



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 26TH DAY OF NOVEMBER, 2025

PRESENT

THE HON'BLE MR. JUSTICE S G PANDIT

AND

THE HON'BLE MRS JUSTICE GEETHA K.B.

MISCELLANEOUS FIRST APPEAL NO. 102865 OF 2022 (MV-D)

C/W

MFA CROSS OBJ NO. 100011 OF 2024

IN MFA NO.102865/2022

BETWEEN:

THE NEW INDIA ASSURANCE CO. LTD.,
R/BY ITS DIVISIONAL MANAGER,
DIV. OFFICE, MUDALAGI BLDG.,
CLUB ROAD, BELAGAVI-590001
NOW R/BY ITS AUTHORISED SIGNATORY.

...APPELLANT

(BY SRI. SUBHASH J. BADDI, ADVOCATE)

AND:

1. MALLIKARJUN S/O. ADIVEPPA GHODAGERI
AGE: 46 YEARS,
2. KUMAR RAJESH S/O. MALLIKARJUN GHODAGERI
AGE: 16 YEARS, OCC. STUDENT,
3. KUMAR RAKESH S/O. MALLIKARJUN GHODAGERI
AGE: 14 YEARS, OCC. STUDENT,
ALL ARE R/O. ANKALAGI, GOKAK TALUK,
BELAGAVI-591101.



NC: 2025:KHC-D:16522-DB
MFA No. 102865 of 2022
C/W MFA.CROB No. 100011 of 2024

RESPONDENT NOS.2 AND 3 ARE MINORS
R/BY THEIR NATURAL NEXT FRIEND
RESPONDENT NO.1 I.E., MALLIKARJUN
S/O. ADIVEPPA GHODAGERI.

4. SRI BASAVARAJ S/O. NINGAPPA GHODAGERI
AGE: MAJOR, OCC. AGRICULTURE,
R/O. ANKALAGI, GOKAK TALUK,
BELAGAVI-591101.

...RESPONDENTS

(BY SRI ASHOK A. NAIK, ADVOCATE FOR R1 TO R3;
NOTICE SERVED TO R4)

THIS MFA IS FILED UNDER SECTION 173(1) OF MOTOR
VEHICLE ACT, 1988, PRAYING TO CALL FOR RECORDS AND SET
ASIDE THE JUDGMENT AND AWARD DATED 01.07.2022 PASSED
IN MVC NO.425/2020 ON THE FILE OF THE IV ADDITIONAL
DISTRICT JUDGE AND MOTOR ACCIDENT CLAIMS TRIBUNAL-V,
BELAGAVI, WITH COST IN THE INTEREST OF JUSTICE AND
EQUITY.

IN MFA CROB.NO.100011/2024
BETWEEN:

1. SHRI MALLIKARJUN ADIVEPPA GHODAGERI
AGE: 44 YEARS, OCC. COOLIE
R/O. ANKALAGI GOKAK,
TQ. BELAGAVI DIST. 591218.
2. KUMARI RAJESH S/O. MALLIKARJUN GHODAGERI
AGE: 17 YEARS, OCC. STUDENT
R/O. ANKALAGI GOKAK
TQ. BELAGAVI DIST. 591218.
3. KUMAR RAKESH S/O. MALLIKARJUN GHODAGERI
AGE: 15 YEARS, OCC. STUDENT
R/O. ANKALAGI GOKAK,
TQ. BELAGAVI DIST. 591218
(CROSS OBJECTOR NO.2 AND 3
SINCE MINORS R/BY THEIR NATURAL/NEXT FRIEND
CROSS OBJECTORS NO.1



NC: 2025:KHC-D:16522-DB
MFA No. 102865 of 2022
C/W MFA.CROB No. 100011 of 2024

MALLIKARJUN S/O. ADIVEPPA GHODAGERI.

