



NC: 2026:KHC-D:4871
MFA No. 5767 of 2015
C/W MFA No. 5766 of 2015
MFA No. 5768 of 2015

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD
DATED THIS THE 27TH DAY OF MARCH, 2026
BEFORE
THE HON'BLE MR. JUSTICE RAVI V.HOSMANI
MISCELLANEOUS FIRST APPEAL NO.5767 OF 2015
C/W
MISCELLANEOUS FIRST APPEAL NO.5766 OF 2015
MISCELLANEOUS FIRST APPEAL NO.5768 OF 2015

IN MFA NO. 5767/2015:
BETWEEN:

THE DIVISIONAL MANAGER,
SHRIRAM GENERAL INSURANCE COMPANY LTD.,
HEAD OFFICE AT JAIPUR, RAJASTHAN-303022.

NOW REPRESENTED BY THE MANAGER,
M/S SHRIRAM GENERAL
INSURANCE COMPANY LTD.,
NO.5/4, 3RD FLOOR, S.V.ARCADE,
BILAKAHALLI MAIN ROAD, OFF BG ROAD,
IIM POST, BANGALORE-560076.

...APPELLANT

(BY SRI NAGARAJ C. KOLLOORI, ADVOCATE)

AND:

1. RAMAPPA
S/O RUDRAPPA,
NOW AGED ABOUT 46 YEARS,
OCC. AGRICULTURIST,
R/O KAKKARAGOLLA VILLAGE,
DAVANAGERE TALUK & DISTRICT,
NOW R/O NANDIBEVOOR VILLAGE,
HARAPANAHALLI TALUK,
DAVANAGERE DISTRICT-577001.



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2. SMT.HUVVAKKA W/O RAMAPPA,
NOW AGED ABOUT 40 YEARS,
OCC. HOUSEHOLD,
R/O KAKKARAGOLLA VILLAGE,
DAVANAGERE TALUK & DISTRICT,
NOW R/O NANDIBEVOOR VILLAGE,
HARAPANAHALLI TALUK,
DAVANAGERE DISTRICT-577001.
3. SR.J.SHANMUGAM S/O K. JALABADI,
AGED ABOUT 34 YEARS,
OCC. DRIVER-CUM-OWNER
OF LORRY BEARING REG.NO.KA-01-D-1618,
R/O KAVANDABALEYAM VILLAGE,
RASHIPURAM TALUK, NAMMAKKAL DISTRICT,
TAMIL NADU STATE -641014.

...RESPONDENTS

(BY SRI VIJAYKUMAR K. KOTIN, ADVOCATE FOR R1 & R2;
NOTICE TO R3 IS SERVED)

THIS MFA IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT PRAYING TO SET ASIDE THE JUDGMENT AND AWARD DATED 18.02.2015 PASSED IN MVC NO.4/2012 THE SENIOR CIVIL JUDGE AND M.A.C.T-IX AT HARAPANAHALLI AWARDDING COMPENSATION TO THE PETITIONER'S/RESPONDENT'S NO.1 AND 2 HEREIN, IN A SUM OF RS.5,00,000/- WITH INTEREST AT 6% BY ALLOWING THE ABOVE APPEAL, IN THE INTEREST OF JUSTICE AND EQUITY.

IN MFA NO. 5766/2015:

BETWEEN:

THE DIVISIONAL MANAGER,
SHRIRAM GENERAL INSURANCE COMPANY LTD.,
HEAD OFFICE AT JAIPUR, RAJASTHAN-303022.

NOW REPRESENTED BY THE MANAGER,
M/S SHRIRAM GENERAL INSURANCE COMPANY LTD.,
NO.5/4, 3RD FLOOR, S.V.ARCADE,
BILAKAHALLI MAIN ROAD, OFF BG ROAD,
IIM POST, BANGALORE 560076.

...APPELLANT

(BY SRI NAGARAJ C. KOLLOORI, ADVOCATE)



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AND:

1. KARIBASAPPA S/O DANDYAPPA,
NOW AGED ABOUT 43 YEARS,
R/O NANDIBEVOOR VILLAGE,
HARAPANAHALLI TALUK,
DAVANAGERE DISTRICT-577001.
2. SR.J.SHANMUGAM S/O K. JALABADI,
AGED ABOUT 34 YEARS,
OCC. DRIVER-CUM-OWNER OF LORRY
BEARING REG.NO.KA-01-D-1618,
R/O KAVANDABALEYAM VILLAGE,
RASHIPURAM TALUK, NAMMAKKAL DISTRICT,
TAMIL NADU STATE-641014.

