HC-KAR

NC: 2026:KHC:61204
MFA No. 10034 of 2013

CNR: KAHC010458752013

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.10034 OF 2013(MV-I)

BETWEEN:

DIVISIONAL MANAGER UNITED INDIA
INSURNACE CO LTD
34/3, M M K COM0PLEX
AKKAMAHADEVI ROAD
P J EXTENSION
DAVANAGERE - 577 002.

...APPELLANT

(BY SRI A N KRISHNA SWAMY, ADVOCATE)

AND:

1. SHIVANNA @ SHIVAMURTHY
S/O HANUMANTHAPPA
NOW AGED ABOUT 45 YEARS
OCC: COOLIE
R/O CHIKKAPURA VILLAGE
CHITRADURGA TALUK - 577 501.

2. S NAGAPPA
S/O SIDDAPPA
AGE: MAJOR
OWNER OF TRACTOR & TRAILER
R/O SADARAHALLY
LAXMISAGARA POST
CHITRADURGA TALUK - 577 501.

3. SHIVANANDA
S/O VEERAPPA

Digitally signed by ANUSHA V
Location: High Court of Karnataka

NOW AGED ABOUT 50 YEARS
DRIVER OF TRACTOR AND TRAILER
R/O CHIKKAPURA VILLAGE
CHITRADURGA TALUK - 577 501.

…RESPONDENTS

(BY SRI B M SIDDAPPA, ADVOCATE FOR R2;
R1 AND R3 NOTICE SERVED AND UNREPRESENTED)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 16.09.2013 PASSED IN MVC NO.363/2008 ON THE FILE OF THE ADDITIONAL DISTRICT & SESSION JUDGE & ADDITIONAL MACT, CHITRADURGA, AWARDING COMPENSATION OF RS.1,67,500/- WITH INTEREST @6% P.A FROM THE DATE OF PETIION TILL THE REALIZATION.

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

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL JUDGMENT

Challenging judgment and decree dated 16.09.2013 passed by Addl. District & Sessions Judge & Addl. MACT., Chitradurga (***Tribunal***), in M.V.C.no.363/2008, this appeal is filed.

2. Sri A.N.Krishna Swamy, learned counsel for appellant submitted that appeal was by insurer challenging finding of tribunal on liability.

3. Brief facts leading to appeal as per claimant were that at 8:30 p.m. on 10.12.2007 claimant along with other coolies, as per instructions of owner, went to unload areca nut in tractor-trailer no.KA.16/F-1264-65. On return journey, they stopped at Bharamasagar for meals. Thereafter when claimant was standing on backside of tractor-trailer, driver drove it in reverse direction without any signal or noticing claimant. Tractor-trailer dashed against claimant resulting in injuries. Despite treatment at CHC, Hospital, Bharamasagara and later at Basaveshwara Hospital, Chitradurga, he did not recover fully and sustained loss of earning capacity. Claiming compensation, he filed claim petition under Section 166 of Motor Vehicles Act, 1988 (***MV Act***) against driver, owner and insurer of tractor-trailer.

4. Despite service of notice, driver of tractor-trailer did not appear and was placed *ex parte*. Owner and insurer opposed claim petition on all available grounds. Based on

pleadings, tribunal framed following issues and recorded evidence:

i. Whether the petitioner proves that he sustained injuries in the alleged RTA on 10.12.2007 at 8.30 p.m. in Bharamasagara, Chitradurga Taluk, due to rash and negligent driving of tractor-trailer bearing no.KA-16/T-1264-65 by its driver?

ii. Whether petitioner is entitled for compensation? If so, at what quantum and from whom?

iii. To what order or award?

5. Claimant along with Dr.Ambarish deposed as PWs.1 and 2 and got marked Exs.P1 to 17. In rebuttal, official of insurer was examined as RW.1 and got marked Exs.R1 to 3. On consideration, tribunal held accident had occurred due to rash and negligent driving of tractor by its driver. Claimant had sustained injuries and was entitled for compensation assessed at Rs.1,67,500/- with interest at 6% per annum and held owner as well as insurer liable to pay same. Dis-satisfied with finding on liability, appeal was filed.

6. It was firstly submitted that tribunal had, on an earlier occasion, passed award dismissing claim petition against

insurer and holding owner liable to pay compensation of Rs.59,400/-. Said award was questioned by claimant in MFA no.3161/2011. By judgment dated 08.12.2012, same was allowed and matter remitted back to tribunal. Thereafter impugned order was passed holding owner and insurer liable to pay compensation. It was submitted that consistent version of claimant in claim petition and in deposition was that accident occurred when claimant was standing behind tractor and driver reversed tractor without signal or noticing claimant same militated against contents of Ex.P4 wound certificate, Ex.P15 Discharge summary and Ex.R3 MLC Register Extract, which indicated that injuries were sustained due to fall from tractor.

