HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE T.M.NADAF

MISCELLANEOUS FIRST APPEAL NO.2344 OF 2023(MV-D)

BETWEEN:

M/S. NATIONAL INSURANCE CO. LTD.,
V V ROAD, MANDYA,
REPRESENTED BY
REGIONAL OFFICE SITUATED AT
NO.144, 2ND FLOOR,
SHUBRAM COMPLEX,
M G ROAD,
BANGALORE – 560 001.
REPRESENTED BY REKHA S MENON,
DEPUTY MANAGER.

...APPELLANT

(BY SRI. GEETHA R., ADVOCATE)

AND:

1. MRS. PREMA,
   W/O LATE HANUMANTHA,
   AGED ABOUT 45 YEARS,

2. MR.SUNIL H,
   S/O HANUMANTHA,
   AGED ABOUT 29 YEARS,

   BOTH OF THEM ARE RESIDING AT
   2ND CROSS,
   HOSABADAVANE SUGAR TOWN,
   MANDYA CITY – 571 401.

3. MRS. CHITRA H.,
   D/O HANUMANTHA,
   W/O SRINIVAS,

AGED ABOUT 27 YEARS,
RESIDING AT GUTHALU ROAD,
GOWTHAMA BADAVANE,
MANDYA CITY – 571 401.

4. MRS. VARALAKSHMI,
W/O LATE HANUMANTHA,
AGED ABOUT 40 YEARS,

5. MASTER. SUNIL H.,
S/O LATE HANUMANTHA,
AGED ABOUT 15 YEARS,

6. KUMARI GOWRI,
D/O LATE HANUMANTHA,
AGED ABOUT 16 YEARS MAJOR,

RESPONDENTS NOS. 5 & 6 BEING MINORS,
REPRESENTED BY VARALAKSHMI, 4TH RESPONDENT
RESPONDENT NOS. 4,5, & 6 ARE RESIDING AT
NO. 36, 2ND CROSS, HOSABADAVANE,
SUGAR TOWN, MANDYA – 571 401.

7. MR. UDAYA KRISHNA,
S/O MAHABALESHWARA BHAT,
RESIDING AT NO.26,
SAI PRABHA,
2ND MAIN,
BANANGIRI NAGARA,
BSK 3RD STAGE,
BANGALORE – 560 085.

8. THE BRANCH MANAGER,
ROYAL SUNDARAM ALLILANCE
INSURANCE COMPANY LTD.,
NO.133, 3RD FLOOR,
SHIKA TOWERS,
RAMAVILAS ROAD,
MYSORE – 570 001.

9. MR. CHANDRASHEKAR H.B,
S/O BASAVAIAH,
RESIDING AT NO.1203,
3RD CROSS, ASOKA NAGARA,
MANDYA – 571 401.

...RESPONDENTS

(BY SRI. HARSHA S., ADVOCATE FOR
SRI. CHALUVARAJU M.D., ADVOCATE FOR R1 TO R6,
R5 & R6 ARE MINOR REPRESENTED BY R4,
SRI. S. KRISHNA KISHORE, ADVOCATE FOR R8,
SRI. SHANTKUMAR M., ADVOCATE FOR R8,
SRI. K.V. SHYAM PRASAD, ADVOCATE FOR R7)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT, AGAINST THE JUDGMENT AND AWARD DATED:23.11.2022 PASSED IN MVC NO. 129/2018 ON THE FILE OF THE II ADDITIONAL SENIOR CIVIL JUDGE AND MEMBER, MACT, MANDYA, AWARDING COMPENSATION OF RS. 20,02,500/- WITH INTEREST AT 6 PERCENT P.A. FROM THE DATE OF PETITION TILL DEPOSIT OF THE AMOUNT.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE T.M.NADAF

ORAL JUDGMENT

This appeal is by the insurer calling in question the judgment and award dated 23.11.2022 in MVC.No.129/2018 passed by the II Additional Senior Civil Judge and MACT, Mandya, challenging the liability fastened on insured offending car.

