



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 9<sup>TH</sup> DAY OF DECEMBER, 2025**

**BEFORE**

**THE HON'BLE MR. JUSTICE UMESH M ADIGA**

**MISCELLANEOUS FIRST APPEAL NO.2484 OF 2021 (ECA)**

**BETWEEN:**

- 1 . SMT FIZA KAUSAR  
W/O LATE KHAJA ALI KHAN  
NOW AGED ABOUT 25 YEARS,
- 2 . MASTER UMAR KHAN  
S/O LATE KHAJA ALI KHAN  
NOW AGED ABOUT 9 YEARS,
- 3 . KUMARI IQRA KAUSAR  
D/O LATE KHAJA ALI KHAN  
NOW AGED ABOUT 7 YEARS,

2<sup>ND</sup> AND 3<sup>RD</sup> MINOR APPELLANTS  
ARE REPRESENTED BY NATURAL  
GUARDIAN/MOTHER, 1<sup>ST</sup> APPELLANT  
HEREIN

ALL ARE RESIDING NEAR  
REDDY KALYANA MANTAP,  
MARUTI EXTENSION,  
MALUR TOWN,  
KOLAR DISTRICT.

...APPELLANTS

(BY SRI. GOPAL KRISHNA N., ADVOCATE)

**AND:**

- 1 . SRI. N. NARAYANASWAMY  
S/O NARAYANAPPA,  
MAJOR BY AGE  
RESIDING AT NO.34/2  
RAJIV NAGAR, POST OFFICE  
ROAD, MALUR TOWN,  
KOLAR DISTRICT-563 130.



- 2 . THE UNITED INDIA  
INSURANCE CO. LTD.,  
REGIONAL OFFICE. NO.18  
KRISHI BHAVAN, 5<sup>TH</sup> FLOOR  
OPP: HUDSON CIRCLE  
NRUPATHUNGA ROAD,  
BENGALURU-560 001  
BY ITS MANAGER.
- 3 . SMT MEHABOOB JAN  
W/O IQBAL KHAN  
NOW AGED ABOUT 55 YEARS  
34/2, RAJIV NAGAR, POST  
OFFICE ROAD, MALUR TOWN  
KOLAR DISTRICT-563 130.
- 4 . MRS.NUSRATH FATHIMA  
D/O. IQBAL KHAN,  
NOW AGED ABOUT 25 YEARS,  
MARUTHI EXTENSION,  
REDDY, CHOULTARY STREET,  
MALUR,  
KOLAR DISTRICT- 563 301.

...RESPONDENTS

(BY SRI.KAILAS SHANKAR P.S, ADVOCATE FOR R1,  
SMT.MANJULA N. TEJASWI, ADVOCATE FOR R2,  
SRI.D.NAGARAJA REDDY, ADVOCATE FOR R3 AND R4)

THIS MFA IS FILED UNDER SECTION 30(1) OF EMPLOYEES COMPENSATION ACT, AGAINST THE JUDGMENT AND AWARD DATED 03.03.2020 PASSED IN E.C.A NO.162/2016 ON THE FILE OF THE IX ADDITIONAL SMALL CAUSES JUDGE, C/c XXII ADDITIONAL SMALL CAUSES JUDGE AND ACMM, MEMBER-MACT, (SCCH-24), BENGALURU, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 15.10.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:



CORAM: HON'BLE MR. JUSTICE UMESH M ADIGA

**CAV JUDGMENT**

This appeal is filed by the claimants under Section 30(1) of Employee's Compensation Act, 1923 (for short, `the Act'), challenging the correctness of the order dated 3<sup>rd</sup> March 2020, passed by the IX Addl.Small Causes and C/c. XXII Addl.Small Causes Judge and MACT, Bengaluru (SCCH-24), (for short, `Commissioner'), in ECA.No.162/2016.

2. For the sake of convenience, the parties are referred to as per their ranking before the Commissioner.

3. The brief facts of the case of the claimants are that, the claimants being the wife and minor children of one Khaja Ali Khan, an employee of respondent No.1, filed the claim petition before the trial Court under Section 22 of the Employees's Compensation Act, for awarding of compensation, due to the death of said Khaja Ali Khan during the course of his employment on 31.08.2016 at



Gandiguda Village of Shamshabad Mandal, Ranga Reddy District, Telangana State, on National Highway No.44.

