

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 24TH DAY OF NOVEMBER, 2025

BEFORE

THE HON'BLE MRS JUSTICE GEETHA K.B.

MISCELLANEOUS FIRST APPEAL NO.100409 OF 2014

BETWEEN

THE DIVISIONAL MANAGER
NEW INDIA ASSURANCE CO. LTD.,
CLUB ROAD, BELGAUM,
NOW R/BY ITS REGIONAL MANAGER
SHRI V.V. MUTALIK DESAI
NEW INDIA ASSURANCE CO. LTD.,
MTP HUB SRINATH COMPLEX,
NCM HUBLI.

...APPELLANT

(BY SRI RAJASHEKHAR S. ARANI, ADVOCATE)

AND

- 1 . SMT. HEENA KAUSAR
W/O. IRSHAD AHEMAD ANGOLKAR
AGE: 34 YEARS, OCC: HOUSEHOLD WORK
R/O. ANGOL BELGAUM, DIST: BELGAUM.
- 2 . KUMAR SALIHA D/O. IRSHAD AHEMAD ANGOLKAR
AGE: 16 YEARS, OCC: STUDENT
SINCE MINOR R/BY HER M/G RESPONDENT NO.1
NATURAL MOTHER SMT. HEENA KAUSAR
W/O. IRSHAD AHEMAD ANGOLKAR
AGE: 34 YEARS, OCC: HOUSEHOLD WORK,
R/O. ANGOL BELGAUM DIST: BELGAUM.
- 3 . KUMARI HAUMATAJ D/O. IRSHAD AHEMAD ANGOLKAR
AGE: 14 YEARS, OCC: STUDENT

SINCE MINOR R/BY RESPONDENT NO.1
R/O. ANGOL BELGAUM DIST: BELGAUM.

- 4 . KUMARI SABATASNEEM D/O. IRSHAD AHEMAD
ANGOLKAR
AGE: 14 YEARS, OCC: STUDENT
SINCE MINOR R/BY RESPONDENT NO.1
R/O. ANGOL BELGAUM DIST: BELGAUM.
- 5 . MASABBI W/O. MOHAMMED RASOOL ANGOLKAR
AGE: 65 YEARS, OCC: HOUSEHOLD WORK
R/O. ANGOL BELGAUM DIST: BELGAUM.
- 6 . NAUSHAD S/O. ABDUL RAHEMAN SHAIKHJI
AGE: MAJOR, OCC: BUSIENSS
R/O. H.NO. 183, JERE GALLI,
ANGOL BELGAUM, DIST: BELGAUM.
- 7 . SHRI ASHRAF S/O. ABDUL RAHEMAN SHAIKHJI
AGE: MAJOR, OCC: BUSINESS,
R/O. H.NO.183, JERE GALLI,
ANGOL BELGAUM, DIST: BELGAUM.

...RESPONDENTS

(BY SMT. PREETI SHASHANK, ADVOCATE FOR R2;
R1-NOTICE SERVED AND UNREPRESENTED)

THIS MFA IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT 1988 PRAYING TO SET ASIDE THE JUDGMENT AND AWARD OF RS.7,42,000/- WITH 6% INTEREST PER ANNUM PASSED BY IN THE COURT OF LEARNED PRESIDING OFFICER FAST TRACK COURT-III AND MEMBER ADDL. MACT BELGAUM IN MVC NO.2349/2011 DATED 13.11.2013 WITH COSTS AND INTERESTS IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL HAVING BEEN HEARD AND RESERVED ON 10.11.2025 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, DELIVERED THE FOLLOWING:

CAV JUDGMENT

(PER: THE HON'BLE MRS JUSTICE GEETHA K.B.)

The appellant/insurer has filed this appeal under Section 173(1) of the Motor Vehicles Act, 1988 (for short, 'Act') challenging the judgment and award passed in M.V.C. No.2349/2011 dated 13.11.2013 on the file of Fast Track Court-III and Additional MACT, Belagavi (for short, 'Tribunal') on the grounds of liability and quantum of compensation.

2. Parties would be referred with their ranks, as they were before the Tribunal for the sake of convenience and clarity.

3. Claimants being the wife, children and mother of deceased Irshad Ahemad Angolkar, who died in a motor vehicle accident that had taken place on 04.10.2008 at about 21.30 hours near firefighter office on Belagavi-Khanapur road when Irshad Ahemad Angolkar was the inmate of the auto rickshaw bearing Reg.No.KA-22/A-1365 along with two others. Due to this accident, husband of

claimant No.1 succumbed to injuries on 07.10.2008 when he was taking on the way to hospital in Bengaluru.

