The Divisional Manager Vs. Ismail @ Ismail Khan

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Court : Karnataka

Decided On : Nov-28-2022

Judge : Hanchate Sanjeevkumar

Appeal No. : MFA 9192/2018

Appellant : The Divisional Manager

Respondent : Ismail @ Ismail Khan

Judgement :

- 1 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE28H DAY OF NOVEMBER, 2022 BEFORE THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR MISCELLANEOUS FIRST APPEAL NO.9192 OF2018C/W MISCELLANEOUS FIRST APPEAL NO.8766 OF 2018 MISCELLANEOUS FIRST APPEAL NO.9193 OF 2018 MISCELLANEOUS FIRST APPEAL CROB NO.88 OF2021(MV-I) IN MFA 9192 OF2018: BETWEEN: THE DIVISIONAL MANAGER RELIANCE GENERAL INSURANCE COMPANY LTD SADIQ COMPLEX, OPP: SUNDAR ASHRAYA, N.T. ROAD, SHIVAMOGGA. NOW REP BY ITS MANAGER, RELIANCE GENERAL INSURANCE COMPANY LTD., NO.28, CENTENARY BUILDING, EAST WING, 5TH FLOOR, M G ROAD, BENGALURU-01. APPELLANT (BY SRI. H.N. KESHAVA PRASHANTH., ADVOCATE) - 2 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 AND:

1. ISMAIL @ ISMAIL KHAN S/O MIYAJAN KHAN, NOW AGED ABOUT47YEARS, COOLIE, NOW R/AT C/O JAVID KHAN, 2ND CROSS, K.R. PURAM, SHIVAMOGGA.

2. ABDUL SALEEM, S/O ABDUL SUBAM SAB, NOW AGED ABOUT45YEARS, DRIVER, R/O HOLEHONNUR, BHADRAVATHI TALUK, SHIVAMOGGA DIST., DRIVER OF BOLERO GOODS VEHICLE BEARING No.KA-16-B-5664 3. BASHEER KHAN H.R. S/O RASHEED KHAN, MAJOR, R/O NO.91/1, THATTE HALLI MOHALLA, HOLEHONNUR, BHADRAVATHI TALUK, SHIVAMOGGA DIST., OWNER OF BOLERO GOODS VEHICLE BEARING No.KA-16-B-5664 RESPONDENTS (BY SRI. SATEESH CHANDRA K V., ADVOCATE FOR R1 R2 - NOTICE DISPENSED WITH V/O DATED0502.2021 R3 - SERVED) THIS MFA FILED U/S1731) OF MV ACT AGAINST THE

JUDGMENT
AND AWARD DATED0509.2018 PASSED IN MVC NO.245/2016 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE & AMACT-6, SHIVAMOGGA, AWARDING COMPENSATION - 3 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 OF RS.4,81,600/- WITH INTEREST AT6 P.A. FROM THE DATE OF PETITION TILL ITS PAYMENT. IN MFA 8766 OF2018BETWEEN: ISMAIL @ ISMAIL KHAN AGED ABOUT47YEARS, COOLI, C/O. JAVID KHAN, 2ND CROSS, K.R. PURAM, SHIVAMOGGA-577 201 APPELLANT (BY SRI. K.V. SATEESHCHANDRA., ADVOCATE) AND:

1. ABDUL SALAM S/O. ABDUL SUBAM SAB, AGED ABOUT45YEARS, DRIVER, R/O. HOLEHONNUR, BHADRAVATHI TALUK, SHIVAMOGGA.

2. BASHEER KHAN .H.R. S/O. RASHEED KHAN, MAJOR, R/O. NO.91/1, THATTE HALLI MOHALLA, HOLEHONNUR, BHADRAVATHI TALUK, SHIVAMOGGA DIST.

3. DIVISIONAL MANAGER, RELIANCE GENERAL INSURANCE, SADIQ COMPLEX, - 4 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 OPP. SUNDAR ASHRAYA, N.T.

