



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

MISCELLANEOUS FIRST APPEAL NO. 7641 OF 2017 (MV-I)

BETWEEN:

D S SHIVAKUMAR,
AGED ABOUT 46 YEARS,
S/O LATE SHIVALINGAPPA,
K BEVINAHALLI VILLAGE,
DAVANAGERE DISTRICT-577 601.

...APPELLANT

(BY SMT. SHRUTHI S.P FOR SRI VINAYA KEERTHY M,
ADVOCATE)

AND:

1. ANJINAPPA,
AGED ABOUT 27 YEARS,
S/O HANUMANTHAPPA,
MAYAKONDA VILLAGE & POST,
DAVANAGERE TALUK & DISTRICT,
AND ALSO AT: HOSA KUNDAVADA
DAVANAGERE TALUK & DISTRICT-577 601.
2. N B MRUTHYUNJAYA,
AGED ABOUT 36 YEARS,
S/O B NAGAPPA,
NEAR GOPALAKRISHNA THEATRE,
III CROSS, BARAMPURA,
HARIHARA DAVANAGERE DISTRICT-577 601.
3. THE MANAGER,
RELIANCE GENERAL INSURANCE CO. LTD.,
1 & 2, I FLOOR, MANGANOR,
COMMERCIAL COMPLEX,



P B ROAD, CHITRADURGA-577 501.

...RESPONDENTS

(BY SRI V.B SIDDARAMAIAH, ADVOCATE FOR R-1;
SRI D VIJAYKUMAR, ADVOCATE FOR R-3;
R-2 SERVED & UNREPRESENTED)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 05.08.2017 PASSED IN MVC NO.87/2014 ON THE FILE OF THE III ADDITIONAL SENIOR CIVIL JUDGE AND VII ADDITIONAL MACT, DAVANGERE, AWARDED COMPENSATION OF RS.2,13,000/- WITH INTEREST AT THE RATE OF 8% P.A. FROM THE DATE OF PETITION UNTIL REALIZATION.

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

CORAM: HON'BLE MR. JUSTICE C M JOSHI

ORAL JUDGMENT

1. Heard the learned counsel appearing for the appellant and the learned counsel appearing for respondent No.3-Insurance Company.

2. Being aggrieved by the Judgment and Award in MVC No.87/2014 by learned III Additional Senior Civil Judge and VII MACT, Davanagere, dated 05.08.2017, the owner of the vehicle, that is respondent No. 2 is before this Court in appeal.



3. The factual matrix of the case is as below: On 06.04.2014, the villagers of the Kodaganur were removing the silt from the lake using JCB owned by the appellant/respondent No.2 bearing KA.17.N.8414. The said JCB was operated by respondent No.1 and he was loading the tractor bearing No.KA.16.E.6047. The respondent No.1 while loading the said tractor, the petitioner was closing the rear door of the tractor and respondent No.1 operated the bucket of the JCB in a negligent manner which hit against the leg of the petitioner resulting in grievous injuries to him. The petitioner has sustained fracture of the inner aspect of the ankle joint and he was shifted to hospital through an ambulance. He took treatment for about 10 days and had to spend for the treatment. It was contended that the petitioner was a coolie, earning his livelihood by such coolie work and the accident was due to negligence of the JCB operator, the owner is liable vicariously and the Insurance Company/respondent No.3 is liable due to



contractual obligations. It was also stated that the case was registered by the jurisdictional police in Crime No.56/2014 and a charge sheet was filed against respondent No.1.

4. On being issued with the notice, respondent Nos.1 to 3 had appeared before the Tribunal and respondent Nos.1 and 3 denied the petition averments. Respondent No.2 contended that respondent No.1 had got a valid driving licence and therefore, the vehicle being covered by the policy issued by respondent No.3, the liability has to be fastened upon respondent No.3. Respondent No.3 took up the contention that the accident had not occurred as alleged by the petitioner and at the time of the accident respondent No.1 was not having a valid and effective driving licence. He also contended that the terms and conditions of the policy were violated and therefore, it is not liable to pay the compensation.



5. The Tribunal framed appropriate issues. The petitioner was examined as PW1 and one witness was examined as PW2. Exhibits P1 to 12 were marked. On behalf of the respondents, four witnesses were examined as RWs1 to 4 and Exhibits R1 to 4 were marked.

6. After hearing the arguments, the Tribunal held that PW1 in the cross examination had admitted that there were three JCBs and JCB had been hired for the purpose of lifting the silt from the tank bed. Based on the said admission, it held that the owner of the JCB is liable but not the Insurance Company since it is violation of the terms of the policy. However, it calculated the compensation amount at Rs.2,13,000/- and fastened the liability upon respondent No.2/appellant herein. Being aggrieved by the same, respondent No.2 is before this Court in appeal.

