



NC: 2026:KHC:49930
MFA No. 8674 of 2018

CNR: KAHC010544052018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

MISCELLANEOUS FIRST APPEAL NO.8674 OF 2018 (MV)

BETWEEN:

ORIENTAL INSURANCE CO. LTD.,
DIVISIONAL OFFICE,
NO.11, 1ST MAIN,
KANTHARAJ URS ROAD,
SARASWATHIPURAM,
MYSORE - 560 009,

NOW REP. BY ITS
REGIONAL MANAGER,
THE ORIENTAL INSURANCE CO. LTD.,
REGIONAL OFFICE, TP HUB,
LEO SHOPPING COMPLEX,
RESIDENCY ROAD CROSS,
BANGALORE - 560 025.

Digitally signed
by ANUSHA V

Location: High Court of
Karnataka (BY SRI H C VRUSHABHENDRAIAH, ADVOCATE)

...APPELLANT

AND:

1. PAPEGOWDA
S/O KALEGOWDA,
AGED ABOUT 54 YEARS,
R/AT HEGGADIKOPPALU VILLAGE,
MAKODU POST,
RAVANDUR HOBLI,
PERIYAPATNA TALUK.



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2. MANJUNATHA. C. S.
S/O SANNAIAH,
AGED ABOUT 28 YEARS,
R/AT NO. 24 (A),
CHITTEKYATHANAHALLI VILLAGE,
HUNSUR TALUK.

...RESPONDENTS

[BY SRI C.P.PUTTARAJA, ADVOCATE FOR R2 (AB);
R1 - NOTICE SERVED AND UNREPRESENTED]

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 20.07.2018 PASSED IN MVC NO.147/2014 ON THE FILE OF THE SENIOR CIVIL JUDGE, JMFC, MEMBER, MACT, PERIYAPATNA, AWARDING COMPENSATION OF RS.86,000/- WITH INTEREST AT 9% P.A. FROM THE DATE OF PETITION TILL THE DATE OF PAYMENT.

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 20.07.2018 passed by Senior Civil Judge and JMFC and MACT, Periyapatna (**'Tribunal'**) in MVC no.147/2014, this appeal is filed.



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2. Sri H.C. Vrushabhendraiah, learned counsel for appellant submitted that appeal was by insurer challenging award on ground of liability.

3. Brief facts leading to this appeal, as stated, are that at 7:30 a.m. on 04.07.2014 when respondent - claimant - Papegowda was travelling in Goods Auto no.KA-45/7253, near Moduru vehicle sustained accident and despite treatment initially at Government Hospital, Hunsur and later at KR Hospital, Mysuru, he did not recover fully and sustained permanent physical disability. Claiming that he was earning Rs.300/- per day as loader and alleging loss of earning capacity, he filed claim petition under Section 166 of Motor Vehicles Act, 1988 ('**MV Act**') against owner and insurer of Goods Auto.

4. On contest, wherein claim petition was opposed on all grounds, including denying liability on ground that there were 25 to 30 persons travelling in Goods Auto in breach of terms and conditions of policy which would not cover risk of gratuitous passengers travelling in goods vehicle.



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5. Based on pleadings, Tribunal framed issues and recorded evidence. Wherein claimant examined himself as PW.1 and got marked Exs.P1 to P56. In rebuttal, insurer examined its official as RW.1 and got marked insurance policy and charge sheet as Exs.R1 and R2.

6. On consideration, Tribunal answered issues in favour of claimant and held insurer liable to pay compensation of Rs.86,000/- with interest at 9% per annum within one month from date of order. Aggrieved thereby, this appeal was filed.

7. Referring to medical discharge summary, charge sheet as well as deposition of PW.1, it was submitted claimant had clearly stated that on date of accident, he had boarded Goods Auto to travel to his daughter's place and at time of accident, there were 25 to 30 persons travelling in Good Auto. This would substantiate that claimant was a gratuitous passenger. It was submitted, as per Ex.R1 - insurance policy, risk of gratuitous passenger was not covered and despite same fastening of liability by Tribunal was not justified. It was



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submitted, Hon'ble Supreme Court in cases of **Amudhavalli and Ors. v. HDFC Ergo General Insurance Co. Ltd. and Ors.**, reported in **2025 SCC OnLine SC 2262** and **Ranga Naik v. United India Insurance Co. Ltd. and Anr.**, reported in **2026 ACJ 875** had held insurer would not be liable and prayed for allowing appeal.

8. There is no representation for respondents.

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

10. This appeal is by insurer challenging finding of Tribunal on liability. Therefore, point that arises for consideration is:

"Whether finding of Tribunal on liability of insurer to pay compensation suffers from perversity and calls for interference?"

11. Occurrence of accident, claimant sustaining injuries, consequent loss of earning capacity and being entitled for compensation are not in dispute. Challenge by insurer is on specific ground that Ex.R1 - insurance policy would not cover



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risk of gratuitous passengers. Perusal of Ex.P8 reveals that in history of injuries column, occurrence of accident is mentioned as while claimant was travelling as passenger. It is also elicited in cross-examination of PW.1 that on date of accident, he had boarded Goods Auto as a passenger and at time of accident, there were 25 to 30 persons travelling in Goods Auto as passengers. Though, he later states that he was a loader in Goods Auto, same would be contradictory to his earlier statement and without proper explanation. But, since Ex.R1 - insurance policy is obtained to cover risk of not only owner but also driver and cleaner, permitting gratuitous passenger to travel in goods vehicle claiming to be cleaner would only be breach of terms of policy condition and would not be a case of absence of contract of insurance.

12. While passing impugned judgment, precisely on this ground Tribunal held insurer liable to pay compensation. However, in **Reliance General Insurance Co. Ltd. v. Om Prakash**, [2026 INSC 767] Hon'ble Supreme Court has clarified that in case of breach of terms of policy, appropriate course would be to direct insurer to pay compensation to



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claimant in first instance and thereafter recover it from insured/driver without recourse to separate proceedings.

13. In view of above, point for consideration is answered partly in affirmative in favour of appellant.

14. Hence, following:

ORDER

- i) Appeal is ***allowed***;
- ii) Judgment and award dated 20.07.2018 passed by Senior Civil Judge and JMFC and MACT, Periyapatna in MVC no.147/2014 stands ***modified*** holding insurer liable to pay compensation to claimant in first instance. Being entitled to recover compensation paid from insured without recourse to separate proceedings.
- iii) Amount in deposit is ordered to be transmitted to Tribunal for disbursal.
- iv) Balance amount, if any, is directed to deposit before Tribunal within six weeks.



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- v) On deposit, Tribunal is directed to release same in favour of claimant to his account through RTGS.

Sd/-
(RAVI V HOSMANI)
JUDGE

GRD
List No.: 1 Sl No.: 24