ROAD, SHIVAMOGGA. RESPONDENTS (BY SRI. H.N. KESHAVA PRASHANTH., ADVOCATE FOR R3 R1 & R2 - SERVED) THIS MFA FILED U/S1731) OF MV ACT AGAINST THE

JUDGMENT
AND AWARD DATED0509.2018 PASSED IN MVC NO.245/2016 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE, AMACT-6, SHIVAMOGGA, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION. IN MFA 9193 OF2018BETWEEN: THE DIVISIONAL MANAGER, RELIANCE GENERAL INSURANCE COMPANY LTD, SADIQ COMPLEX, OPP: SUNDAR ASHRAYA, N.T. ROAD, SHIVAMOGGA. NOW REP BY ITS MANAGER, RELIANCE GENERAL INSURANCE COMPANY LTD, NO28 CENTENARY BUILDING, EAST WING, 5TH FLOOR, M.G. ROAD, BENGLAURU-01. APPELLANT (BY SRI. H.N. KESHAVA PRASHANTH., ADVOCATE) - 5 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 AND:

1. SHABEER KHAN, S/O MAJEED KHAN, NOW AGED ABOUT30YEARS, COOLIE, NOW R/AT C/O ASLAM, 1ST CROSS, K.R. PURAM, SHIVAMOGGA-577225.

2. ABDUL SALEEM, S/O ABDUL SUBAM SAB, NOW AGED ABOUT45YEARS, DRIVER, R/O. HOLEHONNUR, BHADRAVATHI TALUK-577302. SHIVAMOGGA DISTRICT, DRIVER OF BOLERO GOODS VEHICLE BEARING No.KA-16-B-5664 3. BASHEER KHAN H.R. S/O. RASHEED KHAN, MAJOR, R/O. No.91/1, THATTE HALLI MOHALLA, HOLEHONNUR, BHADRAVATHI TALUK, SHIVAMOGGA DISTRICT-577302. OWNER OF BOLERO GOODS VEHICLE BEARING No.KA-16-B-5664 RESPONDENTS (BY SRI. K.V. SATEESH CHANDRA., ADVOCATE FOR R1 R2 & R3 ARE SERVED) THIS MFA FILED U/S1731) OF MV ACT AGAINST THE

JUDGMENT
AND AWARD DATED0509.2018 PASSED IN MVC NO.246/2016 ON THE FILE OF THE PRL. SENIOR CIVIL JUDGE & AMACT, VI SHIVAMOGGA, AWARDING COMPENSATION OF - 6 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA

No.9193/2018 C/W MFA CROB. No.88/2021 RS.2,44,120/- WITH INTEREST @ 6% P.A. FROM THE DATE OF PETITION TILL REALIZATION. IN MFA CROB88OF 2021 BETWEEN: SHABEER KHAN S/O. MAJEED KHAN, AGED ABOUT33YEARS, R/O C/O. ASLAM, 1ST CROSS, K.R. PURAM, SHIVAMOGGA-577201 CROSS OBJECTOR (BY SRI. K.V. SATEESHCHANDRA., ADVOCATE) AND:

1. ABDUL SALAM S/O. ABDUL SUBAM SAB, AGED ABOUT48YEARS, R/O. HOLEHONNUR, BHADRAVATHI TALUK, SHIVAMOGGA-577201.

2. BASHEER KHAN S/O. RASHEED KHAN, MAJOR, R/O. NO.91/1, THATTE HALLI MOHALLA, HOLEHONNUR, BHADRAVATHI TALUK, SHIVAMOGGA-577201.

3. DIVISIONAL MANAGER RELIANCE GENERAL INSURANCE, SADIQ COMPLEX, OPP. SUNDAR ASHRAYA, N.T. ROAD, SHIVAMOGGA-577201. RESPONDENTS (BY SRI. H.N. KESHAVA PRASHANTH., ADVOCATE FOR R3 R1 & R2 ARE NOTICE D/W V/O DATED3005.2022) - 7 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 THIS MFA CROB FILED U/O.41 RULE22OF CPC R/W SEC.173(1) OF MV ACT, AGAINST THE

