

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

DATED THIS THE 8TH DAY OF JULY 2022

PRESENT

THE HON'BLE MR.JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR.JUSTICE S. RACHAIAH

MISCELLANEOUS FIRST APPEAL No. 202022/2016
(MV)

Between:

1. Dr. Narasimulu Nandini Memorial
Education Trust, Situated at No.1-7-7
Near Goal Market, Station Area
Raichur-584101
Owner of Bus No.KA-36/A-1164
Represented by Mahalinga. B
Managing Trustee

...Appellant

(By Sri Shivakumar Kalloor, Advocate)

And:

1. Banu Begum W/o Late Mohammed Husen
Age: 49 Years, Occ: Housewife
2. Malan Begum D/o Late Mohammed Husen
Age: 21 Years, Occ: Nil
3. Moula Husen S/o Late Mohammed Husen
Age: 18 Years, Occ: Student
4. The New India Assurance Co. Ltd.,
Branch Office, Situated at PB No:355

Opp: To RDCC Bank Ltd., Gunj Road
Raichur-584 101

...Respondents

**(By Sri Basavaraj R. Math, Advocate R1 & R2;
Smt. Preeti Patil. Melkundi, Advocate for R4;
R3 is served)**

This MFA is filed under Section 173 (1) of MV Act, praying to allow the above Miscellaneous First Appeal and set aside the impugned judgment and award passed by II Addl. District and Sessions Judge at Raichur, in MVC No. 586/2015 dated: 5.10.2016 and dismiss the claim petition MVC No.586/2015 as against the appellant.

This MFA having been heard and reserved on 07.06.2022 and coming on for pronouncement this day, **SREENIVAS HARISH KUMAR J.**, delivered the following:

JUDGMENT

The owner of the offending vehicle having been saddled with the liability to pay compensation to the claimants, has preferred this appeal. The factual background is as follows :

2. Name of the deceased in the accident is Syed Wali. On 28.9.2015, about 4.00, PM he was riding a motor cycle with registration No. KA-36/W-3987 with one Mr.Mohammed Shali on the pillion. As they came

near the by-pass of Raichur-Merched Road, a school bus with registration No. KA-36/A-1164 being driven rashly and negligently by its driver hit the motor cycle while overtaking it. As a result Syed Wali met instant death and the pillion rider was injured.

3. In the claim petition laid by the dependants of the deceased, the insurer of the offending vehicle took a specific defence that since on the date of accident, the fitness certificate and the permit were not in force, it was not liable to indemnify the liability of the owner although the insurance policy was in force. The tribunal computed the total compensation payable to the dependents at Rs.6,18,000/- with interest at the rate of 6% p.a. and accepting the defence of the insurer absolved it of its liability and directed the owner of the offending vehicle to pay compensation amount to the dependants. Aggrieved by this finding, the owner has preferred this appeal.

4. We have heard Sri Shivakumar Kalloor, learned advocate for the appellant, Sri Basavaraj R Math for respondents 1 and 2/claimants, and Smt. Preethi Patil Melkundi, learned counsel for respondent No.4 insurance company.

5. It was the argument of Sri Shivakumar Kalloor that on the date of accident, the insurance policy issued for the offending vehicle was in force. The policy would not have been renewed unless the vehicle had fitness certificate and the permit. The appellant applied for renewal of the fitness certificate and he remitted the required fee through the challan dated 6.10.2015 and thereafter fitness certificate was issued to be valid till 18.12.2016. Once the fitness certificate was issued, it would relate back to the date of expiry. In regard to permit also he argued that the appellant paid the road

tax and applied for renewal of the permit. Once permit was issued or renewed, it would come into effect from the date of expiry. In this regard he referred to section 81(5) of the Motor Vehicles Act and placed reliance on the decisions of this court in **MFA 5159/2016 [United India Insurance Company Limited vs Smt. Yasmin Begum and Others, and MFA 3338/2015 [Catherine Louis A vs Kengaiyah and Others]**. He argued that the position of law being like this, appeal deserves to be allowed and the insurance company should be directed to pay the compensation amount to the claimants.

