HC-KAR

NC: 2026:KHC:61311
MFA No. 3542 of 2014

CNR: KAHC010098642014

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

MISCELLANEOUS FIRST APPEAL NO.3542 OF 2014(MV-D)

BETWEEN:

ORIENTAL INSURANCE COMPANY LTD.,
D.O.10, CHENNAI, DWARAKA,
II FLOOR, NO.79,
UTHAMARGANDHI,
SALAI, CHENNAI,
TAMIL NADU - 600 034,
REPRESENTED BY
THE ORIENTAL INSURANCE CO. LTD.,
S.S.COMPLEX,
SUBHASH CHOWK, HASSAN.

BY ORIENTAL INSRUANCE CO. LTD.,
REGIONAL OFFICE, 2ND FLOOR,
SUMANGALA COMPLEX,
LRMINGTON ROAD,
HUBLI - 580 020.
BY ITS MANAGER.

...APPELLANT

(BY SRI O MAHESH, ADVOCATE)

Digitally signed by ANUSHA V
Location: High Court of Karnataka

AND:

1. LAKSHMAMMA
   AGED ABOUT 59 YEARS,
   W/O RAJEGOWDA @ RAJU,

2. MOHAN KUMAR
   AGED ABOUT 32 YEARS,
   S/O RAJEGOWDA @ RAJU,

3. RAJASHEKAR
   AGED ABOUT 30 YEARS,
   S/O RAJEGOWDA @ RAJU,

ALL ARE RESIDENT OF
CHAMPAKANAGAR,
SAKALESHPURA TOWN.

4. N. ABDULLA
MAJOR,
SINCE DEAD BY HIS LRS,

4(a) SALEEL,
S/O LATE ABDULLA,
MAJOR, MEGALAKOPPALU,
KUSHALNAGAR EXTENSION,
SAKALESHSLURA,
HASSAN DISTRICT - 573 201.

4(b) SHAKEEL
S/O LATE ABDULLA,
MAJOR,

4(c) SAFIA
W/O ABDULLA,
MAJOR,

4(d) SUHEEL
S/O LATE ABDULLA,
MAJOR,
ALL ARE FIDA ELECTRONICS,
IN FRONT OF OLD BUS STAND,
SAKALESHPUR TOWN,
HASSAN DISTRICT - 573 201.

…RESPONDENTS

[BY SRI PRAKASH M. PATIL, ADVOCATE FOR R1 TO R3;
R4(a)- R4(d) - NOTICE SERVED AND UNREPRESENTED]

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 15.02.2014 PASSED IN MVC NO.74/2009 ON THE FILE OF THE SENIOR CIVIL JUDGE, & JMFC, MACT, SAKLESHPUR, AWARDING COMPENSATION OF Rs.3,52,000/- WITH INTEREST @ 6% P.A. FROM THE DATE OF PETITION TILL REALIZATION.

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

CNR: KAHC010098642014

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL JUDGMENT

Challenging judgment and award dated 15.02.2014 passed by Senior Civil Judge and JMFC, MACT, Sakleshpur ('**Tribunal**') in MVC no.74/2009, this appeal is filed.

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

3. Brief facts leading to this appeal as per claimants were that at 11:45 pm on 28.02.2008 when claimant no.1 son Manjunath @ Madhu was traveling in Lorry no.KA-46-450 from Bangalore towards Hassan as a loader and it was near Dyamasandra Gate, its driver drove it in rash and negligent manner and dashed against another Mini Lorry no.KA-18-8804 caused accident. In accident, Manjunath sustained grievous injuries and succumbed to same at Adhichunchanagiri Hospital. Alleging loss of dependency on account of his sudden death, claimants i.e. deceased mother and brothers filed claim petition under Section 166 of Motor Vehicles Act, 1988 ('**MV Act**') against owner and insurer of Lorry.

4. On contest, wherein claim petition was opposed on all grounds including insurer denying deceased Manjunath travelling in insured vehicle as an employee, alleging violation of terms and conditions of policy and claim petition being exorbitant.

