

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 30TH DAY OF JANUARY, 2026

BEFORE

THE HON'BLE DR. JUSTICE K.MANMADHA RAO

MISCELLANEOUS FIRST APPEAL NO.101629 OF 2014 (MV)



BETWEEN:

THE DIVISIONAL MANAGER,
THE NATIONAL INSURANCE CO. LTD.,
RAMDEV GALLI, BELGAUM,
INSURER OF TEMPO
BEARING NO.MH-10/AG-5163
VEHICLE INSURED WITH NATIONAL CO.LTD.,
SANGLI BRANCH OFFICE,
JAIN BORDING COMPLEX, SANGLI-416416.
POLICY NO.27-802/31/12/6300003251
PERIOD COVER 23.02.2013 TO 22.02.2014

...APPELLANT

(BY SMT. ARUNA R. DESHPANDE, ADVOCATE)

AND:

1. SMT. VAISHALI
W/O. RAMESH PISE
AGE: 41 YEARS,
OCC: HOUSEHOLD WORK,
2. SMT. PRIYA
W/O PRADEEP VINEHA
AGE: 39 YEARS,
OCC: HOUSEHOLD WORK,
3. SMT. MADHURI
W/O UDAY POKALE
AGE: 37 YEARS,
OCC: HOUSEHOLD WORK,
4. SMT. TEJEASWINI
W/O VAIBHAV KOGALE

Digitally signed
by
MOHANKUMAR
B SHELAR
Location: High
Court of
Karnataka,
Dharwad Bench

AGE: 35 YEARS,
OCC: HOUSEHOLD WORK,

5. SMT. PRIYA
W/O PREETAM BULBULE
AGE: 35 YEARS,
OCC: HOUSEHOLD WORK,
6. SMT. SAPNA
W/O. VISHWANATH MALAVADE
AGE: 31 YEARS,
OCC: HOUSEHOLD WORK,

ALL ARE R/O KOLHAPUR
PRESENTLY AT KAKTI
C/O MANISH W/O NARENDRA PETKAR

7. MR. PRABHUNAND APPASO JEUR
AGE: MAJOR, OCC: BUSINESS,
R/O. DARIBADACHI, TQ: JATH,
DIST: SANGLI, MAHARASHTRA.

...RESPONDENTS

(BY SMT. SUNANDA P. PATIL, ADVOCATE FOR R1 TO R6;
NOTICE TO R7-DISPENSED WITH)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT 1988, PRAYING TO SET ASIDE THE COMMON ORDER DATED 17.01.2014 PASSED IN MVC NO.882/2013 ON THE FILE OF II ADDITIONAL SENIOR CIVIL JUDGE AND ADDITIONAL MACT BELAGAVI BY ALLOWING THE ABOVE APPEAL, IN THE INTEREST OF EQUITY AND JUSTICE.

THIS MFA HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 22.01.2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:
CORAM: THE HON'BLE DR. JUSTICE K.MANMADHA RAO

CAV JUDGMENT

This appeal is filed under Section 173(1) of Motor Vehicles Act, 1988 (hereinafter referred to as 'MV Act') by the Insurance Company challenging by the Judgment and Award dated 17.01.2014 passed by the II Additional Senior Civil Judge and Additional Motor Accidents Claims Tribunal, Belgaum ('the Tribunal', for short) in MVC No.882/2013.

2. For convenience, the parties are referred to, based on their rankings before the Tribunal.

3. Facts giving rise to the filing of the appeal briefly stated are as under:

On 13.03.2013, one Dhiraj Vijay Pise was riding the motorcycle bearing registration No.MH-09/BE-6760 with two pillion riders, namely Narendra Narayan Petkar, husband of claimant No.1 and father of claimant No.2 in MVC No.794/2013 and Smt.Lalita Narayan Petkar, mother of the claimants in MVC No.882/2013 from Ugar to Miraj. When the motorcycle reached on Maishal-Miraj Road at about 1.50 p.m., a Tempo bearing Registration No.MH-10/AQ-5163 came from opposite direction, in a rash and negligent manner and dashed against the said motorcycle. Due to the impact, the rider of the motorcycle Dhiraj Vijay Pise and Lalita Narayan Petkar died on the spot and the said Narayan

Petkar was shifted to the Hospital and succumbed to the injuries and a case was registered against the driver of the Tempo.

Smt.Lalita Narayan Petkar was aged about 60 years and was hale and healthy prior to the accident. She was doing tailoring work and earning Rs.6000/- per month. Due to the untimely death of Smt.Lalita Narendra Petkar, the claimants in MVC No.882/2013 have lost their financial support. Hence, claimants pray to award compensation of Rs.25,00,000/- with interest at 12% per annum. The claimants contend that respondent No.1, the R.C. owner and respondent No.2, the insurer of said Tempo are jointly and severally liable to pay the compensation.