...RESPONDENTS

(BY SRI VIJAYKUMAR K. KOTIN, ADVOCATE FOR R1;
NOTICE TO R2 IS SERVED)

THIS MFA IS FILED UNDER SECTION 173(1) OF
MOTOR VEHICLES ACT PRAYING TO SET ASIDE THE
JUDGMENT AND AWARD DATED 18.02.2015 PASSED IN
MVC NO.125/2011 THE SENIOR CIVIL JUDGE AND M.A.C.T-
IX AT HARAPANAHALLI AWARDED COMPENSATION TO
THE PETITIONER/RESPONDENT NO.1 HEREIN, IN A SUM OF
RS.15,000/- WITH INTEREST AT 6% BY ALLOWING THE
ABOVE APPEAL, IN THE INTEREST OF JUSTICE AND
EQUITY.

IN MFA NO. 5768/2015:

BETWEEN:

THE DIVISIONAL MANAGER,
SHRIRAM GENERAL INSURANCE
COMPANY LTD.,
HEAD OFFICE AT JAIPUR, RAJASTHAN-303022.

NOW REPRESENTED BY THE MANAGER,
M/S SHRIRAM GENERAL INSURANCE
COMPANY LTD.,



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MFA No. 5768 of 2015

NO.5/4, 3RD FLOOR, S.V.ARCADE,
BILAKAHALLI MAIN ROAD, OFF BG ROAD,
IIM POST, BANGALORE-560076.

...APPELLANT

(BY SRI NAGARAJ C. KOLLOORI, ADVOCATE)

AND:

1. DASARA CHANDRAPPA S/O ADICAPPA,
NOW AGED ABOUT 65 YEARS,
OCC. AGRICULTURIST,
R/O NANDIBEVOOR VILLAGE,
HARAPANAHALLI TALUK,
DAVANAGERE DISTRICT-577001.
2. SRI J.SHANMUGAM S/O K. JALABADI,
AGED ABOUT 34 YEARS,
OCC. DRIVER-CUM-OWNER OF LORRY
BEARING REG.NO.KA-01-D-1618,
R/O KAVANDABALEYAM VILLAGE,
RASHIPURAM TALUK,
NAMMAKKAL DISTRICT,
TAMIL NADU STATE-641014.

...RESPONDENTS

(NOTICE TO R1 AND R2 SERVED)

THIS MFA IS FILED UNDER SECTION 173(1) OF
MOTOR VEHICLES ACT PRAYING TO SET ASIDE THE
JUDGMENT AND AWARD DATED 18.02.2015 PASSED IN
MVC NO.124/2011 THE SENIOR CIVIL JUDGE AND M.A.C.T-
IX AT HARAPANAHALLI AWARDING COMPENSATION TO
THE PETITIONER/RESPONDENT IN A SUM OF RS.35,000/-
WITH INTEREST AT 6% BY ALLOWING THE ABOVE APPEAL,
IN THE INTEREST OF JUSTICE AND EQUITY.

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

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



ORAL JUDGMENT

Challenging common judgment and award dated 18.02.2015 passed by Senior Civil Judge and MACT-IX, Harapanahalli (**'Tribunal'**, for short) in MVC nos.124/2011, 125/2011 and 4/2012, these appeals are filed.

2. Sri Nagaraj C. Kolloori, learned counsel for appellant submitted, appeals were by insurer assailing finding of Tribunal on liability of insurer. It was submitted as per claimants at 9:00 a.m. on 26.03.2010, claimants along with others were visiting field of Dasara Chandrappa in Bullock Cart to see brinjal crop, when driver of Lorry no.KA-01/D-1618 drove it in rash and negligent manner and dashed against parked bullock cart, entered field, damaged brinjal crop, dashed several persons and stopped after dashing against borewell. In said accident, one Basavaraj sustained severe injuries and died, while other injured did not fully recover even after taking treatment and sustained loss of earning capacity. Therefore, claiming compensation, they filed separate claim petitions under Section 166 of Motor Vehicles Act, 1988 (**'Act,**



1988' for short) against owner and insurer of Lorry. Claim petitions were clubbed.

3. Despite service of notice, owner of Lorry did not appear and was placed *ex-parte*. Only insurer opposed claim petition on all counts. It was alleged that driver initially named in complaint was Shivu S/o Adimulam, however, in further statement and charge sheet, some other person was arraigned only to suit claim against insurer.

4. Based on pleadings, Tribunal framed issues and recorded evidence. Claimants in MVCs no.124 and 125 of 2011 examined two witnesses as PWs1 and 2 and got marked Exs.P1 to P16, while claimants in MVC no.4/2012 examined three witnesses as PWs1 to 3 and insurer examined Sri B.Vinaya Kumar as RW1 and got marked Exs.R1 to 7.

