

HC-KAR



CNR: KAHC010196862017

NC: 2026:KHC:41598-DB  
MFA No. 474 of 2017  
C/W MFA No. 4854 of 2016  
MFA No. 4855 of 2016

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 6<sup>TH</sup> DAY OF AUGUST, 2026**

**PRESENT**

**THE HON'BLE MR. JUSTICE JAYANT BANERJI**

**AND**

**THE HON'BLE MS. JUSTICE TARA VITASTA GANJU**

**MISCELLANEOUS FIRST APPEAL NO.474 OF 2017 (MV-I)**

**C/W**

**MISCELLANEOUS FIRST APPEAL NO.4854 OF 2016 (MV-I)**

**MISCELLANEOUS FIRST APPEAL NO.4855 OF 2016 (MV-I)**

**IN MFA No.474/2017:**

**BETWEEN:**

MISS SINDHU.C.L.  
D/O LOKNATH.C.A.,  
AGED ABOUT 30 YEARS,  
/AT #37/7/5/ 2<sup>ND</sup> MAIN,  
GANGADHAR LAYOUT,  
VIJAYANAGAR,  
BENGALURU - 560 040.

...APPELLANT

(BY SRI. NATARAJ.H.T, ADVOCATE)

**AND:**

1. M/S. NATIONAL INSURANCE  
COMPANY LIMITED,  
#3, MIDDLETON STREET,  
POST BOX NO.9229,  
KOLKATA - 700 071.
2. M/S.LINK TAXIES PVT. LTD.,  
# 90/4, MUNEKOLALU VILLAGE,  
VARTHUR HOBLI,  
BENGALURU - 560 037.

...RESPONDENTS

Digitally signed by  
SUMATHY KANNAN  
Location: HIGH  
COURT OF  
KARNATAKA

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(BY SRI. A RAVISHANKAR, ADVOCATE FOR R1-ABSENT;  
SRI. K.RAVISHANKAR, ADVOCATE FOR R2)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 02.03.2016 PASSED IN MVC NO.1824/2013 ON THE FILE OF THE X ADDITIONAL JUDGE, COURT OF SMALL CAUSES (SCCH-16) BENGALURU, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

**IN MFA NO.4854/2016:**

**BETWEEN:**

M/S V.LINK TAXIES PVT LTD.,  
REP. BY ITS MANAGER FACILITATION,  
VIJAYA KUMAR.,  
NO.90/4, MUNEKOLALU VILLAGE,  
VARTHUR HOBLI,  
BENGALURU - 560 037.

...APPELLANT

(BY SRI. K.RAVISHANKAR, ADVOCATE)

**AND:**

1. SRI. PONANNA.M.S.  
S/O M.P.SUBBAIAH,  
AGED 29 YEARS,  
R/AT NO.104,  
KALYAN BCR COMPLEX BANASWADI,  
BENGALURU-560 040.

2. M/S. NATIONAL INSURANCE COMPANY LTD.,  
3, MIDDLETON STREET,  
POST BOX 9229,  
KOLKATA - 700 071.

...RESPONDENTS

(BY SRI. H.T.NATARAJ, ADVOCATE FOR R1;  
SRI. A.RAVISHANKAR, ADVOCATE FOR R2)

HC-KAR



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MFA No. 474 of 2017  
C/W MFA No. 4854 of 2016  
MFA No. 4855 of 2016

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED: 02.03.2016 PASSED IN MVC.NO.1825/2013 ON THE FILE OF THE 10<sup>TH</sup> ADDITIONAL JUDGE, COURT OF SMALL CAUSES, MACT, BENGALURU (SCCH-16) AWARDED A COMPENSATION OF RS.23,500/- WITH INTEREST @ 9% P.A FROM THE DATE OF PETITION TILL ITS REALIZATION.

**IN MFA NO.4855/2016:**

**BETWEEN:**

M/S. V.LINK TAXIES PVT LTD.,  
REP. BY ITS MANAGER FACILITATION,  
NO.90/4, MUNEKOLALU VILLAGE,  
VARTHUR HOBLI,  
BENGALURU-560 037.

