

**IN THE HIGH COURT OF KARNATAKA  
KALABURAGI BENCH**

**DATED THIS THE 07<sup>TH</sup> DAY OF OCTOBER, 2021**

**BEFORE**

**THE HON'BLE MR.JUSTICE R. NATARAJ**

**MFA.No.31952/2010 (WC)**

**c/w**

**MFA.No.31948/2010, MFA.No.31950/2010 and**

**MFA.No.31951/2010 (WC)**

**IN MFA.NO.31952/2010**

**BETWEEN:**

THE DIVISIONAL MANAGER  
NATIONAL INSURANCE CO. LIMITED  
GULBARGA.

**... APPELLANT**

**(BY SRI. R. V. NADAGOUDA, ADVOCATE)**

**AND:**

01. MALLAPPA S/O KAMANNA  
AGE: 44 YEARS OCC: EX-LABOUR  
R/O: VILLAGE ALDAL, TQ: SURAPUR  
DIST: YADGIR.
02. SRI. BHIMANNA S/O KAMANNA MUDDANUR  
AGE: 61 YEARS OCC: AGRICULTURE AND OWNER  
OF TRACTOR  
R/O: ALDAL TQ: SHORAPUR  
DIST: YADGIR.

03. SRI. AKBAR PATEL S/O LADLE PATEL  
 AGE: 44 YEARS OCC: DRIVER  
 R/O: ALDAL TQ: SHORAPUR  
 DIST: YADGIR

**... RESPONDENTS**

**(NOTICE TO R1 HELD SUFFICIENT  
 VIDE ORDER DATED 27.05.2019  
 R2 SERVED,  
 NOTICE TO R3 DISPENSED  
 WITH VIDE ORDER DATED 21.08.2014)**

THIS MISCELLANEOUS FIRST APPEAL IS FILED  
 UNDER SECTION 30 (1) OF THE WORKMEN'S  
 COMPENSATION ACT, PRAYING TO CALL FOR THE  
 RECORDS, ALLOW THE APPEAL AND SET-ASIDE THE  
 IMPUGNED JUDGMENT AND ORDER DATED 13.05.2010  
 PASSED BY THE LABOUR OFFICER AND COMMISSIONER  
 FOR WORKMEN'S COMPENSATION, GULBARGA IN  
 WCA/CR.NO.184/2006.

**IN MFA.NO.31948/2010**

**BETWEEN:**

THE DIVISIONAL MANAGER  
 NATIONAL INSURANCE CO. LIMITED  
 GULBARGA.

**... APPELLANT**

**(BY SRI. R. V. NADAGOUDA, ADVOCATE)**

**AND:**

01. SMT. MAHADEVI W/O MALLAPPA  
 AGE: 39 YERS OCC: EX-LABOUR  
 R/O: VILLAGE ALDAL, TQ: SURAPUR  
 DIST: YADGIR.

02. SRI. BHIMANNA S/O KAMANNA MUDDANUR  
AGE: 61 YEARS OCC: AGRICULTURE AND OWNER  
OF TRACTOR  
R/O: ALDAL TQ: SHORAPUR  
DIST: YADGIR.
03. SRI. AKBAR PATEL S/O LADLE PATEL  
AGE: 44 YEARS OCC: DRIVER  
R/O: ALDAL TQ: SHORAPUR  
DIST: YADGIR

**... RESPONDENTS**

**(NOTICE TO R1 AND 3 SERVED,  
SRI. VEERANAGOUDA, ADVOCATE FOR R2)**

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 30 (1) OF THE WORKMEN'S COMPENSATION ACT, PRAYING TO CALL FOR THE RECORDS, ALLOW THE APPEAL AND SET-ASIDE THE IMPUGNED JUDGMENT AND ORDER DATED 13.05.2010 PASSED BY THE LABOUR OFFICER AND COMMISSIONER FOR WORKMEN'S COMPENSATION, GULBARGA IN WCA/CR.NO.183/2006.

**IN MFA.NO.31950/2010**

**BETWEEN:**

THE DIVISIONAL MANAGER  
NATIONAL INSURANCE CO. LIMITED  
GULBARGA.