4. After contest, the said claim petition was allowed by the Commissioner and awarded an amount of Rs.7,93,240/- along with interest at the rate of 12% p.a. from expiry of one month from the date of accident, till its realisation. It was also ordered that respondent No.1/owner of the offending vehicle shall deposit the said amount of compensation and claim against the insurer was dismissed by the impugned judgment and award dated 03.03.2020.

5. The said judgment and award is challenged by the claimants in the present appeal with a sole ground that Commissioner has erred in exonerating the insurer from its liability to pay compensation and liability shall be fastened on the respondent No.2-insurer.

6. On 25.10.2024, this appeal was admitted to consider following substantial question of law.



*" whether the Tribunal erred in exonerating the liability of 2<sup>nd</sup> respondent and non-application of the theory of notional extension as contended. If so, to what result? "*

7. The impugned judgment and award has not been challenged by respondent No.1 - owner of the lorry. Claimants have not challenged quantum of the compensation awarded by the Commissioner.

8. It is the case of the claimants that the deceased Khaja Ali Khan was serving as a driver under respondent No.1 in his Eicher Goods tempo bearing registration No.KA-08-7337, on a monthly salary of Rs.12,000/- and batta of Rs.200/- per day. There exists employer and employee relationship between deceased, as well as respondent No.1. On 31.08.2016, deceased after loading of goods in the said lorry, took it to a town in Andhra Pradesh and after unloading the same, while returning towards Bengaluru, at Gandiguda Village, Shamshabad Mandal of Ranga Reddy District in Telangana State, he



stopped his vehicle and tried to cross the road to attend nature's call. At that time, an over-speeding lorry bearing registration No.TS-12-UA-8687, driven by its driver in a rash and negligent manner hit the said Khaza Ali Khan, which resulted in his death at the spot. The contentions of the claimants was that during the course of his employment, he met with an accident, therefore, respondents are liable to pay the compensation.

9. The Commissioner framed necessary issues, recorded the evidence of the parties to the proceedings and on appreciation of the materials available on record, by the impugned judgment and award dated 03.03.2020 held that, accident occurred during the course of employment. The Commissioner has calculated the amount of compensation and further held that the accident was not occurred due to involvement of the lorry bearing registration No.KA-08-7337 belonging to respondent No.1 and hence, respondent No.2-insurer is not liable to pay the compensation and on the contrary, respondent No.1 being



the employer, is liable to pay the said amount of compensation.

10. The learned counsel appearing for the appellants/claimants vehemently contended that, at the time of incident, deceased was under the employment of respondent No.1 and during the course of employment, he was crossing the road to attend nature's call. Hence, theory of notional extension of the employment extends to the said act of crossing the road. The deceased being driver, with all the care and caution, was crossing the road. Suddenly an over-speeding lorry hit him and caused the accident. Undisputedly, deceased was driving the lorry belonging to respondent No.1. It was insured with respondent No.2 and the policy of insurance covers the risk of owner-cum-driver of the vehicle. Under these circumstances, respondent No.2 is liable to indemnify respondent No.1 and liable to pay the compensation to the claimants. The Tribunal has not considered this point properly and erroneously held that the said vehicle was



not involved in the accident and hence, respondent No.2 is not liable to pay the compensation; the said finding is erroneous. Hence, prayed to allow the appeal.

11. The learned counsel for the insurer vehemently contended that the policy of insurance issued by respondent No.2 was not an employee policy, but a vehicle insurance policy; As per the contentions of the claimants, accident was not caused while deceased was driving his vehicle; The vehicle belonging to respondent No.1 was not at all involved in the accident; According to the case of appellants, accident was caused due to rash and negligent driving of another lorry bearing registration No.TS-12-UA-8687. The claimants ought to have filed motor vehicle compensation petition against the owner and insurer of the said vehicle, instead of filing the petition against the owner and insurer of the vehicle belonging to the respondent No.1 under the Employees Compensation Act; Therefore, respondent No.2 is not liable to pay the compensation or its liability is not covered when death



was caused due to the involvement of a vehicle, which was not insured with respondent No.2. Hence, prayed to dismiss the appeal.