...APPELLANT

(BY SRI. K.RAVISHANKAR, ADVOCATE)

**AND:**

1. MISS. SINDU.C.L.  
D/O LOKNATH.C.A.,  
AGED ABOUT 30 YEARS,  
R/AT NO.37/7/5, 2<sup>ND</sup> MAIN,  
GANGADHAR LAYOUT,  
VIJAYANAGAR,  
BENGALURU-560 040.

2. M/S. NATIONAL INSURANCE COMPANY LTD.,  
3, MIDDLETON STREET,  
POST BOX 9229,  
KOLKATA - 700 071.

...RESPONDENTS

(BY SRI. NATARAJ.H.T, ADVOCATE FOR R1;  
SMT. GEETHARAJ, ADVOCATE FOR R2 - ABSENT)

THIS MFA FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 02.03.2016 PASSED IN MVC NO.1824/2013 ON THE FILE OF THE 10<sup>TH</sup>

HC-KAR



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MFA No. 474 of 2017  
C/W MFA No. 4854 of 2016  
MFA No. 4855 of 2016

ADDITIONAL JUDGE, COURT OF SMALL CAUSES, MACT,  
BENGALURU (SCCH-16) AWARDING A COMPENSATION OF  
RS.92,510/- WITH INTEREST @ 9% P.A FROM THE DATE  
OF PETITION TILL ITS REALIZATION.

THESE APPEALS COMING ON FOR HEARING THIS DAY,  
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI  
&  
HON'BLE MS. JUSTICE TARA VITASTA GANJU

**ORAL JUDGMENT**

**(PER: HON'BLE MS. JUSTICE TARA VITASTA GANJU)**

**ORDER ON I.A.No.2/2016 in MFA No.4855/2016:**

1. An application I.A.No.2/2016 is filed seeking condonation of delay of 43 days in filing the present appeal. The reasons as stated in the application being found to be sufficient and in view of the fact that the opposite party has no objection in allowing the said application, I.A.No.2/2016 is allowed and the delay of 43 days in filing the appeal is condoned.

**M.F.A.No.474/2017, M.F.A.No.4854/2016**

**& M.F.A. No.4855/2016:**

2. These appeals seek to challenge the Common Judgment and Award dated 02.03.2016 in MVC



No.1824/2013 & MVC No.1825/2013 passed by the X Additional Judge, Court of Small Causes (SCCH-16), Bangalore, (hereinafter referred to as the 'Impugned Award'). By the Impugned Award, the learned Tribunal has awarded compensation in a sum of Rs.92,510/- to the claimant in MVC No.1824/2013 and a sum of Rs.23,500/- to the claimant in MVC No.1825/2013 along with interest at 9% per annum from the date of petition till its realisation. The challenge in the present appeals has been made by the claimant in MVC No.1824/2013 as well as by the Owner of the offending vehicle in MVC No.1824/2013 as well as MVC No.1825/2013. There is no appeal filed on behalf of the Insurance Company.

3. While MFA No.474/2017 has been filed by the appellant/claimant in MVC No.1824/2013 seeking for enhancement of compensation awarded by the learned Tribunal, MFA No.4854/2016 and MFA No.4855/2016 have been filed by the Owner of the offending vehicle / M/s. V. Link Taxies Pvt. Ltd. challenging the finding of the learned



Tribunal in both the claim petitions fastening the liability on them to pay the compensation as per the Impugned Award.

