

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 21st DAY OF FEBRUARY, 2014

BEFORE

THE HON'BLE MR. JUSTICE L. NARAYANA SWAMY

MFA NO 5853 OF 2012 (MV)

BETWEEN:

SRI B V GOVINDARAJU
AGED 41 YEARS
S/O B H VISHWANATHA SETTY
R/O SATHYANARAYANA TRANSPORT
SOCIETY ROAD,
HASSAN 573 201 ... APPELLANT

(By Sri : NAGARAJ DAMODAR, ADVOCATE)

AND

1. THE UNITED INDIA ASSURANCE CO LTD
P B NO.108, VENKATESWARA BUILDING,
B M ROAD,
HASSAN -573201.

2. SRI SHARADAMMA
AGED 35 YEARS
W/O LATE M G NARASIMHARAJU
R/OF UTHAGODAHALLI,
HULLENAHALLI POST, THIPPASANDRA HOBLI
MAGADI TALUK,
BANGALORE RURAL DISTRICT

3. M N MAHALAKSHMI
AGED 11 YEARS D/O LATE M G NARASIMHARAJU
MINOR, REPRESENTED BY THEIR NATURAL
GUARDIAN MOTHER,

1ST RESPONDENT HEREIN
R/OF UTHAGODAHALLI,
HULLENAHALLI POST,
THIPPASANDRA HOBLI,
MAGADI TALUK
BANGALORE RURAL DISTRICT

4.CHANDRAKUMAR
AGED 8 YEARS
S/O LATE M G NARASIMHARAJU
MINOR, REPRESENTED BY THEIR NATURAL
GUARDIAN MOTHER, 1ST RESPONDENT HEREIN
R/OF UTHAGODAHALLI,
HULLENAHALLI POST,
THIPPASANDRA HOBLI,
MAGADI TALUK
BANGALORE RURAL DISTRICT

5.M N SHOBA
AGED 6 YEARS
D/O LATE M G NARASIMHARAJU
MINOR, REPRESENTED BY THEIR NATURAL
GUARDIAN MOTHER,
1ST RESPONDENT HEREIN
R/OF UTHAGODAHALLI,
HULLENAHALLI POST,
THIPPASANDRA HOBLI,
MAGADI TALUK
BANGALORE RURAL DISTRICT

6.GAYATHRI
AGED 4 YEARS
D/O LATE M G NARASIMHARAJU
MINOR, REPRESENTED BY THEIR NATURAL
GUARDIAN MOTHER,
1ST RESPONDENT HEREIN
R/OF UTHAGODAHALLI,
HULLENAHALLI POST,
THIPPASANDRA HOBLI,
MAGADI TALUK
BANGALORE RURAL DISTRICT ... RESPONDENTS

(By Sri: KALEEMULLAH SHARIFF, ADVOCATE)

MFA FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED:31.03.2012 PASSED IN MVC NO.253/2002 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE, & CJM, MACT, RAMANAGARA, AWARDING A COMPENSATION OF Rs.8,67,000/- WITH INTEREST @ 6% P.A. FROM THE DATE OF PETITION TILL REALIZATION.

THIS APPEAL COMING UP FOR ORDERS THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is filed by the owner challenging the judgment passed in MVC No.253/2002 on the file of the Addl. Motor Accidents Claims Tribunal and Principal Sr. Civil Judge & CJM, Ramanagara. The prayer made in this appeal is to modify the judgment and award passed by the Tribunal and to fix the liability on the appellant and respondent No.1 jointly and further to direct to refund the amount deposited by him.

2. The facts leading to this case are that on 6.5.2000 at about 11.00 p.m. the deceased was travelling in a lorry bearing No.KA 6047 along with household articles by paying fare and luggage charges and the vehicle met with an accident due to rash and negligent driving of the lorry by the driver. The lorry in which he was travelling dashed against the road side tree

resulting in death of the husband of petitioner No.1 and father of petitioners 2 to 5.

3. It is the case of the claimants that the deceased was travelling in the lorry along with the goods and he was working as Lineman in KPTCL and thereafter, after his office hours, when he boarded the lorry and travelling along with goods, the accident has taken place. The claimants are entitled for compensation since the lorry was insured with the first respondent- Insurance company.

4. The MACT by its Judgment dated 31.3.2012 has accepted the case of the claimants and fastened the liability on the owner. Hence the owner has filed this appeal.

5. The appellant – owner has taken the ground that the Tribunal should have fastened the liability on the insurance company since the deceased was owner of the goods for the purpose of Section 2 (13) of the MV Act, 1988 (hereinafter called as ‘the Act’) and comes within the definition of ‘fare paying passenger’.

6. By referring the policy, the learned counsel for the appellant submits that the insurance has collected the premium towards risk of fare paid passenger. Hence the liability should have been shifted on the insurance company and to that extent,

the Tribunal has committed an error. The learned counsel for the appellant has also relied upon judgment in the case of UNITED INDIA INSURANCE COMPANY LTD VS SMT GANGUBAI AND OTHERS, 2011 ACJ 2091 wherein it has been held that Ganesha Idol is termed as goods which included for the purpose of Section 2(13) of the Act except the goods which are excluded under definition. Since the goods which were transported by the deceased is not excluded, the same is to be considered for the purpose of liability.

