

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH
THE HON'BLE MR. JUSTICE P.G.M.PATIL

MFA NO.23320/2012 (MV) DATED: 23-08-2019

ANNAPURNA W/O ULAVAPPA KATTIMANI URF BHIMANNAVAR,
AND OTHERS VS. RAM SHRINGAR PAL, AND OTHERS

JUDGMENT

The appeal is admitted and taken up for final disposal at the request of the learned counsel appearing for the parties.

2. The claimants being aggrieved by the judgment and award dated 4.2.2012, passed in MVC No.512/2008, by the I Addl. Senior Civil Judge and Addl. MACT, Dharwad, have filed this appeal.

3. The case of the claimants before the tribunal is that, on 27.6.2007, at about 2.45 p.m., near the land belonging to one Hebballi on P.B.Road, between Narendra and Hubballi, one Ulavappa was travelling in lorry bearing registration No.MA-43/E-3880 as hamal. The driver of the said lorry drove the same in a rash and negligent manner, lost control over the lorry and it was turtle down in a ditch by the

side of the road. Due to the accident, Ulavappa sustained fatal injuries and died on the spot. The claimants No.1 to 4 are the wife, daughter and two sons of the deceased, who were fully dependents upon his income. The deceased was a labourer in lorry and was earning `6,000/- per month along with daily bhatta of `40/-. The mother of the deceased was also impleaded as respondent No.3 in the claim petition. Therefore the claimants claimed compensation of twenty lakh rupees against the owner and insurer of the offending vehicle, who are respondents No.1 and 2 respectively.

4. In response to the notices, respondents No.1 was absent and he was placed ex parte. Respondent No.2/insurer appeared before the tribunal through his counsel and filed the statement of objections denying the averments made in the claim petition. He further contended that his liability is subject to production of original policy, driving licence, permit of the lorry etc.,. He has denied the age, occupation and income of the deceased. The deceased was not a labourer in the lorry involved in the accident. He filed additional objections contending that the deceased was an unauthorized passenger in the lorry and insurance company is not liable to pay the compensation and that the driver of

the lorry was also not holding a valid and effective driving licence.

5. On the basis of the pleadings of the parties, the tribunal framed issues. In support of their claim, claimant No.1 was examined as PW.1 and one witness as PW.2 and got marked 6 documents as Exs.P.1 to P.6. On behalf of the respondents, respondent No.2/insurer examined one witness as RW.1 and got marked 2 documents as Exs.R.1 and R.2.

6. The tribunal, after hearing both the parties, passed the impugned judgment awarding a compensation of `5,47,000/- with interest at 6% p.a. from the date of petition, till its realization. Respondent No.1 the owner of the vehicle was directed to deposit the compensation amount. Respondent No.2 the insurer was exonerated.

7. The claimants being aggrieved by the impugned judgment and award have filed this appeal stating that the tribunal is not justified in fastening the liability on the owner of the vehicle only on the ground that the deceased was stated to be travelling

as an unauthorized passenger in the vehicle. It is further contended that the policy issued by respondent No.2 cover the risk of two non fare paid passengers (NFPP) and therefore the risk of the deceased was covered under the policy in addition to the risk of two persons as WC under the policy. The claimants have also contended that the income of the deceased considered by the tribunal is on lower side and the compensation awarded under other heads is also on lower side.

8. Heard the learned counsel appearing for the parties.

9. The learned counsel for the appellants/claimants reiterating the grounds taken in the appeal memorandum submitted that the insurer has collected separate premium covering the risk of two NFPP and also cover the risk of 2 WC and therefore the case of the claimants falls under the category of NFPP and therefore the risk of the deceased is covered under the policy in view of IMT 37A.

