

The Manager vs Smt. Jayanthi (Jayanthi)

The Manager vs Smt. Jayanthi (Jayanthi)

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Court : Karnataka

Decided On : May-29-2025

Judge : K.S.Mudagal,M.G.S. Kamal

Appeal No. : MFA/2414/2022

Appellant : The Manager

Respondent : Smt. Jayanthi (Jayanthi)

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF MAY, 2025 PRESENT THE HON'BLE MRS JUSTICE K.S.MUDAGAL AND THE HON'BLE MR JUSTICE M.G.S. KAMAL MISCELLANEOUS FIRST APPEAL NO.2414/2022 (MV-D) BETWEEN: THE MANAGER UNITED INDIA INSURANCE CO. LTD. M C ROAD, MANDYA DO-II, NO.2912 SRI VENKATESHWARA PLAZA 1ST MAIN, SARASWATHIPURAM MYSORE - 570 001 REPRESENTED BY THE REGIONAL MANAGER 6TH FLOOR, KRUSHI BHAVAN NRUPATHUNGA ROAD HUDSON CIRCLE BENGALURU - 560 001 APPELLANT

Digitally signed by (BY SMT.MANJULA N TEJASWI, ADVOCATE)
ROOPA R U Location: AND: High Court of Karnataka 1. SMT.JAVANTHI
(JAYANTHI) W/O LATE SRIRAMA AGED ABOUT 46 YEARS

2. SANDEEP KUMAR S/O LATE SRIRAMA AGED ABOUT 27 YEARS

3. BHARATH GOWDA S/O LATE SRIRAMA AGED ABOUT 23 YEARS -
2-

4. CHIKKEGOWDA S/O LATE KEMPA @ YADACHA AGED ABOUT 75
YEARS (R4 DELETED AS PER THE ORDER OF THIS COURT DATED
28.01.2025)

5. SMT SHANKARAMMA W/O CHIKKEGOWDA AGED ABOUT 70
YEARS R1 to R5 R/O AT BEVUKAL KOPPALU VILLAGE
HOBLI:DUDDA MANDYA TALUKA, MANDYA

6. GALAPPA S/O RAMAIAH MAJOR R/AT MARIGOWDANAHALLI
RAMOHALLI POST KENGERI HOBLI, BANGALORE (OWNER OF
QUALIS BG NO. KA-02-AA-1786)

7. STATE GOVERNMENT OF KARNATAKA REP.BY ITS CHIEF
SECRETARY VIDHANA SOUDHA AMBEDKAR VEEDI BANGALORE -
560001

8. SUPERINTENDENT POLICE MANDYA DISTRICT MANDYA

9. INSPECTOR GENERAL OF POLICE

JALAPURI, MYSORE CITY MYSORE - 570 001 RESPONDENTS (BY
SRI. SHARATH GOWDA G B, ADVOCATE FOR R1 TO R3 & R5; R6 TO
R9 ARE SERVED AND UNREPRESENTED) THIS MISCELLANEOUS
FIRST APPEAL IS FILED UNDER

**SECTION 173(1) OF MV ACT PRAYING TO SET ASIDE THE
JUDGMENT**

AND AWARD DATED 01.04.2021 PASSED IN MVC NO.731/2016 ON THE FILE OF THE I ADDITIONAL SENIOR CIVIL JUDGE AND CJM, C/C II ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, MANDYA, AWARDED TOTAL COMPENSATION OF RS.37,05,552/- WITH INTEREST AT 8 PERCENT P.A. FROM THE DATE OF PETITION TILL REALIZATION. -3- THIS MISCELLANEOUS FIRST APPEAL HAVING BEEN RESERVED FOR JUDGMENT ON 16.04.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, K.S.MUDAGAL. J., DELIVERED THE FOLLOWING: CORAM: HON'BLE MRS JUSTICE K.S.MUDAGAL AND HON'BLE MR JUSTICE M.G.S. KAMAL

CAV JUDGMENT

(PER: HON'BLE MRS JUSTICE K.S.MUDAGAL) Challenging the award in MVC No.731/2016 passed by II Addl. Senior Civil Judge & JMFC, Mandya respondent No.2/the Insurer in the said case has preferred this appeal.

2. Appellant was respondent No.2, respondent Nos.1 to 5 were claimants No.1 to 5, respondent No.6 was respondent No.1 and respondent Nos.7 to 9 were respondents Nos.3 to 5 in MVC No.731/2016 before the Tribunal. For the purpose of convenience, the parties are referred to henceforth according to their ranks before the Tribunal.