5. Based on pleadings, Tribunal framed following:

ISSUES:

1. *Whether the petitioners prove that Manjunath @ Madhu S/o Rajegowda died due to the accident alleged to have taken place on 28.02.2008 at about 11.45 p.m. on N.H.48, B.M.Road, near Belluru at Dyamasandra Gate and that the said accident occurred due to the rash and negligent driving of the Lorry bearing no.KA-46-450 by its driver?*

2. *What was the age, occupation and income of the deceased at the time of accident?*

3. *Whether the respondent no.1 proves that the driver of the offending vehicle having valid and effective driving licence at the time of accident?*

4. *Whether the respondent no.2 proves that the owner of the vehicle violated the terms and conditions of the policy?*

5. *Whether the petitioners are entitled for compensation? If so, to what amount? And from whom?*

6. *What award or order?*

6. Claimant no.1 deposed as PW.1 and got marked Exs.P1 to P6. On behalf of respondents, owner of lorry and

official of insurer deposed as RWs.1 and 2 and got marked Exs.R1 to R3.

7. On consideration, Tribunal answered issues no.1 and 3 in affirmative; issue no.4 in negative and issues no.2, 5 and 6 by assessing total compensation of Rs.3,52,000/- and holding insurer liable to pay same with interest at 6% per annum. Dissatisfied with same, appeal was filed.

8. It was also submitted that in objections filed by respondent no.1, there was denial of allegations made in claim petition and same was also noted by Tribunal. It was submitted that though deceased Manjunath was stated to be travelling in Lorry as a cleaner/loader, Ex-R2 - statement given before police would indicate that on date of accident, Manjunath along with another had accompanied driver of Lorry as his friends intending to go to Sakleshpur and not as employee. It was further submitted that even general denial of entire claim petition averments in objections filed by owner of Lorry would also would inure or substantiate contention of insurer. It was submitted that insurance policy issued cover risk of owner and did not cover risk of employee. It was submitted that in

absence of contract of insurance, fastening of liability on insurer as done by Tribunal would not be justified and sought for setting aside award.

9. On other hand, Sri Prakash M Patil, learned counsel for respondents no.1 to 3 - claimants would oppose appeal. It was submitted that while passing award, Tribunal had referred to contention of insurer and referring to admission of relationship employer and employee in objections filed by owner, held claimant entitled for compensation from insurer. On said ground sought for dismissal.

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

11. From above and since only insurer is in appeal challenging finding of Tribunal on liability, sole point that would arise for consideration is:

> *"Whether Tribunal was justified in fastening liability on insurer to pay compensation?"*

12. To establish actionable negligence against insurer, in instant case claimant relied on prosecution records namely FIR, complaint and charge sheet would reveal that complaint

was filed by driver of Mini Lorry. In view of above, averments in complaint would not be relevant for purposes of establishing relationship of employer and employee. There are no specific records produced to establish employment. However, claimant has consistently described himself to be employee of Lorry and there is general denial of claim petition averments but there is specific assertion in para-4 of objections and para-3 of affidavit examination-in-chief as follows:

> *"… … The averments made in para 22 of the petition that on 28-2-2008 at about 11-45 pm the son of the 1st petitioner was coming as a loader from Bangalore towards Hassan in a vehicle bearing no.KA-46-450 is true."*

13. Indeed, contents of Ex.R2, alleged statement given by one Kiran inmate of Lorry in question in course of police investigation indicate that Manjunath was travelling in Lorry as his friend and not as an employee, however, statement recorded under Section 161 of CrPC, would not be substantive evidence by itself and there is no confrontation of Ex.R2 to RW.1. In view of above, there is some material on record to support conclusion about Manjunath was travelling in Lorry as an employee of owner at time of accident.

14. While passing impugned award, Tribunal has in fact adverted to material and arrived at conclusion that insurer had failed to establish that Manjunath was not travelling in Lorry as employee. Merely on ground of another view is possible, findings of Tribunal cannot be reversed. More so, when there is some basis for conclusion and is arrived at by referring to entire material on record.

15. In view of above, appeal is devoid of merit and is accordingly ***dismissed***. Amount in deposit is ordered to be transmitted to Tribunal for disbursement. Insurer is directed to deposit balance compensation amount, if any, before Tribunal within six weeks from today. On deposit, entire compensation amount is ordered to be released in favour of claimant.

Sd/-
(RAVI V HOSMANI)
JUDGE

GRD
List No.: 1 Sl No.: 24