SCC 208

(ii) The impugned judgment and award passed by Tribunal *insofar* as the petitioners in these two appeals are concerned, is hereby modified.

(iii) Respondent No.2 – Insurance Company is directed to deposit the compensation amount at the first instance, within a period of 06 weeks from the date of receipt of a copy of this judgment.

(iv) Liberty is reserved to the respondent No.2 – Insurance Company to recover the same from the respondent No.1 – owner of the vehicle.

(v) Send the Trial Court records to the concerned Court.

Sd/-
(K. NATARAJAN)
JUDGE

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

SBS
List No.: 1 Sl No.: 32
CT:SI