



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 26TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V.HOSMANI

MISCELLANEOUS FIRST APPEAL NO.100632 OF 2015 (MV-D)

BETWEEN:

THE DIVISIONAL MANAGER,
NEW INDIA ASSURANCE COMPANY LIMITED,
DIVISIONAL OFFICE,
OPP. KITTLE COLLEGE, DHARWAD.
NOW REPRESENTED BY ITS
SR. DIVISIONAL MANAGER.

...APPELLANT

(BY SRI RAJASHEKHAR S. ARANI, ADVOCATE)

AND:

1. SMT.VENKAMMA W/O MOHAN NAIK,
AGE: 57 YEARS, OCC: GOVT., SERVICE,
R/O: NEAR CHOUDESHWARI TEMPLE,
PALLIKERI, BABRUWADA, ANKOLA.
2. POOJA D/O MOHAN NAIK,
AGE: 21 YEARS, OCC: STUDENT,
R/O: NEAR CHOUDESHWARI TEMPLE,
PALLIKERI, BABRUWADA, ANKOLA.
3. SMT.GULABI W/O SHIVA NAIK,
AGE: 74 YEARS, OCC: HOUSE WIFE,
R/O: NEAR CHOUDESHWARI TEMPLE,
PALLIKERI, BABRUWADA, ANKOLA.
4. PUNDALIK RAMCHANDRA LOKHANDE,
REGD. OWNER OF TRUCK BEARING
REG. NO.KA-25/C-8585,
R/O: TULSA NILAYA, VIDYANAGAR, HUBLI.



5. LENKANGOUDA BALAPPA ARKERI,
REGD. OWNER OF TRUCK BEARING
REG. NO.KA-29/6379,
R/O: GADDDINKERI CROSS,
TAL. & DIST. BAGALKOT.
6. THE DIVISIONAL MANAGER,
ROYAL SUNDARAM ALLIANCE INSURANCE CO., LTD.,
SUNDARAM TOWERS 45 AND 46 ROAD,
CHENNAI-600 014.
7. THE SUPERINTENDENT OF POLICE,
UTTARA KANNADA, KARWAR.
8. THE KARNATAKA GOVT. INSURANCE DEPARTMENT,
VISHWESHWARAIH TOWER,
KGID-BRANCH, BANGALORE-560 001.

...RESPONDENTS

(BY SRI ANKIT DESAI, ADVOCATE FOR
SMT.GAYATRI SR., ADVOCATE FOR R1 TO R3;
SRI GN RAICHUR, ADVOCATE FOR R6 (VC);
SRI JAIRAM SIDDI, HCGP FOR R7 & R8;
NOTICE TO R4 IS HELD SUFFICIENT;
NOTICE TO R5 IS SERVED)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER
SECTION 173(1) OF MV ACT, AGAINST THE JUDGMENT AND
AWARD DATED 09.12.2014 PASSED IN MVC NO.97/2010 ON THE
FILE OF THE 2ND ADDITIONAL MOTOR ACCIDENT CLAIM
TRIBUNAL KARWAR, AWARDING THE COMPENSATION OF
RS.11,28,744/- WITH INTEREST AT THE RATE OF 6% P.A. FROM
THE DATE OF PETITION TILL THE DATE OF REALIZATION & ETC.

THIS MFA COMING ON FOR ADMISSION, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:



CORAM: THE HON'BLE MR. JUSTICE RAVI V.HOSMANI

ORAL JUDGMENT

Challenging judgment and award dated 09.12.2014 passed by II Additional M.A.C.T., Karwar (for short, '**Tribunal**') in MVC no.97/2010, this appeal is filed.

2. Sri Rajashekhar S. Arani, learned counsel for appellant submitted that appeal was by insurer challenging award on liability. It was submitted that on 04.04.2010 one Mohan Shiva Naik was driving Police van no.KA-30/G-282 on Kalagatagi-Yellapur road. Its driver noticed a static Lorry no.KA-29/6379 near Hittinbail and slowed down Police Van. But driver of Lorry KA-25/C-8585 overtook Police Van and on noticing parked Lorry swerved it to left side and dashed against front portion of Police Van and caused accident. In accident, Mohan Siva Naik sustained grievous injuries and initially taken to Government Hospital, Yellapur and thereafter to Mahalaxmi Hospital, Sirsi, but died while being taken to K.L.E. Hospital, Belagavi for higher treatment. Alleging loss of dependency, his wife, minor daughter and mother filed claim petition under Section 166 of Motor Vehicles Act, 1988 (for short, '**MV Act**') against owners and insurers of both lorries as well as Police Van.



