



CNR: KAHC010248742023

NC: 2026:KHC:37476-DB
MFA No. 3247 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 21ST DAY OF JULY, 2026
PRESENT
THE HON'BLE MR. JUSTICE S.G.PANDIT
AND
THE HON'BLE DR. JUSTICE K.MANMADHA RAO
M.F.A. NO. 3247 OF 2023 (MV-D)

BETWEEN:

NEW INDIA ASSURANCE COMPANY LTD.,
NO.22/B, UNITY BUILDING ANNEX,
MISSION ROAD, LALBAGH ROAD,
BANGALORE-560027
REP. BY THE REGIONAL MANAGER,
M/S. NEW INDIA ASSURANCE COMPANY LTD.,
THIRD PARTY CLAIMS HUB,
MAHALAKSHMI CHAMBERS,
II FLOOR, NO.9, M.G. ROAD,
BENGALURU-560 001.

...APPELLANT

(BY SMT. MANJULA NEMICHANDRA TEJASWI, ADV.)

Digitally Signed by
NANJUNDA CHARI
Location: High
Court of Karnataka

AND:

1. KALPANA M.R.
AGED ABOUT 30 YEARS,
W/O LATE SHIVAKUMAR K.,
2. KASHIKA S.
D/O LATE SHIVAKUMAR K.,
AGE: 4 YEARS 5 MONTHS
3. BYRESH S. @ TRAYAKASH S.
S/O LATE SHIVAKUMAR
AGED ABOUT 3 YEARS



CNR: KAHC010248742023

NC: 2026:KHC:37476-DB
MFA No. 3247 of 2023

(RESPONDENTS 2 AND 3 ARE MINORS,
HENCE REP. BY NATURAL GUARDIAN
MOTHER NAMELY KALPANA)

4. CHANDRAMMA
W/O KENCHIAIAH
AGED ABOUT 72 YEARS

ALL RESPONDENTS NO.1 TO 4 ARE
RESIDING AT NO.23,
KICHCHAAVAADI VILLAGE,
HULIYURU DURGA HOBLI,
KUNIGAL TALUK-572130
TUMKUR DISTRICT.

5. SRI KOTTURWSHARA TRANSPORT COMPANY,
C.N. ROAD, BHADARAVATHI, - 577245
SHIVAMOGGA DISTRICT
(R.C. OWNER OF TANKER KA-55-B-9579)

...RESPONDENTS

(BY SRI. SHRIPAD V SHASTRY, ADV. FOR R1-R4
V/O DATED 15.01.2025 NOTICE TO R5 D/W
R2 & R3 MINOR REP. BY R1)

THIS APPEAL IS FILED U/S.173(1) OF MV ACT, AGAINST THE
JUDGMENT AND AWARD DATED 02.12.2022 PASSED IN MVC
NO.1598/2021 ON THE FILE OF THE VI ADDITIONAL JUDGE, COURT
OF SMALL CAUSES AND ADDITIONAL CHIEF METROPOLITAN
MAGISTRATE AND MACT, BENGALURU, (SCCH-2), AWARDED
COMPENSATION OF RS.34,81,080/- WITH INTEREST AT 6 PERCENT
P.A. FROM THE DATE OF PETITION TILL THE DATE OF DEPOSIT.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
AND
HON'BLE DR. JUSTICE K.MANMADHA RAO



CNR: KAHC010248742023

NC: 2026:KHC:37476-DB
MFA No. 3247 of 2023

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE S.G.PANDIT)

The appellant-Insurance Company is in appeal under Section 173(1) of the Motor Vehicles Act, 1988 (for short "the Act") questioning saddling of the entire liability on it, under judgment and award dated 02.12.2022 in MVC No.1598/2021 on the file of the VI Additional Judge, Court of Small Causes and Additional Chief Metropolitan Magistrate and Motor Accident Claims Tribunal, Bengaluru (for short "Tribunal").

2. The facts in nutshell are:

The claimants, wife, minor children and mother of the deceased filed claim petition under Section 166 of the Act, claiming compensation for the accidental death of one Shivakumar K., husband of the first claimant in a road traffic accident that occurred on 15.01.2021 involving motor bike bearing registration No.KA-02/KE-4784 and Tanker bearing registration No.KA-53/B-9579. It is stated that the deceased was aged about 30 years as on the date



NC: 2026:KHC:37476-DB
MFA No. 3247 of 2023

CNR: KAHC010248742023

of accident and was drawing salary of Rs.22,500/- p.m. working as Manager at Maruthi Showroom Spare Parts. It is also stated that the claimants are wholly depending on the earning of the deceased.

3. On issuance of notice, respondent No.1-Insurance Company, the appellant herein filed written statement denying the entire claim petition averments. However, admitted the policy. Further contended that driver of the offending vehicle was not possessing valid and effective Driving License as on the date of accident and the accident occurred solely due to the negligence of the deceased rider of the motorcycle. It is also contended that the deceased rider of the motorcycle was not having valid and effective Driving License and was riding without wearing helmet. It is also stated that the claim is exorbitant and without any basis.

