



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 30TH DAY OF OCTOBER, 2024
BEFORE
THE HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA
MISCELLANEOUS FIRST APPEAL NO. 6228 OF 2016 (MV-D)

BETWEEN:

THE CLAIM MANAGER
CHOLAMANDALAM GENERAL
INSURANCE COMPANY LIMITED
UNIT NO.4, NINTH FLOOR (LEVEL-6)
GOLDEN HIGHTS COMPLEX, 59TH
C CROSS, INDUSTRIAL SUBURB
RAJAJINAGAR, 4TH 'M' BLOCK
BANGALORE - 560 010
BY ITS MANAGER

... APPELLANT

(BY SRI O.MAHESH, ADV. [VC])

AND:

1. VIJAYA
AGED 43 YEARS
W/O MANOHAR @ A.MANOHARA @
MANOGAR
2. MANIKANTA @ MANIKATAN
AGED ABOUT 26 YEARS
S/O MANOHAR @ A. MANOHARA @
MANOGAR

BOTH ARE R/AT NO.4, 6TH CROSS
MANJUNATHA NAGAR, MAGADI ROAD
BANGALORE - 560 023

3. MANJU @ MANJU M.
AGED 28 YEARS
D/O MANOHAR A. MANOHARA @
MANOGAR, W/O SURESH KUMAR
NO.2, 9TH CROSS, MANJUNATHA
NAGAR, BANGALORE - 560 023

Digitally signed by
PRAJWAL A
Location: HIGH
COURT OF
KARNATAKA



4. MAHESHWARI @ MAGESHWARI M.
AGED ABOUT 29 YEARS
D/O MANOHAR @ A.MANOHARA @
MANOGAR, W/O SURESH KUMAR
E-112 C, 18/2, 15TH CROSS
BHUVANESHWARI NAGAR
BINNIPETE, BANGALORE -560 023

5. UMESH E.
MAJOR, S/O ELUMALAI
NO.8, LAKSHMAN RAO NAGAR
SRIRAMPURAM POST
BANGALORE - 560 021

... RESPONDENTS

(BY SRI K.T.GURUDEVA PRASAD, ADV. FOR R1 TO R4;
R5 SERVED)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 3.6.2016 PASSED IN MVC NO.2499/2014 ON THE FILE OF THE 21ST ACMM, 23RD ADDITIONAL SMALL CAUSES JUDGE, MACT, COURT OF SMALL CAUSES, BENGALURU, AWARDING A COMPENSATION OF RS.11,86,000/- WITH INTEREST AT 6% P.A., FROM THE DATE OF PETITION TILL THE DATE OF DEPOSITING THE AMOUNT IN THE TRIBUNAL.

THIS APPEAL HAVING BEEN RESERVED FOR JUDGMENT COMING ON FOR PRONOUNCEMENT THIS DAY, **T.G.SHIVASHANKARE GOWDA, J.**, DELIVERED/PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA)

In this appeal, the Insurance Company is challenging the legality of the judgment and award dated 03.06.2016



passed in M.V.C.No.2499/2014 by the XXI A.C.M.M. and XXIII A.S.C.J. (SCCH-25) Bengaluru.

2. For the sake of convenience, the rank of the parties shall be referred to as per their status before the Tribunal.

3. The brief facts of the case are, on 30.01.2014 at about 9.10 a.m., one Manohar @ A.Monahara @ Manogar, the deceased, who is the husband of the first petitioner and father of petitioner Nos.2 to 4, while transporting the vegetables from the City Market in a TATA Goods vehicle bearing Reg.No.KA-02/AC-1654 on Mysuru road, near N.T.Pette 2nd Cross, the vehicle was dashed against the speed breaker of the road, due to which, he fell down and sustained injuries. He was treated at Swamy Health Care and Suguna Hospital, Bengaluru and then at NIMHANS, Bengaluru. In spite of it, he did not survive and succumbed to the death. The petitioners being the dependants, have approached the Tribunal for grant of compensation of Rs.60,00,000/-. The claim was opposed



by the Insurance Company. The Tribunal, after taking the evidence and hearing both the parties, allowed the claim petition, granting compensation of Rs.11,86,000/- with interest @ 6% per annum and fastened the liability against the Insurance Company to pay the compensation. Aggrieved by the same, the Insurance Company is before this Court.