5. On consideration, Tribunal held accident occurred due to rash and negligent driving of Lorry by its driver, and since Lorry was insured, insurer was liable to pay compensation assessed by Tribunal at Rs.35,000/- in MVC no.124/2011, Rs.15,000/- in MVC no.125/2011 and Rs.5,00,000/- in MVC no.4/2012. Aggrieved thereby, these appeals were filed.



6. It was submitted, complaint was filed by one Srinivas on date of accident, naming Shivu s/o Adimulam of Tamil Nadu as Lorry driver. Later same day, he changed it to J.Shanmugam Jalabadi of Tamil Nadu. It was explained that, name of Lorry driver was mentioned in complaint as disclosed by driver himself. But, when driver disclosed his correct name at Hospital, mistake was realised and rectified by giving further statement. It was submitted, said narration would indicate manipulation for purposes of claim as in all probability, driver named earlier may not have had driving licence to drive vehicle at time of accident. Though same was pleaded, Tribunal overlooked it and passed impugned award. It was submitted, non-mentioning of time of recording Ex.P3 - further statement of complainant would also lend to suspicion of manipulation.

7. It was submitted, Tribunal brushed aside above contention with observation that insurer failed to establish Lorry driver did not have driving licence to drive Lorry at time of accident, which would be unsustainable. On said ground sought for allowing appeals.



8. On other hand, Sri Vijayakumar K.Kotin, learned counsel for claimants opposed appeals. It was submitted, Tribunal had appreciated entire evidence on record and by assigning reasons. Hence, there was no merit in appeal.

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

10. These appeals are by insurer challenging finding of Tribunal on liability, therefore common point arising for consideration is :

‘Whether Tribunal was justified in holding insurer liable to pay compensation?’

11. Same is answered ‘partly in affirmative’ for following reasons.

12. As noted above, there is no dispute about occurrence of accident and claimants sustaining injuries. Tribunal assessed compensation and held insurer liable to pay same. Sole ground on which award is challenged is substitution of name of driver to overcome insurer’s defence on liability.



13. There is no dispute between parties that name of driver of offending Lorry mentioned in complaint, differs from name of driver of said vehicle mentioned in charge sheet. It is also not in dispute that rectification of mistake is at instance of complainant himself who gave further statement on date of complaint itself. It is stated, immediately after accident, complainant had enquired name of driver with driver himself and mentioned it in complaint as disclosed. But, he found it to be incorrect, later, when driver gave his correct name in Hospital, which necessitated correction.

14. While passing impugned award, Tribunal did not address this issue on ground that insurer failed to establish driver named in complaint did not have driving licence. Normally, it is for party who pleads mistake to offer explanation and justify correction. Insurer cannot be burdened to establish its defence to the hilt.

15. A careful examination of Ex.P1 - complaint reveals that it was filed at 11:00 a.m. Ex.P16 - wound certificate of driver mentions date of his medical examination barely fifteen minutes later at 11:15 a.m. PW.2 complainant stated that



Ex.P3 - further statement was recorded between 1:30 p.m. to 2:30 p.m. Ex.P7 - spot panchanama is drawn between 2:30 p.m. to 3:30 p.m.

16. But, material that leads this Court towards suspicious manipulation is admission by PW.2 during cross-examination about presence of advocate at time of recording further statement and through whom claim petition was filed. PW.2 further states that *after giving further statement, he went to hospital*, which would be inconsistent with his explanation about need for further statement. When insurer has taken specific contention about change of name of driver as suspicious, it was incumbent upon claimants to have examined Lorry driver or Investigating Officer. Failure would invite adverse inference. A combined appreciation of above factors would lead to conclusion that change of name of Lorry driver was with intention to overcome some factor materially affecting claim.

17. However, even if driver of insured vehicle did not have driving licence, insurer cannot avoid liability in respect of claims by third parties. Therefore, it would require to satisfy



award in first instance and thereafter seek reimbursement from insured. Point for consideration answered accordingly.

18. Consequently, following:

ORDER

- (i) All three insurers' appeals are **allowed in part.**
- (ii) Common judgment and award dated 18.02.2015 passed in MVCs no.124 and 125 of 2011 and MVC no.4/2012 by Senior Civil Judge and MACT-IX, Harapanahalli are modified. Insurer is held liable to pay compensation to claimants in first instance and thereafter recover same from insured without recourse to separate proceedings.
- (iii) Amounts in deposit are ordered to be transmitted to Tribunal for disbursement.
- (iv) Balance amount to be deposited within 6 weeks.
- (v) On deposit, entire amount is ordered to be released in favour of respective claimants.

Sd/-
(RAVI V.HOSMANI)
JUDGE

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