4. Claimant No.1, wife of the deceased got examined herself as P.W.1 and examined eye-witness as P.W.2



NC: 2026:KHC:37476-DB
MFA No. 3247 of 2023

CNR: KAHC010248742023

apart from marking the documents as Ex.P1 to Ex.P23 whereas the respondent-Insurance Company examined driver of the offending Tanker as R.W.1.

5. The Tribunal, on appreciation of material on record awarded total compensation of Rs.34,81,080/- with interest at the rate of 6% p.a. from the date of petition till the date of deposit saddling the liability on the insurer. While awarding the above compensation, the Tribunal assessed the monthly income of the deceased at Rs.22,820/- p.m., added 40% of the assessed income towards future prospects while deducting $\frac{1}{4}^{\text{th}}$ of the assessed income towards personal expenses and applied appropriate multiplier of 16. The insurer aggrieved by saddling of the entire liability on it and without considering the contributory negligence of the deceased rider of the motorcycle is before this Court in this appeal.

6. Heard learned counsel Smt.Manjula N Tejaswi for the appellant-Insurance Company and Sri.Sripad V Shastri,



NC: 2026:KHC:37476-DB
MFA No. 3247 of 2023

CNR: KAHC010248742023

learned counsel for respondents-claimants through video conference. Perused the entire appeal papers along with the records of the Tribunal.

7. Learned counsel Smt.Manjula N Tejaswi for the appellant-Insurance Company would contend that the Tribunal failed to consider the contention of the appellant-insurer that the accident had taken place solely due to the negligence on the part of the deceased rider of the motorcycle. Further, it is stated that if the rider of the motorcycle i.e., deceased had taken little precaution, the accident would not have occurred. Further, she submits that the tanker was parked on the left side of the road with indicators on and the deceased rider of the motorcycle had sufficient space on the right side of the road to pass through. Further she submits that the deceased rider of the motorcycle came in a rash and negligent manner and dashed to the stationed tanker and sustained injuries which resulted in his death. Learned



NC: 2026:KHC:37476-DB
MFA No. 3247 of 2023

CNR: KAHC010248742023

counsel would invite attention of this Court to the evidence of P.W.2 and also evidence of R.W.1 to submit that the evidence of those two persons would clearly establish that the tanker was parked with signals and indicators on and the accident occurred solely due to the negligence on the part of the deceased himself. Learned counsel for the insurer in support of her contention, placed reliance on the judgment of a co-ordinate bench of this Court in MFA No.5896/2018 and connected appeals **(MS.JOYEETA BOSE AND OTHERS v/s VENKATESHAN V AND OTHERS)** disposed off on 24.08.2020 and also on the decision of the Hon'ble Apex Court in **RENUKADEVI H AND OTEHRS v/s BANGALORE METROPOLITAN TRANSPORT CORPORATION AND OTHERS** reported in **(2008)17 SCC 56**.

8. On the other hand, Sri.Sripad V Shastri, learned counsel for the respondents-claimants would support the judgment and award passed by the Tribunal and would



NC: 2026:KHC:37476-DB
MFA No. 3247 of 2023

CNR: KAHC010248742023

submit that the accident occurred solely due to the negligent parking of the tanker. Learned counsel would submit that the tanker was parked on the middle of the road without any indicators at 11.40 p.m., which led to the occurrence of the accident resulting in death of the rider of the motorcycle. Learned counsel would submit that the accident had taken place at 11.40 p.m. and he also draws attention of this Court to the evidence of P.W.2/eye-witness who has stated that at that point of time i.e., at 11.40 p.m., there was fog and it was not clearly visible. Learned counsel referring to sketch at Ex.P4 would submit that road width was 40 feet and the lorry was parked at the middle of the road i.e., 20 feet from the left edge of the road. It is his submission that the tanker had occupied almost 50% of the road. Further, learned counsel inviting attention of this Court would submit that Regulation 15 of the Rules of Road Regulations, 1989 (for short "1989 Regulations") that the motor vehicle could not have been parked on a main road or one carrying fast



CNR: KAHC010248742023

traffic and also near a bus-stop, school or hospital entrance or blocking a traffic sign or entrance to a premises or a fire hydrant. Learned counsel would submit that the tanker was parked at the bus-stop and in terms of Regulation 15 of 1989 Regulations, the tanker could not be parked at bus-stop where the accident took place. Thus, he would pray for dismissal of the appeal.

9. It is made clear that except the above contention, learned counsel for the appellant has not urged any other ground and not questioned with regard to quantum of compensation.

10. On hearing the learned counsel for the parties and on perusal of the entire appeal papers, the only point which falls for our consideration is as to whether the Tribunal is justified in saddling the entire liability on the appellant-insurer of the offending tanker.