JUDGMENT
AND AWARD DT.05.09.2018 PASSED IN MVC NO.246/2016 ON THE FILE OF THE PRL. SENIOR CIVIL JUDGE AND AMACT-VI, SHIVAMOGGA, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION. THESE MFAS CONNECTED WITH MFA CROB. COMING ON FOR FURTHER ARGUMENTS THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT
MFA.No.9192/2018 is filed by the Insurance Company challenging the judgment and award dated 05.09.2018 passed in MVC.No.245/2016 by the Prl. Senior Civil Judge and AMACT VI at Shivamogga, questioning the liability fastened on the Insurance Company. MFA.No.8766/2018 is filed by the claimant challenging the

judgment and award dated 05.09.2018 passed in MVC.No.245/2016 by the Prl. Senior Civil Judge and AMACT VI at Shivamogga, for seeking enhancement of compensation.-. 8 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 MFA.No.9193/2018 is filed by the Insurance Company challenging the judgment and award dated 05.09.2018 passed in MVC.No.246/2016 by the Prl. Senior Civil Judge and AMACT VI at Shivamogga, questioning the liability fastened on the Insurance Company. MFA.Crob.No.88/2021 is filed by the claimant challenging the judgment and award dated 05.09.2018 passed in MVC.No.246/2016 by the Prl. Senior Civil Judge and AMACT VI at Shivamogga, for seeking enhancement of compensation.

2. Brief facts of the cases are that, on 03.11.2014 the claimants-Ismail Khan and Shabeer Khan went to Ananthpur in order to transport 27 bags of corn seeds belongs to Amanulla. The aforesaid Amanulla had engaged the vehicle bearing Reg.No.KA-16/B-5664 belongs to respondent No.2 for transporting the goods and respondent No.1 was the driver of the vehicle. The - 9 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 claimants loaded the corn seeds to the aforesaid vehicle and when they were proceeding to Shivamogga on NH.206, respondent No.1 who is the driver of the said vehicle drove the same in a rash and negligent manner and caused accident near Muddinakoppa. Due to the said impact, the claimants fell down and sustained grievous injuries.

3. Heard the arguments from both sides and perused the records. SUBMISSION OF LEARNED COUNSEL FOR THE INSURANCE COMPANY:

4. The Tribunal has determined the compensation and fastened the liability on the Insurance Company to pay the compensation.

5. Sri H.N.Keshava Prashanth, learned counsel appearing for the Insurance Company submitted that, in the present case, the claimants were travelling as - 10 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 gratuitous passengers in the goods vehicle and also travelling on the body of the vehicle by sitting on the load of jowar crop. Therefore, the Insurance Company is not liable to indemnify the owner to pay the compensation.

Further submitted that there were five persons travelling including the owner of jowar load and one driver, but the seating capacity of the offending vehicle is two persons (1+1) and also the insurance policy covers the risk of driver and owner of the goods, but not any other employee/coolie/loader/un-loader, since extra premium is not paid. Therefore, submitted that the Insurance Company is not liable to pay the compensation.

6. Further submitted that even as per Rule 100 of Karnataka Motor Vehicles Rules, 1989 (hereinafter referred to as KMV Rules) in Light Goods Vehicle three persons are permitted to travel along with the goods where the laden registered weight is more than 990 kgs. In the present case, undisputedly, the registered laden - 11 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 weight is 2750 kgs. Therefore, Clause (ii) of Sub-section (1) of Rule 100 of KMV Rules is applicable where the vehicle movement is within the same town or city, but in the present case, the offending vehicle was moving from Ananthapur to Shivamogga city and both these Ananthapur and Shivamogga city are two different places and both the places are not in the same city. Therefore, Clause (ii) of Sub-section (1) of Rule 100 of KMV Rules is not applicable. Therefore, submitted that, even though, Rule 100 of KMV Rule is not beneficial to the claimants so as to fasten the liability on the Insurance Company.