4. The case of claimants in nutshell is that claimants are the wife, minor children and mother of deceased and were fully dependant upon the deceased for their livelihood. They would contend that deceased was running grocery shop at Angol, Belagavi and was self-employed, earning ₹.10,000/- per month from the said business, he was aged about 40 years at the time of accident and hence, claimed compensation under different heads.

5. On receipt of notice, respondent No.1-owner of auto rickshaw bearing Reg.No.KA-22/A-1365 filed his objection statement, wherein he denied the petition averments in toto in respect of the age, occupation of the deceased, the manner in which accident happened and his involvement in causing the accident. He denied the entire case in toto. He further contended that if the Tribunal comes to the conclusion that claimants are entitled for

compensation, then the auto rickshaw in question is insured with respondent No.3 and hence prayed for saddling the liability on respondent No.3 and to dismiss the petition against him.

6. On receipt of notice, respondent No.2-owner of auto rickshaw bearing Reg.No.KA-22/9822 filed his objection statement wherein he denied the petition averments in toto in respect of the age, occupation of deceased, the manner in which accident happened and his involvement in causing the accident. He denied the entire case in toto and further contended that police have filed false charge sheet against him and hence, prayed for dismissal of the petition.

7. Respondent No.3-insurer of auto rickshaw bearing Reg.No.KA-22/A-1365 filed its objection statement, wherein it denied the averments made in petition in toto and further contended that police have filed charge-sheet against driver of auto rickshaw bearing Reg.No.KA-22/9822 and thus, the auto-rickshaw which is insured with it is not

involved in the accident. It further took contention that only if the claimants able to establish the involvement of said auto-rickshaw in the accident, then its liability, if any, is subject to the validity or legality of the permit, driving licence of the driver. He is entitled to take defence under Section 170 of Motor Vehicles Act. Hence, prayed for dismissal of the petition.

8. On behalf of claimants, claimant No.1 was examined as P.W.1, two witnesses are examined as P.W.2 and P.W.3 apart from marking Exs.P.1 to P.12 and closed their side before the Tribunal. On behalf of respondents, R.W.1 was examined apart from marking Exs.R.1 to R.3.

9. After recording evidence of both sides, hearing arguments of both sides, the Tribunal came to the conclusion that the claimants have proved the accident that had taken place when the deceased was traveling in the auto rickshaw bearing Reg.No.KA-22/A-1365 and because of rash and negligent driving of driver of the said auto rickshaw, the accident happened and saddled the liability on

respondent No.3 by granting compensation of ₹.7,42,000/- with interest at 6% per annum under following heads:

Towards loss of dependency due to death of Irshad Angolkar	₹.6,72,000/-
Towards loss of estate	₹.20,000/-
Towards loss of filial love and affection	₹.20,000/-
Towards loss of consortium	₹.20,000/-
Towards funeral expenses, transportation of dead body etc.	₹.10,000/-
Total	₹.7,42,000/-

10. Aggrieved by the said judgment and award, the appellant-insurer has filed this appeal.

11. Learned counsel for appellant Sri Rajashekhar S Arani would submit that the accident was not happened due to the involvement of auto rickshaw bearing Reg.No.No.KA-22/A-1365, but auto rickshaw bearing Reg.No.KA-22/9822 was involved and it was not covered with insurance. But the alleged auto rickshaw bearing Reg.No.No.KA-22/A-1365 is covered with insurance and hence the claimants in collusion with respondents No.1 and 2 have filed false claim petition against this vehicle. This respondents No.1 and 2 are none other than brothers and respondent No.1 is owner of auto rickshaw bearing Regn.No.No.KA-22/A-1365, whereas

respondent No.2 is owner of auto rickshaw bearing Reg.No.KA-22/9822. Hence, the insurer is not liable to pay the compensation.

12. In this regard, he relied on the MLC register and other relevant documents of the Tribunal. Hence, prayed for allowing the appeal.

13. Even after service of notice, respondents No.5 to 7 have not contested this appeal. Respondent No.5 is mother of deceased. Respondents No.6 & 7 are the alleged owners of both auto rickshaws.