...CROSS OBJECTORS

(BY SRI ASHOK A. NAIK, ADVOCATE)

AND:

1. BASAVARAJ S/O. NINGAPPA GHODAGERI
AGE: MAJOR, OCC. AGRICUTLURE
R/O. ANKALAGI GOKAK,
TQ. BELAGAVI DIST. 591218.

2. NEW INDIA ASSURANCE CO. LTD.,
R/BY ITS DIVISIONAL MANAGER
DIV. OFFICE MUDALAGI BLDG.,
CLUB ROAD, BELAGAVI.

...RESPONDENTS

(BY SRI SUBHASH J. BADDI, ADVOCATE FOR R2;
NOTICE SERVED TO R1)

THIS MFA.CROB IS FILED UNDER ORDER 41 RULE 22 OF THE CODE OF CIVIL PROCEDURE 1908, PRAYING THAT, THE JUDGMENT AND AWARD DATED 01.07.2022 PASSED IN MVC NO.425/2020 BY IN THE COURT OF IV ADDITIONAL DISTRICT JUDGE AND MACT-V, BELAGAVI, AT: BELAGAVI, MODIFY AND ALLOW THE PRESENT CROSS OBJECTOR BY THIS COURT CLAIM AMOUNT OF RS.34,00,000/- WITH INTEREST 18% PER ANNUM FOR THE DATE OF PETITION CROSS OBJECTOR, TILL THE DATE OF PAYMENT AND RESPONDENTS NO.1 AND 2 JOINTLY AND SEVERALLY LIABLE TO PAY THE COMPENSATION, BY ALLOWING THIS CROSS APPEAL, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL AND CROSS OBJECTION, COMING ON FOR FURTHER HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE S G PANDIT
AND
THE HON'BLE MRS JUSTICE GEETHA K.B.



ORAL ORDER

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

MFA No.102865/2022 is filed under Section 173(1) of Motor Vehicles Act, 1988 (for short, 'Act') and MFA Crob. No.100011/2024 is filed under Order XLI Rule 22 of C.P.C. challenging the judgment and award dated 01.07.2022 passed in MVC No.425/2020 on the file of IV Additional District Judge and MACT-V, Belagavi (for short, 'Tribunal').

2. MFA No.102865/2022 is filed by the Insurer on the ground that no accident had taken place and the motor cycle is falsely implicated in the case; whereas MFA Crob. No.100011/2024 is filed by the claimants praying for enhancement of compensation.

3. The parties would be referred with their ranks as they were before the Tribunal for convenience and clarity.

4. The case of claimants before the Tribunal in nutshell is that on 22.04.2019, the wife of claimant No.1, who is the mother of claimants No.2 and 3, had been to



attend Jathra at Savalagimath and while returning back, she was the pillion rider of Hero Honda HF Deluxe motor cycle bearing Reg.No.KA-49/S-4982 while respondent No.1 was riding said motor cycle; when it came near Matagar Factory on Hidakal Dam Road, at about 15:30-15:35 hours, she fell down from the motor cycle due to rash and negligent driving of respondent No.1, sustained injuries and immediately she was shifted to BIMS Hospital, Belagavi and then to KIMS Hospital for further treatment, but she succumbed to injuries on 23.04.2019 at 00.05 hours.

5. The claimants further contended that the deceased was aged about 41 years at the time of accident, was hale and healthy and was doing tailoring work and she was also running Xerox shop at Ankalagi. The claimants contended that they were dependents on the earnings of the deceased. Hence, prayed for compensation under different heads.



6. On issuance of notice, respondent No.2-Insurer filed its objection statement, wherein initially it has taken contention that the accident happened due to the sole negligence of the deceased and other objections. Subsequently, it amended the objection statement and deleted the above contention and further took contention at para No.28 that the deceased sustained injuries due to self-fall while walking at about 02.00 p.m. near her house on 22.04.2019 and with that history she was admitted to BIMS Hospital, Belagavi. Thus, there was no involvement of the motor cycle bearing Reg.No.KA-49/S-4982 and thus there is no question of indemnifying respondent No.1 and prayed for dismissal of the petition.

