

KAUK720008252022



In the Court of the Senior Civil Judge & Prl. JMFC, Kumta.

Dated this the 20th day of January, 2023

PRESENT

**Smt.Bhamini, B.A.,L.L.B.,
Senior Civil Judge
& Prl. JMFC, Kumta**

Execution Case No.88/2022

Decree Holder: United India Insurance Company Ltd.,
Divisional Office, Karwar,
Represented by Divisional Manager,
Sri. Gurunath Gadag,
S/o. Yellappa Gadag,
Aged 50 years, R/o. Karwar,
Tq. Karwar.

(By Sri. S.M.B., Advocate)

V/s

Judgment debtor: Satyendra Martu Prabhu,
Aged about 54 years,
Occ: Business,
R/o. Near Old Government Hospital,
Kumta, Tq. Kumta.

(By Sri. S.J.N., Advocate)

Orders regarding the maintainability of this execution petition

Decree holder Insurance Company has filed this execution petition against the judgment debtor to execute the Order dated 28-09-2021 passed in M.F.A.No.100422/2021 on the file of Hon'ble High Court of Karnataka, Dharwad Bench. Judgment debtor has opposed this execution petition by filing his written objections.

2. Decree holder has contended that as per the Order under execution, it is liable to pay compensation to the claimants of E.C.A.No.4/2017 on the file of this Court and thereafter recover the same from the judgment debtor, who is the insured.

3. Judgment debtor has contended that in the aforesaid order of the Hon'ble High Court of Karnataka there is no order to pay and recover the same from him, that the said appeal filed by him was allowed and order of this Court passed in the aforesaid E.C.A. is modified and merely because in the said order it was held that the decree holder is at liberty to proceed against him, it does not mean that the decree holder has to pay

and recover the compensation from him and hence, this execution petition is not maintainable.

4. Since the judgment debtor has contended that this execution petition is not maintainable, this Court was pleased to post the matter for hearing regarding the maintainability of this execution petition.

5. I have heard the arguments addressed by the learned advocates for decree holder and judgment debtor.

6. Following points arise for my consideration.

1. Whether this execution petition is maintainable?
2. What order ?

7. My findings on the above points are as follows:-

Point No.1 : In the Affirmative

Point No.2 : As per final order

For the following:-

REASONS

8. Point No.1: Decree holder has filed this execution petition against the judgment debtor to execute the Order dated 28-09-2021 passed in M.F.A.No.100422/2021 on the file of Hon'ble High Court of Karnataka, Dharwad Bench.

9. I have perused the entire records of E.C.A.No.4/2017 on the file of this Court. According to the claimants, the deceased who is the husband of claimant No.1, father of claimant No.2 and son of claimant No.3 was the driver of Pickup Vehicle bearing Reg.No.KA-24/8581 belongs to the judgment debtor, during the course of his employment i.e., while driving the aforesaid vehicle the said vehicle met with an accident and in the said accident the deceased died.

10. In the aforesaid E.C.A. the judgment debtor has contended that the deceased was not the driver of the said vehicle but he was the cleaner in the said vehicle and he has admitted the relationship of employer and employee between himself and the deceased . In the said E.C.A. the decree holder has contended that there was no relationship of employer and employee between the judgment debtor and the deceased, deceased had no valid and effective driving licence to drive the said type of vehicle at the time of accident and the liability of the cleaner was not covered under the Insurance policy.

11. By considering all the materials on record, this Court was pleased to allow the said petition against the judgment debtor only and dismissed the said petition against the decree

holder. Aggrieved by the said judgment, the judgment debtor has preferred M.F.A.No.100422/2021 on the file of the Hon'ble High Court of Karnataka, Dharwad Bench and the said appeal was allowed and the decree holder was directed to pay the compensation amount. In the said Order the Hon'ble High Court of Karnataka has further ordered that "However, the Insurance Company is at liberty to proceed against the owner. Amount in deposit, if any, is ordered to be returned to the owner."