7. It was submitted that though on an earlier occasion taking note of claimant's version that he was working as coolie and accident occurred while in course of employment had held liability of insurer would be under Workmen's Compensation Act (***WC Act***), under impugned award, tribunal erroneously observed that insurer would be liable, regardless of whether claimant sustained injuries while standing behind tractor or while travelling on tractor, which would not be justified.

9. Further, a tractor when attached with trailer would be a goods vehicle and no other passenger than driver would be permitted to travel on tractor (**tractor engine**). In absence of any explanation about discrepancy in police investigation records and claimant's version vis-a-vis contents of wound certificate, discharge summary and MLC register extract, claimant would have to be held to have approached tribunal with unclean hands and claim petition was liable to be dismissed. On said ground sought for allowing appeal.

10. Respondent no.1-claimant is served, unrepresented. Sri BM Siddappa, learned counsel for respondent no.2 - owner would oppose appeal.

11. It was submitted that there was no dispute about both tractor and trailer being covered under insurance policy issued by appellant herein and being current as on date of accident. There was also no dispute about driver of vehicle holding valid and effective driving licence. It was submitted that claimant had consistently stated that he was an employee and travelling as a loader/unloader. Since separate and additional premium was collected to cover risk of employee, tribunal

rightly held insurer liable to pay compensation. There was admission by insurer that claimant was employee. Therefore, fastening of liability on insurer by tribunal was justified and sought for dismissal.

12. Heard learned counsel, perused impugned award and record.

13. From above and since insurer is in appeal specifically on ground of inconsistency about manner of occurrence of accident and for avoidance of liability on ground of violation of terms and conditions of policy, point that would arise for consideration is:

> *Whether tribunal was justified in holding claimant entitled for compensation from insurer?*

14. In order to establish actionable negligence against driver, owner and insurer of offending vehicle, claimant relied on police investigation records. Ex.P1-FIR is registered on a complaint filed three days after date of accident. In complaint claimant stated that he had travelled on tractor-trailer as per instructions of owner to unload areca nut and in transit, vehicle

had stopped for meals. Thereafter when claimant was standing behind tractor trailer, driver reversed vehicle without noticing claimant, trailer hit claimant and he sustained injuries. Ex.P2-charge sheet would reflect same version. Ex.P3-spot panchanama would also be on similar lines. In order to establish injuries and disability, claimant relied on discharge summary, disability certificate, evaluation reports, medical bills, x-rays and case sheet, etc. Ex.P4-wound certificate, Ex.P7-discharge summary and Ex.P15- case sheet would however paint a different version. They would record in history of injuries as 'fall from tractor'. There is no mention in any of them that claimant sustained injuries due to fall from trailer or for that matter fall from tractor trailer. There does not appear to be any confusion or usage of word 'tractor' in wider meaning to cover both tractor and trailer. Neither in his claim petition nor in his examination in chief, claimant has offered any explanation that usage was in wider sense. In case claimant sustained injuries due to fall from tractor trailer, as rightly submitted by owner of tractor trailer, insurer may have found it difficult to avoid liability. If claimant had sustained injuries due

to fall from tractor i.e. tractor engine, since no other person than driver would be entitled to travel on tractor, same would be violation of terms and conditions of insurance coverage and though insurer would be liable to pay compensation to claimant in first instance, it would be entitled to recover it from owner. But instant case reveals two very different versions, one about claimant sustaining injuries while standing behind vehicle and vehicle reversing and hitting him where he would be a pedestrian and other would be as inmate.

15. As noted above, discrepancy has not been explained. Therefore, when difference in version about manner of occurrence would make a large difference on aspect of liability, absence of explanation would invite adverse inference. In view of above, point for consideration would have to be answered in negative.

16. Consequently, following:

ORDER

i. *Appeal is **allowed**.*

ii. Judgment and award dated 16.09.2013 passed by Additional District and

Sessions Judge and AMACT, Chitradurga in MVC no.363/2008 is set aside.

iii. *Claim petition is dismissed.*

iv. *Amount in deposit is ordered to be released in favour of appellant electronically.*

Sd/-
(RAVI V HOSMANI)
JUDGE

HNM,YKL
List No.: 1 Sl No.: 4