7. On behalf of claimants, claimant No.1 was examined as P.W.1 apart from examining two witnesses as P.W.2, P.W.3, marking Exs.P.1 to P.17 and closed their side before the Tribunal. On behalf of respondent-Insurer, R.W.1 is examined apart from marking Exs.R.1 to R.5 and one



certified copy of statement of petitioner No.1 at Ex.R.1 before the Tribunal.

8. After recording evidence of both sides and hearing arguments of both sides, the Tribunal came to the conclusion that the accident happened due to rash and negligent riding of rider of the motor cycle and due to that the wife of claimant No.1 fell from the motor cycle and succumbed to those injuries and thus granted compensation under following different heads.

Sl.No.	Head of Compensation	Amount
1	Loss of dependency	18,54,720/-
2	Loss of estate	15,000/-
3	Loss of consortium	40,000/-
4	Funeral expenses	15,000/-
Total		19,24,720/-

9. Being not satisfied with the aforesaid compensation, claimants have filed cross-objection seeking enhancement of compensation. Appellant-Insurer has also filed appeal denying the accident itself.

10. Heard arguments of both sides.



11. Learned counsel for the appellant-Insurer, Sri Subhash J Baddi would submit there is ample material produced before the Tribunal to show that there was no accident at all and it is only due to self-fall of the deceased while walking near her house on 22.04.2019 at 02.00 p.m., the accident happened. He mainly relies on Exs.R.3 and R.4 and cross-examination of P.W.2 coupled with MVI report as per Ex.P.6.

12. Learned counsel for the appellant would further submit that the Tribunal has not examined these material aspects meticulously and came to the wrong conclusion and hence, prayed for allowing the appeal.

13. Learned counsel for respondents-claimants Sri Ashok A Naik would submit that immediately after discharge from the BIMS Hospital, the wife of claimant No.1 was taken to KIMS Hospital, wherein MLC was done and narrated in it that she sustained injuries due to the RTA and due to hurry



of providing treatment, proper history of the incident was not furnished before BIMS Hospital.

14. Learned counsel for respondents-claimants Sri Ashok A Naik would further submit that the doctor, who issued Ex.R.3 is not examined. Furthermore, after investigation, charge-sheet is filed on the rider of the motor cycle. Filing of charge-sheet itself is sufficient proof to prove the negligence on the part of respondent No.1 in riding the vehicle.

15. Learned counsel for respondents-claimants would further submit that the compensation awarded by the Tribunal is on lower side and hence, prayed for allowing his cross-objection and to enhance the compensation amount and prayed for dismissal of the appeal of Insurer.

16. Having heard arguments of both sides and on verifying the appeal records along with Trial Court records, the only point that would arise for consideration is:



"Whether the appellant/Insurer would prove that the accident has not at all happened and wife of claimant No.1 died due to injuries sustained by her from self-fall?"

17. Our finding on the above point is in the **'affirmative'** for the following reasons.

18. On perusal of the records of trial Court and appeal papers, they reveal that the contention of claimants is that while coming from Jatra near Ankalagi, in a motor cycle belonging to respondent No.1, wife of claimant No.1 who was pillion rider fell from the motor cycle and sustained injuries and immediately she was taken to BIMS Hospital and then to KIMS Hospital for further treatment. In support of their contention, claimants have examined P.W.2 and P.W.3 said to be the eyewitnesses.

19. P.W.3 is not the charge-sheet witness. But P.W.2 is the charge-sheet witness. Both of them have stated in their affidavits evidence that they have seen the accident and how the wife of claimant No.1 fell from the motor cycle



and sustained injuries. In this regard, P.W.3 in his cross-examination specifically deposed that he had not seen the accident and he does not know what is written in his affidavit evidence. This shows that P.W.3 has not seen the accident. P.W.2 in his cross-examination admitted that the vehicle in question belongs to respondent No.1 and he is his friend and because he is his friend, only to support him and to provide compensation to the claimants, he is deposing falsely.