10. In support of his submission the learned

counsel for the appellants/claimants has relied on the judgment in **Oriental Insurance Company Limited vs. Thukarama Adappa and others, 2007 ACJ 1497; United India Insurance Company Limited vs. Kalavathi and others, 2008(3) TAL 580 (Kant.); National Insurance Company Limited vs. Alipeer and another, 2007 Kant. MAC 149 (Kant.)** and the case of **Manuara Khatun and others vs. Rajesh Kumar Singh and others, 2017 ACJ 1031.**

11. Per contra, the learned counsel for the insurer submitted that it is a case of the claimants that the deceased was working as hamal in the lorry involved in the accident and the said contention was not proved before the tribunal. Therefore it is held that the deceased was travelling in the goods vehicle as unauthorized passenger. The risk of such unauthorized passenger is not covered under the policy nor under section 147 of the M.V.Act. Therefore the tribunal has properly appreciated the facts and law and has exonerated the insurer and there is no need to interfere with the impugned judgment. The learned counsel in support of his

submission has relied on the judgment in **National Insurance Company Limited vs. Cholleti Bharatamma and others, (2008) 1 SCC 423.**

12. The claimants contended before the tribunal that the deceased Ulavappa was travelling in the lorry bearing registration No.MA- 43/E-3880 owned by respondent No.1, as hamal in the said vehicle. They also contended that the deceased was earning `6,000/- per month apart from daily bhatta of `40/-. However the claimants failed to produce necessary evidence to prove that the deceased was working as hamal in the offending lorry. Respondent No.1 the owner of the offending vehicle remained absent and he was placed exparte before the tribunal nor he was examined by the claimants to prove that the deceased was working as hamal in the said lorry.

13. Under such circumstances, the tribunal has held that the claimants have failed to prove that the deceased was travelling in the lorry as hamal and on the other hand, the tribunal proceeded to hold that the deceased was a gratuitous passenger in the lorry. Therefore the insurer is not liable to indemnify the

insured. The tribunal has referred the evidence on record including Ex.P.2 the complaint, wherein it is stated that the deceased Ulavappa boarded the lorry in order to go to Mailar. This is also elicited in the evidence of PW.2. Therefore the finding recorded by the tribunal that the claimants have not proved that the deceased was travelling as hamal in the offending lorry is well reasoned and it does not call for interference.

14. When it is reaffirmed that the deceased was not travelling in the lorry as hamal, the next question would be as to whether the deceased was travelling in the lorry as unauthorized passenger or a non fare paid passenger or a gratuitous passenger. The finding in this regard would decide the liability of the insurer to pay the compensation. The learned counsel for the claimants relying on the judgment in **United India Insurance Company Limited** stated supra, submitted that this Court considered IMT 13 and 14 in the said case and has held, on the basis of the material in that case, that the deceased was not a fare paid passenger or that he was carried for reward.

15. This Court referred to section 147(1)(b)(i) with reference to IMT 14, and proceeded to hold that on an unbiased interpretation of the latter half of the condition in IMT 14, it would clearly render the appellant liable under the policy and that there can be no doubt that the deceased was a passenger in the vehicle and was permitted to board the vehicle by the driver, who was in charge of the vehicle. His presence was not unauthorized. Further, it was held that he was connected with journey at least up to the accident spot. The inmate involved in the said case was the claimant travelling in goods vehicle from Mumbai to Hyderabad and carrying goods. Therefore as representative of the owner of the goods he was travelling in the said vehicle. Under such circumstances, this Court hold that the insurer is liable to pay compensation.

16. In the case of **National Insurance Company Limited** stated supra, this Court again considered the case wherein the claimant was travelling in the goods vehicle as owner of the goods and it is held that number of such owners should not exceed permitted seating capacity. Therefore again it is a case of travelling of a person along with goods in the goods vehicle.

17. In the case of **Oriental Insurance**

Company Limited stated supra, this Court considered the liability of the insurance company to pay compensation, which arise out of the contractual obligations, wherein the risk of the non fare paid passenger was covered. This Court has made the following observations.

The following position emerges.

1) *In claims covered under the provisions of the Motor Vehicles Act, 1939, the insurance company is not liable to pay any compensation for injury sustained or death caused to gratuitous passengers, fare paying passengers, and owner of the goods or his representative who travels in the goods vehicle, when that vehicle meets with an accident.*

2) *In claims covered under the provisions of the Motor Vehicles Act, 1988, arising from 1.7.1989 till 14.11.1994, the day the Amendment Act came into force, the Insurance Company shall not be liable to pay any compensation for the injury sustained or death caused to gratuitous passenger, fare paying passengers and owner of the goods or his authorised representative on being carried in goods vehicle, when that vehicle meets with an accident.*

3) *In claims covered under the provisions of the Motor Vehicles Act, 1988, after amendment i.e., from 14.11.1994 onwards, the insurance company is liable to pay compensation for the injury sustained or death caused to owner of the goods or his*

authorised representative carried in a goods vehicle.

