



IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 23<sup>rd</sup> DAY OF SEPTEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

MFA No.25711/2011 (WC)

BETWEEN:

THE DIVISIONAL MANAGER,  
THE ORIENTAL INSURANCE CO., LTD.,  
DIVISIONAL OFFICE, STATION ROAD,  
HOSPET NOW BY ITS ASST. MANAGER,  
THE ORIENTAL INSURANCE CO., LTD.,  
REGIONAL OFFICE, SUMANGALA COMPLEX,  
IIND FLOOR, LAMINGTON ROAD,  
HUBLI-580020

...APPELLANT

(SRI. M.K.SOUDAGAR, ADVOCATE FOR APPELLANT)

AND:

1. SMT. SAYEEDA KHANAM

\*[2. SRI. JAMARUZ KHAN

3. SMT. HASEENA BEGUM

4. SRI. AMZAD KHAN

...RESPONDENTS

(SRI. M. AMAREGOUDA, ADVOCATE FOR R1;  
R2 AND R3 ARE DECEASED AND V/C/O. DATED 04.07.2017 THE  
NAMES OF R2 AND R3 ARE DELETED;  
R4 SERVED)

THIS MFA IS FILED UNDER SECTION 30(1) OF W.C.ACT,  
AGAINST THE JUDGMENT AND ORDER DATED 21.07.2011  
PASSED IN W.C.NO.59/2007 ON THE FILE OF THE LABOUR  
OFFICER AND COMMISSIONER FOR WORKMENS  
COMPENSATION, KOPPAL DISTRICT, KOPPAL, AWARDED THE  
COMPENSATION OF Rs.4,15,960/- WITH INTEREST AT THE  
RATE OF 12% P.A. FROM THE DATE OF PETITION TILL  
REALIZATION.

THIS MFA COMING ON FOR ORDERS THROUGH VIDEO  
CONFERENCE AT DHARWAD BENCH, HAVING BEEN HEARD AND  
RESERVED FOR JUDGMENT, THIS DAY, THE COURT PASSED THE  
FOLLOWING:

### **JUDGMENT**

This appeal is filed challenging the Judgment and  
award passed in WCF No.59/2009 dated 21.07.2011 on  
the file of the Labour Officer and Workmen's  
Compensation Commissioner, Koppal, District Koppal,

questioning the liability fastened on the Insurance company.

2. The factual matrix of the case of the claimants before the Workmen's Compensation Commissioner is that, the claimants are the legal heirs of the deceased Azam Khan, who died in an accident which occurred on 30.01.2008, contending that as per the instructions of the owner i.e. respondent No.4 herein, he was driving the lorry bearing registration No.KA-36/6712 from Kampli to Tumkur to unload the rice bags and after taking dinner on NH-13, the second driver by name Paulraj was driving the same in a rash and negligent manner and when it reached near Mariyammanahalli bye-pass, in order to avoid the accident from oncoming lorry he suddenly applied the brake of the vehicle, due to which the deceased fell down and sustained severe injuries and he succumbed to the accidental injuries. It is claimed that, he was

working with respondent No.1 of the claim petition and he was getting salary of Rs.6,000/- per month and the Workmen's Compensation Commissioner awarded an amount of Rs.4,15,960/-. It is the contention of the appellant herein that the Insurance company denied the relationship of employer and employee and all other contentions raised in the claim petition and also contended that, the policy does not covers the risk of the second driver and no premium has been to cover the risk of the second driver and in spite of it, the Workmen's Compensation Commissioner allowed, the claim petition. Hence, the present appeal is filed.

3. Being aggrieved by the Judgment and award of the Workmen's Compensation Commissioner the counsel appearing for the Insurance company would vehemently contend that, the Commissioner was not justified in answering Issue No.2 by holding that, the deceased was working under the respondent

No.1, who is none other than the brother of the deceased by overlooking the documentary evidence on record. It is also contended that, the Commissioner was not justified in allowing the petition when there is no contract of carrying two drivers under the policy and the deceased driver being the brother of the Insured and when no additional premium is paid to the additional driver under the policy. The counsel also contend that, the vehicles which are permitted to ply throughout the nation are permitted to carry two drivers and not the vehicles which are restricted to ply only in the particular State and that too in the present case, the deceased was going from Kampli to Tumkur which is hardly 300 kilometers distance and hence, the Commissioner has not justified in allowing the claim petition, ignoring the material and documentary evidence and hence, it requires interference of this Court.

