

MFA NO.101641 OF 2016

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 13TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MRS JUSTICE GEETHA K.B.

MISCELLANEOUS FIRST APPEAL NO.101641 OF 2016(MV-I)

BETWEEN

THE BRANCH MANAGER,
UNITED INDIA INSURANCE CO. LTD.,
MOOD COMPLEX, HOSAPETE,
REPRESENTED THROUGH ITS
BY ITS REGIONAL OFFICE
TP HUB HUBBALLI,
ENKAY COMPLEX 1ST FLOOR,
KESHWAPUR, HUBBALLI,
REP. BY ITS ADMINISTRATIVE OFFICER.

...APPELLANT

(BY SRI. N.R. KUPPELUR, ADVOCATE)

AND

1. SMT. DEVAKKA
W/O. RAMANNA HUNAGUND,
AGE: 40 YEARS, OCC: HOUSE HOLD WORK,
2. KUMAR AJIT,
S/O. RAMANNA HUNAGUND,
AGE: 23 YEARS, OCC: NIL,
3. KUMARI ASHWARYA
D/O. RAMANNA HUNAGUND,
AGE: 12 YEARS, OCC: NIL,
4. KUMARI AKSHATA
D/O. RAMANNA HUNAGUND,

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AGE: 10 YEARS, OCC: NIL,

RESPONDENTS NO.1 TO 4 ARE THE
RESIDENTS OF BACHANAKI VILLAGE,
TQ: MUNDGOD, DIST: UTTARA KANNADA.

THE RESPONDENT NO.3 & 4 BEING MINORS
REPRESENTED BY HIS NATURAL MOTHER
RESPONDENT NO.1.

5. K G THOMAS S/O. GEORGE,
AGE: 42 YEARS, OCC: BUSINESS,
R/O. ARASHINAGERI VILLAGE,
TQ: MUNDAGOD, DIST: UTTARA KANNADA.

(OWNER OF THE TRACTOR-TROLLEY
BEARING-NO.KA-31/T-975, T-9766)

6. CHANNAVEERANAGOUDA
S/O. CHANNABASANAGOUDA PATIL,
AGE: 39 YEARS, OCC: DRIVER,
R/O: BACHANAKI VILLAGE,
TQ: MUNDAGOD, DIST: UTTARA KANNADA.

(DIVER OF THE TRACTOR-TROLLEY
BEARING-NO.KA-31/T-975, T-9766)

...RESPONDENTS
(BY SRI. B.M. PATIL, ADVOCATE FOR R1, R3 & R4;
NOTICE TO R6 IS SERVED; R5-APPEAL IS DISMISSED)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER
SECTION 173(1) OF THE MOTOR VEHICLES ACT, 1988 PRAYING
TO CALL FOR THE RECORDS CONNECTED WITH MVC
NO.53/2009 ON THE FILE OF THE SENIOR CIVIL JUDGE AND
ADDL. MACT YELLAPUR, EXAMINE THE SAME AND SET ASIDE
THE AWARD DATED 26-11-2015 AS AGAINST THE APPELLANT IN
THE INTEREST OF JUSTICE.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT ON 30.01.2026 AND COMING ON FOR
PRONOUNCEMENT OF JUDGMENT THIS DAY, DELIVERED THE
FOLLOWING:

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CAV JUDGMENT

(PER: THE HON'BLE MRS JUSTICE GEETHA K.B.)

This is the appeal filed by the respondent No.3-insurer under Section 173(1) of the Motor Vehicles Act, 1988 (for short 'M.V. Act') challenging the judgment and award dated 26.11.2015 passed in M.V.C. No.53/2009 on the file of Senior Civil Judge and Additional M.A.C.T. Yellapura (for short 'Tribunal').

2. Parties would be referred with their ranks as they were before the Tribunal for the sake of convenience and clarity.

3. The claimants have filed the claim petition praying for compensation in respect of the accident that has taken place on 09.05.2008 at 09.30 p.m., involving the tractor-trolley bearing registration No.KA-31/T975/T9766 at Masankatte Road in Bachanaki village, Mundgod taluk. Due to the said accident, Sri.Mahaveer Shivappa Yegappanavar died due to accidental injuries sustained by him in the hospital. It is the contention of claimants that deceased was

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hale and healthy during his lifetime and was doing agriculture and earning more than ₹.8,000/- per month. Due to his untimely death, the claimants being his wife and children lost earning member of their family and hence prayed for compensation under different heads.

4. Respondent Nos.1 & 2 being the driver and owner of the tractor-trolley remained absent and placed *exparte* before the trial Court.