20. Apart from these things, respondents have summoned the records from BIMS Hospital and KIMS Hospital as per Exs.R.3 and R.4. The records of BIMS Hospital i.e., E.R. record dated 22.04.2019 reveals that on 22.04.2019 at 04.42 p.m. a patient was brought to the hospital by name Shobha Mallikarjuna Ghodageri and the history of patient brought to the hospital is self-fall while walking at 02.00 p.m. on 22.04.2019 near her house and she was unconscious. The history sheet also reveals the same history. The discharge summary of BIMS Hospital



reveals that on 22.04.2019 at 08:14:41 p.m., she was admitted to the hospital and discharged from the hospital on the same day at 10.00 p.m. with LAMA (left against medical advice).

21. Ex.R.4 is the record of KIMS Hospital, wherein it is noted that the patient was referred from BIMS, Belagavi brought to KIMS casualty with no sign of life on 23.04.2019 at 12.05 a.m. with alleged history of RTA (fall from bike) on 23.04.2019 around 4.00 p.m. at Ankalagi and it is also noted that the patient is declared that "the patient is declared 'brought dead' to KIMS casualty".

22. On perusal of these reports, they reveal that the date of accident noted in KIMS Hospital records is 23.04.2019 at 04.00 p.m., whereas she was brought to the hospital on 23.04.2019 at 00:05 hours and thus the accident could not have taken place subsequent to said time. Thus, the date and time of accident mentioned in said report are wrong.



23. On perusal of the records of BIMS Hospital, it is very clear that the patient was brought to the hospital with the history of self-fall while walking at 02.00 p.m. on 22.04.2019 near her house. These facts establish that the death of deceased is not due to the accident as alleged in the claim petition. Whether the said motor cycle is involved in the accident or not is not the question to be decided but whether deceased suffered injuries due to involvement of the motor cycle or not is to be decided.

24. The above discussion reveals that the deceased suffered injuries due to self-fall and not due to involvement of any vehicle in question. However, without considering any of these records, the police only based on the complaint, have made casual investigation and filed charge-sheet against respondent No.1.

25. Respondent No.1 is none other than the brother of claimant No.1 and deceased is his sister-in-law. Thus, they are related with each other.



26. The Tribunal has not accepted the above records of BIMS Hospital on the ground that the doctor, who has treated the deceased, is not examined. However, the said finding is grossly erroneous and not in accordance with appreciation of evidence under the Evidence Act.

27. BIMS is a recognized government hospital and its records are maintained in usual course is to be presumed to be true unless rebutted.

28. Section 114(e) of the Indian Evidence Act, 1872 speaks on this point. It reads as follows:

"114. Court may presume existence of certain facts.- The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

(a) XXXXX

(b) XXXXX

(c) XXXXX

(d) XXXXX

(e) That judicial and official acts have been regularly performed;"

29. The judicial and official acts include acts performed by private persons also. This presumption is also



applied to the acts of private persons. The foundation for the rule is that, every person whether in his private or official character does his duty and unless the contrary is proved it is presumed that all things are rightly and regularly done.

30. The doctor, who treated the deceased, has mentioned the history of injuries in his regular official duty as "history of self-fall while walking at 2.00 p.m. on 22.04.2019". No rebuttal evidence is produced by the claimants to say that these facts mentioned in the E.R. record and his history sheet of BIMS Hospital, Belagavi is false. Hence, they have mentioned it as non-MLC. It is specifically mentioned in these documents.

31. In this regard, Section 35 of the Indian Evidence Act, 1872 deals with the relevancy of facts, which reads as follows:

"35. Relevancy of entry in public [record of electronic record] made in performance of duty.- An entry in any public or other official book, register or [record or an electronic record], stating a fact in issue or relevant fact,



and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or [record or an electronic record], is kept, is itself a relevant fact."

(emphasis supplied)

32. A perusal of the above provision makes it very clear that if an entry in any public or other official book is made by a public servant in discharge of his official duty, then such document is a relevant fact.