2. The parties are referred to as per their rankings before the Tribunal.

3. Heard Madam Geetha.R, learned counsel appearing for the appellant and Sri.Chaluvaraju.M.D. learned counsel appearing for respondent Nos.1 to 6; Sri.K.V.Shyamprasad, learned counsel for respondent No.7; Sri.Ravishankar.C.R, learned counsel for respondent No.8; Sri.Shantkumar.M, learned counsel for respondent No.9.

4. Madam Geetha.R, arguing on the issue of liability, submits that in an accident occurred on 18.08.2017, the insured vehicle of the insurer bearing Reg.No.KA-11-M-5866 which was following another car Reg.No.KA-05-ML-7069. The car bearing Reg.No.KA-05-ML-7069 was ahead of the insured car, dashed against deceased Hanumanthappa, who fell on the road and the insured car Reg.No.KA-11-M-5866 which was following the said car ran over the deceased resulting in death.

5. She further submits that there is no negligence on the part of the driver of the car insured. The accident is because of the rash and negligent driving of the driver of the car, moving ahead. The Tribunal has failed to consider this aspect of the matter and saddled the liability in 50:50 ratio on both the vehicles. With this she sought to allow the appeal and set aside the liability fastened on the insurer.

6. Per contra, Sri. S.Krishna Kishore, learned counsel for respondent No.8-insurer of the car moving ahead, bearing Reg. No.KA-05-ML-7069 with all the vehemence submits that the Tribunal has appropriately considered the case on the basis of the records. Wherein, the police have made both the drivers responsible for the accident and death of Hanumanthappa and fastened the liability at 50:50 ratio, which does not call for any interference at the hands of this Court. The other respondents supported the judgment of the Tribunal.

7. Upon consideration of rival submissions, the only point that would arise for consideration is:

> Whether the Tribunal is right in fastening 50% liability on the appellant-insurer, holding that the driver of the insured car is responsible for contributory negligence at 50%?

8. My answer to the above point for consideration is partly-in-affirmative for the following:

REASONS

9. It is not in dispute that both the vehicles were moving in the same direction. If the driver of the car bearing Reg.No.KA-05-ML-7069 was a little circumspect and cautious, had maintained sufficient distance between the vehicle, he would have avoided the accident i.e., running over the deceased after he fell down, when hit by the car moving ahead.

10. The accident occurred pre-supposes that there is no proper caution observed/exhibited by the driver of

the vehicle following the vehicle ahead in maintaining safe distance in order to stop the vehicle, if any unfortunate event had occurred in view of Rule 23 of the Rules of the Road Regulations, 1989. However, the fact remains that the deceased was hit by the car moving ahead, which has resulted in causing fatal injuries to the deceased, and the fact that the driver of the car insured running over the deceased perhaps might have aggravated the fatality. Considering this aspect of the matter, if the negligence saddled on the insurer is reduced to 25%, the same would meet ends of justice. Accordingly, the point for consideration is answered partly-in-affirmative, holding that the appellant-insurer is liable to pay 25% and the respondent No.8 insurer is liable to pay 75% of the compensation.

11. For the foregoing reasons, this Court proceeds to pass the following:

<u>ORDER</u>

i) Appeal is ***allowed-in-part***, modifying the judgment and award dated 23.11.2022 in MVC.No.129/2018 passed by the II Additional Senior Civil Judge and MACT, Mandya, thereby the liability is reduced to 25%.

ii) The appellate-insurer shall deposit 25% of the compensation awarded along with the accrued interest as per the order of the Tribunal within six weeks from the date of receipt of copy of this order before the concerned Tribunal.

iii) The amount in deposit shall be transmitted to the Tribunal for disbursement.

iv) The respondent No.8 shall deposit balance 25% before the Tribunal along with 50% liability fastened on it, if not already deposited before the Tribunal, within six weeks from the date of receipt of copy of this order along with accrued interest as per the order of the Tribunal.

v) Upon deposit, the apportionment and disbursement is as per the order of the Tribunal.

Sd/-
(T.M.NADAF)
JUDGE

PK
List No.: 1 Sl No.: 19
ct-vn