5. It is respondent No.3-Insurer who has contested the petition by filing its objection wherein he had denied the petition averments in *toto* and further took contention that the accident was not at all taken place as alleged in the claim petition. It is further contented that the deceased was traveling in the trolley and tried to get down from trolley by jumping from it even before the driver has stopped the tractor and because of that attempt he fell down from the tractor-trolley and thus claimants are not entitled for any compensation. It is further contented that as per the FIR filed on the day of accident before police, it is mentioned as

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fall from tractor. Four months afterwards a private complaint is filed stating that deceased was pedestrian. This is concocted only to get compensation from the respondents. He admitted that policy of the vehicle was in force. Further, the driver was not having valid and effective driving license to drive the motor vehicle. Hence, prayed for dismissal of petition with costs.

6. Based on these pleadings, on behalf of claimants, claimant No.1 was examined as P.W.1 apart from examining P.W.2, got marked Exs.P.1 to P.9 before the Tribunal. On behalf of respondents, one witness is examined as R.W.1. Apart from marking Exs.R.1 to R.4 and closed their side before the Tribunal.

7. After recording evidence of both sides and hearing arguments of both sides, the Tribunal came to the conclusion that the claimants have proved the accident that had taken place on 09.05.2008 at 09.30 p.m., due to rash and negligent driving of driver of the tractor and trolley and because of that the deceased died and thus claimants are

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entitled for total compensation of ₹.3,28,000/- with interest at 6% per annum from the date of petition till the date of realization under several heads.

8. Aggrieved by the aforesaid judgment and award, the insurer has filed the present appeal.

9. Heard arguments of both sides.

10. Learned counsel for appellant would submit his arguments that the accident has taken place because the deceased was inmate of the trolley and fall from the trolley and not because of rash and negligent driving of driver of the tractor. Hence, immediately FIR No.98/2008 was registered. But, subsequently, only to get compensation, second FIR based on private complaint was registered as per Ex.P.1 in Crime No.27/2009, which is nothing but abuse of process of law. Tribunal has not considered this aspect and wrongly granted compensation by allowing the petition. Hence, prayed for allowing the appeal.

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11. Learned counsel Sri.B.M.Patil for respondent Nos.1, 3 & 4 would submit that the respondents have produced ample material before the Tribunal to show that the accident happened because of rash and negligent driving of the driver of tractor and the deceased was pedestrian and not inmate of the trolley. P.W.1 and PW.2 clearly and categorically established these facts. P.W.2 is not only a complainant but also an eye witness and supported the contention of claimants. Considering these aspects, rightly the Tribunal has allowed the petition and granted compensation to claimants which need not be interfered with. Hence, prayed for dismissal of appeal.

12. Having heard arguments of both sides, verifying the appeal papers along with trial Court records, the point that arises for consideration is

"Whether the appellant proves that the death of Ramanna was due to fall from trolley and not because of rash and negligent driving of driver of the tractor and deceased was not a pedestrian?"

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13. The finding of this Court on the above point is in 'affirmative' for the following:

REASONS

It is the contention of claimants that the deceased was a pedestrian and a tractor-trolley driven by the respondent No.1 it's driver rashly and negligently and dashed against the husband of the claimant No.1-Devakka and he sustained grievous injuries and he succumbed to those injuries.

14. It is the contention of the claimants that even though, it is informed to the Police, the Police have not taken any action and hence, P.W.2 has filed private complaint before the Court which was referred to the Police and then Police have taken action and filed charge-sheet. The charge-sheet is against the driver of the tractor-trolley. Hence, claimants have established rashness and negligence on the part of driver of the tractor-trolley. The vehicle was duly insured with respondent No.3.

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15. It is the contention of the respondent No.3 that on the date of accident, the complaint was given to Police and the same was registered in Crime No.98/2008. Panchanama was also drawn on the same day. Further, the investigation was in progress and based on this FIR No.98/2008, charge sheet was also filed by the Investigating Officer alleging that the driver of the tractor and trolley was driving tractor rash and negligently and has made the tractor to fall on a big ditch which resulted in fall of Ramanna who was traveling in the Trolley along with the complainant and after he fall down, the left side wheel of the tractor passed through the chest of Ramanna which caused grievous injuries to him and he succumbed to those injuries and thereby the accused has committed the offence.