12. Let us consider the substantial question of law involved in the case.

13. In a case of **Branch Manager, New India Insurance Co., Ltd. -vs- Siddappa and others**,<sup>1</sup> a Co-ordinate Bench of this Court has observed that,

*" It is no doubt true that in order to succeed in an application for getting compensation under Section 3 of the Employees' Compensation Act, the following points are required to be established,*

*1. that the accident must arise out of and in the course of workman's employment,*

*2. that there must be a casual connection between the injury and the accident and the work done in the course of the employment,*

---

<sup>1</sup> ILR 2004 KAR 3119



*3. the workman has to prove that accident took place while doing a part of his duty or incidental thereto.*

14. In this case on 31.08.2016, the deceased Khaja Ali Khan went on duty to transport the luggages/goods to a place in Medak District of Andhra Pradesh and after unloading the same, he was returning towards Bengaluru and on the way, he parked his vehicle at a side of the road and was crossing the road to attend nature's call while he was on duty. As indicated in the pleading and evidence, it was an incidental act. In the course of long distance journey undertaken for employment purposes, the employees' act of stopping enroute to attend to nature's call is an inevitable and incidental act. Therefore, such an act falls within the doctrine of notional extension of employment, as provided under Section 3 of E.C.Act.

15. The contentions of the insurer that the vehicle which was insured with respondent No.2 was not involved



in the accident, therefore, it is not liable to indemnify the owner of the vehicle, is also not acceptable. It was not a condition of policy that respondent No.2 is liable to pay compensation only by involvement of the vehicle which was insured with respondent No.2. Such condition is applicable only to third party. Respondent No.2 has collected an additional premium to cover the risk of owner-cum-driver of the vehicle. Therefore, it is bound to indemnify the owner of the vehicle if the driver of the vehicle during course of his employment, met with an accident and sustained injury or dead.

16. The learned counsel for respondent No.2 relied on the judgment of Hon'ble Apex Court in the case of ***Mamtaj Bi Bapusab Nadaf and others -vs- United India Insurance Co. and others***<sup>2</sup>. The facts of that case were different from the facts of present case. The workman who was engaged for unloading food grains from tractor, had climbed down to a grocery pit to clean it and died due to

---

<sup>2</sup> 2010 AIR SCW 5872



suffocation. It was held that said acts of workman does not fall within the ambit of "in the course of employment", since said work was beyond the scope of employment and hence, the claim petition was rejected against the insurer.

17. Respondent No.2 has also relied on a judgment of Hon'ble Apex Court in the case of ***Mallikarjuna G. Hiremath -vs- Branch Manager, Oriental Insurance Company Limited and another.***<sup>3</sup> In that case, while unloading the luggage, driver of the lorry went and sat on a bank of pond situated near a temple and while getting up, he slipped and fell into the water and drowned. Under those circumstances, it was held by the Hon'ble Apex Court that the said act of the deceased which resulted in his death was not during the course of his employment or arising out of the employment.

18. It is worth to note that, in the above said two cases, the Hon'ble Apex Court exonerated the insurer, as

---

<sup>3</sup> (2009) 13 SCC 405



well as employer for the reasons that the death was not caused during the course of employment. And not for the reasons that death was not caused by an accident involving the said vehicle. Decisions in the above two cases are not applicable to the facts of this case. In this case, as stated above, the acts done by the deceased is falling within the scope and ambit of "in the course of employment", as provided under Section 3 of E.C.Act. Attending to a nature's call during the course of employment has casual connection with his employment. Therefore, the theory of notional extension of employment is applicable.

19. In the case of ***Poonam Devi and others -vs- Oriental Insurance Co. Ltd.,***<sup>4</sup> the Hon'ble Apex Court held that, in case of death of a driver of a truck due to slipping in canal while bathing, during trip, there is a casual connection between death of a workman and his employment, therefore doctrine of 'notional extension' of

---

<sup>4</sup> AIR 2020 SC 1305



employment is applicable and claimants are entitled to the compensation.

20. The doctrine of 'notional extension employment' will be applicable to the facts of the present case and hence, both respondents are liable to pay the compensation.

21. In view of the aforesaid discussion, the substantial question of law is answered in favour of the appellants and in the result, I proceed to pass following order.

**ORDER**

- i) The appeal is ***allowed.***
- ii) The impugned judgment and award dated 3<sup>rd</sup> March 2020, passed by the IX Addl.Small Causes and C/c. XXII Addl.Small Causes Judge and MACT, Bengaluru (SCCH-24), in ECA.No.162/2016, stands modified.



iii) The findings of the Commissioner that respondent-insurer is not liable to pay the compensation, is set aside.

iv) Respondent-insurer shall indemnify the owner and pay the compensation as awarded by the Commissioner in the impugned judgment within a period of six weeks from the date of award.

v) The remaining portion of the award passed by the Commissioner shall remain unaltered.

vi) Draw award accordingly.

Registry is directed to send back the records along with a copy of this judgment to the concerned Court.

**Sd/-  
(UMESH M ADIGA)  
JUDGE**