

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 1ST DAY OF JUNE, 2026

PRESENT

THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

MISCELLANEOUS FIRST APPEAL NO.102054 OF 2014

BETWEEN:

BHARATH ROADLINES,
R/BY ITS PARTNER,
ABHISHEK HANDA,
S/O. ASHWIN HANDA
AGE: 31 YEARS, OCC: PARTNER,
BHARATH ROADLINES,
R/O. TRAFFIC ILAND,
P B ROAD,
HUBLI.

...APPELLANT

(BY SRI MAHESH WODEYAR, ADVOCATE)

AND:

- 1 . SHIDDAVVA LAXMAPPA @
KANTEPPA KHANAPUR,
AGE: 59 YEARS,
OCC: COOLIE,
R/O. KULAGERI,
TQ: BADAMI,
DIST: BAGALKOT.
- 2 . SAKKUBAI,
S/O. BEERAPPA KHANAPUR,
AGE: 24 YEARS, OCC: COOLIE,
R/O. KULAGERI,
TQ: BADAMI,
DIST: BAGALKOT.

3 . LAXMAPPA,
S/O. BEERAPPA KHANAPUR,
AGE: 8 YEARS, OCC: COOLIE,
R/O. KULAGERI,
TQ: BADAMI,
DIST: BAGALKOT.
SINCE MINOR, R/BY HIS M/G
RESPONDENT NO.2

4 . THE DIVISIONAL MANAGER,
NEW INDIA ASSURANCE CO. LTD.,
OPP. KITTEL COLLEGE,
P.B. ROAD, HUBLI.
(POLICY NO.670700/31/07/01/00008727
VALIDITY FROM 27.02.2008 TO 26.02.2009)

...RESPONDENTS

(BY SRI. PRAKASH HOSAMANE, ADVOCATE FOR R2
SRI. R.R. MANE, ADVOCATE FOR R4)
(R1 - DECEASED)
(R3 MINOR R/BY R2)
(R2 AND R3 ARE THE LRS OF DECEASED R1)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173 (1) OF THE MOTOR VEHICLES ACT 1988, PRAYING TO SET ASIDE THE JUDGMENT AND AWARD DATED 02.05.2011 PASSED BY THE LEARNED SENIOR CIVIL JUDGE AND MEMBER MACT-VIII, BADAMI, IN MVC NO.245/2009, AND CONSEQUENTLY FASTENED THE LIABILITY ON THE INSURANCE CO. RESPONDENT NO.4, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL IS COMING ON PRONOUNCEMENT AND THE SAME HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 16.03.2026, THIS DAY, DELIVERED THE FOLLOWING:

CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI)

The owner of the truck bearing No.KA-25-A-9396/Respondent No.1 in MVC No.245/2009 (in short, 'the owner') on the file of learned Senior Civil Judge and MACT-VIII, Badami has preferred this appeal praying to set aside judgment and award dated 02.05.2011 passed therein and consequently fasten the liability of satisfying the award on his Insurer.

2. Brief facts leading to this appeal are as under:

i) The claimants namely Shiddavva and others maintained the petition in MVC No.245/2009 under Section 166 of Motor Vehicles Act seeking compensation of Rs.22,75,000/- from the owner and insurer of the truck bearing No.KA-25-A-9396 for the death of Sri Beerappa in a road traffic accident occurred on 27.12.2008. The case of the claimants was that on the particular date while the deceased was travelling in the truck along with his goods, he met with an accident due to actionable negligence on the part of the truck driver and succumbed to the injuries sustained in the accident.

ii) On service of notice, both the owner and insurer of the truck appeared before the Tribunal, filed their objection and

contested the petition. Thereafter, the Tribunal framed relevant issues, recorded evidence of the parties, heard their arguments and disposed of the claim petition vide impugned judgment.

iii) The Tribunal held that the deceased met with the accident due to the negligence attributable to the truck driver. It further held that the deceased was a gratuitous passenger and as such, the insurer is not liable to pay any compensation to the claimants. Accordingly, the Tribunal partly allowed the claim petition holding that the claimants are entitled to total compensation of Rs.3,56,000/- together with interest at the rate of 6% per annum from the date of petition till its realization and directed the owner to satisfy the award. Feeling aggrieved, the owner has come up with this appeal.