4. Heard the arguments of Shri.O.Mahesh, learned Counsel for the Insurance Company and Shri.K.T.Gurudeva Prasad, learned Counsel for the petitioners.

5. It is the contention of the learned counsel for the Insurance Company that, the deceased is not the owner of the goods, he was not supposed to travel on the goods. Utmost, the owner of the goods may be permitted to travel inside the cabin and not on the luggage. The Tribunal did not consider this aspect and fastened the liability. To explain that the owner of the goods must travel only in the cabin of the vehicle not on the goods,



learned counsel has relied on the judgment of the Hon'ble Apex Court in **National Insurance Company Ltd. -vs- Cholleti Bharatamma and Others**¹.

6. Per contra, learned counsel for the petitioners has contended that, TATA Ace is a light motor vehicle, as per Rule 100 of the Karnataka Motor Vehicles Rules 1989 (for short, 'K.M.V.Rules'), three persons can be carried in the said vehicle. The deceased was carrying his vegetables from City Market and during the transit, he sustained injuries and succumbed to the death. There is no rule that the owner of the goods must travel only in the cabin, the principle laid down in **Cholleti Bharatamma's** case (supra) is not applicable to the facts of this case as the Hon'ble Apex Court was dealing with the gratuitous passengers. To support his argument, he relied on the judgment of the Coordinate Bench of this Court in **Divisional Manager, New India Assurance Co. Ltd. - vs- Shashidhara and another**² and also **Divisional**

¹ 2008 (1) SCC 423

² 2009 ACJ 1778



**Manager, United India Insurance Co. Ltd. -vs-
Smt.Sarojanibai and others³.**

7. I have given my anxious consideration to the arguments addressed on behalf of the parties and perused the records.

8. There is no dispute as to the accident that took place on 30.01.2014 while the deceased was transporting the vegetables from City Market to Rajajinagar, at N.T.Pette which is the middle of the way, the goods vehicle was hit against the speed breaker, due to which the deceased fell down, sustained injuries and succumbed to the death. The evidence clearly point out that, at the time of accident the deceased was on the goods and not inside the cabin of the TATA Ace.

9. The arguments of the Insurance Company that in order to consider the owner of the goods to travel he must travel only inside the cabin. The Hon'ble Apex Court, while dealing with the gratuitous passengers traveling in the

³ MFA.No.6628/2007 D.D.24.07.2008



cabin, observed at para 19 that, the owner of the goods means 'only the person who travels in the cabin of the vehicle'. The Hon'ble Apex Court was not dealing with Rule 100 of the K.M.V. Rules while deciding the **Cholleti Bharathamma's** case (supra) as it hails from Andhra Pradesh.

10. In view of the same, whether the deceased is required to travel inside the cabin or whether his risk is covered in the present scenario has to be considered. In this regard, the Coordinate Bench of this Court in **Shashidhara's** as well as **Sarojanibai's** case (supra), referring to the Rule 100 of the K.M.V. Rules, that in a light motor vehicle, three persons can be traveled and by virtue of the same, Section 147 has been amended to incorporate and include a person carrying the goods in the goods carriage. In the present case, the deceased was not gratuitous passenger, he was owner of the goods.

11. In view of the Karnataka scenario as special Rule has been framed, which was not considered by the Hon'ble



Apex Court in **Cholleti Bharatamma's** case (supra), three persons can also travel in a light motor vehicle as provided under Rule 100 of K.M.V. Rules, the risk of the deceased is on the higher side as he was also the owner of the goods. Under such circumstances, the principles laid down by the Hon'ble Apex Court in **Cholleti Bharatamma's** case (supra) will not be helpful to the Insurance Company. Hence, the Tribunal, has considered all these aspects and has rightly fastened the liability against the Insurance Company.

12. In view of the above discussion, the appeal is devoid of merits, in the result, the following.

ORDER

The appeal is ***dismissed***.

Amount in deposit shall be transmitted to the Tribunal.

SD/-
(T.G.SHIVASHANKARE GOWDA)
JUDGE

MKM/-
CT:HS