

IN THE COURT OF THE I ADDL.SENIOR CIVIL JUDGE AND
JMFC AND COMMISSIONER FOR WORKMEN'S COMPENSATION,
AT RAICHUR

Present: Smt. Hema Pastapur,
B.A. LL.B.

II Addl. Sr. Civil Judge and JMFC, Raichur,
c/c I Addl. Sr. Civil Judge and JMFC, Raichur.

E.C.A. No.01/2018

Dated this the 25th day of February 2021

Claimants / Petitioners:-

1. Smt. Shivamma W/o Hanumantharaya,
Age:- 32 years, Occ:- Housewife,
2. Rangayya S/o Hanumantharaya,
Age:- 04 years,
3. Sabayya @ Sabagouda S/o Nagappa,
Age:- 70 years, Occ:- Nil,
4. Hanumanthi W/o Sabayya @ Sabagouda,
Age:- 66 years, Occ:- Nil,

Petitioner No.2 is the Minor and U/G ship of
the petitioner No.1 i.e.,natural mother,

All are residing at Haddinal village,

Tq. Devadurga, Dist. Raichur,

Now residing at 1st cross,

Shakhinagar, Tq and Dist. Raichur.

(By Shri B.V. Patil, Advocate)

Vs

Respondents:-

1. B. Nagalaxmi W/o Ramakrishna,
Occ:- Owner of John Deere,
Tractor 5050D bearing No.
KA-36-TC5016 R/o Srinivas Camp,
Post. Javalagera, Tq. Sindanoor,
Dist. Raichur.
2. The Branch Manager,
Reliance General Insurance
Co. Policy Issuing Office,
No.40, 1st floor, SLV Towers,
Parvathi Nagar, main road,
Ballary Karnataka
Vide policy No.14122623400023
validity from 15.05.2015 to
14.05.2016.

(Respondent No.1 by Shri G.S.R.K. Reddy
and respondent No.2
by Shri A.S.Mali Patil, Advocates).

JUDGMENT

That, the petitioners have filed the claim petition under Section 22 of the Workmen's Compensation Act, claiming compensation of Rs.16,00,000/-.

Facts of the case are as under :-

1. That, the petitioner No.1 is the wife, petitioner No.2 is the son and petitioners No.3 and 4 are the parents of the deceased Hanumantharaya. That, the respondent No.1 is the owner of the Tractor bearing No.KA-36-TC-5016. That, the said Hanumantharaya during his life time was working as a Coolie under the employment of respondent No.1. That, on 01.07.2016 as per the instructions of respondent No.1, the said Hanumantharaya was proceeding in said Tractor towards her land and on that day he was sitting in a plough (Tiller) which was attached to the said Tractor and on that day the driver of the respondent No.1 was driving the said tractor and at about 8.50 a.m., when they were proceeding near to the land of one Shri Rajashekhar Hadnur one cattle came in front of said tractor and due to

which the said driver lost control over the tractor and the said tractor turtle and due to which the said Hanumantharaya fell down and had sustained the grievous injuries and died on the spot.

2. That, the Yadrami police have registered the case against the said driver in Crime No.101/2016 for the offences punishable under Sections 279 and 304(A) of Indian Penal Code.

3. That, on alleged date of accident the said Hanumantharaya was aged about 21 years and was hale and healthy and was earning Rs.14,000/- per month. That, due to sudden death of said Hanumantharaya the petitioners are leading the miserable life. Hence, this petition.

4. That, on notice being served by this Court, the respondents have appeared before this Tribunal through their learned counsel. That, the respondent No.1 in her written statement has admitted that the said Hanumantharaya during his life time was working under her employment as a cleaner / coolie in her said tractor and also admitted that on 01.07.2010 as per her instructions the said Hanumantharaya was proceeding in her said tractor towards her land and also admitted the alleged accident and the death of said Hanumantharaya and denied rest of petition averments. That, the respondent No.1 has

contended that he was paying Rs.7,000/- per month to said Hanumantharaya and the claim made by the petitioners is high and excessive. That, the respondent No.1 has further contended that on alleged date of incident the policy of the said tractor was in force and the respondent No.2 is liable to indemnify the petitioners.