33. Under Section 81 of the Indian Evidence Act, 1872, the Court shall presume on certain things, which reads as follows:

*"81. Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents.—The Court shall presume the genuineness of every document purporting to be the London Gazette or [any Official Gazette, or the Government Gazette] of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament [of the United Kingdom] printed by the Queen's Printer, **and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.**"*

(emphasis supplied)



34. In the instant case, as discussed above, the history sheet, discharge summary and other records are produced from BIMS Hospital i.e., from proper custody and they are in formats, which the doctors have to maintain and hence, these documents are admissible in law.

35. Learned counsel for the appellant would rely upon the judgment of Hon'ble Apex Court in the case of ***Rajamma & Others Vs. M/s. Reliance General Insurance Company Limited & Another***¹, wherein at paragraphs-6 and 7, it is held as follows:

6. It is on preponderance of probabilities that the proof of accident is looked at in a motor accidents claim. An FIR registered as against the driver of the offending vehicle can be relied on to find the accident having been caused by the driver of the offending vehicle, that too by his rash and negligent driving as reported at the first instance. However, the preponderance of probabilities that arise from such an FIR registered would not have the same probity if there is a valid suspicion raised on the registration of the FIR and the falsity of the claim being clearly discernible from the evidence led itself.
7. As has been rightly found by the High Court, the testimony of PW2 is unbelievable. PW2 deposed that she was running a wayside fruit shop near the scene of occurrence; which has not been established by any document, like the licence issued from the local

¹ Civil Appeal No.5172/2025, dated 26.09.2025



authority, in which event she is deemed to be a chance witness, subject to strict scrutiny. Further, her testimony is that, having witnessed the accident, she came running and saw that her neighbour was the victim. She immediately realised that the victim's daughter was studying in a nearby school, to which school she proceeded, to bring the daughter who was studying in the 7th standard to the spot. By the time she came back with the daughter, she deposed in her chief examination, the vehicle had disappeared and so had the victim. However, she also stated in chief examination that the number of the vehicle was noted by herself and the daughter of the victim. The said statement is quite contrary to the assertion that by the time PW2 came back with the daughter, the offending vehicle and the victim had disappeared. The daughter of the victim was also not examined."

36. Thus, mere filing of charge-sheet itself cannot be a ground to prove the involvement of motorcycle and rashness and negligence on the rider of the vehicle in question. The surrounding circumstances are also to be looked into to decide these factors.

37. In the instant case, as discussed above, there is clinching evidence in the initial stage that history of the incident as self-fall while walking near home. Furthermore, MVI report as per Ex.P.6 reveals that except small scratch on the left side, there were no other damages to the said



vehicle. Furthermore, P.W.3 has not seen the accident and P.W.2 himself has admitted that only to support the claimant and respondent No.1, he is deposing falsely.

38. Under those circumstances, the involvement of motorcycle bearing registration No.KA-49/S-4982 itself is doubtful. Under those circumstances, the claimants have not produced any material to show the involvement of the motorcycle in question in the case to cause injuries to the deceased, which would result in her death. Hence, we are of the considered opinion that when the alleged accident itself is not proved by cogent evidence on record, grant of compensation to the claimants would not arise.

39. For the reasons recorded supra, we proceed to pass the following:

ORDER

- a) The appeal filed under Section 173(1) of the MV Act, 1988 by the Insurance Company is ***allowed***;



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- b) MFA Cross objection filed under Order XLI Rule 22 of CPC, by the claimants is ***dismissed*** as devoid of merits;
- c) The judgment and award passed in MVC No.425 of 2020 dated 1.7.2022 on the file of learned IV Addl. District Judge and MACT-V, Belagavi is set aside;
- d) Consequently, the claim petition in MVC No.425/2020 stands dismissed;
- e) The amount in deposit, if any, be refunded to the appellant/Insurer on proper identification;
- f) No order as to costs.

Pending applications, if any, are disposed of as not surviving for consideration.

**Sd/-
(S G PANDIT)
JUDGE**

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