**... APPELLANT**

**(BY SRI. R. V. NADAGOUDA, ADVOCATE)**

**AND:**

01. BEERAPPA S/O SIDDAPPA  
AGE: 23 YEARS OCC: EX-LABOUR  
R/O: VILLAGE MACHALLI TQ: SURAPUR  
DIST: YADGIR
02. SRI. BHIMANNA S/O KAMANNA MUDDANUR  
AGE: 61 YEARS OCC: AGRICULTURE AND OWNER  
OF TRACTOR R/O: ALDAL TQ: SHORAPUR  
DIST: YADGIR.
03. SRI. AKBAR PATEL S/O LADLE PATEL  
AGE: 44 YEARS OCC: DRIVER  
R/O: ALDAL TQ: SHORAPUR  
DIST: YADGIR

**... RESPONDENTS**

**(BY SRI. BASAVARAJ R. MATH, ADVOCATE FOR R1  
SRI. KRUPA SAGAR PATIL, ADVOCATE FOR R2  
NOTICE TO R3 DISPENSED WITH VIDE ORDER  
DATED 21.08.2014)**

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 30 (1) OF THE WORKMEN'S COMPENSATION ACT, PRAYING TO CALL FOR THE RECORDS, ALLOW THE APPEAL AND SET-ASIDE THE IMPUGNED JUDGMENT AND ORDER DATED 13.05.2010 PASSED BY THE LABOUR OFFICER AND COMMISSIONER FOR WORKMEN'S COMPENSATION, GULBARGA IN WCA/CR.NO.186/2006.

**IN MFA.NO.31951/2010****BETWEEN:**

THE DIVISIONAL MANAGER  
NATIONAL INSURANCE CO. LIMITED  
GULBARGA.

**... APPELLANT****(BY SRI. R. V. NADAGOUDA, ADVOCATE)****AND:**

01. HANMANATH S/O RAMAPPA  
AGE: 52 YEARS OCC: EX-LABOUR  
R/O: VILLAGE ALDAL TQ: SURAPUR  
DIST: YADGIR.
02. SRI. BHIMANNA S/O KAMANNA MUDDANUR  
AGE: 61 YEARS OCC: AGRICULTURE AND OWNER  
OF TRACTOR R/O: ALDAL TQ: SHORAPUR  
DIST: YADGIR.
03. SRI. AKBAR PATEL S/O LADLE PATEL  
AGE: 44 YEARS OCC: DRIVER  
R/O: ALDAL TQ: SHORAPUR  
DIST: YADGIR

**... RESPONDENTS**

**(NOTICE TO R1 & R2 SERVED  
SRI. VEERANAGOUDA, ADVOCATE FOR R2)**

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 30 (1) OF THE WORKMEN'S COMPENSATION ACT, PRAYING TO CALL FOR THE RECORDS, ALLOW THE APPEAL AND SET-ASIDE THE IMPUGNED JUDGMENT AND ORDER DATED 13.05.2010 PASSED BY THE LABOUR OFFICER AND COMMISSIONER FOR WORKMEN'S COMPENSATION, GULBARGA IN WCA/CR.NO.185/2006.

THESE APPEALS HAVING BEEN HEARD, RESERVED FOR JUDGMENT ON 27.07.2021 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:-

## **JUDGMENT**

These appeals are filed by the insurer challenging the quantum of compensation awarded as well as the liability imposed upon it, to pay the compensation awarded by the Labour Officer and Commissioner for Workmen's Compensation Gulbarga (henceforth referred as 'Commissioner') in WCA/CR/Nos.183 to 186 of 2006 in terms of the order dated 13.05.2010.

02. The claim petitions filed under Section 10 of the Workmen's Compensation Act, 1923 before the Commissioner indicates that the respondent No.2 herein was the owner of a Tractor bearing Reg.No.KA-33-T-3986 and Trailer bearing Reg.No.KA-33-T-1127 (henceforth referred as 'offending vehicle'). The claimants were all engaged as labourers in the offending vehicle by the respondent No.2. It is stated that on 08.02.2006, the claimants on the instructions of respondent No.2 had loaded saplings on the Tractor for planting them in the land of respondent No.2. At about 01.30 p.m. when the

Tractor/Trailer was moving near the Water Tank at Kumbarpet Gudda, the driver of the Tractor who was driving it in a rash and negligently manner could not control the vehicle. As a result the vehicle over turned. The claimants who were in the Trailer along with the plants suffered fracture wounds and they were shifted to Shorapur Government Hospital and thereafter shifted to Gulbarga General Hospital. The jurisdictional police registered a case in Crime.No.22/2006 against the driver of the offending vehicle. The claimants claimed that they were aged 19, 48, 40 and 35 years respectively and were paid daily wage of ₹.100/-. They contended that due to accident, they had suffered permanent disability and could not work as daily wagers. They contended that the accident occurred during and in the course of employment and thus the respondent No.2 being the owner of the offending vehicle was liable to compensate them and as the vehicle was insured, it was for the insurer to indemnify the respondent No.2.

03. The claim petition was not contested by the respondent No.2 owner. The insurer contested the claim petition denying the assertion of the claimants. The insurer contended that on 08.02.2006 about 17 persons were traveling as gratuitous passengers in the offending vehicle and therefore there was no relationship of employer and employee. It contended that since the claimants were gratuitous passengers, it was exonerated from the liability to pay compensation. It also contended that the Trailer was not insured with it while the Tractor was insured. It also contended as per the policy only one labour was covered and there was no cover for the risk to hamalies. Therefore, it contended that the claim petitions may be rejected. It alternatively contended that the driver of the offending vehicle did not possess a valid license. The insurer also filed an application under Section 170 of the Motor Vehicle Act, which was granted by the Commissioner.