6. Sri Basavaraj R Math supported the argument of Sri Shivakumar Kalloor.

7. But, Smt. Preethi Patil Melkundi refuted the argument of Sri Shivakumar Kalloor and submitted that the position of law is otherwise. Referring to the

judgment of the Supreme Court in the case of **Amrit Paul Singh and Another vs Tata AIG General Insurance Company Limited and Others [(2018) 7 SCC 558]**, she submitted that on the day when the accident took place, the permit and the fitness certificate were not in force. The validity period of the insurance policy was from 29.6.2015 to 28.6.2016. Permit was issued for the period 20.7.2010 to 19.7.2015. Fitness certificate was obtained after the accident. Therefore it is clear that the policy conditions were violated and in this view the insurer need not indemnify the liability of the appellant.

7.1. She argued that section 81(5) of the Motor Vehicles Act is not applicable. Temporary permit was not issued to the offending vehicle in order to invoke section 81(5). She argued that section 81(1) clearly states that the permit would become effective from date of renewal, and it does not relate back to the

date of expiry. She also referred to sections 56(1), 66(1) and 84(a) and (f) of the Motor Vehicles Act to argue that unless permit and fitness certificate are issued, transport vehicle cannot be deemed to be validly registered for the purpose of section 39 and looked in this view section 149 (2) (a)(i) (C) of the Motor Vehicles Act is applicable. The position of law being so, the appellant cannot insist on the insurance company to indemnify his liability. She also placed reliance on the judgment of the Supreme Court in the case of ***M.S.Middle High School vs HDFC Ergo General Insurance Company Limited [Special Leave Petition (C) No. 31406/2017]*** and the judgment of the Division Bench of this court in the case of ***Kariyamma and Others vs Kumar and Another [MFA No. 101633/2014]*** She argued for dismissing the appeal.

8. Therefore the question to be answered is whether the liability of the insurance company can still be enforced although the offending vehicle did not possess permit and fitness certificate on the date of accident.

9. The accident took place on 28.9.2015, and on that day the policy issued by respondent No.4 was in force. It is not in dispute that the offending vehicle did not possess the fitness certificate as also the permit on the day when the accident took place. It is also not in dispute that the appellant obtained both after the accident.

10. Smt. Preethi Patil Melkundi has referred to sections 56 (1), 66 (1) and 84 of the Motor Vehicles Act. Section 56 deals with obtaining of fitness certificate and section 66, with permits which are essentially required for a transport vehicle for being

plied on the road. In section 84 the permit conditions are enlisted. Clause (a) of section 84 requires that the valid certificate of fitness must be maintained at all times and clause (f) states that the provisions of Chapters X, XI and XII apply to the holder of permit. That means the permit and the fitness certificate must be in force and according to clause (f) if a transport vehicle is to be insured in accordance with section 146 coming under Chapter XI, the fitness certificate must be in force. In this case though the insurance policy was in force on the date of accident, the permit and the validity of the fitness certificate had expired. Then the fitness certificate was obtained to be valid from 19.12.2015 to 18.12.2016 as per Ex.R5. The fourth respondent does not dispute the fact of fitness certificate being in force on the date it issued the policy to the appellant. The fourth respondent would not have issued the policy unless fitness certificate

was in force and it appears that the fitness certificate expired after the issuance of the policy. In so far as permit is concerned, Ex.R1 shows that the validity period of the permit was from 30.3.2016 to 29.3.2021. According to section 81(1), the permit other than a temporary permit issued under section 87 or a special permit issued under sub-section (8) of section 88 shall be effective from the date of issuance or renewal thereof for a period of five years. Ex.R1 clearly shows that the validity of the permit commenced from 30.3.2016, it does not indicate that it was renewed from the date of expiry. Sri. Shivakumar Kalloor referred to section 81(5) to argue that though in Ex.R1 the validity period of the permit is shown as 30.3.2016 to 29.3.2021, according to sub-section (5) of section 81, the renewal came into effect from the date of expiry and therefore

on the day when the accident took place it should be deemed that the permit was in force.