4. The appellant in MFA No.474/2017 being the claimant in MVC No.1824/2013 namely Ms.Sindhu C.L. shall hereinafter be referred to as 'petitioner No.1'. The respondent No.1 in MFA No.4854/2016 being the claimant in MVC No.1825/2013 namely Shri Ponanna M.S. shall hereinafter be referred to as 'petitioner No.2'. Further, the appellant in MFA Nos.4854/2016, and MFA No.4855/2016, being the owner of the offending vehicle namely 'M/s. V. Link Taxies Pvt. Ltd.' shall hereinafter be referred to as 'owner of the offending vehicle' for the sake of convenience. While petitioner No.1 has filed MFA No.474/2017 seeking for enhancement of the compensation awarded by the learned Tribunal, petitioner No.2 has not filed any appeal for enhancement.

5. When the matters are taken up for final hearing and called out, there is no appearance on behalf of the



Insurance Company. The Insurance Company is accordingly proceeded with *ex parte*.

6. Briefly, the facts of the case are that the petitioner in MVC No.1824/2013 and the petitioner in MVC No.1825/2013 were travelling in a Toyota Etios bearing Registration No.KA-02/MH975 towards Shimoga on the National Highway No.206 via Tumkur KB Cross and when they reached near Tiptur at about 5.45 p.m., the driver of a Mahindra Logan City Taxi bearing Registration No.KA-53/6386 while driving at a high speed, hit the vehicle of the petitioners. As a result of the accident, both petitioners sustained injuries and were shifted to the Tiptur Government Hospital and thereafter to Columbia Asia Hospital in Bangalore.

7. Claim petitions were filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the MV Act'), were filed by both the petitioners. So far as concerns MVC 1824/2013, it was stated in the claim



petition that the petitioner therein/Ms.Sindhu C.L. sustained permanent disfigurement. She suffered displaced fracture of left 6<sup>th</sup>, 7<sup>th</sup> ribs and undisplaced fracture of left 5<sup>th</sup> and 8<sup>th</sup> ribs and was advised to take bed rest for 6 months. It was also stated in the claim petition that she lost a project of Rs.8,00,000/-, in the Movie Industry. The petitioner in MVC No.1825/2013 also similarly stated that he had spent considerable amounts for medicines and other charges in view of the injuries sustained in the accident. It was stated in the petitions that both the petitioners were permanently disabled due to the accidental injuries.

8. The jurisdictional Police registered a case being Crime No. 11 of 2013 against the driver of the offending vehicle. Notice of the claim petitions was sent to the respondent No.1/Insurance Company as well as respondent No.2/owner of the offending vehicle, who appeared before the learned Tribunal and filed their respective written statements. The respondent No.1/



Insurance Company, denied the accident, medical expenses incurred and also raised objections such as the FIR was lodged two days late and that the driver of the offending vehicle did not possess a valid permit as a city taxi, but restricted its plying within 25 kilometres of limits from Bengaluru city and since it was driving without a permit and a breach of policy condition was there, the respondent No.1/Insurance Company was not liable to pay compensation.

8.1 As far as the respondent No.2/owner of the offending vehicle is concerned, it was contended that the offending vehicle was insured as on the date of the accident. Thus, the respondent No.1/Insurer has to indemnify and pay the compensation.

9. On the basis of the pleadings of the parties, the following issues were framed:

*"ISSUES IN MVC NO.1824/2013 & IN MVC NO.1825/2013*

*1. Whether the petitioner proves he has sustained grievous injuries in a road traffic accident due to involvement of Mahindra Logan City Taxi bearing Reg.No.KA-53-6368 on 04.02.2013 at about 3.00 p.m., by it*



*is stated that, rash and negligent driving as alleged in the petition?*

*2. Whether the petitioner is entitled for any compensation as claimed? If so, to what extent and from whom?*

*3. What order or award?"*

10. The petitioner Nos.1 and 2 examined themselves as PW-1 and PW-2 respectively and also marked 18 documents, which included copy of the Complaint (Exhibit-P1), FIR (Exhibit-P2), Spot Mahazar (Exhibit-P3), IMV Report (Exhibit-P4), Charge-sheet (Exhibit-P5), Wound Certificate (Exhibit-P6), Columbia Hospital Bill (Exhibit-P7) and other documents specifying the Car Rent Receipt (Exhibit-P8), Agreement for Project in Movie Industry (Exhibit-P9), Income Tax Verification of AY 2013-14 (Exhibit-P10), Statement of Account (Exhibit-P11), Case Sheet (Exhibit-P14) and MLC Extract (Exhibits-P16 and P17).