5. That, the respondent No.2 denying all contentions of the petitioners submitted his written statement contending that there was no jural relationship between the said deceased and respondent No.1 and the petitioners have not submitted any document to substantiate the jural relationship between the respondent No.1 and said deceased and in view of the same the petition is liable to be dismissed.

That, the respondent No.2 has further contended that after alleged incident the petitioner No.1 had lodged the complaint in concerned police station stating that on alleged date of accident the said Hanumantharaya was proceeding in said tractor by sitting on the mudguard and from the police records it appears that on alleged date of accident the said Hanumantharaya was travelling in said tractor as an unauthorized passenger. That, the respondent No.2 has further contended that as per the terms of R.C. of said tractor its seating capacity is only one that too for driver only and on alleged date of

accident the driver of the said tractor was not holding the effective driving license.

That, the respondent No.2 has further contended that as per the police records the alleged accident had taken place on Nagarhalli village, near Eshwar Camp, Hadnoor field, Tq. Jevargi, District Kalaburgi and in view of the same this Court has no jurisdiction to entertain this petition.

That, the respondent No.2 has further contended that if the respondent No.1 was the employer of the said deceased then she could have deposited the compensation amount within 30 days from the date of incident and in absence of compliance of alleged procedure, he is not liable to indemnify the petitioners and there is no privity of contract between him and respondent No.1 for indemnifying and paying the penalty or interest if any. That, the respondent No.2 has further contended that the claim put forth by the petitioners is high and excessive. That, the respondent No.2 in view of his all aforesaid contentions has prayed for rejecting the claim petition against him.

6. That, on the basis of the pleadings of both the parties the following issues were struck:-

1. Whether the petitioners prove that, deceased Hanumantharaya S/o Sabayya @ sabagouda died in an accident, which was taken place on 01.07.2016 at about 8.50 a.m., while he was proceeding in a plough (Tiller) which is attached to the Tractor bearing No.KA-36-TC-50146 driven by its driver in rash and negligent manner while deceased was died during the course of employment and out of employment of respondent No.1?
2. Whether the petitioners prove that, he was employee of respondent No.1 as on the date of alleged incident?
3. Whether the petitioners are entitled for compensation? If so, at what extent and from whom?
4. Whether the respondent No.2 proves that, at the time of accident, the said vehicle was not having valid permit?
5. What order or award?
7. That, the petitioners to substantiate their aforesaid contentions has got examined the petitioner No.1 as PW1 and got marked the documents at EXs.P1 to 10 and closed their side.

That, the respondent No.1 prove her aforesaid contentions has deposed herself as RW1 and got marked the documents at EXs.R1 to 3 and closed her side.

8. That, the respondent No.2 to substantiate his contentions has got examined his Manager Legal – Shri Amarnath D.V. S/o Veerabhadrapa as RW2 and got marked the document at EX.R4 and closed his side.

9. That, I have heard the arguments and perused the materials placed on record. That, the respondents No.1 and 2 have submitted their written arguments and I have gone through the same. That, My answer to the aforesaid issues are as under:-

Issue No.1 :- In the **NEGATIVE**

Issue No.2 :- In the **NEGATIVE**

Issue No.3 :- In the **NEGATIVE**

Issue No.4 :- Do not survive for consideration

Issue No.5 :- As per the final order for the following:-

REASONS

10. **Issue No.2:-** It is specific case of the petitioners that, the said deceased Hanumantharaya during his life time was working under the employment of respondent No.1 as a coolie and on 01.07.2016 as per the directions and instructions of respondent No.1 he was proceeding towards her land in Tractor bearing No.KA-36-TC-5016. It is pertinent to note here that, the respondent No.1 in her pleadings and in examination-in-chief has specifically admitted that there was a jural

relationship between herself and deceased Hanumantharaya and on 01.07.2016 as per her instructions he was proceeding towards her land in her said tractor.

