



CNR: KAHC010472002014

NC: 2026:KHC:54586
MFA No. 3634 of 2014

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

MISCELLANEOUS FIRST APPEAL NO. 3634 OF 2014 (MV)

BETWEEN:

N VIJAYAKUMAR
S/O RAMAKRISHNARO,
AGED ABOUT 31 YEARS,
OWNER OF VIJAYAKIRANA ASSOCIATES
AND LORRY NO.KA-09-A-2529,
15TH CROS, 2ND MAIN, KTJ NAGARA,
DAVANAGERE - 577 001.

...APPELLANT

(BY SRI M.RAVINDRANATH, ADVOCATE FOR
SRI NAGABHUSHANA S., ADVOCATE)

AND:

1. NOORYANAIK
S/O SHANKAR NAIK,
AGED ABOUT 50 YEARS,
HAMALI WORK, 11TH CROSS,
BHARATH COLONY,
DAVANAGRE - 577 001.
2. N.VIJAYAKUMAR
S/O NARASOJIRAO,
AGED ABOUT 31 YEARS,
DRIVER OF LOORY NO.
KA-09-A-2529,
13TH CROSS, KTJ NAGARA,
DAVANAGERE - 577 001.

Digitally signed
by ANUSHA V
Location: High
Court of
Karnataka



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3. THE NEW INDIA ASSURANCE CO. LTD.,
160/1, R.H. BUILDING,
NARASARAJ ROAD,
DAVANAGERE DISTRICT - 577 001,
REP BY THE BRANCH MANAGER.

...RESPONDENTS

(BY SRI NAVEEN V., ADVOCATE FOR R2;
SRI S.V.HEGDE MULKHAND, ADV. FOR R3 (VC);
R1 - NOTICE SERVED]

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 22.8.2013 PASSED IN MVC NO.1080/2012 ON THE FILE OF THE III ADDL. SENIOR CIVIL JUDGE AND MACT., DAVANAGERE, AWARDED COMPENSATION OF RS.78,000/- WITH FUTURE INTEREST AT THE RATE OF 6% P.A. FROM THE DATE OF PETITION TILL REALIZATION.

THIS APPEAL, COMING ON FOR *FINAL HEARING*, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:
CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL JUDGMENT

Challenging judgment and award dated 22.08.2013 passed by III Additional Senior Civil Judge and MACT, Davanagere, in MVC no.1080/2012, this appeal is filed.



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2. Sri M Ravindranath, learned counsel for appellant submitted that appeal was by owner challenging impugned award of liability.

3. Brief facts leading to this case as per claimant are that at 4:30 pm on 24.05.2012 when claimant was traveling in Lorry no.KA-09-A-2529 belonging to appellant as Hamali for unloading of fertilizer, it met with accident on Harapanahalli road. In accident, claimant sustained grievous injuries and despite treatment at Primary Health Center, Arsikere and Bapuji Hospital at Davanagere, he did not recover fully and sustained loss of earning capacity. Therefore, claiming compensation he filed claim petition under Section 166 of MV Act against driver, owner and insurer of lorry.

4. On appearance, driver, owner and insurer opposed claim petition on all grounds including alleging claimant was travelling as unauthorised passenger in goods vehicle, violation of terms and conditions of policy, vehicle being plied without registration certificate, fitness certificate, permit and being driven by a person holding valid and effective driving licence as on date of accident. Issuance of insurance policy and its



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coverage as on date of accident were admitted. Based on pleadings, tribunal framed following issues:

- "1. Whether the petitioner proves that on 24.05.2012 at about 4.30 p.m., in between Davanagere-Harapanahalli, near Thouduru Village, Harapanahalli Taluk, he sustained injuries in motor vehicle accident due to rash and negligent act of the driver of Lorry Reg.No.KA-09-A-2529 i.e., respondent no.1 as pleaded in the petition?
2. Whether the respondents prove that they are not liable to pay the compensation for the reasons mentioned in the objection statement?
3. Whether the petitioner is entitled for compensation? If so, at what rate and from whom?
4. What relief or award?"

5. Thereafter, claimant deposed as PW1 and got marked Ex.P1 to Ex.P24. Insurer examined its official as well as ARTO as RWs 1 and 2 and got marked Ex.R1 to Ex.R3. On consideration, Tribunal held issue no.1 in affirmative, issues no.2 and 3 partly in affirmative and issue no.4 by assessing total compensation of Rs.78,000/- and holding driver and owner liable to pay same. Claim petition against insurer was dismissed. Aggrieved thereby, this appeal is filed.



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6. It was submitted that accident occurred on 24.05.2012. Only reason assigned by Tribunal for fixation of liability on owner and dismissing claim petition against insurer was that permit was not current as on date of accident. Permit issued on 24.05.2007 was valid upto 23.05.2012 and subsequent renewal was from 25.05.2011 to 24.05.2017 as per Exs.R1 and R2. It was submitted that though absence of permit as on date of accident was admitted, Section 81(5) of MV Act provided that in case of renewal of a permit after expiry of period thereof, such renewal would be effective from date of expiry. It was further sought to be contended that an application for renewal was filed prior to expiry by referring to contents of Ex.R1. On above grounds sought for absolving liability of owner and to hold insurer liable to pay compensation.