10.1 On behalf of the respondents, one Vijay Kumar, Manager Facilitation of the Insurance Company was examined as RW-1 and G. Shivkumar, Administrative



Officer of the Insurance Company was examined as RW-2 and eight Exhibits were marked on behalf of the respondents namely Authorization letter (Exhibit R1), Policy (Exhibit R2), Office copy of complaint (Exhibit R3), ID Card (Exhibit R4), Policy Copy (Exhibit R5), Permit extract (Exhibit R6), D.L. extract (Exhibit R7) and B-register extract (Exhibit R8).

11. The learned Tribunal after examining the evidence, found that the driver of the offending vehicle was driving in a rash and negligent manner and that a Police complaint was lodged against him. It was also stated that there was no contributory negligence on the part of the driver of the vehicle in which the claimants were travelling. The learned Tribunal also found that the FIR or the charge-sheet had not been challenged and thus it was held that the issue of rash and negligent driving was proved.

12. On the award of compensation, the learned Tribunal found that as per the discharge summaries, petitioner No.1 was hospitalised for 2 days from the date of the



accident and the medical bills were also taken into consideration to calculate the compensation. In addition, the learned Tribunal found that although the petitioner No.1 had stated that she had a Movie Project amounting to Rs.8,00,000/- which she lost due to the accident, she had not produced any document with respect to the project. It was also contended that petitioner No.1 had acted in some movies and four movies of her had been released till date, including one in 2014. However, the petitioner No.1 had not produced any document to show that she had left the film industry after the accident. Thus, based on the evidence placed before it, the learned Tribunal, calculated the income of petitioner No.1 in the following terms:

**In MVC.No.1824/2013 (appellant in MFA No.474/2017):**

| Sl.No. | Heads of Compensation                                                     | Amount (in Rs.) |
|--------|---------------------------------------------------------------------------|-----------------|
| 1      | Pain and sufferings                                                       | 25,000/-        |
| 2      | Attendant charges, nutritious food, conveyance and transportation charges | 3,000/-         |



|   |                                        |                 |
|---|----------------------------------------|-----------------|
| 3 | Medical expenses                       | 24,510/-        |
| 4 | Loss of income during laid up period   | 30,000/-        |
| 5 | Loss of future amenities and happiness | 10,000/-        |
|   | <b>TOTAL</b>                           | <b>92,510/-</b> |

12.1 Thus, the learned Tribunal awarded petitioner No.1 /Ms. Sindhu C.L. compensation in a sum of Rs.92,510/- along with interest at the rate of 9% per annum from the date of petition till its realization.

13. The challenge as stated in the appeal is by the appellant in MFA No.474/2017 for enhancement of compensation. Learned counsel for the appellant in MFA No.474/2017/petitioner No.1 submits that the learned Tribunal was required to rely on the evidence of the Doctor to calculate her disability. He further submits that petitioner No.1 was an actress and lost some of her future projects on account of the accident. On a query being put to the learned counsel, he fairly submits that no document has been produced to show loss of earnings of petitioner



No.1. So far as concerns the disability of petitioner No.1, only the evidence of the Doctor has been produced.

14. Learned counsel for the owner of the offending vehicle/respondent No.2 in MFA No.474/2017 who is also the appellant in MFA No.4854/2016 and MFA No.4855/2016 has also challenged the award of the learned Tribunal. He submits that since the offending vehicle possessed a valid insurance policy, the liability could not have been fastened on the owner. He further submits that the breach of the conditions of permit is not a ground available to the Insurance Company, in terms of the settled position of law. Thus, he submits that the liability should have been fastened on the Insurance Company.