It is pertinent to note here that, the respondent No.2 has contended that on alleged date of accident there was no jural relationship between the respondent No.1 and the deceased Hanumantharaya and on alleged date of accident the said Hanumantharaya was travelling in said tractor as an unauthorized passenger. It is pertinent to note here that, RW2 in his chief affidavit has reiterated the said facts. It is significant to note here that, from perusal of contents of EX.P2 – Complaint it appears that the PW1 has specifically mentioned that her husband Hanumantharaya was working as a coolie under one B.D. Ramakrishna – i.e. the husband of respondent No.1. That, the respondent No.1 in her cross-examination dated:- 03.02.2021 in page No.3 at 2nd line has specifically admitted as under:-

ಸದರಿ ಮೃತರು ಸದರಿ ಬಿ.ಡಿ. ರಾಮಕೃಷ್ಣ ಇವರ ಹತ್ತಿರ
ಕರ್ತವ್ಯವನ್ನು ನಿರ್ವಹಿಸುತ್ತಿದ್ದರು ಎಂದು
ಸಲ್ಲಿಸಿರುತ್ತಾರೆ ಎಂದು ಹೇಳಿದ್ದಕ್ಕೆ ಸಾಕ್ಷಿ ಹೌದು
ಎಂದು ಹೇಳುತ್ತಾರೆ.

It is significant to note here that, the respondent No.1 in her cross-examination dated:- 03.02.2021 in page No.3 at 6th line has further admitted that:-

ಸದರಿ ಬಿ.ಡಿ. ರಾಮಕೃಷ್ಣ ಇವರು ನೀರಾವರಿ
ಜಮೀನನ್ನು ಹೊಂದಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ನಮ್ಮ
ಯಜಮಾನದ ಸದರಿ ಜಮೀನಿನಲ್ಲಿ ಸದರಿ ಮೃತರು
ಹಾಗೂ 1ನೇ ಅರ್ಜಿದಾರರು ಕೂಲಿ ಕೆಲಸ
ಮಾಡುತ್ತಿದ್ದರು ಎಂದರೆ ಸರಿ.

It is significant to note here that, from contents of EX.P1 and said admissions of respondent No.1 it clearly appears that neither on alleged date of accident nor prior to it the deceased Hanumantharaya was not working under the employment of respondent No.1.

11. That, the respondent No.2 has placed his reliance on following decision:-

[2015 Kant.M.A.C.356 (Kant)]

ICICI Lombard General Insurance Co.Ltd.,

vs

Mudiyappa and others,

wherein it has held that, Workmen's

Compensation Act, 1923 Section 3 –

Motor Vehicle Act, 1988, Section 147

(1) – Rules of Road Regulations,

1989, Rule 28- Accident – Tractor –

trailer – Liability of Insurer – Breach

of policy – Workmen coolie sitting on

mudguard of tractor – Fell down and

sustained injuries when driver of

tractor applied sudden brake –

Commissioner, W.C. awarded

compensation holding insurer liable

to pay compensation – Unjustified –

Rule 28 of Regulations 1989 prohibits

any person other than driver from

travelling on a tractor – Risk of an

employee sitting on mudguard of a

tractor not covered under policy-

Commissioner, W.C. erred in holding

that risk of an employee – coolie,

sitting on mudguard of a tractor was

covered under policy – Fastening of

**liability on Insurer by Commissioner
unjustified – Insurer not liable for
breach of terms of policy – Impugned
order dated 25.07.2007 of
Commissioner, W.C., saddling
liability on Insurer quashed and set
aside – Appellant – Insurer
exonerated from its liability – Appeal
allowed.**

12. It is pertinent to note here that, the respondent No.1 though, admitted that on alleged date of accident the said deceased was working under her employment, but, her said admissions have devoid her own version. That, in view of My above findings and without much discussion I hold that, the petitioners have failed to demonstrate that on alleged date of accident there was a jural relationship between the said deceased and respondent No.1. Hence, issue No.2 is answered in the **NEGATIVE**.

