

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 14TH DAY OF NOVEMBER, 2025

BEFORE

THE HON'BLE MRS JUSTICE GEETHA K.B.

MISCELLANEOUS FIRST APPEAL NO.103576 OF 2015

BETWEEN

NATIONAL INSURANCE COMPANY
LIMITED, D.O.1723,
RAMDEV GALLI, BELAGAVI,
NOW REPRESENTED BY
THE MANAGER, REGIONAL OFFICE,
2ND FLOOR, ARIHANT PLAZA,
KESHWAPUR, HUBBALLI.

...APPELLANT

(BY SRI RAJESH B. RAJANAL, ADVOCATE)

AND

1 . SMT. YALLAWWA W/O. DEMAPPA SANGOLLI
AGE: 45 YEARS, OCC: COBBLER AND
COOLIE WORK, R/O: KENGANUR,
TQ: BAILHONGAL, DIST: BELAGAVI.

2 . SHRI SHIVAPPA M. KADALI
AGE: MAJOR, R/O: LAKKUNDI
TQ: BAILHONGAL, DIST:BELAGAVI

...RESPONDENTS

(BY SRI. HANAMANTH R. LATUR, ADVOCATE FOR R1;
NOTICE SERVED TO R2 AND UREPRESENTED)

THIS MFA IS FILED UNDER SECTION 173(1) OF THE MOTOR
VEHICLES ACT 1988 PRAYING TO SET ASIDE THE JUDGMENT
AND AWARD PASSED IN M.V.C.NO.2481/2005 DATED:
21.08.2015 BY SENIOR CIVIL JUDGE AND ADDITIONAL MACT
BAILHONGAL ALLOW THIS APPEAL AND DISMISS THE CLAIM
PETITION IN THE INTEREST OF JUSTICE.

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.)

This appeal is filed under Section 173(1) of the Motor Vehicles Act, 1988 by the respondent-insurer challenging the judgment and award passed in MVC No.2481/2005 dated 21.08.2015 on the file of Senior Civil Judge and Additional MACT, Bailhongal (for short, 'Tribunal').

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

3. Claimant has filed claim petition before the Tribunal under Section 166 of Motor Vehicles Act claiming compensation for the injuries sustained by her in a road traffic accident that had taken place on 15.04.2005 at about 03.00 p.m.; when she was waiting for the bus by the side of Bailhongal bypass road near Anigol bus stop, a Hero Honda C.D. Dawn motorcycle bearing Reg.No.KA-24/H-3004 came

from opposite direction and dashed against her and thereby caused the accident which resulted in grievous injuries i.e., deformity of her right middle 1/3rd of leg, fracture of both tibia and fibula. Hence, she prayed for compensation under several heads.

4. After service of notice of the petition, respondent-owner appeared through his counsel and filed objections, wherein he denied the petition averments in toto and further contended that compensation claimed by the claimant is highly exorbitant and further stated that it is duly insured with respondent No.2. Hence, prayed for dismissal of petition.

5. Respondent No.2-insurer on service of notice appeared and filed its objections denying the petition averments in toto and denied the date, time and place of accident. It further contended that there is inordinate delay in lodging the complaint which was not properly explained. It is only an afterthought in collusion with police officials

and respondent No.1. Hence, prayed for dismissal of petition.

6. Initially after recording evidence, the Tribunal came to the conclusion that the road traffic accident involving the vehicle in question is not proved by the claimant and thereby dismissed the petition by passing the judgment on 31.12.2007. Aggrieved by said judgment and award, the claimant has preferred MFA No.21080/2008 which was allowed on 14.03.2014 and matter was remitted back to the Tribunal for fresh disposal.

7. After such remand, the claimant examined eyewitness as P.W.3; the administrative officer of respondent No.2 was examined as R.W.1; then after recording the evidence of both sides and hearing the arguments, the Tribunal came to the conclusion that the accident is proved and granted the compensation of ₹.2,22,880/- with current and future interest at 6% per annum by saddling the liability on respondent No.2-insurer.

8. Aggrieved by the said judgment and award, the present appeal is preferred by the appellant-insurer.

9. Learned counsel for appellant-insurer Sri Rajesh B Rajanal vehemently would submit his arguments that the Tribunal has not properly appreciated the oral and documentary evidence. He further would submit that there is delay of 10 days in lodging the complaint. Initially, when the claimant was admitted to the hospital, MLC was issued and it was not produced by the appellant-claimant even though there was specific undertaking while remanding the matter to the Tribunal by this court by the claimant's advocate that he would produce the extract of MLC register and examine the doctor. Hence, the respondent-insurer has produced said extract of MLC register as per Ex.R.2 before the Tribunal. On perusal of it, initially assault is written and strike off; then one scooter No.KA-24/297 is written in MLC report as RTA, but not the motorcycle involved in the present case. The Tribunal has not considered this aspect and only relied upon the evidence of PW.3, who is the close

friend of the husband of appellant-claimant. Hence, prayed for allowing the appeal and to dismiss the claim petition.