4. Learned counsel in support of his arguments he relied upon the Judgment of this Court, in the case of ***M.E.Jayachandra Vs. Reliance General Insurance company Ltd., and another***, reported in ***2016 ACJ 1576***, wherein, this Court has held that, the liability in respect of spare driver and if the policy does not disclose the coverage of the risk of the spare driver, liability cannot be fastened on the Insurance company and also held that, the claimant Injured neither produced the licence to prove that he had license to drive the heavy goods vehicle, nor he cross-examined any witness to prove that he was travelling as spare driver. The counsel also relied upon the Judgment of this Court, in the case of ***National Insurance Company Ltd., Vs. Smt. Lakshmindevamma and another***, reported in ***2011 Kant. M.A.C. 629 (kant)***, wherein also this Court has held that, the liability cannot be fastened on the

Insurer in the case of gratuitous passengers, on the ground that there is breach of terms and conditions of the policy and that when the owner of the offending vehicle has not paid the required premium, question of fastening liability on the insurer and the insurer satisfying the award does not arise.

5. Per contra, learned counsel appearing for the respondent would vehemently contend that, the respondent was having only one vehicle and the claimant was working as driver and the father had lodged the complaint wherein, specifically stated that, the deceased was the driver and another driver who was driving the vehicle at the time of the accident is the spare driver and the claim is made by the legal heirs of the deceased driver. The counsel also would submits that, the complaint was given within a span of two hours of the death of the deceased and the

vehicle is a goods vehicle and the same was taken from Kampli to Tumkur to unload the rice bags. The counsel in support of his arguments, he relied upon the Judgment of this Court, in the case of **United India Insurance Co., Ltd., Vs. Ramesh Kamanagouda Patil and another**, reported in **2017 (2) KCCR 1691** , wherein this Court has discussed Section 2(1)(n) of the Employees Compensation Act, 1923, and the claimant working as driver of the Jeep belonging to mother of claimant and held that, there is no provision which prohibits son to work and claim to be workman under his father, mother or any other relative, the claimant is workman within meaning of the Act and hence, the contention cannot be accepted.

6. Having heard the respective counsel and also the material on record, the point that would arise for consideration of this Court are:



*(i) Whether the Workmen's Compensation Commissioner committed an error in coming to the conclusion that, the deceased was a workman as defined under Section 2(1)(n) of the Employees Compensation Act, 1923?*

*(ii) Whether the tribunal has committed an error in fastening the liability on the Insurance company and whether it requires interference?*

*(iii) What order?*

7. **Answer to Point No.1** : Having heard the respective counsel and also on perusal of the material, the Court has to take note of the pleading of the claimant in the application filed under Section 22 read with Section 10A(2) of the Workmen Compensation Act, 1923, wherein it is contended that, the deceased was working as a driver of the lorry and as per the direction of the respondent No.1, the deceased was proceeding as a lorry driver from Kampli to Tumkur to

unload the rice bags along with the second driver by name Paulraj and cleaner Veeresh. After completion of meals, the second driver by name Paulraj driving the said lorry and when he was driving the vehicle, by seeing the on coming vehicle which suddenly came near the vehicle, the driver suddenly stopped the lorry, as a result the deceased who was sitting in the cabin fell down from the lorry and sustained severe injuries. The very contention of the Insurance company in the written statement is that, there was no any employer and employee relationship between the respondent No.1-owner and the deceased. The respondent No.2 also denied the contents of the claim petition and hence, the company is not liable to pay any compensation. The respondent No.1 also filed the written statement. In paragraph No.5, it is admitted that, he is the owner of the vehicle and the vehicle was insured with the respondent No.2 and on the date