13. Issue No.1:- It is specific case of the petitioners that, on alleged date of accident the said deceased was proceeding in said tractor towards the land of respondent No.1 and the same was driving by the

driver of respondent No.1 and when they were proceeding near to the land of one Rajashekhar Haddanur a cattle was came in front of the said tractor and due to which the said tractor turtle and the said Hanumantharaya fell down and died on the spot. That, to substantiate the said facts the petitioners have got marked the documents at EXs.P1 to 7. That, the EX.P2 is the certified copy of Complaint. That, the EX.P1 is the certified copy of F.I.R. That, the EX.P1 reveals that in pursuance of EX.P2 the Yadrami police have registered the case against the husband of respondent No.1 in Crime No.101/2016 for the offences punishable under Sections 279 and 304(A) of Indian Penal Code. That, the EX.P3 is the certified copy of Final report and which reveals that the said police have charge sheeted the said B.D. Ramakrishna for the offences punishable under Sections 279 and 304(A) of Indian Penal Code and under Section 187 of Indian Motor Vehicles Act. That, the EX.P4 is the certified copy of Inquest panchanama and the EX.P5 is the certified copy of Crime Details Form. That, the EX.P6 is the certified copy of Post Mortem Report and EX.P7 is the certified copy of Motor Vehicles Accident Report. It is pertinent to note here that, as discussed on issue No.2 the petitioners have failed to prove that neither on alleged date of incident nor prior to

it there was a jural relationship between the respondent No.1 and deceased Hanumantharaya. That, the said Hanumantharaya though, on 01.07.2016 had met with an accident and died on the spot but, it cannot be held that he died during the course of jural relationship between him and respondent No.1. Hence, without much discussion, issue No.1 is answered in the **NEGATIVE**.

14. Issue No.3:- That, as discussed on issues No.1 and 2, the petitioners have failed to substantiate that on alleged date of accident there was a jural relationship between the respondent No.1 and deceased Hanumantharaya and during the course of said employment on 01.07.2016 he met with an accident and died on the spot. Hence, the petitioners are not entitled for any compensation. Hence, issue No.3 is answered in the **NEGATIVE**.

15. Issue No.4:- It is pertinent to note here that, the respondent No.2 has not taken the contention that on alleged date of accident the said tractor was not having valid permit. Hence, this issue is wrongly framed and does not survive for consideration.

16. Issue No.5:- That, as discussed on issues No.1 to 4, I proceed to pass the following :-

ORDER

That, the claim petition filed by the petitioners under Section 22 of Workmen's Compensation Act, is hereby dismissed with costs.

That, draw the award accordingly.

That, Advocate Fee is fixed at Rs.1,000/-.

(Directly dictated to the Stenographer on Computer, typed by him, corrected by me and then pronounced in the open Court on this the 25th day of February 2021).

(Hema Pastapur)
II Addl. Senior Civil Judge and JMFC,
Raichur,
c/c I Addl. Sr. Civil Judge and JMFC,
Raichur.

ANNEXURE**List of witnesses examined on behalf of petitioners:-**

PW1 : Shivamma W/o Hanumantharaya.

List of documents marked on behalf of petitioners:-

EX.P1 : Certified copy of F.I.R;
EX.P2 : Certified copy of Complaint;
EX.P3 : Certified copy of Final report;
EX.P4 : Certified copy of Inquest panchanama;
EX.P5 : Certified copy of Crime Details Form;
EX.P6 : Certified copy of Post-Mortam report and

EX.P7 : Certified copy of IMV report.

List of witnesses examined on behalf of respondent No.1:-

RW1 : B. Nagalaxmi W/o Ramakrishna.

List of documents marked on behalf of respondent No.1:-

EX.R1 : Notarized copy of Driving license of B.D.
Ramakrishna;

EX.R2 : Notarized certificate of Registration of vehicle
bearing No.KA-36-TC-5016 and

EX.R3 : Copy of extract of Driving licence of B.D.
Ramakrishna.

List of witnesses examined on behalf of respondent No.2:-

RW2 : Amarnath D.V. S/o Veerabhadrappa.

List of documents marked on behalf of respondent No.2:-

EX.R4 : Copy of Insurance policy of vehicle bearing
No.KA-36-TC-5016.

II Addl. Senior Civil Judge and JMFC,
Raichur,
c/c I Addl. Sr. Civil Judge and JMFC,
Raichur.