7. Learned counsel for the Insurance Company has relied on the following judgments: (i) MFA.NO.40/2010 DD. 08.06.2012 (THE BRANCH MANAGER, NATIONAL INSURANCE CO., LTD., VS. SMT.BELLAMMA); (Smt. Bellammas case) (ii) NATIONAL INSURANCE CO., LTD., VS. PREMBAI PATEL AND OTHERS - (2005) 6 SCC172 - 12 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 (iii) NATIONAL INSURANCE CO. LTD., VS. CHOLLETI BHARATAMMA AND OTHERS - AIR 2008 SC484 (Cholleti Bharatammas Case) 8. Therefore, the learned counsel for the Insurance Company placing reliance on the above discussed legal provisions and judgments, prays to discharge the Insurance Company from making payment of compensation to the claimants and to indemnify the owner and also submitted that, at the most, if the above said contention is accepted by the Court, then the liability of the Insurance Company is subject to provision of Section 147 of MV Act

that the claimants are entitled for compensation under the provisions of Employees Compensation Act. Therefore, prays to discharge the Insurance Company from making payment of compensation to the claimants.-. 13 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 SUBMISSION OF LEARNED COUNSEL FOR THE CLAIMANTS:

9. On the other hand, learned counsel for the claimants submitted that, in the present case, the claimants are only two claimants have filed the claim petitions arising out of the same accident and therefore, as per Section 147 of the MV Act, the risk of the claimants is covered as they were travelling, even though, as coolie/loader/un-loader, but authorized representative of the jowar crop. Hence, submitted that the Tribunal is correct in fastening the liability on the Insurance Company. Further submitted that as per Clause (ii) of Sub-section (1) of Rule 100 of KMV Rules, the risk of three persons is covered where travelled in the goods vehicle, but in the present case, the claimants are only two coolies. Hence, submitted that the risk is covered. Hence, prays to confirm the judgment and award passed by the Tribunal insofar as liability is concerned. He places reliance on the - 14 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 judgment of this Court in the case of Somappa Vs., Imamsab and Another1. Further submitted that the quantum of compensation awarded is on the lesser side. Therefore, prays for enhancement of the compensation. Regarding liability:

10. The undisputed fact emerged as per the evidence of P.W.1-Ismail @ Ismail Khan in both the cases, complaint, Ex.D.1-Insurance Policy and other materials is that: (i) The offending vehicle Bolero Goods Vehicle bearing No.KA-16/B-5664 is the Light Goods Vehicle (LGV) mainly for carrying goods having registered laden weight is 2750 km. (ii) As per the Insurance Policy-Ex.D.1, the risk is covered to TPPD, driver and owner and extra premium is paid. (iii) No extra premium is paid covering the risk of employee/coolie/loader/un-loader. 1 2018 ACJ1322- 15 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 (iv) The claimants have admitted in their cross-examination that they have travelled by sitting on the load on the body of the vehicle, but not

inside the cabin. (v) The load is jowar crop and one Amanulla Khan is the owner of jowar crop.

11. Therefore, from the complaint averments and other materials as discussed above and also on perusal of cross-examination of both the claimants who are examined as P.W.1 in their respective claim petitions that they have travelled in the offending vehicle by sitting over the load of jowar crop and not in the cabin. The owner is one Amanulla Khan who had travelled in the cabin being the owner of the goods. Therefore, the claimants have travelled as coolies on the vehicle by sitting over the load of jowar crop. Further as per the Insurance Policy-Ex.D.1, extra premium is not paid covering the risk of coolie/employee/loader/un-loader. Under these circumstances, whether the risk of the claimants is - 16 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 covered or not can be considered in the light of the legal provision of Section 147 of MV Act and in the light of the principles of law laid down by this Court and by the Honble Supreme Court. For easy reference, Section 147 of MV Act is extracted as under: 147. Requirement of policies and limits of liability.-(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which- (a) is issued by a person who is an authorised insurer; and (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)- (i) against any liability which may be incurred by him in respect of the death of or bodily [injury to any person, including owner of the goods or his authorised representative carried in the vehicle]. or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place; (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place: Provided that a policy shall not be required- (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the - 17 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee- (a) engaged in driving the vehicle, or (b) if it is a public service vehicle engaged as

conductor of the vehicle or in examining tickets on the vehicle, or (c) if it is a goods carriage, being carried in the vehicle, or