11. Answer to the above point would be in the affirmative for the following reasons:

The occurrence of the accident on 15.01.2021 involving motorbike bearing registration No.KA-02/KE-4784 and tanker bearing registration No.KA-53/B-9579 and the accidental death of husband of the first claimant i.e., Shivakumar K is not in dispute in this appeal. The appellant-insurer is questioning non-consideration of contributory negligence on the part of the deceased by the Tribunal. Learned counsel contended that if the deceased was little cautious, the occurrence of the accident could have been avoided. To appreciate the said contention of the appellant-insurer, it would be appropriate to refer Ex.P4/spot sketch and also evidence of P.W.2/eye-witness. A perusal of Ex.P4/spot sketch would indicate that the road width is 40 feet whereas the tanker was parked 20 feet from the left edge of the road, that means the tanker was parked in the middle of the road. It is also noticed that the lorry was parked opposite the bus-stop. It would



NC: 2026:KHC:37476-DB
MFA No. 3247 of 2023

CNR: KAHC010248742023

also indicate that another 20 feet width was available on the right side of the parked tanker. Evidence of P.W.2/eye-witness would indicate that the accident occurred at 11.40 p.m. and tanker bearing No.KA-53/B-9579 was parked in the middle of the road without showing any signal, without indicators on and without putting any light or keeping any branch of a tree or red tape in a reckless manner. The eye-witness/P.W.2 also stated that when the deceased reached near the tanker which was parked on the middle of the road, the deceased tried to avoid his motorbike hitting against the tanker by applying break, but he could not avoid the accident. Further, P.W.2 has stated that the accident occurred solely due to the negligent parking of the tanker on the middle of the road. In the cross-examination, nothing in support of the contention of the insurer was elicited. Moreover, in the cross-examination, P.W.2 has stated to the suggestion that the witness could not have seen the motorcycle hitting the tanker, and also stated that around 11.30 to



CNR: KAHC010248742023

11.45 p.m., the fog was covering the area. Further, to a suggestion of the insurer that rider of the motorcycle was not wearing helmet, the witness specifically stated that he was wearing helmet.

12. Learned counsel for the appellant submitted that if there was fog at the time of accident, P.W.2 could not have witnessed the accident. The same applies to the rider of the motorcycle if there was fog, he could not have noticed the parked tanker, when it was parked without any indicators as deposed by P.W.2/eye-witness. Learned counsel for the appellant-insurer also referred to the evidence of R.W.1, driver of the offending tanker. R.W.1 has stated that he had parked the tanker with parking lights. However, the same cannot be believed as he is an interested witness.

13. Learned counsel for the appellant placing reliance on the judgment of the co-ordinate bench in MS.JOEETA AND OTHERS (supra). On going through the same we are of



CNR: KAHC010248742023

the opinion that, the facts of the present case and the case involved in Mrs. Joeeta case are entirely different, though the accident in Joeeta case was dashing the standing lorry. In the instant case, the tanker parked 20 feet from left side edge of the road. Therefore, the driver of the tanker was totally negligent in parking the tanker in such a way. Learned counsel for the appellant also places reliance on the decision of the Hon'ble Apex Court in **RENUKA DEVI (supra)** to contend that the deceased also ought to have been little cautious. In the instant case, the accident has taken place at around 11.40 p.m. and admittedly, the tanker was parked on the middle of the road. P.W.2 has specifically stated that the fog was covering the area at that point of time. In the said circumstance, the deceased taking precaution or otherwise would not arise.

14. Regulation 15 of 1989 Regulations reads as follows:

"15. Parking of the vehicle.-(1) Every driver of a motor vehicle parking on any road shall park in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to other road users and the manner of parking is indicated by



NC: 2026:KHC:37476-DB
MFA No. 3247 of 2023

CNR: KAHC010248742023

any sign board or markings on the road side, he shall park his vehicle in such manner.

(2) A driver of a motor vehicle shall not park his vehicle:-

- (i) at or near a road crossing, a bend, top of a hill or a humpbacked bridge;*
- (ii) on a foot-path;*
- (iii) near a traffic light or pedestrian crossing;*
- (iv) on a main road or one carrying fast traffic;*
- (v) opposite another parked vehicle or as obstruction to other vehicle;*
- (vi) alongside another parked vehicle;*
- (vii) on roads or at places or roads where there is a continuous white line with or without a broken line;*
- (viii) near a bus stop, school or hospital entrance or blocking a traffic sign or entrance to a premises or a fire hydrant;*
- (ix) on the wrong side of the road;*
- (x) where parking is prohibited;*
- (xi) away from the edge of the footpath.*

The above regulation makes it abundantly clear that a driver of the motor vehicle cannot park his vehicle endangering or obstructing or causing undue inconvenience to other road users. Further, it also makes it clear that the driver of the motor vehicle shall not park his vehicle on a main road or one carrying fast traffic or near a bus-stop, school, hospital entrance or blocking a traffic sign or entrance to a premises or a fire hydrant.



**NC: 2026:KHC:37476-DB
MFA No. 3247 of 2023**

CNR: KAHC010248742023

15. In the instant case, the tanker was parked on the main road and at a bus-stop. In the light of the above, the Tribunal is justified in saddling entire liability on the Insurer of the Tanker. Thus, we do not find any merit in the appeal and accordingly, the appeal stands ***dismissed***.

The amount in deposit be transmitted to the Tribunal, forthwith.

**Sd/-
(S.G.PANDIT)
JUDGE**

**Sd/-
(DR.K.MANMADHA RAO)
JUDGE**

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List No.: 1 Sl No.: 45