7. The claimant herself examined as PW1. But she is not an eye witness to the accident nor the complainant. They have produced Ex.P1- FIR, Ex.P2- Charge sheet, Ex.P3- Mahazar Ex.P4- IMV report, Ex.P5- sketch, Ex.P6- Inquest report, Ex.P7- PM report, Ex.P8- Genealogical tree and Ex.P9- salary certificate. None have been examined by the respondents including the appellant herein.

8. Earlier the appellant had approached this Court in MFA No.10824/2007 alleging that he had not been given opportunity before the Tribunal. This Court allowed the appeal on 14.12.2011 and remitted the matter to the MACT with a direction to afford opportunity to the appellant. On receipt of

the order from this Court, the MACT,. Ramanagaram passed the impugned judgment.

9. The learned counsel for the insurance company sought to dismiss the appeal as there are no grounds to interfere with the impugned judgment. The case of the deceased does not fall for the purpose of Section 2(13) of the Act. The deceased was an employee of KPTCL and he boarded the lorry since he did not get bus to reach his residence situated at Nelamangala. The claimants have not produced any materials to prove the fact of travelling as the owner of the goods. The police records namely Ex.P3- Mahazar does not disclose the fact of transporting any goods in the lorry. As per the police records, there were 10 persons in the lorry, out of which four died including the deceased and remaining persons sustained injuries. The permissible seating capacity in the vehicle was only 5+1 as per RC book. Though Rs.200/- has been collected as premium to cover the risk of non-fare passenger, since the deceased does not fall within the definition under Section 2(13) of the Act. The learned counsel for the first respondent – Insurance company referred IMT 14 which pertains to legal liability to Non Fare Paying Passengers who are not employees of the Insured (commercial vehicles only). The non paying passengers means a

charterer or representative of the charterer of the truck or any other person directly connected with the journey in one form or the other being carried in or upon or entering or mounting or alighting from vehicle insured described in the Schedule to the policy. Hence the claimants are not entitled for compensation for which the liability has been fastened on the owner.

10. I have heard learned counsel for both the parties.

11. The case of the appellant has been examined in the light of the proceedings available in the LCRs. The first ground urged by the petitioners that the deceased was travelling with the goods and his risk is covered as owner of the goods is not acceptable. What was the goods taken in the lorry by the deceased is not forthcoming in the police records. Ex.P3 is a mahazar which does not disclose anything that any goods were taken in the vehicle by the deceased. It is the case of the claimants that the deceased was employee of KPTCL and he boarded the lorry since he did not get the bus to reach his place. The case of the appellant is that the deceased was travelling along with the goods namely cable wires and in support of such contention, no material is available and the same cannot be considered. Assuming that the deceased was travelling along with some goods, he is not entitled for coverage of the risk

unless he falls U/s 2(13) of the Act. Section 2(13) of the Act reads thus:

“2(13) “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”.

12. The case of the appellant that the deceased was travelling as owner of the goods cannot be considered and the same is rejected for the reason that no goods particulars or anything with regard to the same has been found. Moreover, the deceased was not a businessman, trader or agriculturist in order to believe the fact of travelling with the goods. From the police records, it discloses that there were 7 to 8 persons travelling (10 persons as per insurance company). The total number of persons travelling itself disclose that the driver of the lorry should not permit persons to travel to such an extent and the same is unauthorized. Rule 100 of the Karnataka Motor Vehicle Rules permits the persons to travel in the vehicle in accordance with seating capacity namely, the driver, cleaner and three passengers. The passengers also does not come within the definition of non paying passengers in IMT 14 or the owner of the goods as per Section 2(13) of the M.V.Act. It is seen from the

records, that the deceased was employee of KPTCL cannot be considered that he was travelling with goods to reach his residence and in natural course he has boarded the lorry for the purpose of travelling which is illegal.

13. The learned counsel for the first respondent referred to the premium collected towards risk of non paying passengers.

The definition of IMT 14 is as follows:

“ HMT 14. Legal liability to Non fare paying passengers who are not employees of the insured (Commercial vehicles only)

In consideration of the paying of an additional premium of Rs.... And notwithstanding anything to the contrary contained in Section II-1.

(c) it is hereby understood and agreed that the company will indemnify the insured against his legal liability other than liability under statute (except Fatal Accidents Act 1855) in respect of death or bodily injury to any person not being an employee of the insured and not carried for hire or reward provided that the person is

a) character or representative of the charterer of the truck.

b) Any other person directly connected with the journey in one form or the other being carried in or upon or entering or mounting or alighting from vehicle insured described in the SCHEDULE OF THIS POLICY.

Subject otherwise to the terms exceptions conditions and limitations of this policy “.

14. In view of the IMT 14 regulations referred to above, the risk of the deceased is not covered under the (a) and (b) of the IMT 14. The deceased was taking table in the lorry as stated by the owner appellant is not reflected in any of the materials available in the LCRs. Under these circumstances, the reasons assigned by the Tribunal in fastening liability on the owner is just and proper. I do not find any reasons to interfere with the impugned judgment. Accordingly, the appeal is dismissed.

Sd/-
JUDGE

NM