12. Therefore, as per Sub-clause (i) of Clause (b) of Sub-section (1) of Section 147 of MV Act, the liability arises in respect of injury to any person including owner of goods or his authorized representative carried in the goods vehicle. The word injury to any person means either the owner of the goods or his authorized representative carried in the goods vehicle. The said wordings injury to any person means it is a limited extent covering the risk of either owner of the goods or his authorized representative of the goods travelling in the vehicle. Admittedly, in the present case, Amanulla Khan is the owner of jowar crop. It is clearly stated in Ex.P1-complaint - 18 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 and also admitted by the claimants in their evidence. Therefore, the owner has travelled in the goods vehicle. Therefore, the claimants cannot be termed as traveller being the owner of the goods or authorized representative of the goods. Under these circumstances, I find force in the submission canvassed by the learned counsel for the Insurance Company that the risk of the claimants is not covered under Sub-clause (i) of Clause (b) of Sub-section (1) of Section 147 of MV Act, but covers under the provisions of Employees Compensation Act as per the provision of Section 147 of MV Act.

13. The Honble Supreme Court in the case of Cholleti Bharatammas case (stated supra) at paragraph No.17 were pleased to observe as follows: It is now well settled that the owner of the goods means only the person who travels in the cabin of the vehicle. - 19 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 14. Therefore, as per the principles of law laid down in Cholleti Bharatammas case (stated supra), the owner of the goods means only the person who travels in the cabin of the vehicle. In the present case, the owner- Amanulla Khan has traveled in the cabin of the offending vehicle as owner of the goods.

15. Rule 100 of KMV Rules, 1989, stipulates as follows:

"100. Carriage of persons in goods vehicle.-(1) subject to the provisions of this rule, no person shall be carried in a goods vehicle: Provided that the owner or the hirer or a bona fide employee of the owner of the hirer of the vehicle carried free of charge or a police officer in uniform traveling on duty may be carried in a goods vehicles, the total number of persons so carried.- (i) in light transport goods vehicle having registered laden weight less than 990 kgs. Not more than one; (ii) in any other light transport goods vehicle not more than three; and (iii) in any goods vehicle not more than seven: - 20 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 Provided that the provisions of sub-clauses (ii) and (iii) of the above proviso shall not be applicable to the vehicles plying on inter-State routs or the vehicles carrying goods from one city to another city.

16. In the present case admittedly, the registered laden weight is 2750 kgs. Therefore, as per clause-(ii) of sub-rule-(1), Rule-100 of KMV Rules, 1989, only three persons who are employees are permitted to travel, but where the vehicle is traveling from one city to another city, then this provision is not applicable. In the present case, admittedly, the offending vehicle was traveling from Ananthpur to Shivamogga. Ananthpur is in Sagar Taluk which is 40 kms., away from Shivamogga city. Therefore, it is proved admittedly that the offending vehicle was moving from Ananthpur to Shivamogga city and these two places are different. Ananthpur is a town in Sagar Taluk. Therefore, from one city to another city for the purpose of this it can be construed as Ananthpur is another place of town from which the offending vehicle was moving to Shivamogga city. Therefore, this provision of permit, - 21 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 wherein three employees can travel in the goods carriage vehicle is not permissible. The principle of law laid down by this Court in the case of SMT.BELLAMMAs case stated supra is squarely applicable to the case on hand. In the aforesaid judgment, at para-8, this Court has observed as follows: 8. On the basis of the facts, the provisions which are applicable to this case are Rule 100 of the Karnataka Motor Vehicle Rules 1989. According to Rule 100, no person shall be carried in any goods vehicle provided that the owner or the hirer or a bonafide employee of the owner or the hirer of the vehicle carried free of charge or a police officer in uniform travelling on duty may be carried in a goods vehicle, the total number of persons so carried in the light transport goods vehicle having registered laden weight less than 990 kgs. not