7. Learned counsel appearing for the appellant would submit that the JCB which was owned by



respondent No.2 was engaged in lifting the silt from the tank bed and the silt was being utilized by various people. The petitioner was on the tractor and when the tractor was loaded with silt, while he was closing the door, the JCB was operated negligently by respondent No.1 and therefore, the accident took place.

8. It is submitted that the obligations of the respondent No.3-Insurance Company is governed by the policy conditions. The policy produced at Exhibit R2 shows that there is no such prohibition for giving the JCB on hire. It is submitted that the prohibition is only for the purpose of carrying the passengers and the said condition is also in a doubtful phrases in the policy. Therefore, she submits that the liability should have been fastened upon the respondent No.3 and the Tribunal erred in relying upon the testimony of PW1.

9. *Per contra*, learned counsel Sri D Vijay Kumar, appearing for the Insurance Company would submit that



the testimony of RW2 and RW3 would clearly indicate that the vehicle, either it may be a passenger vehicle or a transport vehicle or any other kind of vehicle, cannot be used for hire when it is registered for its own use. He submits that the testimony of the officials of the Regional Transport Office would show that the vehicle if registered with a white board, it cannot be used for hiring. Therefore, he submits that the testimony of RW2 and RW 3 would clearly indicate that the vehicle could not have been rented out to anybody as it is stated by PW1 in the cross-examination. He further submits that the JCB is registered for the 'own use' and the appellant had violated the same by renting it out. Therefore, he defends the impugned judgment.

10. A careful perusal of the records would show that the obligations of respondent No.3-Insurance Company is governed by the contract of policy. There cannot be any dispute about this aspect. The Exhibit R2 is the copy of policy which has been produced by the



Insurance Company. In the entire Exhibit R2, except the following words there is nothing else which would show that renting out of the vehicle has been prohibited and it would amount to violation of the terms of the policy. In the policy, it is written as below:

"the policy covers use for any purpose other than
(a) organized racing, (b) pacemaking, (c)
reliability trials and (d) speed testing, *(E need to
include use for carriage of passengers for hire or
reward).*

11. It is pertinent to note that Clause E do not fit into the remaining Clauses (a),(b) (c) and (d). Obviously, the said clause is bracketed and it appears that a draft of the policy which was submitted for approval has not been rectified and a suggestion was made by the draftsman of the policy indicating that there is a need to include, "the usage of the vehicle for carriage of the passengers for hire or reward". Even if we hold that the said clause is



operative, then also, carriage of the passengers are prohibited but not for renting out the entire vehicle for excavation purpose. It is pertinent to note that a JCB cannot, at any stretch of imagination be used for carriage of passengers. It is meant for excavation work only. Therefore, when the excavation of the silt from the public lake of Kodaganur village was the admitted fact, it cannot be said that it could not be used for that purpose but it has to be used by respondent No.2/ appellant only. When the policy does not specify that hiring of the vehicle is prohibited or renting out of the vehicle is prohibited, it cannot be said that the Insurance Company should be absolved from the liability.

12. Sofaras the bar under the statute is concerned, the testimony of RW 2 and RW 3 would show that though they say in their examination-in-chief that the vehicle cannot be used for renting out, in the cross-examination, RW3 states that "there is no mention in Exhibit R4, which



is the registration certificate of JCB that there is no clause mentioning that it should not be used for renting out."

13. It is pertinent to note that in the policy at Exhibit R2, nowhere it is mentioned that the vehicle should be used only for the 'personal use or own use'. In the absence of any such clause in Exhibit R2, it cannot be said that the Insurance Company is not liable to pay the compensation to the petitioner. Obviously, the petitioner is a third party insofar as respondent Nos.1 to 3 are concerned. Respondent No.3-Insurance Company had covered the liability whenever the JCB was put to use. Under these circumstances, the contention of the learned counsel appearing for respondent No.3 cannot be accepted. In the result, the conclusion of the Tribunal that the liability has to be fastened upon the appellant herein is not sustainable in law.

14. It is seen from the records that the Tribunal has awarded interest at the rate of 8% per annum. Obviously,



the grant of interest at 8% per annum is not sustainable in view of catena of judgments of this Court which hold that the rate of interest shall be 6% p.a. Hence, to that extent the impugned judgment needs to be modified.

15. Hence, the following

ORDER

(i) The appeal is allowed.

(ii) Respondent No.3-Insurance Company is directed to pay the compensation amount as determined by the Tribunal to the petitioner. However the rate of interest shall be 6% per annum from the date of petition till its deposit before the Tribunal. The impugned judgment and award is modified to that extent.

(iii) The Rest of the order regarding deposit and apportionment remain unaltered.



NC: 2026:KHC:920
MFA No. 7641 of 2017

(iv) The amount in deposit before this Court made by appellant is ordered to be transmitted to the Tribunal forthwith, and the same be refunded to the appellant.

Sd/-
(C M JOSHI)
JUDGE

tsn*

List No.: 1 Sl No.: 15