14. Respondents No.1 to 4-wife and children of deceased are represented by their counsel Sri Mallikarjunaswamy B Hiremath. Learned counsel appearing for respondents No.1 to 4 would submit that by examining the relevant materials, the Tribunal properly comes to the conclusion that the claimants have proved the accident and rashness and negligence on the part of its driver. Even though, charge-sheet is filed against driver of the auto rickshaw bearing Reg.No.KA-22/9822, the materials

produced before the Tribunal clearly establish that the accident occurred due to rash and negligent driving of driver of the auto rickshaw bearing Reg.No.KA-22/A-1365. The Tribunal has properly appreciated the oral and documentary evidence in that regard. Hence, prayed for dismissal of appeal by confirming the judgment and award passed by the Tribunal.

15. Having heard the arguments of both sides and verifying appeal papers along with original records, the points that would arise for consideration are:

“1. Whether the appellant/insurer proves that saddling liability on insurer along with owner of the auto rickshaw bearing Reg.No.No.KA-22/A-1365 (respondent No.1 in the original petition and respondent No.7 in this case) is erroneous, even though, the charge-sheet is filed against driver of the auto rickshaw bearing Reg.No.KA-22/9822?

2. Whether the compensation awarded by the Tribunal is on higher side?”

16. My finding on the above points is in "negative" for the following reasons:

17. The facts alleged in the petition are that the husband of claimant No.1 was the inmate of auto rickshaw bearing Reg.No.KA-22/A-1365 and when the said auto rickshaw came near the firefighters' office on 04.10.2008 at about 21.30 hours, it turtle and because of that the husband of claimant No.1 has sustained severe injuries; immediately he was shifted to Civil Hospital, Belagavi and thereafter while he was shifting to Bengaluru for further treatment, on the way he succumbed to the injuries on 07.10.2008.

18. It is further averred that in the complaint, the auto rickshaw bearing Reg.No.KA-22/A-1365 is mentioned and accordingly case is registered in Crime No.191/2008. However, after investigation, the charge-sheet is filed against auto rickshaw bearing Reg.No.KA-22/9822. Hence, owners of both vehicles were made as respondent No.1 & 2.

19. It is to be noted here that in the complaint, the auto rickshaw bearing Reg.No.KA-22/A-1365 is mentioned and accordingly case is registered in Crime No.191/2008 alleging the offences punishable under Sections 279, 337, and 338 of I.P.C. and also under Sections 134 read with 187 of Motor vehicles Act. After registration of the case against this auto rickshaw, on 6.10.2008, the spot panchanamma was drafted. In the said panchanamma vehicle number was not mentioned; whereas spot sketch as per Ex.P.4 was prepared. In that spot sketch, vehicle number was mentioned as KA-22/9822. Before that, vehicle No.KA-22/A-1365 was written and A-1365 was strike off. Subsequently, the charge-sheet was filed against the driver of auto rickshaw bearing Reg.No.KA-22/9822. In the criminal case after recording evidence, the learned JMFC acquitted the accused that he was not involved in the accident.

20. Based on the finding of Criminal Court, the Tribunal has come to the conclusion that even though

charge-sheet was filed against the auto rickshaw bearing Reg.No.KA-22/9822, said auto rickshaw was not involved in the accident, but auto rickshaw bearing Reg.No.KA-22/A-1365 was involved.

21. Respondent No.2 who is the owner of auto rickshaw bearing Reg.No.KA-22/9822 was examined as R.W.1 and he admitted that charge-sheet was filed against him and he faced criminal trial, but he was acquitted in the said case.

22. Respondent Nos.1 and 3 i.e., owner of auto rickshaw bearing Reg.No.KA-22/A-1365 and insurer are not examined in this case. Only the policy of auto rickshaw bearing Reg.No.KA-22/A-1365 is produced and marked as Ex.R.2.

23. In this case, apart from claimant No.1, two more witnesses are examined. One of them was the inmate of the auto rickshaw (P.W.3) and another one had seen the accident (P.W.2) when he was standing near firefighter's office. In the cross-examination, he denied the suggestion

that auto rickshaw bearing Reg.No.KA-22/A-1365 was not involved in the accident. Except that, nothing serious was elicited from his cross-examination.