7. On other hand Sri SV Hegde Mulkhand, learned counsel for respondent no.3 vehemently opposed appeal. It was submitted that appellant had duly participated in appeal, but had failed to lead evidence to establish filing of application for renewal prior to expiry. As per deposition of ARTO as well as



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officials of insurer-RWs.1 and 2, permit obtained in respect of vehicle had expired a day prior to accident and renewal was a day after accident. Indisputably as on date of accident permit was not effective. Therefore, there was clear violation of policy condition and dismissal of claim petition was justified. On other hand, it was sought to be contended that though claimant had described himself as Hamali, travelling in goods vehicle, owner had not led evidence to establish employment of claimant as Hamali- loader/unloader. Even claimant failed to produce any material to substantiate employment. Under above circumstances, as held by Hon'ble Supreme Court in case of ***Sanjeev Kumar Samrat v. National Insurance Company Ltd. and Ors.*** reported in ***(2014) 14 SCC 243***, insurer could not be held liable.

8. It was further submitted, in application filed under Section 170 of MV Act, insurer had clearly urged contention about collusion between owner and claimant. Failure to produce material before Tribunal would substantiate same. Under above circumstances, there was no merit in appeal and sought for dismissal.



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9. Heard learned counsel, perused impugned judgment award and record.

10. From above and since owner is in appeal challenging dismissal of claim petition against insurer, point that arises for consideration is:

'Whether Tribunal was justified in dismissing claim petition against insurer denying indemnification to insured?'

11. Occurrence of accident due to rash and negligent driving by its driver involving insured vehicle and coverage of insurance in respect of said vehicle as on date of accident are not in dispute. Even claimant sustaining injury/disability and being entitled for compensation is also not in dispute. Only dispute is about liability of insurer.

12. While passing impugned award, reason assigned by Tribunal for holding owner liable and insurer not liable is expiry of permit as on date of accident. Ex.R2 would indicate that permit issued on 24.05.2007 was valid till 23.05.2012. Ex.R1 would indicate that permit was in force from 25.05.2011 till



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24.05.2017. Above would indicate that as on date of accident i.e. 24.05.2012, permit was not in force. However, Section 81 of MV Act provides that an application for renewal may be filed not less than 15 days prior to expiry. Section 81(5) provides that in case of renewal of permit after expiry, same would be effective from date of expiry irrespective of whether or not a temporary permit was granted under clause (d) of Section 87. In cross examination of RW.1 suggestion was made that application for renewal was filed prior to accident and during currency of period of earlier permit was denied. But careful perusal of Ex.R1 would indicate that chalan for payment of renewal fee of Rs.850/- was paid on 21.05.2012, thereby probalising filing of application for renewal prior to expiry. In either case Section 81(5) of MV Act provides renewal to be effective from date of expiry. Consequently, date of accident would be covered. Therefore, Tribunal was not justified in dismissing claim petition against respondent no.3 - insurer. Insofar as contention of respondent no.3 - insurer that there was no material to establish claimant was hamali in goods vehicle, it is seen that in his complaint filed before police and



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subsequent prosecution records as well as in claim petition, deposition etc., there is consistent assertion by claimant describing himself as Hamali, travelling in goods vehicle. Though there is a suggestion about absence of any record about claimant being a member of Hamalis' Association of Davanagere, in absence of specific material Tribunal would not be in error in assuming that he was travelling in goods vehicle as hamali. Employment of claimant by driver of vehicle on behalf of owner would be in accordance with law.

13. Besides above, insurer in instant case had filed application under Section 170 of MA Act. Having alleged collusion between claimant and insured, and obtaining permission to defend claim petition on all grounds available to owner, there is no material evidence led by insurer to deny or dispute claimant being hamali in insured vehicle at time of accident nothing material is elicited during cross examination of PW1. Under above circumstances, neither ratio in **Sanjeev Kumar Samrat** would apply nor contentions would be substantiated. Hence point for consideration is answered in negative. At same time since it is found that appellant herein



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did not participate in proceedings before Tribunal effectively and led to situation by his own default and rendered insurer liable to pay interest for period of 12 years during pendency of this appeal. Therefore, it is found fit to deny refund of amount in deposit.

14. Consequently following:

ORDER

Appeal succeeds. Judgment and award dated 22.08.2013 passed by III Additional Senior Civil Judge and MACT, Davanagere, in MVC no.1080/2012 stands modified. Insurer is held liable to pay compensation. Appellant is not entitled for refund of amount in deposit. Along with accrued interest it is ordered to be transmitted to Tribunal for dispersal to claimant. Balance amount to be deposited by insurer within 6 weeks.

Sd/-
(RAVI V HOSMANI)
JUDGE

YKL
List No.: 1 Sl No.: 36