15. Based on the contentions of the parties, the following points would arise for determination:

- (i) Whether the amounts awarded by the learned Tribunal were in accordance with the evidence on record?



(ii) Whether the liability could have been fastened on the owner of the offending vehicle by the learned Tribunal?

16. This Court has examined the Impugned Award as well as the evidence placed on record. Undisputably, the petitioner No.1 was initially hospitalized for 2 days in Tiptur Government Hospital and thereafter in Columbia Asia Hospital in Bangalore. PW-3, who is an Assistant Surgeon/Medical Officer at Columbia Asia Hospital, has deposed on behalf of petitioner No.1. The Doctor has stated that the petitioner No.1 was brought to the hospital with grievous injuries of (a) subcutaneous emphysema and (b) displaced fracture of left 6<sup>th</sup>, 7<sup>th</sup> ribs and undisplaced fracture of left 5<sup>th</sup> and 8<sup>th</sup> ribs, on the night of 04.02.2013 at 10.00 p.m. and was discharged on 06.02.2013 and was advised regular follow-up treatment. On follow-up treatment on 01.09.2014, the Doctor has stated that the petitioner No.1 complained of pain in chest on and off, sometimes difficulty in breathing, lifting



weights, driving, running, dancing. But on an examination of the lungs, the Doctor has stated that her respiration appeared to be normal and also that although the patient has difficulties, the disabilities cannot be assessed in terms of percentage. The relevant extract of the evidence of PW-3, is set out below:

*"1. I submit that the patient Miss. Sindhu C.L., aged **about 27 years was brought to our hospital on 05.02.2013 with alleged history of road traffic accident when the following injuries were found:***

- (a) *Subcutaneous emphysema.*
- (b) *Displaced fracture of left 6<sup>th</sup>, 7<sup>th</sup> ribs and undisplaced fracture of left 5<sup>th</sup> and 8<sup>th</sup> ribs.*

*2. I am of the opinion injuries **(1) and (2) are grievous. Patient was brought to our hospital on 04.02.2013 night at 10 PM.** Patient was admitted in our hospital between 05.02.2013 to 06.02.2013 and treated conservatively. Patient was discharged on 06.02.2013 and advised regular follow up treatment patient came in **April and August in 2013 for follow up treatment.***

*3. On 01.09.2014 patient came to Dr. Mukundan and me for checkup, further treatment and assessment of disability. **She came with complaints of pain in chest on and off, sometimes difficulty in breathing, lifting weights, driving, running, dancing (Actress by profession).***

- 4. On examination lungs respiration normal no tendency of ribs, though the patient has difficulties but the difficulties and disabilities are cannot be assessed in terms of percentage."*

[Emphasis Supplied]



16.1 On cross-examination conducted by the Advocate for the Owner of the offending vehicle as well as Insurance Company, it was admitted by the Doctor that the petitioner No.1 did not suffer any disability. The relevant extract of the cross examination reads thus:

*"CROSS EXAMINATION BY SRI. VS ADVOCATE FOR R1:*

*I have not produced authorisation letter. I am working from January 2014. I have treated the patient with other doctor only once and later assessed disability. **I have not issued wound certificate.** The petitioner was inpatient for 2 days. the petitioner was treated conservatively. The petitioner was stable at the time of discharge. **I have not produced follow-up records.** **The petitioner was not having any disability.** It is false to say that the petitioner's profession will not be effected. It is false to say that to help the petitioner I am falsely deposing.*

[Emphasis Supplied]

16.2 The wound certificate produced at Exhibit P6 also reveals the very same injuries stated in the evidence of the Doctor/PW-3 as extracted above. Further, no other document has been shown or filed by the petitioner No.1 to prove her disability. Thus, concededly, as per the examination of the Doctor and as per the evidence of the Doctor, there was no permanent physical disability of



petitioner No.1. Thus, the learned Tribunal has rightly not awarded any amounts in that regard.