11. For renewal of permit, an application should be filed not less than 15 days before the date of expiry of the permit in accordance with sub-section (2). Sub-section (3) clearly states that if an application cannot be made within 15 days before expiry, the Regional Transport Authority or the State Transport Authority can still entertain an application for renewal of a permit if it is satisfied that the applicant was prevented by good and sufficient cause from making an application within the time specified. That means if sufficient cause is shown, application can be entertained and permit can be renewed. If permit is renewed upon an application made before expiry, automatically the renewal takes place from the date of expiry. Whenever renewal is sought after expiry of the time, if the concerned authority

entertains such an application according to section 81(3) and grants renewal by condoning delay, obviously the renewal goes back to the date of expiry as provided under section 81(5) of the Motor Vehicles Act. Temporary permit is issued for the interregnum period, and it has nothing to do with renewal.

12. A co-ordinate Bench of this court had an occasion to examine a similar issue in the case of ***United India Insurance Company Limited vs Yasmin Begum (supra)***. What is held is,

"23. On a reading of the aforesaid provisions, it becomes clear when the permit is issued, in the first instance, it is effective from the date of issuance for a period of five years. But subsequently when a permit which has expired is renewed, it is from the date of expiry. Having regard to Sub-sections (2) and (3) of Section 81 of the Act, where there could

be a delay in making of an application for renewal of permit and also keeping in mind the fact that renewal application would take sometime for it to be considered, processed and ultimately the permit being renewed even though such an application has been made well within time. Sub-section (5) of Section 81 of the Act takes care of a period during which the vehicle is plying on the public road, pending renewal of the permit. In such a case, Sub-section (5) of Section 81 of the Act states that where a permit is renewed after the expiry of its period, such renewal shall have an effect from the date of such expiry. In other words, Sub-section (5) of Section 81 of the Act deals with a case of deemed permit or takes care of a situation where pending renewal of a permit, a transport vehicle is plying on a public road. In such a situation, it cannot be considered to be a case where the transport vehicle is plying without a permit rather the vehicle is plying pending renewal of the permit i.e. on a deemed permit.

Renewal of the permit could take place only if a permit had been issued in the first instance and not otherwise. Hence, the object of a provision incorporating a legal fiction must be given its fullest scope and application”.

13. Smt. Preethi Patil Melkundi has referred to the judgment of the Supreme Court in the case of **Amrit Paul Singh (supra)** in support of her contention. But the co-ordinate Bench referred to **Amrit Paul Singh** while deciding **Yasmin Begum** and held that the ratio in **Amrit Paul Singh** is not applicable because the factual position there was that the offending vehicle did not have permit at all. Therefore **Amrit Paul Singh** is not helpful to respondent No.4. The decision of the Supreme Court in **M.S.Middle High School** was also considered by the coordinate bench in the case of **Yasmin Begum**. Moreover, in **M.S.Middle High School**, we do not find

any law being laid down. Therefore we are of the view that the ratio in ***Yasmin Begum*** can be applied to the case on hand. Looked in this view, we may state that though Ex.R1 indicates that the permit was validated with effect from 30.3.2016, in view of section 81(5) of the Motor Vehicles Act, it should be deemed that on the day when the accident took place, the permit was in force.

14. Another coordinate Bench judgment in MFA 101633/2014 does not help the fourth respondent because the question of permit and fitness certificate did not arise for discussion there; the issue discussed was whether liability could be saddled on the insurance company if the deceased was a gratuitous passenger.

15. From the above discussion, we arrive at a conclusion that the fourth respondent/insurance

company cannot disown its responsibility to indemnify the liability of the appellant. In this view, the finding of the tribunal is not sustainable and therefore this appeal deserves to be allowed. Hence, the following :

ORDER

- (i) Appeal is allowed.
- (ii) The judgment of the tribunal is modified. The fourth respondent/insurance company is hereby directed to indemnify the liability of the appellant and pay compensation amount of Rs.6,18,000/- with 6% p.a. interest from the date of petition till the date of realisation.
- (iii) The fourth respondent shall deposit the compensation amount with interest within four weeks from today.

(iv) The apportionment of the compensation amongst claimants 1 to 3 as directed by the tribunal is maintained.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

ckl