10. Learned counsel for respondent Sri Hanamant R Latur would submit his arguments that there was clear oral evidence adduced by the claimant and P.W.3 regarding the manner in which the accident happened. P.W.3 had withstood the cross-examination. Under those circumstances, extract of MLC register cannot be relied upon because there might be some mistake in noting the vehicle number involved in the accident in said register. Only because of that, it cannot be said that claimant has not established the factum of accident. Hence, considering these aspects, rightly, the Tribunal has allowed the claim petition and awarded the compensation to the claimant. Hence, prayed for dismissal of the appeal.

11. Having heard the arguments of both sides and on verifying the records of this Court and Tribunal, the following point would arise for consideration:

"Whether the Tribunal erred in holding that the claimant has established the road traffic accident had taken place on 15.04.2005 at Bailhongal bypass road, near Anigol Bus stop by the motorcycle bearing Reg.No.KA-24/H-3004?"

12. The finding on the above point is in **"affirmative"** for the following reasons.

13. The case of claimant before the Tribunal in nutshell is that she was met with an accident on 15.04.2005 when she was waiting for the bus at bypass road, Anigol bus stand at about 3.00 p.m., a motorcycle Hero Honda C.D. Dawn bearing Reg.No.KA-24/H-3004 came in a rash and negligent manner and dashed against her and because of that she fell down and sustained grievous injuries to her leg.

14. It is to be noted here that the alleged accident had taken place on 15.04.2005. But the complaint was lodged by the husband of claimant on 25.04.2005 at 11.15 a.m. as per Ex.P.2 and accordingly FIR was prepared as per

Ex.P.1. The husband of claimant is not an eyewitness to the incident. He has stated in the complaint that the rider of Hero Honda motorcycle has ridden it in a rash and negligent manner at about 03.00 p.m. on 15.04.2005 and dashed against his wife Smt.Yallavva and it is informed to him through one by Yallappa Dyamappa Talawar, resident of Kenganuru; the other witnesses Patravva and Chandrappa Ramappa Muargod of Jalikoppad (P.W.3) have taken her to Government Hospital, Bailhongal; then he got provided treatment to his wife at Dr.Mahantesh Hospital and he has also mentioned the number of motorcycle KA-24/H-3004 in the complaint.

15. Based on this complaint, a criminal case was registered and ultimately charge-sheet was filed against the rider of the motorcycle. Ex.P.4-motor vehicle accident report establishes that there were no visible damages to the motorcycle bearing Reg.No.KA-24/H-3004 when examined by the ARTO.

16. Ex.P.5-wound certificate is issued by the doctor at General Hospital, Bailhongal and not by Dr.Mahantesh Hospital. According to Ex.P.5, on 15.04.2005 at 3.30 p.m., the doctor first examined the claimant and she was brought to the hospital by one Somappa S Damakkanavar with the history of RTA on 15.04.2005 at 3.15 p.m. The vehicle details are not mentioned in this wound certificate.

17. Ex.R.2-certified copy of MLC register reveals that on 15.04.2005 at 04.09 p.m. patient by name Yallava Dyamappa Sangolli, female 35 years, Kenganuru came to the hospital with the history of assault (strike off) RTA at 03.15 p.m. at Bailhongal. This MLC register apparently reveals the name of vehicle as KA-24/2971 and that too it was a scooter. However, the vehicle alleged to be involved in this case is Hero Honda Motorcycle bearing Reg.No.KA-24/H-3004. In local language this Hero Honda motorcycle would be called as bike and will not be called as scooter.

18. PW.3 said to be the eye witness of the incident has stated in his affidavit evidence that on 15.04.2005

when they were standing near the bus stand, rider of H.H. motor cycle bearing Reg.No.KA-24/H-3004 came and dashed against Yallavva. In this regard, in his cross-examination, this witness has deposed that the claimant was standing in the vacant space by the side of the road and rider of the motorcycle came and dashed against her, she fell down and lost her consciousness; by the side of claimant, one Pattravva was standing and she also fell down. But she has not sustained injuries. She might have sustained abrasion injuries; the rider of the motorcycle has not stopped the vehicle and escaped from the spot and he has noted the vehicle number at that spot only; but he does not know to whom said two-wheeler belongs to and who was riding it; he has not accompanied the claimant to the hospital.

19. According to Ex.R.2 and Ex.P.5, this claimant was brought to the hospital by one Somappa Sathyappa Dyamappanavar. However, he was not examined by the claimant. Claimant has deposed in her cross-examination

that this Somappa Dyamappanavar is her relative. He and Chandrappa Murgod (P.W.3) admitted her to the hospital. However, P.W.3 deposed that he has not admitted her to the hospital. According to her, after dashing the motorcycle to her, even rider of the motorcycle fell down about 25-30 feet afterwards. But she does not know what happened to him.