3. On appearance, respondents contested claim petition on all grounds. Based on pleadings, Tribunal framed issues and recorded evidence. Claimant no.1 along with another deposed as PW.1 and PW.2 and got marked Exs.P1 to P5. Respondents examined 4 witnesses as RW.1 to RW.4 and got marked Exs.R1 to R20.

4. On consideration, Tribunal held accident occurred due to contributory negligence of drivers of all three vehicles, apportioned at 30% against Van Driver, 20% against driver of parked lorry and 50% against driver of offending lorry. It also held claimants entitled for compensation of ₹11,28,744/- with interest at 6% per annum. Aggrieved by said award, insurer was in appeal.

5. It was submitted that Exs.P1 to P3, prosecution would indicate that based on complaint, Police had conducted investigation and charge sheeted driver of insured lorry for driving a 'Heavy Goods Vehicle' without valid and effective driving licence as on date of accident. It was submitted, insurer had also examined jurisdictional R.T.O. as RW.4, who produced driving license extract as per Ex.R6, which revealed that Heavy Goods Vehicle driving license of deceased was issued on 03.04.2002 and was in force till



02.04.2005. It was submitted though license was renewed on 10.05.2010 till 09.05.2013, driver of lorry did not have driving licence to drive any vehicle as on date of accident that is on 04.04.2010. Therefore, submitted that Tribunal held in holding insurer liable to pay compensation.

6. On other hand, Sri Ankit Desai, learned counsel appearing for Smt.SR Gayatri, advocate for respondents no.1 to 3/claimants opposed appeal. It was submitted, deceased was driver of Police Van and as such would be a third party insofar as claim against owner/insurer of offending lorry. Therefore, in view of full bench decision of this Court in case of ***New India Assurance Co. Ltd., Bijapur vs. Yallavva w/o. Yamanappa Dharanakeri***, reported in ***2020 (2) AKR 484***, even if, insurer were to establish violation of terms and conditions of policy, insurer would require to first pay compensation to claimant and thereafter recover same from insured.

7. Sri GN Raichur, learned counsel for respondent no.6 and Sri Jayaram Siddi, learned HCGP for respondents no.7 and 8 opposed appeal.



8. Heard learned counsel, perused impugned judgment, award and record.

9. From above, since insurer is in appeal only on finding about liability, point that would arise for consideration is:

“Whether finding of Tribunal on liability of appellant/insurer calls for modification?

10. At outset, contention of appellant/insurer on liability is principally based on contention that driver of insured vehicle did not have valid and effective driving license to drive a lorry (Heavy Goods Vehicle) as on date of accident. To establish said fact, insurer relies upon Ex.R6, driving license extract of driver of insured vehicle and deposition of RW.4. Perusal of Ex.R6 reveals that driver had driving license to drive Heavy Goods Vehicle from 03.04.2002 till 02.04.2005. Accident occurred on 04.04.2010. Immediately, after accident, driver of insured lorry has got his driving license renewed from 10.05.2010 to 09.05.2013. Same would establish that as on date of accident driver did not have valid and effective driving license to drive Heavy Goods Vehicle. But full bench of this Court in **Yallavva**’s case has held even in case of breach of terms and conditions of policy, insurer would



require to pay compensation to claimants in first instance and thereafter recover same from insured without recourse to separate proceedings. Thus, point for consideration is answered partly in affirmative as above. Consequently, following:

ORDER

- (i) Appeal is *allowed in part*.
- (ii) Judgment and award dated 09.12.2014 passed in MVC no.97/2010 on file of II Additional MACT, Karwar is modified only to an extent of holding insurer would be liable to pay compensation to claimants in first instance and thereafter recover same from insured. In all other aspects, award remains confirmed.
- (iii) Amount in deposit is ordered to be transmitted to Tribunal for payment.
- (iv) Balance amount to be deposited within a period of 6 weeks.

**Sd/-
(RAVI V.HOSMANI)
JUDGE**