17. So far as concerns the amounts granted on the heads of 'pain and suffering', 'attendant charges', 'loss of income during laid up period' and 'loss of future amenities and happiness', given the evidence placed on record, this Court deems it apposite to enhance these amounts. The amount awarded towards 'pain and suffering' is enhanced to Rs.50,000/-. The compensation towards 'attendant charges' is enhanced to Rs.25,000/-. The compensation towards 'loss of income during laid-up period' is enhanced by another Rs.10,000/-. The compensation towards 'loss of future amenities' is enhanced by another Rs.30,000/-.

18. An examination of the income tax returns which have been placed on record in relation to petitioner No.1 for the Assessment Year 2013-14, shows the gross income of petitioner No.1 as Rs.3,30,542/-, the net income as Rs.2,74,060 and that she had paid an Income Tax of Rs.7,628/-. Thus, the compensation would have to be

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awarded accordingly. PW-4 has also placed on record the agreements entered into by petitioner No.1 for acting in films including the Agreement dated 18.03.2012, the Agreement dated 15.07.2012, an Agreement dated 09.10.2012 as well as agreement to act in a movie from the month of November 2012. From each of these assignments, it is revealed that the petitioner No.1 would have earned a sum of Rs.2 to 3 lakhs each. The petitioner No.1 has also produced the evidence of PW-4 who is the production manager of the petitioner No.1, who has deposed to the effect that in the month of February 2013, the petitioner No.1 was offered a chance to act in two movies namely 'Bajarangi' and 'Kotle Satisha'. In the cross-examination, the witness has denied the suggestion and has deposed that the petitioner No.1 would earn 2 to 3 lakhs for a film and not 8 lakhs. In view of the fact that the petitioner No.1 was regularly earning income from assignments and that there would be loss of income during the laid up period, and the period of recovery from



injuries, the compensation towards 'loss of income during laid up period', is also required to be enhanced.

19. In view of the evidence on record, this Court also deems it apposite to award a sum of Rs.1,50,000/- towards 'loss of future earnings' to the petitioner No.1. Further, the compensation awarded towards 'loss of amenities' is enhanced to Rs.50,000/-

20. Accordingly, the petitioner No.1 in MVC No.1824/2013 (appellant in MFA No.474/2017), is entitled to enhanced compensation in the following manner:

| Sl.No. | Heads of Compensation                                                     | Amount (in Rs.) |
|--------|---------------------------------------------------------------------------|-----------------|
| 1      | Pain and suffering                                                        | 50,000/-        |
| 2      | Attendant charges, nutritious food, conveyance and transportation charges | 25,000/-        |
| 3      | Medical expenses                                                          | 24,510/-        |
| 4      | Loss of income during laid up period                                      | 1,00,000/-      |
| 5      | Loss of amenities                                                         | 50,000/-        |
| 6      | Loss of future earnings                                                   | 1,50,000/-      |



|  |                                                          |                   |
|--|----------------------------------------------------------|-------------------|
|  | <b>TOTAL</b>                                             | <b>3,99,510</b>   |
|  | <b>Less compensation<br/>awarded by the<br/>Tribunal</b> | <b>92,510/-</b>   |
|  | <b>Enhanced<br/>compensation</b>                         | <b>3,07,000/-</b> |

**MFA No.4854/2016 & MFA No.4855/2016:**

21. So far as concerns the challenge by the owner of the offending vehicle, i.e., the appeals in MFA No.4854/2016 and MFA No.4855/2016 is concerned, the record reflects that a valid Insurance Policy has been placed on record by the witness of the Insurance company namely Mr. G. Shivkumar (RW-2) and is marked as Exhibit R2. Thus, there can be no dispute on the existence of the Insurance Policy.

22. The liability fastened on the owner of the offending vehicle is concerned, the learned Tribunal proceeded on the basis that the offending vehicle being a City Taxi, was permitted to ply only within a radius of 25 kilometres from the limits of Bengaluru City Corporation and that the accident had occurred at Tiptur, outside the permitted



area, thereby resulting in violation of the permit condition. The learned counsel for the Owner, on the other hand, contends that the offending vehicle was covered by a valid Insurance Policy and that the driver possessed a valid and effective driving licence and, therefore, the liability ought to have been fastened on the Insurance Company.