24. P.W.3 is one Gouslal S/o Chandsab Balekundri. Ex.R.3 is the wound certificate of this P.W.3 issued by the BIMS, District Hospital, Belagavi. According to it, this P.W.3 has taken treatment on 05.10.2008 at 01.20 a.m. He also sustained some fractures and other injuries in the same accident. He has not stated the auto rickshaw number at the time of giving history of the incident before doctor but has only stated that while going in an auto rickshaw near Bridge, the accident happened. However, according to the case of prosecution, the accident occurred near firefighters' office, but not at the place mentioned in Ex.R.3.

25. On perusal of the oral and documentary evidence in detail, the Tribunal came to the conclusion that the auto rickshaw bearing Reg.No.KA-22/A-1365 is involved and not auto rickshaw bearing Reg.No.KA-22/9822. Some of the witnesses who have given evidence in criminal case were

examined. Furthermore, the depositions of some of those witnesses are marked in this claim petition.

26. On perusal of the oral and documentary evidence produced before the Tribunal, the learned JMFC has acquitted the driver of the auto rickshaw bearing Reg.No.KA-22/9822 on the ground that said auto-rickshaw was not involved in the accident. On perusal of the oral and documentary evidence, the name of auto rickshaw bearing Reg.No.KA-22/9822 was not mentioned in complaint, FIR and also the vehicle number is not at all mentioned in the panchanama. Only for the first time, in spot panchanama, the auto rickshaw number KA-22/9822 is mentioned. Why and how, the IO came to know about said vehicle is not explained.

27. As discussed above, already there was some striking and overwriting in this sketch, which is not properly explained. No reason is assigned by the Investigating Officer to mention the auto rickshaw No.KA-22/9822 in the charge-sheet.

28. The insurer has not made any efforts to find out that the auto rickshaw in question is not involved in accident. Only because charge-sheet is filed against another auto rickshaw, respondent No.3 cannot contend that the vehicle to which insurance was valid at the time of accident was not involved in the accident. This is more so, as in the complaint and FIR name of said vehicle is mentioned. Generally, the vehicle which involved in the accident, its number will be mentioned in the panchanama, but the same was not mentioned in the instant case

29. Furthermore, as per Investigating Officer, both panchanama and spot sketch were prepared at the spot on same day. But only spot panchanama was signed by panchas and spot sketch was not signed by panchas. Thus, it is the auto rickshaw bearing Reg.No.KA-22/A-1365 was involved in the accident and not the other one. Hence, the contention of insurer that wrongly the Tribunal has saddled liability on respondents No. 1 and 3 cannot be accepted.

30. Considering all these facts, rightly, the Tribunal has come to the conclusion that respondents No.1 and 3 are liable to pay compensation and not respondent No.2. Hence, it needs no interference.

31. The Tribunal has taken the monthly income of deceased at ₹.6,000/- per month, but no document is produced to prove his income at that time. Under those circumstances, relying on KSLSA guidelines, as the accident occurred in the year 2008, ₹.4,250/- was to be taken as the notional income of deceased. To this income, 25% is to be added as future prospects as per the judgment in the case of **National Insurance Company Limited vs. Pranay Sethi and Others** reported in **(2017) 16 SCC 680**. However, it was not added by the Tribunal. Hence, if income of deceased is taken into consideration even at ₹.4,250/- and if 25% is added to it, it amounts to ₹.5,313/-. The notional monthly income of the deceased would be ₹.5,313/-. The appropriate multiplier would be 15 considering the age of the deceased. Since there are five

dependants, $1/4^{\text{th}}$ is to be deducted towards personal and living expenses of the deceased. Hence, the compensation payable under the head loss of dependency would be ₹.7,17,255/- (₹.5,313 x 12 x 15 x $3/4^{\text{th}}$).

32. Even the Tribunal has not granted loss of consortium to all the petitioners. Hence, the compensation that would have been awarded to the claimants will be much more compared to the amount which is already granted by the Tribunal. There is no appeal from the claimants. Hence, I have no other option but to confirm the compensation awarded by the Tribunal.

33. In view of my findings on point Nos.1 & 2, I proceed to pass the following:

ORDER

1)Appeal filed under Section 173(1) of Motor Vehicles Act, 1988 is dismissed by confirming the judgment and award passed in M.V.C. No.2349/2011 dated 13.11.2013 on the file of Fast Track Court-III and Additional MACT, Belagavi;

2) No order as to costs;

3)The amount which is already in deposit be transmitted to the Tribunal forthwith.

4)Pending applications, if any, do not survive for consideration.

**Sd/-
(GEETHA K.B.)
JUDGE**

SH
CT-CMU, LIST NO.: