



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF MARCH, 2026

BEFORE

THE HON'BLE MRS. JUSTICE P SREE SUDHA

MISCELLANEOUS FIRST APPEAL NO. 1039 OF 2014 (MV-D)

BETWEEN:

M/S ICICI LOMBARD GENERAL
INSURANCE COMPANY LIMITED,
BELLAD & COMPANY,
2ND FLOOR, GOKUL ROAD, HUBLI,
NOW REPRESENTED BY
ITS BANGALORE OFFICE,
NO.89, 2ND FLOOR,
S.V.R. COMPLEX,
HOSUR MAIN ROAD, MADIWALA,
BANGALORE-560 068,
REP. BY ITS MANAGER LEGAL.

...APPELLANT

(BY SRI. A M VENKATESH., ADVOCATE)

AND:

1. SMT RATHNAMMA
W/O LATE K.T.MANJUNATHA,
AGED ABOUT 36 YEARS,
2. M. SWAMY
S/O LATE K.T.MANJUNATHA,
AGED ABOUT 15 YEARS,
SINCE MINOR REP. THROUGH
NATURAL GUARDIAN & MOTHER
SMT.RATHNAMMA-RESP.NO.1
KULENUR,
CHANNAGIRI TALUK,
DAVANAGERE DISTRICT.

Digitally signed
by
PADMA SREE
SHEKHAR
DESAI

Location: High
Court of
Karnataka



3. THIMMAPPA
S/O BASAPPA,
AGED ABOUT 64 YEARS,
UN-EMPLOYEE,

4. SMT.HANUMAKKA
W/O THIMMAPPA,
AGED ABOUT 59 YEARS,

ALL ARE R/AT KULENUR,
CHANNAGIRI TALUK,
DAVANAGERE DISTRICT.

RESPONDENT NOS. 3 AND 4
ARE DELETED
V/O DTD:25.11.2016.

5. M.N. AJJIAH S/O NAGAPPA,
AGED ABOUT 26 YEARS,
DRIVERO OF LUGGAGE AUTORICKSHAW,
BEARING NO.KA-17/6024,
R/O. GEDDALAHATTI VILLAGE,
CHANNAGIRI TALUK,
DAVANAGERE DISTRICT-577 001.

6. C.S. YOGENDRAPPA
S/O C.K.SIDDALINGAPPA,
AGED ABOUT 35 YEARS,
OWNER OF LUGGAGE AUTORICKSHAW,
BEARING NO.KA-17/6024,
R/O.KULENUR VILLAGE,
CHANNAGIRI TALUK,
DAVANAGERE DISTRICT-577 001.

...RESPONDENTS

(BY SRI. S V PRAKASH., ADVOCATE FOR R1,
R2 IS MINOR RE. BY R1, R5 AND R6 ARE SERVED,
R3 AND R4 ARE DELETED V/O DTD:25.11.2016)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE
JUDGMENT AND AWARD DATED:22.6.2013 PASSED IN MVC



NO.82/2010(OLD NO.1024/2009) ON THE FILE OF THE SENIOR CIVIL JUDGE, MACT, CHANNAGIRI, AWARDING A COMPENSATION OF RS.5,19,000/- WITH INTEREST @ 6% P.A FROM THE DATE OF PETITION TILL REALIZATION.

THIS APPEAL HAVING BEEN HEARD AND RESERVED ON 27.01.2026 COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, ***P SREE SUDHA J.***, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE P SREE SUDHA

CAV JUDGMENT

This appeal is filed by the appellant/Insurance Company under Section 173(1) of Motor Vehicles Act, 1988, to set aside the judgment and award dated 22.06.2013 passed in MVC No.82/2010 (Old No.1024/2009) on the file of the Senior Civil Judge and MACT at Channagiri.

2. Heard the arguments of the learned counsel for the appellant and learned counsel for respondents. The ranks of the parties are retained as per tribunal for the sake of convenience.



3. It is the case of the petitioners that on 07.04.2008 one K.T.Manjunath met with an accident and died subsequently. His wife, son and parents filed a claim for compensation of Rs.20 lakhs. However, the Tribunal considering the entire evidence on record, granted an amount of Rs.5,19,000/- with interest at the rate of 6% p.a., from the date of petition till realization.

4. Aggrieved by the said order, he preferred an appeal and mainly contended that K.T.Manjunath was an unauthorized passenger sitting in a goods vehicle and it is a three wheeler closed goods auto and it had no seating capacity, except for driver. But it is stated that Manjunath was travelling in a goods auto, sitting by the side of driver unauthorizedly and he was not carrying any goods. The Mahazar indicates that goods auto was empty and was not carrying any goods. The policy of Insurance does not cover the risk of any persons in the goods auto, as such, Insurance Company is not liable to pay the compensation. The Tribunal did not properly appreciate their defence and



the evidence on record while passing the order. Though policy does not cover the risk of any passenger other than driver, the Tribunal directed the insurer to pay the compensation. It is a three-wheeler goods auto, and as per the RC extract of respondent No.1, its permitted carrying capacity is only one person. No person other than the driver is permitted to travel in the auto. The said K.T.Manjunath has not filed any document to show that he purchased the goods and was bringing the goods in the said auto. The shop owner from whom the deceased is alleged to have purchased the goods has not been examined. There is also no documentary evidence to show that the goods were purchased from the said shop. Further, no material has been produced to establish that the deceased had purchased the goods for the purpose of selling them in his shop. No documents have been filed to show that he was running a shop or that goods were being sold to customers from his shop. The mahazar and the charge sheet also do not disclose that the deceased was



travelling in the vehicle as the owner of the goods. Thus, he is an unauthorized passenger and the Insurance is not covered. The Tribunal considered the evidence of PW1 and PW2 and stated that he was travelling in the auto with the goods and the said finding is to be set aside. Therefore, the Insurance Company requested to exonerate them from the liability.

5. On Perusal of the record, it shows that K.T.Manjunath was travelling in goods auto bearing Reg.No.KA-17/1624 as an owner of the goods from Santhebennur and Kulenur and when the auto was proceeding between Santhebennur, Shivakulenur, near voda and Airtel tower, at that time, respondent No.1/driver of the auto driven it in a rash and negligent manner with high speed and auto turned turtle. As a result, K.T.Manjunath sustained greivous injuries and was shifted to the hospital and died subsequently. He was aged 38 years and was earning Rs.15,000/- per month and was doing agriculture work. Later, Santhebennur police have



registered the case in Crime No.44/2008 against respondent No.1/driver of the auto, respondent No.2/owner and respondent No.3/the insurer. It is stated that all of them are jointly and severally liable to pay the compensation with interest.

6. After service of notice, respondent Nos.1 to 3 entered appearance. Respondent Nos.1 and 2 filed a joint statement of objections, whereas Respondent No.3 filed a separate statement of objections. It is stated that respondent No.1 is having valid driving license at the time of the accident and respondent No.2 was insured with respondent No.3. Therefore, respondent No.3 is liable to pay the compensation. According to respondent No.3, the driver of the auto did not hold valid driving license to drive such class of vehicle. But the owner knowingly and intentionally handed over the vehicle to him and it amounts to breach of conditions of the policy and they are not liable to pay the compensation. Further, the deceased K.T.Manjunath was travelling as an unauthorized



passenger in the auto and their liability is subject to the terms and conditions of the policy, valid Driving License, RC and permit. PW1 produced FIR complaint, Spot Mahazar, IMV report, inquest mahazar and his statement and Post Mortem report and also final report under Exs.P1 to P8. The Petitioner examined PW2 as an eyewitness and he is a complainant.

7. The tribunal mainly relied upon the contents of the complaint in which it was mentioned that the deceased KT Manjunath was traveling in the auto along with the goods. It was observed that none of the parties have adduced direct evidence to show that K.T.Manjunath was travelling in the auto rickshaw along with goods. The petitioner/wife was examined as PW1, respondent No.3 is the officer of the Insurance Company (RW1) and they are not eye witnesses. Therefore, their evidence was not considered. PW2 filed complaint under Ex.P2. Accident occurred on 07.04.2008 at about 06.30 p.m., and on the next day i.e. on 08.04.2008 at about 10 a.m., complaint is



given. In the said complaint, it was clearly mentioned that deceased was travelling along with the goods, and there was no delay in filing the complaint. The contents of the complaint cannot be considered as an afterthought. Respondent argued that police have not seized any goods, but the said argument was not accepted by the Tribunal. It was observed that K.T.Manjunath was travelling as an owner of the goods in the accident. As per section 147 of the Motor Vehicles Act, his risk is covered under the Insurance Policy.

8. Learned counsel for the respondent No.2 relied upon the citations to contend the risk of the gratuitous passenger travelling in the goods auto, cannot be covered under the policy. But in this case, he was travelling as an owner of the goods. As such, his risk is covered and thus held that respondent Nos.1 and 3 are jointly and severally liable.

9. Learned counsel for appellant relied upon a citation of Hon'ble Supreme Court reported in **2003 ACJ 1**



in case of ***New India Assurance Co. Ltd., Vs Asha Rani***
and others wherein it was held as follows;

"The difference in the definitions of the 'goods vehicle' in 1939 Act 'goods carriage' in 1988 Act is significant. By reason of the change in the definitions of the terminology, the legislature intended that a goods vehicle could not Carry any passenger, as the words 'in addition to passengers' occurring in the definition of goods vehicle in 1939 Act were omitted. Furthermore, it categorically states that 'goods carriage' would mean a motor vehicle constructed or adapted for use 'solely for the carriage of goods'. Carrying of passengers in a 'goods carriage', thus, is not contemplated under 1988 Act."

He also relied upon another citation reported in ***2007 ACJ 1043*** in case of ***New India Assurance Co. Ltd., Vs Vedwati and others*** in which it was held as follows,

"Provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefore."



10. Advocate for cross objectors relied upon citation reported in **(2017) 4 for SCC 796** in case of ***Manuara Khatun and Ors Vs Rajesh Kumar Sing and Ors*** in which it was held that the victims were travelling as gratuitous passengers in the vehicle, as such, owner was not required to pay the compensation. Moreover, Insurance Company has to pay the compensation initially, and they are at liberty to recover the same from owner of the vehicle. The victims were travelling as gratuitous passengers and the award was passed by the Tribunal against owner of the vehicle, exonerating the Insurance Company, still Insurance Company was liable to pay the compensation and they are at liberty to recover the same. He also relied upon another citation reported in ***ILR 2007 KAR 1585*** in case of ***V.Jagannathan Vs. the United India Insurance Compnay Ltd., Vs Smt.Lalithabai and Others*** as below,

(c) Section 2(13) of the Motor Vehicles Act, 1988 (for short 'Act').
The said Section reads thus:"goods"



includes live-stock, and anything (other than equipment ordinarily used with the vehicle carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle.

7. It is therefore clear from the above definition that personal effects or personal luggage carried by a person in a motor car or passengers travelling in the vehicle will not come within the ambit of the definition of "goods" in order to establish that what was carried came within the expression "goods" and not personal effects or personal luggage, the claimants will have to lead evidence in this regard by establishing the weight of the bags or the quantity of food grains carried in the two bags. No such evidence is forthcoming in the instant case.

11. Another citation of Hon'ble Supreme Court in case of ***New India Assurance Co. Ltd. v. Yallavva and Anr.***, reported in ***2020 ACJ 2560 (SC)*** in which it was held that claimant was a gratuitous passenger travelling in a goods vehicle and it is in violation of the policy



conditions. The policy being a contractual policy not an Act policy, the insurer cannot be fastened with liability. Later, the matter was referred to the larger bench and it was held that the Rule of Pay and recovery is applicable in view of the mandate under Section 149 (4) of MV Act and the Insurance Company has to satisfy the award and it is the duty of the Insurance Company to indemnify the insured on the basis of the policy. Even if policy is violated, the Insurer is entitled to recover the same from the insured. He also filed another citation in case of ***Nagendra v. New India Assurance Co. Ltd.,*** in ***SLP (C) Nos. 7139-7140 of 2023,*** for the same proposition.

12. The case of the claimants is that K.T.Manjunath was travelling in a goods auto as an owner of the goods, he met with an accident due to negligence of the driver of the auto. The tribunal relied upon the contents of the complaint under Ex.P1 and held that he was travelling in the auto along with the goods. But the Insurance Company mainly contended that the deceased was



travelling in a three-wheeler closed goods auto, which has no seating capacity for any person other than the driver. As such, the contentions of the claimants that the deceased K.T.Manjunath, was travelling in the auto along with the driver and seated beside the driver cannot be accepted. Admittedly, it was a goods auto and though it was stated that he was carrying the goods, the nature of the goods and the quantity of the goods carried by him was never stated anywhere. It is simply stated that he was travelling as owner of the goods to comply the guidelines of Hon'ble Supreme Court. No goods were seized as per Mahazar and the details of the goods carried by him are not mentioned, either in the complaint or in the charge sheet. Admittedly, he is an unauthorized passenger travelling in a goods vehicle. However, Hon'ble Supreme Court held that when a valid policy is in existence as on the date of the accident, it is the duty of the Insurance Company to indemnify the injured/claimants and thereafter, is at liberty to recover the same from the



owner of the vehicle. Therefore, this court finds it reasonable to invoke the principle of pay and recovery.

Accordingly, this appeal is ***partly allowed.***

Sd/-
(P SREE SUDHA)
JUDGE

AKV
CT:NR
List No.: 2 Sl No.: 2