more than one, in any other light transport goods vehicle not more than three and in any goods vehicle not more than seven persons. Whether these persons provided under Rule 100 whether they can travel in the cabin or in the carriage has been interpreted in Cholleti Bharatamma's case stated supra where it has been held that persons who are permitted as per Rule 100 - 22 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 should travel in the cabin and not in the carriage. Owner of the goods or any representative of the owner could travel in the cabin and not in the carriage, because carriage is meant for goods and persons are not classified as goods for specific purpose. Even to travel in the cabin Sub-Rule 4 shows that unless an area of not less than 0.40 square metre of the floor of the vehicle is kept open for each person. In view of the provisions of Sub- Rule 4 which clarifies the position that even in the cabin no person can share the seat meant for driver. If he is permitted to sit depending upon the laden weight of the vehicle for which their shall be provision for sitting from one person to another person. When such being the position, the question as to that whether he could travel on the goods in the carriage has been answered that it is impossible which cannot be considered which is in contravention of Rule 100 and also the conditions stipulated in the policy. By advertently or inadvertently even if the policy premium is collected to cover one or two persons as a package policy, that cannot legalise to travel in the carriage. Under this circumstance, provisions either in the Act or Rules which are ultimate and undisputable. Accordingly, I find force in the case of the appellant and evidence of PW2 and Ex.P3 - complaint and FIR which undisputedly and - 23 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 unequivocally proves that the deceased Shamanna was travelling on the goods in the carriage which is impermissible. Accordingly, liability cannot be fastened on the insurance company. Hence the insurance company is discharged from liablity. Award is to be satisfied by the owner. Hence the following order:

17. Therefore, clause-(ii) of sub-rule-(1), Rule- 100 of KMV Rules, 1989, is not applicable in the present facts and circumstances and the claimants and the owner cannot take benefit of this provision. Furthermore, upon perusal of Exhibit-D1 insurance police, as it was valid and in existence as on the date of the accident,

but there was no extra-premium is paid in respect of coolie / employees.

18. As per certificate of registration of the offending vehicle, the seating capacity is 1+1, as per the provision at the most the risk of one person who is traveling in the offending vehicle in the cabin are covered. Admittedly, as discussed above from the - 24 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 evidence it is revealed that one Amanulla Khan was the owner of jowar crop transported in the offending vehicle. Therefore, his risk has been covered. Therefore, even if the insurance policy is a package policy, but in the absence of premium paid in respect of the coolies / employees, the risk of claimants who are coolies / loader-unloader are not covered. It is worthwhile to refer to the principle of law laid down by the Honble Supreme Court in the NATIONAL INSURANCE CO., LTD., VS. PREMBAI PATEL AND OTHERSs case stated supra, at para-13, the Honble Supreme Court was pleased to observe as follows: 13. The insurance policy being in the nature of a contract, it is permissible for an owner to take such a policy whereunder the entire liability in respect of the death of or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b) may be fastened upon the insurance company and insurance company may become liable to satisfy the entire award. However, for this purpose the owner must take a policy of that particular kind for - 25 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 which he may be required to pay additional premium and the policy must clearly show that the liability of the insurance company in case of death of or bodily injury to the aforesaid kind of employees is not restricted to that provided under the Workmen's Act and is either more or unlimited depending upon the quantum of premium paid and the terms of the policy.

19. Therefore, as discussed above, by following Section-147 of M.V. Act and clause-(ii) of sub-rule-(1), Rule-100 of KMV Rules, 1989 and also as per the principles of law laid down in the aforesaid judgment discussed above, so far as the claimants are concerned for the present case, the insurance company is not liable to indemnify the owner of the vehicle. Consequently, the insurance company is not liable to pay the compensation to the claimants. Hence, the liability of the insurance company for payment of compensation invoking the provision Section-

147 of M.V.Act, is hereby exonerated. Therefore, the liability is fastened on the owner of the - 26 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 offending Bolero Goods Vehicle bearing No.KA-16/B-5664 to pay compensation to the claimants.