4) The insurance company is statutorily liable to pay compensation to the employee of the insured engaged in driving the vehicle i.e., driver of the vehicle, employee engaged as a conductor or examining tickets of the public service vehicle, and an employee carried in goods carriage, to the extent of liability payable under Workmen's Compensation Act, 1923 only.

18. Therefore it is necessary for the claimants to prove one of such circumstances, under which they fall, in order to fasten the liability against the insurer. The claimants have to establish that the deceased was either travelling as owner of the goods or representative of the owner of the goods, or as any other person directly connected with the journey in one form or the other as stated in IMT 37A. The facts proved in the present case shows that the deceased was travelling in the goods vehicle and it is the case of the claimant that he was travelling in the said vehicle as hamal, which was not proved before the tribunal. When the claimants failed to prove that the deceased was travelling in the said vehicle as hamal, he has to be considered as a non fare paid passenger or as an unauthorized passenger or a gratuitous passenger.

19. In the case of **National Insurance Company Limited vs. Cholleti Bharatamma and others** stated supra, the Apex Court in paragraph No.23 has held as follows:

23. *Upon considering the evidence on record, it was held:*

“As the permitted seating capacity of the lorry is only ‘3’ including the driver and cleaner and as only one non-fare paying passenger as owner of goods can travel in the cabin and as the deceased has admittedly travelled in the cabin beyond seating capacity and contrary to the terms of the permit as well as Rule 252(2) of the Motor Vehicles Act. I am of the view that R-2 cannot be fastened with the liability to pay compensation along with R-1 to all the injured and legal representatives of the deceased. At best it is liable to pay compensation jointly and severally along with R-1 only in respect of one non-fare paying passengers, who is the owner of the goods. As per the endorsement I.M.T. 14(b) unless additional premium is paid for the number of persons who travelled in the lorry, as owners, I am of the view that R-2 cannot be fastened with liability. Further all the petitioners and the deceased cannot be deemed to have travelled as owners of the paddy as the paddy is said to be in bags and orally kept in loose in the lorry and it is enough if any one of them have travelled in the lorry on behalf of all, as owner of the lorry. Rule 277(3) of A.P.Motor Vehicles Rules, clearly shows that no person shall be carried in the goods vehicle except as provided in the Rule under the statute and as the only person, who is permitted to carry in goods

vehicle is the owner or hirer or bona fide employee of owner or hirer and total number of such persons, who could be carried in goods vehicle is not more than seven including the driver.

As per Rule 252(2) no person shall be carried in the cab of the vehicle beyond the seating capacity as per clause (2). No person shall be carried on the load or otherwise. Rule 4 empowers R.T.A. to allow large number of persons to be carried. As the seating capacity of the lorry is only '3' as per Ex.B1 and B3 and as the risk of only owner of goods is covered by Ex.B2 policy, whereas about 40 to 42 persons travelled in the lorry by sitting on the load, which is not permitted and as there is no material to show that R.T.A. permitted carriage of more than seating capacity but on the other hand the permit is cancelled, I am in agreement with the contention of the learned counsel for the respondent that it cannot be fastened with the liability for compensation."

20. In the case on hand, the claimants have not proved that the deceased was permitted to be carried in the lorry by the insured. The insurance policy produced at Ex.R.1 shows that premium was collected for WC 2 and NFPP 2. The IMT endorsement numbers provided in the policy also refers to IMT 37A. IMT 37A refers to the liability of the insurer in respect of death or bodily injury to any person not being employed by insured and not

carried for hire or reward provided that the person, who is charterer or representative of the charterer of the truck or any other person directly connected with the journey in one form or the other being carried in or open or entering or mounting etc.,.

21. In the case on hand, the evidence is crystal clear that the deceased boarded the lorry in order to go to Mailar, which cannot be termed that he was travelling in the lorry connected with the journey in one form or the other.