3. Sri Mahesh Wodeyar, learned Counsel for the Owner, submitted that PW-1 and PW-2 categorically stated in their evidence that the deceased was travelling in the truck along with his goods. Even then, the Tribunal without considering that evidence erroneously held that the deceased was a gratuitous passenger in the truck, which is contrary to the materials on record. He further submitted that the Tribunal erred in fastening the liability for payment of the compensation on the owner of the truck despite there being no violation of

policy conditions. He therefore prayed that the appeal be allowed and that the liability to satisfy the award be fastened on the insurer.

4. Sri Prakash Hosamane, learned Counsel for the Claimants submitted that the deceased was carrying 10 bags of fertilizers in the truck at the relevant point of time and he was not a gratuitous passenger. He submitted that the Tribunal rightly held that the deceased met with an accident due to actionable negligence on the part of the driver of the offending vehicle. In view of the same, he prayed that both the owner and insurer of the offending vehicle be held liable to pay the compensation by modifying the impugned judgment and award accordingly.

5. Sri R.R. Mane, learned Counsel appearing for the Insurer vehemently submitted that the Tribunal rightly concluded that the deceased was a gratuitous passenger in the offending vehicle. He further submitted that even if it is presumed that the deceased was travelling in the offending vehicle along with some bags of fertilizer, that fact alone is not sufficient to bring deceased within the definition of 'the owner of the goods' travelling in the offending vehicle. He submitted the policy did not cover the risk of a gratuitous passenger and

in those circumstances, the Tribunal properly declined to invoke the 'pay and recover' principle and directed the owner of the vehicle to satisfy the award. Hence, he prayed that the appeal may be to dismiss the appeal.

6. On hearing the arguments canvassed on both sides and considering the materials available on record, the following points arise for consideration of this Court:

- i) Whether the Tribunal was justified in holding that the deceased was travelling as a gratuitous passenger in the offending vehicle?
- ii) Whether the Tribunal was justified in directing the owner of the offending vehicle to satisfy the award?

Point Nos.(i) and (ii):

7. The parties to the proceeding are not in dispute about the accident, the vehicle involved, death of the deceased caused by the injuries sustained in the incident or cause for the accident i.e, the negligence on the part of the truck driver. The only dispute is the capacity in which the deceased was travelling in the offending vehicle, namely whether he was travelling as the owner of the goods or as a gratuitous passenger.

8. The wife of the deceased, in her deposition as PW-1, stated that the deceased was travelling in the offending vehicle along with the fertilizer bags. Admittedly, PW-1 was not accompanying the deceased at the relevant time. During her cross examination, PW-1 categorically admitted that she did not know how many bags of fertilizer her husband had purchased. Further, the claimants did not produce any document before the Tribunal to show that the deceased had purchased the fertilizer bags on that day. Thus, it is clear whatever statements PW-1 made in her evidence, were not based on her personal knowledge or supported by any document. Hence, the testimony of PW-1 is of no help to the claimants in proving their case.

9. PW-2, Sri Gannusab, is the person who lodged a complaint in connection with the accident. In his examination in chief, PW-2 stated that on the relevant date when he was travelling in the offending vehicle, the deceased was also there in the vehicle. He further stated that on their way, the fertilizer bags were unloaded near the deceased's land and thereafter they continued the journey. PW-2 stated that while the driver of the offending vehicle tried to avoid the accident with the motorcycle coming from opposite direction, because of ditch in

the road, the driver of the offending vehicle lost control, which resulted in the accident.

10. During his cross-examination, PW-2 categorically admitted that he had no personal knowledge about the deceased having purchased the fertilizers. He further admitted that he had personally lodged a complaint with the jurisdictional police and that he had not given any statement before the police stating that the deceased was transporting the fertilizer bags in the offending vehicle.