20. The learned counsel for the claimants relied on judgment of this Court in SOMAPPAS CASE supra. In the said case, the facts are that the claimants were traveling in a goods vehicle along with their goods and had sustained injuries in the accident. But in the present case the claimants were traveling as coolies / loaders - unloaders by sitting on the goods, but not as owner or authorized representative of the goods. It is proved fact that one Amanulla Khan is the owner of jowar crop was travelling in the offending vehicle. Therefore, in the above said Somappas case it is a fact that the injured traveled along with their goods i.e., along with their goods means, they are owners of the goods. Hence, claimants in the above cited case are owners of the goods have sustained injuries while traveling in the goods. Under such circumstances, the liability was fastened on the insurance - 27 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 company but the facts in the present case are different from the above stated case as discussed above. Therefore, the above stated case is not applicable in the present facts and circumstances involved in the case.

21. Since the Tribunal had determined the compensation by appreciating the evidence on record under the M.V.Act. There is no medical evidence produced. Since the provisions of M.V. Act is followed for determining the compensation, once again determining the compensation under the Employees Compensation Act, does not arise. Furthermore, if the compensation determined under the provision of MV Act is on lesser side, the claimants would not be permitted to choose the E.C. Act. It is a fact that the claimants have right to choose the provisions either MV Act or E.C. Act., since the claimants have chosen the provisions of M.V. Act and got determined the compensation by the Tribunal as per Section-147 of MV Act, it is not open for the claimants for choosing - 28 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 compensation under both, for the same cause of accident.

Here in the present case, the claimants have chosen the provision of MV Act and accordingly the Tribunal has determined the compensation. Therefore, there is no question of once again determining the compensation under E.C. Act. MFA No.9192/2018 (MVC No.245/2016) AND MFA No.8766/2018 (MVC No.245/2016) :

22. In the present case, the Tribunal has taken notional income of the claimant as Rs.6,000/- per month only which is on lesser side. The accident was caused in the year 2014, therefore in the absence of proof of income, as per Chart of notional income recognized by the Karnataka State Legal Services Authority, a sum of Rs.8,500/- is to be taken as notional monthly income of the claimant. The disability of the claimant as determined is taken at 20% and the claimant was aged 45 years at the time of the accident, therefore the appropriate - 29 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 multiplier applicable as per the judgment of the Honble Supreme Court, in the case of Smt.Sarla Verma & Others. Vs. Delhi Transport Corpn And Another2 is 14. Therefore, the compensation under the head Loss Of Earning Capacity due to Disability is recalculated and quantified as follows: Rs.8,500/- x 20% x 14 x 12 = Rs.2,85,600/- 23. The compensation amount awarded under the head Pain and Sufferings at Rs.1,00,000/- is on higher side and hence scaled down to a sum of Rs.60,000/-.

24. The compensation awarded by the Tribunal under other heads are found to be correct and the same are kept in tact. Therefore, in modification of the award of the Tribunal, the appellant-claimant is entitled to the following compensation:

2. AIR 2009 SC3104- 30 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 Loss of Future Earnings due : Rs. 2,85,600/- to disability (Rs.8,500 x 20% x 14 x

12) Pain and Sufferings : Rs. 60,000/- Medical Expenses : Rs. 60,000/- (Kept in tact) Conveyance Charges : Rs. 30,000/- (Kept in tact) Attendant and Nourishment, : Rs. 50,000/- (Kept in tact) Charges Lot of future amenities of life : Rs. 40,000/- (Kept in tact) TOTAL : Rs. 5,25,600/- 25. Therefore, the appellant-claimant is entitled for compensation of Rs.5,25,600/- as against Rs.4,81,600/-. The appellant - claimant is entitled for an additional compensation of Rs.44,000/-