20. Initially when claimant was examined, she has not stated the name of P.W.3 in her affidavit evidence and she has not even mentioned his name in the claim petition. Only after remand of the matter to establish the accident, she has stated in her affidavit evidence about P.W.3, which clearly indicates that P.W.3 is a concocted witness.

21. At the time of remand in MFA No.21080/2008 by this Court, the learned counsel for appellant had made submission that as per the wound certificate, immediately after the accident the claimant was taken to Civil Hospital, Bailhongal and thus he would examine the medical officer of said Hospital to provide extract of the MLC register of the

said hospital. After making such submission, the matter was remanded to the Tribunal to furnish the aforesaid documents or to examine the said doctor. However, as discussed above, the claimant has not made any efforts to examine the doctor of Civil Hospital, Bailhongal or to furnish MLC register. But it is the insurer who made efforts and summoned the MLC register extract and it was marked as Ex.R.2. The Tribunal has not considered Ex.R.2 only on the ground that the doctor, who has written it, was not examined. The said finding of the Tribunal is erroneous because it is issued by the CMO of General Hospital, Bailhongal only based on the records maintained in the MLC register. It is the register maintained on a daily routine basis by the General Hospital and there was no reason to disbelieve this document. It clinches the issue that the accident that was caused to the claimant is by scooter bearing No.KA-24/297 and not by the Hero Honda motorcycle bearing Reg.No.KA-24/H-3004.

22. However, without examining these facts in a proper manner, the Tribunal has grossly erred in coming to the conclusion that the claimant has proved the accident and granted compensation to the claimant. The claimant might have sustained accident at the spot, but not from the vehicle, which is involved in this case.

23. Learned counsel for respondent-claimant relied on the following citations:

1. ***Meera Bai and others vs. ICICI Lombard General Insurance Company Limited and Another*** reported in **2025 ACJ 1131**;
2. ***Anita Sharma and Others vs. New India Assurance Company Limited and Another*** reported in **2021 ACJ 17**, wherein it is held as under;

"12. Importantly, the owner-cum-driver though denied responsibility of the accident through his written statement but chose not to enter the witness box in his defence. The insurance company, on the other hand, relied upon the contents of the FIR and the 'Investigation Report' to aver that the accident took place due to rash and negligent driving of the truck driver alone. But we find that the 'investigation report' (Exh. 2) dated 05.05.2009 merely recites that the

registration number of the offending truck could not be ascertained despite best efforts."

3. **Branch Manager, The Oriental Insurance Company Limited vs. Narsamma Askihal and Others** reported in **2019 M.A.C. 414 (Kant)(DB);**
4. **Sachin Yallappa Usulkar and Others vs. Vijayata and Others** reported in **2025 acj 1140;**

24. In **Meera Bai's** case, referred supra, only based on delay in lodging the complaint, it was held that the accident was not proved and at that juncture it was held that filing of charge sheet is sufficient.

25. In the instant case, the vehicle number was given at the time of lodging MLC itself, but that was not so in the aforesaid citation. Hence, facts and circumstances of the present case and the aforesaid citations relied by learned counsel for respondent are entirely different.

26. In this regard, this Court relies upon the decision of the Hon'ble Apex Court in the case of **Ravi Vs.**

Badrinarayan & others reported in **AIR 2011 SC 1226**,

wherein the Hon'ble Apex Court has held as under:

"20. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so the contents of the FIR should also be scrutinised more carefully. If the court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground."

27. In the above said judgment, the Hon'ble Apex Court has specifically stated that when there is delay in lodging the complaint, then the Courts are required to examine the evidence with a closure scrutiny.

28. Under the circumstances, when the accident itself is doubtful, it is the duty of Court to look into the evidence with closure scrutiny and then come to the conclusion whether accident occurred or not. That is not being done in

the present case by the Tribunal; the Tribunal, only relying upon the FIR and complaint and relying upon the oral evidence of P.W.3, which is inadmissible for the reasons stated supra, awarded the compensation, which is erroneous and requires interference.

29. Hence, I proceed to pass the following:

ORDER

- a) Appeal filed under Section 173(1) of the Motor Vehicles Act, 1988 is allowed by setting aside the judgment and award passed in MVC No.2481/2005 dated 21.08.2015 on the file of Senior Civil Judge and Additional MACT, Bailhongal;
- b) The claim petition is dismissed as the road traffic accident due to involvement of motorcycle bearing Reg.No.KA-24/H-3004 is not established.
- c) Amount in deposit, if any, is ordered to be refunded to the appellant on proper identification.

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

SH
CT-CMU