22. Under these circumstances, this Court holds that the risk of the deceased is not covered under the policy Ex.R.1 under the category of NFPP. Consequently this Court has to hold that the deceased was travelling in the lorry as a person travelling without payment of fare which amounts to a gratuitous passenger. The learned counsel for the claimants relying on the judgment in the case of **Manuara Khatun and others** stated supra, submitted that even assuming the case of deceased as gratuitous passenger, the insurer has to be directed to pay and recover the compensation from the owner of the vehicle. The learned counsel for the insurer in this regard submitted that it is not a

case of breach of policy conditions and therefore an order to pay and recover cannot be passed.

23. The Apex Court in **Manuara Khatun and others** stated supra, has held in paragraphs No.20 and 22 as follows:

20. We find no merit in any of the submissions. Firstly, as mentioned above, we find marked similarity in the facts of this case and the one involved in Saju P. Paul's Case, 2013 ACJ 554 (SC). Secondly, merely because the compensation has not yet been paid to the claimants though the case is quite old (16 years) like the one in Saju P. Paul's Case (supra), it cannot be a ground to deny the claimants the relief claimed in these appeals. Thirdly, this Court has already considered and rejected the argument regarding not granting of the relief of the nature claimed herein due to pendency of the reference to a larger Bench as would be clear from Para 25 of the judgment in Saju P. Paul's case (supra). That apart, learned counsel for the appellants stated at the Bar that the reference made to the larger Bench has since been disposed of by keeping the issue undecided. It is for this reason also, the argument does not survive any more.

22. In view of the foregoing discussion, we are of the view that the direction to United India Insurance Co. Ltd., respondent No.3, they being the insurer of the offending vehicle which was found involved in causing the accident due to negligence of its driver needs to be issued directing them (United India Insurance Co. Ltd., respondent No.3) to first pay the awarded sum to the

appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo), respondent No.1, in execution proceedings arising in this very case as per the law laid down in para 25 of Saju P. Paul's case, 2013 ACJ 554 (SC).

24. Therefore, even when the deceased was travelling in the goods vehicle as a gratuitous passenger, the insurer has to be directed to pay and recover the compensation from the owner of the vehicle in the very proceeding by filing an execution petition against the insurer. Under these circumstances, this Court holds that the facts proved in the case on hand are squarely covered by this judgment and it is just and necessary to pass an order for pay and recover. Accordingly the insurer has to be directed to satisfy the award and recover from the insured in the very proceedings by filing an execution petition.

25. The claimants have sought forenhancement of compensation. The accident in question occurred on 27.6.2007. The tribunal has considered the income of the deceased at `3,000/- per month for awarding

compensation. The age of the deceased is considered as 32 years as per the postmortem report Ex.P.4. As per the guideline issued by the Karnataka State Legal Service Authority for settlement of cases before Lok Adalat, the notional income of the deceased, for the accident of the year 2007, has to be considered at `4,000/- per month. The claimants are also entitled for compensation towards loss of future prospects at 40%, which comes to `1,600/-. The total income comes to `5,600/-, out of which 1/4th of the income has to be deducted towards personal and living expenses of the deceased, thereby the remaining `4,200/- has to be considered for calculating the loss of dependency. Thus, a sum of `8,06,400/- ($\text{`4,200/-} \times 12 \times 17$) is awarded towards loss of dependency. The claimants are also entitled for `70,000/- under the conventional heads. Therefore claimants are entitled for `8,76,400/- as against `5,47,000/- awarded by the tribunal. Thereby, the claimants are entitled for enhanced compensation of `3,29,400/- with interest at 6% p.a. from the date of petition till its realization.

26. For the aforesaid reasons, the appeal succeeds partly and accordingly this Court proceed to pass the following:

ORDER

The judgment and award dated 4.2.2012, passed in MVC No.512/2008, on the file of I Addl. Senior Civil Judge and Addl. MACT, Dharwad, so far as exonerating respondent No.2, fastening the liability on respondent No.1 owner of the vehicle, is set aside.

Respondent No.2 the insurer is hereby directed to pay the compensation awarded in the case to the claimants and recover the same from the insured respondent No.1 in the very proceeding by filing an execution petition.

The appellants are entitled for enhanced compensation of `3,29,400/- with interest at 6% p.a. from the date of petition till its realization.

Respondent No.2/insurer is directed to deposit the compensation amount before the tribunal within a period of 60 days.

The apportionment, deposit and disbursement of the compensation shall be in terms

of the order of the tribunal.