(Rs.5,25,600 - Rs.4,81,600) along with interest at 6% per annum from the date of filing of the petition till realization, in addition to what has been awarded by the Tribunal.-. 31 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 MFA NO.9193/2018 AND MFA CROB NO.88/201 (MVC No.246/2016) 26. In the present case, the Tribunal has taken notional income of the claimant as Rs.6,000/- per month only which is on lesser side. The accident was caused in the year 2014, therefore in the absence of proof of income, as per Chart of notional income recognized by the Karnataka State Legal Services Authority, a sum of Rs.8,500/- is to be taken as notional monthly income of the claimant. The disability of the claimant as determined is taken at 13% and the claimant was aged 28 years at the time of the accident, therefore the appropriate multiplier applicable as per the judgment of the Honble Supreme Court, in the case of Smt.Sarla Verma & Others. Vs. Delhi Transport Corpn And Another3 is 17. Therefore, the compensation under the head Loss 3 AIR 2009 SC3104- 32 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 Of Earning Capacity due to Disability is recalculated and quantified as follows: Rs.8,500/- x 13% x 17 x 12 = Rs.2,25,420/- 27. The compensation awarded by the Tribunal under other heads are found to be correct and the same are kept in tact. Therefore, in modification of the award of the Tribunal, the appellant-claimant is entitled to the following compensation: Loss of Future Earnings due : Rs. 2,25,420/- to disability (Rs.8,500 x 13% x 17 x

12) Pain and Sufferings : Rs. 30,000/- (Kept in tact) Medical Expenses : Rs. 15,000/- (Kept in tact) Conveyance Charges, : Rs. 20,000/- (Kept in tact) Attendant and Nourishment, Lot of future amenities of life : Rs. 20,000/- (Kept in tact) TOTAL : Rs. 3,10,420/- 28. Therefore, the appellant-claimant is entitled for compensation of Rs.3,10,420/- as against Rs.2,44,120/-.-. 33 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 The appellant - claimant is entitled for an additional compensation of Rs.66,300/- (Rs.3,10,420/- - Rs.2,44,120/-) along with interest at 6% per annum from the date of filing of the petition till realization, in addition to what has been awarded by the Tribunal.

29. The respondent - owner of the offending vehicle Bolero Goods Vehicle bearing No.KA-16/B-5664 is directed to pay the compensation to the claimants. Consequently, the liability fixed on the insurance company is exonerated. Hence, the appeal filed by the insurance company is liable to be allowed. Accordingly, I pass the following:

ORDER

i. MFA.No.9192/2018 filed by the appellant- Insurance company is Allowed. ii. MFA.No.9193/2018 filed by the appellant- Insurance company is Allowed.-. 34 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 iii. MFA.No.8766/2018 filed by the claimant challenging the judgment and award dated 05.09.2018 passed in MVC.No.245/2016 by the Prl. Senior Civil Judge and AMACT VI at Shivamogga, for seeking enhancement of compensation is Allowed In Part and is modified to the aforesaid extent. iv. MFA.Crob.No.88/2021 filed by the claimant challenging the judgment and award dated 05.09.2018 passed in MVC.No.246/2016 by the Prl. Senior Civil Judge and AMACT VI at Shivamogga, for seeking enhancement of compensation is Allowed In Part and is modified to the aforesaid extent. v. The appellant - claimant in MFA No.8766/2018 (MVC No.245/2016) is entitled for an additional compensation of Rs.44,000/- (Rs.5,25,600 - Rs.4,81,600) along with interest at 6% per annum from the date of filing of the petition till - 35 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 realization, in addition to what has been awarded by the Tribunal. vi. The appellant - claimant in MFA Crob No.88/2021 (MVC No.246/2016) is entitled for an additional compensation of Rs.66,300/- (Rs.3,10,420/- - Rs.2,44,120/-) along with interest at 6% per annum from the date of filing of the petition till realization, in addition to what has been awarded by the Tribunal. vii. The respondent - owner of the offending vehicle Bolero Goods Vehicle bearing No.KA- 16/B-5664 is directed to pay to the compensation to the claimants. Consequently, the liability fixed on the insurance company is exonerated. viii. The amount in deposit shall be transferred to the Tribunal forthwith. ix. Registry is directed to return the Trial Court Records to the Tribunal, along with certified copy of - 36 - MFA No.9192/2018 C/W MFA No.8766/2018 C/W MFA No.9193/2018 C/W MFA CROB. No.88/2021 the order passed by this Court forthwith without any delay. x. Draw award accordingly. xi. No order as to costs. I.A. No.1/2019 for release of amount in deposit filed by learned counsel for appellant, does not survive for consideration and hence stands disposed off. Sd/- JUDGE PB/JJ