3. Claimant No.1 is the wife, claimant Nos.2 and 3 are the children and claimant Nos.4 and 5 are the parents of

deceased Sriram a police constable. On 27.10.2015 at 10.30 a.m. Sriram and his colleague one Nanjunda were deployed on the duty of tracing the accused in a criminal case. Therefore, -4- they had engaged Toyota car bearing No.KA-02/AA 1786 from

K.M.Doddi and came to Malavalli. When the car was proceeding near the land of one Anwar within the limits of Kirugavalu Police station, driver of the car drove the same in rash and negligent manner so as to endanger human life, lost control over the car and hit the road side tree. Consequently Sriram who was sitting by the side of the driver suffered

grievous injuries. He was shifted to Apollo Hospital, Mysuru. On 04.11.2015 at 7.30 a.m. when he was under treatment, he succumbed to the injuries.

4. At the relevant time, respondent Nos.1 and 2 were the owner and Insurer of Toyota car bearing No.KA 02 AA

1786. Respondent Nos.3 to 5 were the employer, Supervisor and immediate higher officer of the deceased.

5. Claimants filed MVC No.731/2016 initially against respondent Nos.1 and 2 contending that deceased Sriram was earning Rs.26,000/- per month and they were all depending on

his income. They contended that due to his untimely death they have suffered emotional and financial loss and claimed compensation of Rs.90,00,000/- from respondent Nos.1 and 2. -5-

6. Subsequently respondent Nos.3 to 5 were impleaded in the case. Respondent No.1, 3 to 5 did not contest

the matter. Respondent No.2 alone contested the matter denying actionable negligence on the part of driver of the car, age, occupation and income of the deceased and its liability to pay the compensation. Respondent No.2 further contended that the policy issued by it was Act Policy only, therefore, the risk of the victim was not covered. The Tribunal on framing necessary issues recorded the evidence of the parties.

7. On behalf of the claimants, claimant No.1 was

examined as PW.1 and other inmate of the car/eye witness was examined as PW2 and Exs.P1 to P9 were marked. On behalf of respondent No.2 its Officer was examined RW.1 and Exs.R1 and R2 were marked.

8. Tribunal on hearing the parties by the impugned

judgment and award held that the accident and consequent

death of Sriram occurred due to the actionable negligence on the part of driver of Toyota Car No.KA 02 AA 1786. Tribunal relying on Ex.P9 salary certificate assessed his salary at Rs.27,350/- per month, his age at 46 years, added 25% to his income by way of future prospects, deducted one third from his -6- income towards his personal expenses, applied 13 multiplier and awarded compensation of Rs.35,55,552/- on the head of loss of dependency. Tribunal in all awarded compensation of Rs.37,05,552/- on different heads as follows:

Sl. Heads Amount in No. Rs. 1 Loss of Dependency 35,55,552/- 2 Loss of Consortium 40,000/- 3 Loss of Parental Consortium to 40,000/- petitioner Nos. 2 & 3 (Rs. 20,000/each) 4 Loss of Filial Consortium to 40,000/- petitioner Nos. 4 & 5 (Rs. 20,000/each) 5 Loss of estate 15,000/- 6 Funeral expenses 15,000/- TOTAL 37,05,552/-

9. Tribunal rejected the contention of Insurer regarding its liability. In that regard the Tribunal relied on the

judgment of the Honble Supreme Court in Shamanna & ors vs.

The Divisional Manager, The Oriental Insurance Co. Ltd & ors¹ and judgment of this Court in MFA No.30131/2010 and directed the Insurer to pay the compensation amount with interest at 8% p.a. from the date of petition till its realization. The Insurer has challenged the said award questioning only the liability of the Insurer and rate of interest awarded.

(2018)9 SCC 650 -7- Submissions of Smt.Manjula N.Tejaswi, learned counsel for the appellant :

10. The policy in question was Act policy. The issue is referred to the larger bench of the Honble Supreme Court in Mohana Krishnan vs. K.Balasubramaniam & ors², therefore the

judgment in Shamannas case cannot be applied. She submits

that if the Insurance policy is private car policy, the Insurer is not liable to pay the compensation and the interest awarded is on the higher side.

11. In support of her submissions, she relies on the following judgments:

i) The Branch Manager, New India Assurance Co.Ltd vs. Mahadev Pandurang Patil and another³ ii) National Insurance Co. Ltd vs. Balakrishnan & anr⁴ iii) United India Insurance Co. Ltd vs. Shrivankumar and others⁵ Submissions of Sri G.B.Sharath Gowda, learned counsel for the claimants:

12. Though the matter is referred to the larger bench, there is no order that pending matters shall not be decided. The Honble Supreme Court in the matter under reference itself 2 Spl.Leave to Appeal No.3433/2020 3 ILR 2012 KAR 1841 4 LAWS(SC) 2012-11-20 5 2023 ACJ 2569 -8-

has ordered for release of the amount in deposit. Therefore, there is no bar to proceed with the matter. The policy Ex.R1 clearly shows that the Insurer has recovered premium for the personal accident of the owner. Since the victim was permitted by the owner, he steps into the shoes of the owner and is

covered under the risk of personal accident. The clause regarding limits of liability, shows that the risk of occupant of the car was not excluded. RW.1 has admitted the collection of additional premium and the policy covered all risk except own damage claim. RW.1 himself has admitted that the victim was public servant on duty and Government servants come under

the definition of third party. The rate of interest awarded is just one and seeks dismissal of the appeal.

