

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 18TH DAY OF AUGUST 1998

BEFORE

THE HON'BLE MR.JUSTICE B.S.SREENIVASA RAO

MISCELLANEOUS FIRST APPEAL NO.1759, 1784 &
1785 OF 1994

Between :

The Oriental Insurance Co.Ltd.,
represented in this appeal by
its Regional Manager,
45, Residency Road,
Bangalore - 560 025. . . APPELLANT

(By Sri S.P.Shankar, Adv.,)

And :

MFA 1759/1994

1. C.V. Thimmappaiah,
Major,
S/o Venkatramaiah,
Driver-Cum-Owner of
Matador Van bearing
No.CNT-818,
Prop.Indian Coffee Bar
R/o Laxmipura,
B.H.Road, Arasikere,
Hassan District.
2. K.S.Padmash Jain,
S/o Surendranath K.B.,
Major, Indian Coffee Bar,
B.H.Road, Arasikere,
Hassan District.
3. Ayyannagowda,
S/o Rangegowda,
aged about 30 years,
Kerekodihalli,
Kasaba Hobli,
Arasikere Taluk,
Hassan District.

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MFA 1784/1994

1. C.V.Thimmappaiah,
S/o Venkatramaiah,
Driver-Cum-Owner of
Matador, Van bearing No.
CNT-818,
Prop. Indian Coffee Bar,
B.H.Road, Arasikere,
Hassan District.
3. K.C.Umesh,
S/o Chandrappa,
aged about 31 years,
R/o Karekodihalli,
Kasaba Hobli,
Arasikere Taluk,
Hassan District.

MFA 1785/1994

1. C.V. Thimmappaiah,
S/o Venkatramaiah,
Driver Cum Owner of
Matador Van bearing
No.CNT-818,
Prop.Indian Coffee Bar,
B.H.Road, Arasikere,
Hassan District.
2. K.S.Padmesh Jain,
S/o Surendranath K.B.,
Major by age,
Indian Coffee Bar,
B.H.Road,
Arasikere,
Hassan District.
3. Smt. Siddalingamma,
aged 36 years,
W/o late Malleshaiah,
4. Shashikala ,
aged about 15 years,
D/o late Malleshaiah,
5. Chandrashekara,
aged about 13 years,
S/o late Malleshaiah,

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6. Manjula,
aged about 11 years,
D/o late Malleshaiah,
7. Siddamma,
aged about 60 years,
W/o late Siddappa,
Mother of late Malleshaiah,

R-3 to R-7 are all residing at
Kerekodihalli, Kasaba Hobli,
Arasikere Taluk, Hassan District
R-4 to 6 are minors by natural
guardian mother 3rd respondent
herein.

.. RESPONDENTS

(By Sri B.Sreenivasa Gowda, Adv.,)

These three Miscellaneous First Appeals are
filed u/s 110-D of the M.V.Act against the
Judgment and award dated 26-4-1994 passed in MVC
No.70/86,71/86 and 72/86 on the file of the
Addl.District Judge and MACT., Hassan partly
allowing the petition.

These appeals coming on for hearing this
day, the Court delivered the following :-

JUDGMENT

These three appeals have been filed by the
appellant Insurance Company which is the third
respondent in MVC 70/86, 71/86 and 72/86 against
the common judgment passed in all the said three
cases dated 26-4-94 awarding compensation to the
respective claimants making liable the appellant
to answer the claim. BB

2. The main ground urged in these three appeals is that the second respondent calling himself as Padmesh sought issue of policy covering the risk of a Matador bearing No.CNT-818 and submitted proposal dated 28-8-85. The said Padmesh issued cheque for Rs.2,044/- dated 28-8-1985 to support the request for issue of policy. The cheque came to be dishonoured with the endorsement that "drawer's signature differs". The appellant wrote to Padmesh notifying that his cheque was dishonoured since the premium was not paid even as late as on 14-11-1985 and the policy which had been issued was cancelled on 14-11-1985 and the same was intimated to RTO. There is an entry that the policy is cancelled in the concerned Register maintained by the appellant. After cancellation of the policy on failure of consideration for the issue of policy the vehicle bearing No.CNT-818 was not covered by the appellant. The accident in question occurred on 16-11-1985 after the policy was cancelled. The question as to whether the appellant is liable to pay the compensation has to be answered in favour of the appellant as there was no liability of the appellant under the Policy. But the Tribunal has foisted liability

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on the appellant even though insurance particulars were not furnished and the existence of the liability was disputed. It is contended in the appeal memo that the accident in question occurred on 16-11-1985 and the cheque issued was bounced as per the Bank's Memo dated 2-9-1985 and there is no liability of the appellant Insurance Company under the Policy. It is to be noted that these contentions which have been taken in the appeal for the first time by the appellant have not been urged before the tribunal wherein the appellant company was represented by a Counsel and filed Objection statements in which it has been clearly stated that the vehicle in question is validly insured with the appellant and the appellant is liable to pay the compensation as per the scope, ambit and conditions of the Policy. During the course of the order, the Tribunal has observed that no evidence was let in by the respondents including the appellant before the Tribunal. The contention of the appellant was that the third respondent before this court describing himself as the owner cum driver of the vehicle did not report the accident to the Insurance Company and he did not produce the documents relating to the vehicle for

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verification. The driver has not produced driving licence for verification and he had no valid driving licence at the time of accident. During the course of the order, the Tribunal has observed that the appellant filed Insurance Policy which shows that the third respondent had insured the vehicle bearing No.CNT-818 for the period from 28-8-1985 to 27-8-1986 and also it has been mentioned that the third respondent is the insured person and hence made the appellant liable as on the date of the accident. As per the Insurance Policy there was coverage with respect to the third party and hence the liability was fastened against the appellant Insurance Company. It is to be noted that no evidence was let in on behalf of the Insurance Company with respect to the contentions now raised and urged in the appeal that though the insurance policy was issued the premium amount paid through cheque was bounced and therefore on the dishonouring of the Bank's memo dated 2-9-1985 automatically the insurance policy issued has been cancelled has been substantiated by the appellant. In view of the ruling reported in AIR 1998 SC 588 in *INDERJIT KAUR VS. ORIENTAL INSURANCE COMPANY* wherein it has been

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held that the liability of insured in respect of third party risks - insurer issuing policy to cover bus without receiving premium - he becomes liable to indemnify third party in respect of the liability which the policy covers and satisfy the awards of compensation and provisions of Section 64 -VB of Insurance Act does not absolve the insured of his liability. In view of the principles enunciated in the above decision and also in view of the objection statement filed by the appellant before the Tribunal that the liability of the claimants have been covered under the policy of insurance which was subsisting on the date of the accident with respect to third party and for the first time the contention which has been taken, which has not been pleaded earlier before the Tribunal and also which has not been substantiated has to be negatived. Accordingly all the three appeals filed by the Insurance Company fail and the same are dismissed.

	<p>sd/ = Judge</p>
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