12. In para No.14 of the aforesaid Order the Hon'ble High Court of Karnataka has held that as per Exs.P8 and 10, it is crystal clear that there existed a relationship of employer and employee between the deceased and the judgment debtor/owner and there is no legal infirmity in recording such a finding by this Court, as such the principal liability is on the owner and since the vehicle was duly insured, the Insurance Company is required to indemnify the owner.

13. In Para No.15 of the aforesaid Order, the Hon'ble High Court of Karnataka has held that " The materials available on record also show that the owner of the offending vehicle did not intimate the Insurance Company about the incident as

is required under contractual obligations. In such circumstances, the Statute itself provides for the Insurance Company to proceed against the owner appropriately. Accordingly, the Insurance Company is made liable to pay the compensation and is at liberty to proceed against the owner.”

14. Learned advocate for judgment debtor has vehemently argued that the words “ the Insurance Company is at liberty to proceed against the owner” stated in the aforesaid order of the Hon’ble High Court of Karnataka do not mean that the decree holder is at liberty to recover the compensation amount paid by it from the insured/judgment debtor and decree holder has to initiate appropriate proceedings against the judgment debtor and not by filing this execution petition.

15. On the other hand, the learned advocate for decree holder has contended that as per the aforesaid order of the Hon’ble High Court of Karnataka, the remedy available to the decree holder is to file execution petition to recover the compensation paid by it to the claimants from the judgment debtor and accordingly, the decree holder has filed this execution petition.

16. Learned advocate for judgment debtor has failed to state what is the appropriate proceedings ought to have been initiated by the decree holder against the judgment debtor as per the aforesaid order passed by the Hon'ble High Court of Karnataka in the aforesaid Miscellaneous First Appeal. If really this proceedings initiated by the decree holder is not legal and the decree holder ought to have initiated other proceedings against him, nothing prevented the judgment debtor to state the alleged correct proceedings ought to have been initiated by the decree holder.

17. Learned advocate for judgment debtor has further argued that the word "proceed" stated in the aforesaid order of the Hon'ble High Court of Karnataka does not mean "recover" from the judgment debtor.

18. Ex.R2 of E.C.A.No.4/2017 is the true copy of Insurance Policy of the insured vehicle. In the Ex.R2 it is stated that, "The insured is not indemnified if the vehicle is used or driven otherwise than in accordance with this Schedule. Any payment made by the Company by reason of wider terms appearing in the Certificate in order to comply with the Motor Vehicles Act, 1988 is recoverable from the Insured.

See the clause headed “ AVOIDANCE OF CERTAIN TERMS AND RIGHT OF RECOVERY”. For Legal interpretation, English version will hold good. In the event of accident, the Insured should inform United India Insurance Co. immediately to arrange spot survey.”

19. As per the aforesaid averments of Ex.R2, it is clear that the insured/judgment debtor should have informed the decree holder/insurer about the accident immediately. But, in the case on hand the judgment debtor has not done so. Further, as per the said averments in the Ex.R2 the compensation paid by the insurer is recoverable from the insured.

20. Under these circumstances, I am of the opinion that the contention of the judgment debtor that the decree holder is not entitled to recover the amount from him as per the order passed in the aforesaid M.F.A. by filing this execution petition and consequently this execution petition is not maintainable cannot be accepted.

21. That on perusal of the entire materials on record and as discussed above, I am of the opinion that this execution petition is maintainable and the decree holder is at liberty to

proceed against the judgment debtor to recover the compensation amount paid by it to the claimants from the judgment debtor. Accordingly, I answered Point No.1 in the Affirmative.

22. **Point No.2:** In view of my findings on point No.1, I proceed to pass the following:

ORDER

This Execution Petition is maintainable. For steps to bring the vehicles attached in this execution petition for sale by 21/01/2023.

(Dictated to the stenographer, transcribed and typed by her, then corrected and pronounced by me in the open court on this the 20th day of January, 2023)

**(Smt. Bhamini)
Senior Civil Judge
& Prl. JMFC., Kumta.**