16. On perusal of the FIR cum Complaint as per Ex.P.2, Panchanama as per Ex.P.3 and other documents, based on which charge sheet is filed, they clearly and categorically reveal that the deceased was traveling in

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trolley along with P.W.1 of present case. P.W.2 of present case was the complainant in that case. P.W.2-the first informant after lodging this complaint has filed private complaint before the Court and it is referred to the concerned police station for investigation and based on it, FIR No.27/2009 was registered. In the said private complaint, it is stated that the deceased was pedestrian and the driver of tractor has driven it rashly and negligently and dashed against the pedestrian at about 09.30 p.m., on 09.05.2008 at the spot of incident and caused the accident and then the injured was taken to hospital and he died in the hospital. It is stated in the private complaint annexed to Ex.P.1-FIR No.27/2009 that immediately after the accident, it was informed to the police; but, police have not taken proper action and hence without any option, he has filed the private complaint. Based on this private complaint, the aforesaid FIR is registered as stated above. However, Ex.P.2 is the FIR No.98/2008. This case is registered based on the complaint given by same complainant. Investigation is conducted in said FIR No.98/2008. According to it, the

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deceased was traveling in the trolley of the tractor, because of rash and negligent driving of driver of the tractor, he fall from the tractor and wheels of the tractor passed through his chest and because of that he sustained grievous injuries and while taking him to the hospital on that day at 11.00 p.m., he died at the hospital. Hence, this statement was given by P.W.2 before the police who came to the hospital and recorded said statement. Based on it, FIR No.98/2008 was registered. Based on Ex.P.2, FIR No.98/2008, the spot panchanama, spot sketch, inquest panchanama, P.M. report, Motor Vehicles Accident Report were prepared and based on these documents i.e., after completion of investigation, the Investigating Officer has filed charge sheet before the jurisdictional Court and it is registered with C.C.No.207/2008. As discussed above, in this charge sheet, it is specifically recited that the deceased was traveling in trolley and before stopping the vehicle, the driver of the tractor drove the tractor on the ditch which resulted in fall of the deceased along with complainant who was traveling

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in the trolley and because of that he sustained injuries and died on the same day at 11.00 p.m.

17. In this regard, in the cross-examination, P.W.2 has admitted that he has given complaint about this accident on 09.05.2008 itself and he admitted his signature on said complaint. He further admitted that on that day once the mud was taken after unloading the mud in the land of deceased; while going back to bring another load of mud, the alleged accident had taken place. He admitted that he along with two more laborers had been to the lands of deceased on that day to take out the mud. After such unloading of the mud from the tractor-trolley again while going back to the lands of deceased, this accident had taken place. In this regard the charge sheet is produced by respondent-insurer as per Ex.R.2.

18. The Tribunal has not examined the veracity of the evidence of P.W.2. It has not observed that in the charge sheet, there is specific mention that deceased was traveling in the trolley and he fell from the trolley and

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sustained injuries. The lodging of private complaint before Court is only an afterthought and misleading. It was lodged on 23.09.2008; whereas, as discussed above charge sheet was filed afterwards i.e. on 17.12.2008 with CC No.207/2008. Any way, the investigation was conducted based on the earlier complaint as discussed above. Postmortem report, inquest report, spot panchanama, spot sketch and all other relevant documents were recorded in Crime No.98/2008 and not in this FIR No.27/2009. Thus, there is clear recital in the charge sheet. Hence, there was no occasion for the complainant-P.W.2 to file one more private complaint before Court. Lodging up of second complaint that too private complaint before Court is nothing but abuse of process of law. However, the Tribunal has not considered these aspects and came to the wrong conclusion that the deceased was pedestrian and not traveling in the trolley. The insurance policy coverage will not be there for a person who was traveling in the trolley. Hence, only to get compensation, the second FIR is concocted by filing private complaint before Court. Hence, the accident as alleged in

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the complaint as per Ex.P.1 itself is not proved. On the other hand, the accident as narrated in complaint as per Ex.P.2 was proved. Thus, the Tribunal ought not to have decreed the claim petition without establishing the use of motor vehicle i.e. rash and negligent driving of driver of the motor vehicle, and without proving that the deceased was pedestrian, claimants were not at all entitled for any compensation. It is only fall from the trolley and deceased was not a pedestrian. Hence, the finding of trial Court is completely erroneous and it requires interference.

19. Accordingly, point under consideration is answered and this Court proceeds to pass the following:

ORDER

1. Appeal filed by the respondent No.3-insurer under Section 173(1) of the Motor Vehicles Act, 1988 is allowed by setting aside the judgment and award dated 26.11.2015 in MVC No.53/2009 on the file of Senior Civil Judge and Addl. M.A.C.T., Yallapur.

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2. Consequently, judgment and award dated 26.11.2015 passed in MVC No.53/2009 by the Senior Civil Judge and Addl. M.A.C.T., Yallapur is hereby dismissed.
3. .The amount if any, in deposit be transmitted to the Tribunal with a direction to refund the same to respondent No.3 on proper identification.

**Sd/-
(GEETHA K.B.)
JUDGE**

HMB
CT-MCK