HC-KAR

CNR: KAHC010233062014

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.4195 OF 2014(MV-I)

BETWEEN:

THE ORIENTAL INSURANCE CO. LTD.,
A COMPANY REGISTERED
(INCORPORATED IN INDIA),
A SUBSIDIARY OF GENERAL INSURANCE CORPORATION
OF INDIA,
HAVING THEIR REGISTERED OFFICE
AT ORIENTAL HOUSE,
P B NO.7037, A-25/27,
ASAF ALI ROAD,
NEW DELHI - 110 002 &

HAVING THEIR BRANCH OFFICES
AT VARIOUS PLACES IN INDIA
INCLUDING ONE AT
POST BOX NO.41,
OPPOSITE TOWN HALL,
CHIKPET,
MADIKERI.

NOW REPRESENTED BY ITS
REGIONAL MANAGER,
ORIENTAL INSURANCE CO. LTD.,
REGIONAL OFFICE,
#44/45,
LEO SHOPPING COMPLEX,
RESIDENCY ROAD,
BANGALORE - 560 025.

...APPELLANT

(BY SRI. VIJAYA PHANEENDRA T.B., ADVOCATE FOR
SRI.A.N.KRISHNA SWAMY., ADVOCATE)

Digitally signed by ANUSHA V
Location: High Court of Karnataka

CNR: KAHC010233062014

AND:

1. SUKUR,
S/O P.SUFI,
NOW AGED ABOUT 35 YEARS,
R/A HARID, DASAVALA,
MADIKERI,
KODAGU DISTRICT - 571 201.

2. V. ASHRAF, MAJOR,
SHETTY FORD PRODUCTS,
#22, INDUSTRIAL,
MADIKERI TALUK,
KODAGU DISTRICT.

…RESPONDENTS

(BY SRI. N. GOPALAKRISHNA, ADVOCATE FOR R1;
NOTICE TO R2 IS HELD SUFFICIENT VIDE COURT ORDER DATED 27.05.2019)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 22.3.2014 PASSED IN MVC NO.147/1999 ON THE FILE OF THE SENIOR CIVIL JUDGE, MACT, MADIKERI, AWARDING A COMPENSATION OF RS.4,04,223/- FROM THE DATE OF PETITION TILL THE DATE OF DEPOSIT.

THIS APPEAL IS 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 22.03.2014 passed by Senior Civil Judge & MACT, Madikeri, in M.V.C. No.147/1999, this appeal is filed.

2. Sri Vijaya Phaneendra T.B., learned counsel appearing for Sri A.N.Krishna Swamy, learned counsel for appellant submitted that this appeal was by Insurer challenging finding of Tribunal on liability.

3. Brief facts leading to this appeal as per claimants were that, at 3:45 p.m. on 17.09.1998 when claimant was travelling in autorickshaw bearing No.KA-12-3426 near Senior College Road at Madikere, its driver drove it in rash and negligent manner, lost control and due to which, it capsized causing injuries on claimant. Despite treatment at hospitals in Madikeri and Mangalore, he did not recover fully and sustained permanent physical disability/loss of earning capacity. Claiming compensation for same under Section 166 of Motor Vehicles Act, he filed claim petition against owner and insurer of autorickshaw.

4. On contest, wherein claim petition was opposed on all grounds, Tribunal framed issues and recorded evidence.

5. Claimant along with another deposed as PWs.1 and 2 and got marked Exs.P1 to P278. Dr.Shridhar Shetty, Dr.R.N.Sujeer and Dr.K.Shashidharan were examined on

commission as CWs.1 to 3 and Exs.C1 and C2 were got marked. In rebuttal, official of Insurer deposed as RW.1 and got marked copy of insurance policy as Ex.R1. On consideration, Tribunal held that accident had occurred due to rash and negligent driving of autorickshaw by its driver and claimant was entitled for compensation assessed by it at Rs.4,24,223/- with interest at 6% per annum and holding owner/insurer jointly and severally liable to pay compensation. Aggrieved, present appeal was filed.

6. Sole contention urged against impugned award was that, admittedly, accident in question occurred while claimant was travelling in it. Vehicle involved was a Goods autorickshaw with seating capacity of only one. Since police investigation records would consistently indicate that accident occurred while claimant was seated in cabin, same would constitute fundamental breach of terms and conditions of policy requiring absolving of liability of insurer. Therefore, sought for allowing appeal.

7. Sri N.Gopalakrishna, learned counsel for claimants opposed appeal.

8. Heard learned counsel for appellant. Perused impugned judgment and award and material on record.

9. From above, insurer is in appeal challenging finding of Tribunal on liability.

10. Point that would arise for consideration is-

"Whether Tribunal was justified in holding insurer liable to pay compensation?"

11. At outset, occurrence of accident, involving insured vehicle and claimant sustaining injuries therein is not in dispute. Challenge against finding of Tribunal holding insurer liable to pay compensation is solely on ground that travel of claimant in cabin of autorickshaw was in violation of terms and conditions of policy and therefore, insurer could not be held liable.

12. Ex.P1 FIR would indicate that accident occurred while claimant was travelling in cabin of autorickshaw. Ex.P.4 copy of RC book of vehicle would indicate over writing of seating capacity as 1+1 without any counter signature. Ex.P5 copy of insurance policy is same as Ex.R1 and Ex.R1 insurance

policy issued to vehicle in question would indicate seating capacity as '0'. However, B Register extract of vehicle in question got marked by claimant as Ex.P277 would indicate seating capacity as '1' including driver. Therefore, there cannot be any dispute about seating capacity of vehicle being '1'. Since complaint averments itself would indicate that claimant sustained injuries while travelling in cabin of auto, violation of policy conditions has to be implied. However, Ex.P1 would also note that vehicle was carrying bakery goods belonging to claimant for sale.

13. Though learned counsel for appellant has relied on decision of Hon'ble Supreme Court in case of ***United India Insurance Company Limited v. Suresh K.K. and Another*** reported in ***(2008) 12 SCC 657*** for absolving of liability of insurer, latest decision of Hon'ble Supreme Court in ***Kaminiben and others v. Oriental Insurance Company Limited and others*** in ***SLP Civil No.21802/2023*** disposed of on 11.02.2026, after review of several earlier decisions and taking note of fact that dominant purpose of hiring vehicle was not for travelling but for carrying goods held Insurer liable to pay compensation even in case of injuries sustained by

gratuitous passenger but with liberty to recover it from owner. Same would squarely apply to present case.

14. In view of above, following:

ORDER

(i) Appeal is ***allowed-in-part***.

(ii) Judgment and award dated 22.02.2014 in MVC No.147/1999 passed by the Senior Civil Judge and MACT, Madikeri, stands modified holding appellant-insurer liable to pay compensation to claimant in first instance with liberty to recover it from insurer.

(iii) Amount in deposit is ordered to be transmitted to Tribunal for payment, balance compensation to be deposited before Tribunal within six weeks.

(iv) On deposit, entire compensation is ordered to be released in favour of claimant.

Sd/-
(RAVI V HOSMANI)
JUDGE

PSJ
List No.: 1 Sl No.: 26