04. Based on these rival contentions, the claim petitions were set down for trial.



05. The claimants were examined separately and they also examined a Doctor and marked documents as Exs.P.1 to 22. The insurer examined its official and marked Ex.R.1 to R.3.

06. Based on the oral and documentary evidence the Commissioner held that the accident occurred during and in the course of employment. It considered the evidence of the doctor who deposed that the claimants had suffered the following disabilities:-

Case Nos.	Extent of Disability
WCA.No.183/2006	20% disability to right hand
WCA.No.184/2006	30% disability to left upper limb
WCA.No.185/2006	35% neurological disability to the left foot
WCA.No.186/2006	50% disability to the left foot.

07. The commissioner considered the injuries suffered by the claimants and after noticing the fact that the doctor who gave the disability certificate had not treated the claimants, held that the claimant No.1 had suffered 10% disability, claimant No.2 20% disability, claimant No.3 25% disability and claimant No.4 35%

disability. It held that the claimants were earning a monthly income of ₹.3,000/- and awarded the following compensation:-

Name of the claimants	Salary per month	Age:	Relevant Factor	Disability	Compensation Awarded
Smt. Mahadevi	₹.3,000/-	35	197.06	10	₹.35,470/-
Sri. Mallappa	₹.3,000/-	45	169.44	20	₹.60,998/-
Sri.Hanamanth	₹.3,000/-	50	153.00	25	₹.68,820/-
Sri. Veerappa	₹.3,000/-	19	225.22	35	₹.1,141,888/-

08. Insofar as the liability to pay the compensation is concerned, the Tribunal held that the Tractor in question was covered by a policy of insurance which is miscellaneous and special type of vehicle policy - B package. The Commissioner took note of a decision of the Hon'ble Supreme Court in the case of ***M/s. National Insurance Company Limited vs. Mubasir Ahmed and others in Civil Appeal Nos.5623-5625/2006*** and held that even if the Tractor was insured and the Trailer has not insured, the insurer is liable to indemnify the owner. It held that since the Tractor was attached with a Trailer it was a Transport Vehicle and therefore the insurer was

statutorily liable to pay the compensation and directed the insurer to pay the compensation along with interest the rate of 12% p.a.

09. Being aggrieved by the aforesaid order, the insurer has filed these appeals.

10. The learned counsel for the insurer contended that the Trailer was not insured with it and therefore the insurer was not liable to pay the compensation. The learned counsel relied upon the judgment of the Hon'ble Supreme Court in the case of ***United India Insurance Company Limited Vs. Serjerao and others, (2008) SCC 425***. He also contended that the additional premium was not collected covering the risk of passengers. The learned counsel further contended the claimants were not coolies, but were passengers in the vehicle.

11. On the other hand, the learned counsel for the claimants contended that the policy in question was a farmers package insurance policy and therefore, the

claimants were statutorily covered. The learned counsel invited the attention of the Court towards the complaint lodged before the jurisdictional police which clearly indicated that the claimants were all traveling as coolies in the Tractor and Tractor in question which was used for the purpose of shifting plants to the land of the owner. Therefore, he contended that the insurer is liable to pay the compensation. The learned counsel contended that even if the Trailer was not insured, since the Trailer was attached to the Tractor and as the same were used for agriculture purpose, he claimed that the insurer is still liable. In this regard he relied upon the decision of the ***Division Bench of this Court in MFA.No.32502/2012 (MV) dated 05.04.2018.***

12. I have considered the submissions made by the learned counsel for the parties.

13. These appeals were admitted to consider the following substantial question of law:-

"Whether the insurer is liable to pay the compensation in respect of the claims in question, since the claimants were all traveling in a Trailer which was though attached to the Tractor, but was not insured?"

14. The accident in question is not in dispute. Since, the owner of the offending vehicle has not contested the claim petitions, he has tacitly accepted that there was relationship of employer and employee between the claimants and himself. In so far as the liability of the insurer is concerned, the offending vehicle was covered by a farmers package policy and therefore, the coolies engaged in the Tractor were statutorily covered under Section 147 of the Motor Vehicle Act. The question whether a Trailer should also be insured so as to fasten the liability on the insurer is sufficiently answered by the Division Bench of this Court in ***MFA.No.32502/2012 (MV) dated 05.04.2018.***

In that view of the matter, the substantial question of law framed is answered against the insurer and in favour of the claimants. Hence, these appeals are dismissed.

The amount in deposit is ordered to be transferred to the Tribunal for passing appropriate orders.

**Sd/-  
JUDGE**

KJJ