11. The claimants have produced the true copy of the complaint lodged by PW-2 as Ex.P2. In the said complaint it was stated that on the relevant date at about 02.00 p.m., PW-2 and the deceased were travelling together in the lorry to their native place to attend some rituals on account of Yellamavasye. There is no mention in the complaint of PW-2 or the deceased having carried any goods including fertilizer bags. By contrast, the complaint states that the driver of the offending vehicle, who was proceeding to his village, stopped on seeing them and took them into the offending vehicle. Therefore, it is apparent that the contents of Ex.P2 do not corroborate the version narrated by PW-2 during his testimony.

12. Even otherwise, a careful analysis of the statement of PW-2 indicates that the deceased's purported journey of the deceased in the offending vehicle as the owner of the goods terminated upon unloading the fertilizer bags near his land. His subsequent travel in the offending vehicle from the place of unloading cannot be treated as his travel in the capacity of the owner of the goods. Therefore, this Court holds that the Tribunal is justified in holding that the deceased was a gratuitous passenger in the offending vehicle.

13. During the course of argument, learned Counsel for the Owner, relied on a decision in **Smt. Ushakiran Shridhar Shinde and Others Vs Arunkumar Kisanlal Kalal and Others** reported in **2001 (4) All.MR.21** and submitted that the contents of the police papers cannot be looked into without adducing evidence to prove its contents. The above submission is principally founded on the insurer's reliance upon the contents of the police papers to contend that none of these documents refer to the recovery of fertilizer bags at the scene of the accident.

14. In the present case, upon re-appreciation of the materials on record it is manifest that the statements of PW-1 and PW-2 are not of assistance to the claimants in establishing

their claim. Further, the claimants themselves cannot dispute the contents of the documents produced and relied upon in their evidence. Admittedly, the owner of the offending vehicle did not adduce any evidence in the case either to support the case of the claimants or to clarify the contradictions/ discrepancies emanating from the evidence adduced by the claimants. Moreover, the claimants did not challenge the finding recorded by the Tribunal that the deceased was a gratuitous passenger in the offending vehicle or the order absolving the insurer from its liability of indemnifying the insured. In view of the foregoing, it is held that there is no merit in the contention of the owner.

15. In **Amudhavally and Others Vs HDFC Ergo General Insurance Company Ltd., and Others (2025 INSC 1219)** Hon'ble Apex Court has held that carrying a gratuitous passenger in a goods carriage vehicle amounts to a fundamental breach of policy conditions and in such cases the insurer is absolved from its liability to satisfy the award even under the principle of pay and recovery.

16. Similarly, in **Basavaraj Vs Smt. Yallavva and Others** (MFA No.20846/2010 C/w MFA No.20847/2010) learned co-ordinate bench of this Court has held that when the

claimant has not challenged impugned judgment and award and thereby admitted the finding recorded by the Tribunal that she was an unauthorized passenger in the offending vehicle, the owner of the offending vehicle cannot seek to apply the principle of pay and recovery as the liability to pay the compensation is on him. The said principle squarely applies to the case on hand. As pointed out earlier, the appellant herein is the owner of the offending vehicle and he is liable to satisfy the award because of violation of policy conditions. Further, the owner is a firm/concern. As such, there may not be any difficulty for the claimants in recovering the award amount. Even if the principle of pay and recovery is applied, the ultimate liability of satisfying the award is on the owner of the vehicle himself. For the foregoing reasons, this Court holds that the owner of the offending vehicle has not made out any valid ground to interfere with impugned judgment and award. Hence, Point Nos.(i) and (ii) are answered in the affirmative.

17. In the result, this Court proceeds to pass the following:

ORDER

- (i) The appeal is dismissed.

(ii) The judgment and award dated 02.05.2011 passed in MVC No.245/2009 by learned Senior Civil Judge and M.A.C.T.VIII, Badami is confirmed.

(iii) The registry is directed to transmit any amount deposited in this appeal before the court to concerned Tribunal along with trial court record at the earliest.

(iv) Draw and award accordingly.

**Sd/-
(B. MURALIDHARA PAI)
JUDGE**

RKM,YAN
CT: CMU