13. On considering the submissions of both side and the material on record, the questions that arise for consideration of the Court are:

i) Whether the Tribunal was justified in fastening the liability against the Insurer ?
ii) Whether the Tribunal was justified in awarding interest at 8% p.a. -9- Reg. Liability:

14. In this case Insurer is not challenging the quantum of compensation or the finding of the Tribunal on the issue of negligence. Only the issue of Insurers liability under the contract is in question. Insurer contended that the policy issued was only Act policy, therefore, that does not involve the

risk of the occupant. The burden of proving its defence that the victim/occupant of the car in question was not a third party and his risk was not covered, was on the Insurer. To prove its defence the Insurer relied on Ex.R.1 the copy of the policy and the evidence of RW.1/Administrative Officer of respondent No.2/the Insurer.

15. It is not disputed that at the time of the accident the policy Ex.R.1 was in force. Ex.R1 is titled as private car

liability only policy. Ex.R.1 shows that respondent No.2 has collected premium of Rs.4,931/- towards basic third party risk, Rs.100/- towards compulsory Personal Accident for owner driver, Rs.50/- towards LL to paid driver IMT 28 thereby the policy covered the risk of third party as well as personal accident of the owner. Section 145(g) of the Motor Vehicles Act, 1988 defines the third party as follows: -
10 - (g) third party includes the Government. There is no dispute that at the time of the accident the victim/a Government servant was traveling in the insured car in

discharge of his official duty. Though RW.1 in his chief examination contended that the policy did not cover the risk of the victims who were traveling in the car, in his cross examination unequivocally admits that as per the policy Government is the third party and the Government servants are covered under the term Government.

16. RW.1 also admitted that the policy covered all

claims except the OD (own damage) claims. He further admits that OD claims in the policy cover the damage to the vehicle only. He admits that they have received additional premium. But, he tried to justify saying that additional premium for owner applies only if the owner was the driver. Admittedly at the time of the accident, the victim was a public/Government servant and he was traveling in the car to perform his public

duty. Therefore, as per the admission of RW.1 himself he becomes a third party and for third party risk, the premium was collected. Therefore, none of the judgments in Mahadev and Shravan Kumars case and other judgments relied by the - 11 -

Insurer are applicable to the facts of the present case. It is also material to note that though the Insurer is fighting the case and only challenged its liability, since 10 years, it did not even produce the entire insurance policy under Ex.R.1 which is copy of the policy. In Ex.R1/the copy of the policy, page No.3 of the document is missing. There is no explanation for such

omission. When the document is incomplete, the Insurer cannot rely on the part which it claims to have favourable clause in it.

17. The other contention of the learned counsel for the

appellant/Insurer regarding the liability of the Insurer in Act policies towards third party/occupant is that Mohana Krishnans case is referred to larger bench of the Honble Supreme Court which is pending consideration. However, there is no interim stay for disposal of the matters pending before the other Courts. Further the Honble Supreme Court by order dated 11.09.2020 granted liberty to the claimant to withdraw the amount. In this matter the accident occurred in the year 2015, since 10 years the matter is pending and the claimants who are the widow, children and aged parents of the deceased have not received any compensation so far. Therefore, there are no - 12 - grounds to defer the matter unduly. Thus the finding of the Tribunal that the Insurer is liable to compensate damages does not warrant any interference. Reg. Interest:

18. Under the impugned award the Tribunal has

granted interest at 8% per annum on the compensation amount. It is no doubt true that the Tribunal has not assigned any reasons for awarding interest at 8% p.a. However, Section 34 of CPC empowers the Court to award interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged from the date of the suit till the date of decree with further interest not exceeding 6% p.a. In

the present case the Insurer without producing the complete copy of the Insurance policy and despite the unequivocal admissions of RW.1 that the deceased being the government servant was also covered under the third party, dragged the claimants to this appeal on the ground of its liability and kept this matter pending for about

3 years. The appellant did not even permit the claimants to withdraw the amount in deposit. Due to such conduct of the appellant, the claimants have suffered for all these years without receiving a penny towards compensation. Therefore, - 13 - this Court does not find any ground to interfere with the rate of interest awarded by the Tribunal payable from the date of petition till the date of this judgment. In view of Section 34 of CPC for delay, if any, in depositing compensation, the interest is payable at the rate of 6% p.a. Hence the following:

ORDER

The appeal is dismissed with costs throughout. Transmit the amount in deposit and the TCRs to the Tribunal forthwith. Sd/- (K.S.MUDAGAL) JUDGE Sd/- (M.G.S. KAMAL) JUDGE AKC List No.: 1 SI No.: 3

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