4. In response to Court notice, though respondent No.1 has been served, he remained absent and placed ex parte. Respondent No.2 Insurance Company has entered appearance through his counsel and has filed objection statement contending that the claimants are residents of Kolhapur. It is denied that the accident had occurred due to rash and negligent driving of the driver of the Tempo. He submits that there were two pillions on the motorcycle, which is in violation of law. He submits that due to the triple riding, the rider of the motorcycle lost control of the vehicle and to his own negligence the accident had occurred. He submits that the driver did not possess valid and effective driving licence and also violated policy conditions. He mainly contends that all the claimants are

married daughters and they were not dependents to her mother and hence prays to dismiss the appeal.

5. The Tribunal on the basis of the pleadings of the parties, framed issues. The claimant No.1 examined herself as P.W.2 and one more witness is examined as PW3 and got marked 22 documents as per Exs.P1 to Ex.P22. On the other hand, respondent No.2 - Insurance Company has not led any evidence but by consent Ex.R1-insurance policy came to be marked. The Tribunal after assessing the oral and documentary evidence, allowed the claim petition in part and awarded compensation of Rs.4,28,000/- to the claimants with interest at the rate of 9% p.a., from the date of petition till the date of realization and held respondent Nos.1 and 2 jointly and severally liable to pay the compensation.

6. The learned counsel appearing for the appellant-Insurance Company would contend that the Tribunal failed to consider the mandatory provisions of Section 173(1) of the MV Act, and erred in entertaining the claim petition despite lack of territorial jurisdiction, as all the claimants are residents of Kolhapur and the alleged accident occurred at Sangli. The Tribunal ought to have dismissed the claim petition on this ground alone.

7. It is further contended that the Tribunal further erred in not dismissing the claim petition for non-joinder of necessary parties, as the owner and insurer of the motor cycle bearing No.MH-09/EE-6760 were not impleaded. The Tribunal also failed to properly appreciate the contributory negligence of the rider of the motor cycle, who violated Section 128 of the MV Act by carrying two pillion riders at the time of the accident. Further, the award of Rs.3,78,000/- towards loss of estate is grossly excessive, arbitrary and contrary to settled principles of law and the binding decision of the Co-ordinate Bench of this Court in the case of **A. Manavagala v. A. Krishnamurthy** reported in **ILR 2004 KAR 3268**, and is therefore liable to be set aside or suitably reduced.

8. The learned counsel for the respondents No.1 to 6 has placed reliance on the judgment of this Court in the case of **National Insurance Co.Ltd., v. Alwin Lobo and another** reported in **2023 ACJ 2054**, wherein held that where the assessment of disability and compensation by the Tribunal is found to be inadequate or perverse, the appellate Court is empowered to enhance the compensation even in an appeal filed by the insurer, by invoking Order XLI Rule 33 of the CPC. The learned counsel further places reliance on the judgments of this Court as under:-

- ***United India Insurance Company Limited v. Aravind Madhukar Sutar and another*** by order dated **11.03.2024** passed in **MFA No.102023/2018**,
- ***Smt.Manisha and another v. Shri Prabhunand Appaso and another*** by order dated **28.10.2014** passed in **MFA No.101262/2013 c/w. MFA No.101628/2014**.

9. Heard learned counsel appearing on either side.

10. Having considered the contentions advanced and on perusal of the materials available on record, it is relevant to place reliance on the judgment of the Hon'ble High Court of Andhra Pradesh in the case of **M/s. National Insurance Company Ltd., v. E. Suseelamma**, reported in **2023 SCC OnLine 1725**, wherein the scope and ambit of Order XLI Rule 33 of the Code of Civil Procedure have been elaborately considered in the context of motor accident claim appeals and held that Order XLI Rule 33 of the CPC is an enabling provision conferring wide discretionary power upon the appellate Court to pass such decree or order as ought to have been passed by the Tribunal, or as the justice of the case may require, notwithstanding the fact that the appeal is preferred only by one of the parties and even in the absence of any appeal or cross-objection by the beneficiary of such relief.

11. It was further held that in appeals under Section 173 of the MV Act, the applicability of the Code of Civil Procedure, including Order

XLI Rule 33, is not excluded, and the appellate Court is empowered to examine the entire award on facts and law. The judgment emphasizes that the absence of an appeal or cross-objection by the claimants does not denude the jurisdiction of the appellate Court to mould relief, provided such exercise does not violate any legal prohibition and does not cause prejudice to the opposite party. The power under Order XLI Rule 33 of the CPC, must be exercised with care and caution, but should not be declined where interference is necessary to prevent injustice or to bring the award in conformity with settled legal principles.

12. The approach adopted by the Hon'ble Andhra Pradesh High Court is in consonance with the consistent view taken by the Co-ordinate Bench of this Court in the case of ***United India Insurance Company Limited v. Aravind Madhukar Sutar and another*** by order dated **11.03.2024** passed in **MFA No.102023/2018**, wherein this Court has observed that technicalities cannot override the duty of the appellate Court to ensure just compensation, and in the case of ***A. Manavalagan v. A. Krishnamurthy*** reported in **ILR 2004 KAR 3268**, it has been held that while exercising appellate jurisdiction, the Court must correct awards which are contrary to settled principles, particularly under conventional heads.

13. By applying the principles laid down in ***E. Suseelamma's*** case (*supra*), to the present case, it is clear that the appeal filed by the insurer brings the entire award under scrutiny before this Court. Merely because the claimants have not preferred an appeal or filed cross-objections, this Court is not precluded from examining whether the Tribunal has correctly applied the law governing assessment of compensation. The appellate jurisdiction under Section 173 of the MV Act, read with Order XLI Rule 33 of the CPC, empowers this Court to pass such orders as ought to have been passed by the Tribunal to meet the ends of justice.

14. In view of the above, it is observed that the object of invoking Order XLI Rule 33 of the CPC, in motor accident cases is not to grant a windfall, but to ensure conformity with legal standards governing compensation. Therefore, if the Tribunal has awarded amounts contrary to settled principles under particular heads, the appellate Court is justified in correcting such errors, even if such correction incidentally benefits a party who has not appealed. The decisive consideration is whether the final award represents just, fair and reasonable compensation in accordance with law.

15. After giving thoughtful consideration, this Court holds that while the findings on negligence and liability do not warrant interference,

the award must nevertheless be tested on the touchstone of settled legal principles governing quantum. The power under Order XLI Rule 33 of the CPC is therefore available to this Court to mould appropriate relief, to the extent necessary, so that the compensation ultimately awarded neither exceeds nor falls short of what the law recognizes as just compensation, and thereby subserves the object of the MV Act.

16. The appeal is preferred by the insurer questioning the common judgment and award dated 17.01.2014 passed by the Motor Accident Claims Tribunal. While examining the legality and correctness of the award, this Court is conscious of the settled principle that the jurisdiction under Section 173 of the MV Act is open for consideration on facts and law. In this context, the power of the appellate Court under Order XLI Rule 33 of the CPC assumes significance, particularly where the Court is required to mould relief so as to do complete justice between the parties.

With regard to the Quantum:

17. The Tribunal had taken income at Rs.3,500/- per month but claimant herself contend that her income was Rs.6,000/- per month. Hence this Court deems it appropriate to consider her monthly income at Rs.6,000/- and multiplier taken is '9'. Hence, loss of dependency works out as under:-

$$\text{Rs.6,000/- less } 1/4^{\text{th}} = \text{Rs.4,500/-} \times 12 \times 9 = \text{Rs.4,86,000/-}$$

18. As regards filial consortium and loss of love and affection, the Tribunal has taken Rs.30,000/-. But in view of the Apex Court judgment in ***Magma General Insurance Co. Ltd. v/s Nanu Ram Alias Chuhru Ram & Ors., reported in 2018 ACJ 2782,*** Rs.48,000/- each for six claimants is awarded for filial consortium and love/affection and Rs.18,000/- for loss of estate and funeral expenses, considering two escalations in accordance with the post - 2017 judgments of the Apex Court and this High Court, where a 10% escalation is applied for every three years. Accordingly, the reassessment of the compensation as per the Chart of the High Court Legal Services Authority is as under:

Sl. No.	Head of Compensation	Amount
1	Loss of Dependency	4,86,000
2	Loss of Estate	18,000
3	Funeral Expenses	18,000
4	Love and Affection (6 claimants)	2,88,000
	Total Compensation	8,10,000

19. Considering the calculations, the total compensation is fixed at **Rs.8,10,000/-** with interest at 6% per annum from the date of petition till realization.

20. In the result, this Court proceeds to pass the following:

ORDER

- i. The appeal is ***allowed-in-part***.

- ii. The judgment and award dated 17.01.2014 passed by the II Additional Senior Civil Judge and Additional Motor Accidents Claims Tribunal, Belgaum in MVC No.882/2013, is modified. The claimants are entitled for total compensation of **Rs.8,10,000/-** with interest at the rate of 6% per annum from the date of petition till realisation.
- iii. The Corporation shall deposit the enhanced compensation along with interest within six weeks from the date of receipt of certified copy of this judgment.
- iv. Apportionment and disbursement shall be in the same manner as directed by the Tribunal.
- v. Amount in deposit, if any, shall be transmitted to the Tribunal forthwith.
- vi. The trial Court records, if any, shall be transmitted to the Tribunal forthwith.

No order as to costs.

Sd/-
(DR. K.MANMADHA RAO)
JUDGE

KGK, CT:VP