of the accident the policy was in force and the deceased Ajam Khan had valid driving licence as on the date of the accident and he has not violated any of the conditions. If the tribunal comes to the conclusion that, the petitioners are entitle for any compensation, the same may be awarded against the respondent No.2 in view of the contract of indemnity and admitted the other allegation made in the petition, except denying the wages. It is also important to note that, it is emerged during the course of the evidence the deceased is none other than the brother of the respondent No.1 and son of the complainant. The claimant also examined the wife of the deceased as P.W.1 and no doubt in the cross-examination, admitted the relationship but specifically denied the suggestion that her husband was not working under the first respondent and also denied the suggestion that there was no any relationship of employer and

employee. The other suggestion is that, her husband was not having valid driving licence was also denied and instead of got marked the document at Ex.P.1, driving licence of the deceased. On the other hand, the Insurance company also examined one witness as R.W.1 and in the evidence also he says that, the first respondent and the deceased are the brothers and also says that, the deceased was not having the driving licence and he was subjected to cross-examination. In the cross-examination, he admits that, he has not produced authorization letter before the Court to give evidence and however, he admits that, the policy was in force as on the date of the accident. It is suggested that, there was an employer and employee relationship between the deceased and the respondent No.1 and the same was denied. It is suggested that, the deceased was having driving licence and the said suggestion was denied. Having

considered both the oral and documentary evidence available on record, the respondent No.1 admitted the ownership and also admitted that the policy was in force as on the date of the accident and R.W.1 also admitted that the policy was in force as on the date of the accident. It is the case of the respondent-Insurance company that the deceased was not having the valid driving licence, but claimants have produced the valid driving licence which is marked as Ex.P.1 before the Court. The main contention of the Insurance company is that, there was no any relationship between the employer and employee and this Court in the Judgment reported in 2017 (2) KCCR 1691, referred supra held that, there is no any provision under the Act that, it prohibits that son cannot be employed as driver and claim to be workman under his father, mother or any other relative, but in the case on hand, the deceased is

driver under the brother as put forth in the pleading and also he was working as driver and when the principles laid down in the Judgment, it is clear that, there is no any prohibition. This Court also would like to rely upon the Judgment reported in ILR 2006 Kar. 1036 United India Insurance Company Ltd., Vs Prakash Shankar Gourav and another, wherein also similar question was raised that cleaner employed by his own father and employer and employee relationship whether is permissible and in this Judgment also categorically held that, father engaging his son as an employee in a vehicle owned by the father is not prohibited in law nor it can be said that, such a situation is not normally possible just as in an other avocation, it is possible for a father to engage his son as employee. If this preposition is accepted, the doubt cast on the document filed by the claimants in support of their contention, do not take much

significance. This Court also would like to rely upon the Judgment of this Court, in the case of ***United India Insurance Company Ltd., Vs. Jonsa and others***, reported in **2001 ACJ 1682** wherein held that, the death of two sons employed by their father as coolies in his agricultural land in an accident while transporting sugarcane the deceased were changing wheel of tractor when they met with accident and question was arises whether the finding of the Commissioner that they were workmen under the Act could be challenged in appeal and this Court held that, no and no substantial question of law is involved. This Court also in the Judgment reported in 2009 Kar MAC 476 (Kar.) ***New India Assurance Company Ltd., Vs. Smt. Mahananda and others***, has clearly laid down a law that there is no prohibition under the Act for the blood relatives to be employer and employee. Having considered the principles laid down in the Judgment

referred supra, it is clear that there is no any provisions under the Act that any prohibition to employ the blood relatives as driver. In the case on hand also, the respondent No.1 of the claim petition was the owner of the vehicle and he had employed his brother as driver. It is also important to note that, the complaint was given on the date of the accident itself in the early morning at 3.30 a.m. and the statement of the father of the deceased was recorded and the accident was occurred at 11.45 p.m. in the previous day, wherein it is specifically stated that his son went in the lorry to unload the rice bags and the second spare driver called and informed about the accident and the deceased was sitting in the cabin in the said lorry and the spare driver was driving the vehicle and an accident was occurred and within a span of three and half hours, the complaint was given and apart from that, the deceased died at around 1.10 a.m. and



