

IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH

ON THE 21<sup>ST</sup> DAY OF JULY, 2015

BEFORE

THE HON'BLE MR.JUSTICE RAVI MALIMATH

AND

THE HON'BLE MR.JUSTICE G.NARENDAR

M.F.A. No. 23209/2012 (MV)

BETWEEN:

1. SHRI. UJWALVANT BHOJAPPA KAMBLE  
AGE:53 YEARS, OCC:NIL  
R/O. HARUGERI, TAL:RAIBAG  
DIST:BELGAUM
2. SMT. SHOBHA  
W/O. UJWALVANT KAMBLE  
AGE : 44 YEARS,  
OCC : HOUSEHOLD WORK  
R/O. HARUGERI, TAL:RAIBAG,  
DIST:BELGAUM
3. SHRI. PRASHANT  
S/O. UJWALVANT KAMBLE  
AGE : 19 YEARS, OCC:STUDENT  
R/O. HARUGERI, TAL:RAIBAG,  
DIST : BELGAUM.

... APPELLANTS

(BY SRI : VITTHAL S TELI, ADVOCATE)

AND :

1. INDIRA B.S. W/O. K R DASS  
AGE: 37 YEARS, OCC: BUSINESS,  
R/O. NO. 162, D STREET  
NEW GUDDAD HALLI,  
MYSORE ROAD,  
BANGALORE – 560026.
  2. THE MANAGER  
FUTURE GENERAL INDIA  
INSURANCE PASADENA NO. 18/1,  
3<sup>RD</sup> FLOOR, ASHOK PILLAR ROAD,  
JAYAANGAR, 1<sup>ST</sup> BLOCK,  
BANGALORE – 560082.
  3. THE MANAGING DIRECTOR  
BMTc SHANTI,  
BANGALORE – 560027.
  4. THE UNITED INDIA INSURANCE CO. LTD.,  
THROUGH ITS DIVISIONAL OFFICE,  
MARUTI GALLI, BELGAUM
- ... RESPONDENTS

(BY SRI S.K. KAYAKMATH, ADVOCATE FOR R2;  
SRI S.S. KOLIWAD, ADVOCATE FOR R4;  
R1 & R3 - SERVED)

THIS APPEAL IS FILED UNDER SECTION 173(1) OF M.V. ACT AGAINST THE JUDGMENT AND AWARD DATED 28.03.2012 PASSED IN M.V.C. NO.1461/2010 ON THE FILE OF THE PRESIDING OFFICER, FAST TRACK COURT --II AND MEMBER, ADDL. M.A.C.T., BELGAUM, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL COMING ON FOR HEARING THIS DAY, RAVI MALIMATH J., DELIVERED THE FOLLOWING:

JUDGMENT

It is the case of the claimants that on 31.03.2010 at about 3.40 p.m. when the complainant, deceased and others were proceeding in a car bearing Reg. No.KA-41/6393 near Ramamurthy Nagar, Ring Road, a B.M.T.C. bus bearing No.KA-01/F-3782 was stationary. The driver of the car went and dashed against the B.M.T.C. bus from behind and caused the accident. The inmates sustained injuries. On the death of the deceased Gajendra, aged about 24 years, his mother, father and sister filed the instant claim petition. The tribunal allowed the petition in part and held that they are entitled for a compensation of Rs.17,23,752/- with interest, while holding the owner of the car liable to satisfy the award. Aggrieved by the same, the claimants have filed this appeal questioning the liability hoisted on the insurer.

2. The learned counsel for appellants contends that the tribunal committed an error in holding that the policy had expired

and the cheque that was issued for renewal had since bounced. Hence, he pleads that the order of the tribunal is erroneous.

3. On the other hand, learned counsel for insurer submits that the insurer had sent a letter to the owner of the vehicle on 06.01.2010 cancelling the insurance policy on the ground that the cheque issued for its premium had bounced. The same was acknowledged by the owner on 09.01.2010. The accident occurred three months thereafter i.e., on 31.03.2010. Therefore, relying on the judgment of the Hon'ble Supreme Court reported in AIR 2001 SC 1197 in the case of National Insurance Co. Ltd. vs. Seema Malhotra and Others, he contends that the insurance policy having been cancelled and the accident occurred much thereafter, the insurer is not liable.

4. On hearing the learned counsels, we are of the view that the contention of the insurer requires to be accepted. The Hon'ble Supreme Court in the aforesaid judgment has clearly stated that if the insurance policy has been cancelled on the ground of cheque bouncing or for any other reasons and the

accident occurs thereafter, the insurer cannot be held liable to satisfy the award since there is no existing insurance policy. Consequently, the finding of the tribunal absolving the insurer and holding the owner of the car to satisfy the award is just and proper and does not call for interference.

5. The second contention urged by the appellants is that the owner of the B.M.T.C. bus was also made a party to the proceedings, and hence, they may be directed to pay the compensation. This contention too was negated by the tribunal and rightly so. The initial case was lodged only against the owner of the car and its insurer. After the evidence was led in, the owner of the B.M.T.C. bus and his insurer were impleaded. Therefore, it is a clear case by the claimants that they had changed the very nature of the accident. Their initial case is that the driver of the car drove the same in a rash manner and dashed against the stationary B.M.T.C. bus. The new case being made out is that the B.M.T.C. bus driver also contributed to the accident and that he was also responsible for the same. Such a change in the narration

of facts is unacceptable. It is not the truth. The case has been made out only at the stage of evidence after coming to know that the owner of the car does not have a policy. Hence, this contention is also rejected. The tribunal having considered all the contentions has rightly held the owner of the car liable to satisfy the award. We find no good ground to interfere with the same. Consequently, the appeal is dismissed.

Ordered accordingly.

Sd/-  
JUDGE

Sd/-  
JUDGE

hnm