within a span of two hours of the accident, the complaint was given and in the said complaint it is stated that the second spare driver was driving the vehicle and except denying the suggestion that he was not employed with the respondent No.1 nothing is elicited from the mouth of the P.W.1 that he was not working as driver. It is also important to note that, R.W.1 though in his evidence says that, there was no any relationship of employer and employee and the deceased was not having any driving licence, but records reveals that the deceased was having the driving licence and the same is marked as Ex.P.1 through P.W.1 and the same is not denied in the cross-examination of the P.W.1 and P.W.1 also categorically says that, her husband was having the driving licence and the suggestion of her husband was not working as driver with the first respondent was categorically denied and having taken note of driving

licence is produced before the Court which is not rebutted by leading any rebuttal evidence by the Insurance company, the very contention that, he was not a workman cannot be accepted.

8. **Answer to Point No.2** : The other contention that the premium was not paid in respect of the second driver, but not disputed the fact that, policy was in force as on the date of the accident and here it is not the claim made by the second driver and question of no liability on the part of the Insurance company does not arise and all the documents including complaint as well as the pleadings is very clear that deceased was the driver and driver who was driving at the time of the accident is the spare driver and I have already pointed out that the complaint came to be filed within two hours of the death of the deceased, wherein, specifically stated that, the driver

who was driving the vehicle at the time of the accident was the second driver and in the cross-examination of P.W.1, nowhere it is suggested that the driver who was driving the vehicle was not working as spare driver except suggesting that he was not proceeding in the vehicle as driver and in the evidence of R.W.1 also except stating that there was a relationship of brother between the respondent No.1 and the deceased and he was not having driving licence, but driving licence is produced as Ex.P.1 and hence, it is clear that, he was the driver along with the other driver in the said vehicle and the said fact came into existence immediately after the accident and in order to prove the contrary, no material is placed before the Court and not disputes the contents of the document at Ex.P.1-complaint along with FIR and police have also investigated the matter and filed the charge-sheet in terms of Ex.P.2 and the same is also not

challenged. Under the circumstances, the very contention that, company is not liable cannot be accepted, though it is contended that no separate premium is paid, but material available before the Court that, it is not the case of the claimants that he was the second driver and the second driver is different from the deceased and this deceased was working as driver and policy was also in force as on the date of the accident and when such being the case, it is not a fit case to reverse the finding of the tribunal exonerating the liability of the Insurance company. No doubt the Judgments which have been relied upon by the appellant counsel in **Jayachandra's case**, the Court held that, the claimant injured neither produced driving licence to prove that, he had licence to drive the heavy goods vehicle nor examined witness to prove that, he was travelling as a spare driver, but in the case on hand

already claimants have produced the driving licence of the deceased to prove that he had driving licence to drive the heavy goods vehicle and the same has not been rebutted by the Insurance company and hence, the Judgment will not come to the aid of the Insurance company to exonerate the liability. The other Judgment relied upon by the Insurance company which is referred supra i.e. ***Laxmindevamma and another*** case, this Court held that, the liability cannot be fastened on the Insurer in the case of gratuitous passengers, on the ground of breach of terms and conditions of the policy when the owner of the offending vehicle has not paid the required premium, but in the case on hand, it is not the case of the Insurance company that he was a gratuitous passenger, but only the contention that on the instructions of his father he was proceeding in the lorry along with rice bags to unload the same, but he

was not the driver and hence, the Judgment relied upon by the Insurance company is not applicable to the facts of the case on hand and hence, I answer point No.2 as negative.

9. **Answer to Point No.3** : In view of the discussions made above, I pass the following:

**ORDER**

The appeal is dismissed. No cost.

The amount in deposit is ordered to be transmitted to the tribunal, forthwith, to disburse the amount in favour of the claimants.

The Registry is directed to transmit the TCR, if any to the concerned tribunal forthwith.

**Sd/-  
JUDGE**

Svh/-