23. While considering a similar issue, the Supreme Court in the case of ***K. Nagendra v. New India Insurance Co. Ltd.***,<sup>1</sup> concerning the effect of deviation from the prescribed route/territorial limits under a transport vehicle's permit on the liability of the Insurance Company, has held that where the vehicle is operated outside the bounds of the permit, the insurer must satisfy the compensation payable to the third-party claimant in the first instance, while being entitled to recover the amount from the owner; thus, the appropriate course is to apply the "pay and recover" principle. It was thus held that a breach of the permit condition by operating the vehicle

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<sup>1</sup> 2025 SCC OnLine SC 2297



outside the permitted area does not defeat the third-party's right to recover compensation from the insurer, though the insurer may recover the amounts from the owner. The relevant extract is set out below:

**"6. The question that comes up for consideration before this Court in these appeals is whether any deviation from the prescribed route as per the permit granted by the state transportation authority, would impact on the liability of the Insurance Company for any accident which may take place while the vehicle is on such a deviated route. An answer to this question would by itself justify the correctness or lack thereof, of the order of the High Court which employs the 'pay and recover' principle.**

7. Before going to the exact issue involved in this case, it would be appropriate to refer to certain judgments which will set out the instances in which this Court has approved the application of the above-mentioned principle. It is on that benchmark that we will proceed to examine the correctness of the High Court's conclusions.

7.1. In *National Insurance Co. Ltd. v. Swaran Singh*, a bench of 3 learned Judges of this Court observed thus:

"83. Sub-section (5) of Section 149 which imposes a liability on the insurer must also be given its full effect. The insurance company may not be liable to satisfy the decree and, therefore, its liability may be zero but it does not mean that it did not have initial liability at all. Thus, if the insurance company is made liable to pay any amount, it can recover the entire amount paid to the third party on behalf of the assured. If this interpretation is not given to the beneficent provisions of the Act having regard to its purport and object, we fail to see a situation where beneficent provisions can be given effect to. Sub-section (7) of Section 149 of the Act, to which pointed attention of the Court has been drawn by the learned counsel for the petitioner, which



is in negative language may now be noticed. The said provision must be read with sub-section (1) thereof. **The right to avoid liability in terms of sub-section (2) of Section 149 is restricted as has been discussed hereinbefore. It is one thing to say that the insurance companies are entitled to raise a defence but it is another thing to say that despite the fact that its defence has been accepted having regard to the facts and circumstances of the case,** the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner. These two matters stand apart and require contextual reading.” [This judgment was followed in *Shamanna v. Oriental Insurance Co. Ltd.*<sup>3</sup>]

(emphasis supplied)

**7.2. K.T Thomas J., in New India Assurance Co. v. Kamla (See: 2001 (4) SCC 342), stated the position of law succinctly, thus:**

“25.... The insurer and the insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. **But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence.** Learned counsel for the insured contended that it is enough if he establishes that he made all due enquiries and believed bona fide that the driver employed by him had a valid driving licence, in which case there was no breach of the policy condition. As we have not decided on that contention it is open to the insured to raise it before the Claims Tribunal. In the present case, if the Insurance Company succeeds in establishing that there was breach of the policy condition, the Claims Tribunal shall direct the insured to pay that amount to the insurer. In default the insurer shall be allowed to recover that amount (which the



*insurer is directed to pay to the claimant third parties) from the insured person.*

7.3. In *Parminder Singh v. New India Assurance Co. Ltd.*, this Court approved the application of this principle in cases where the driver of the offending vehicle does not possess a valid driving license.

7.4. In *S. Iyyapan v. United India Insurance Co. Ltd.*, it was held that if at the time of accident, there is a discrepancy in the vehicle being driven by the driver and the endorsement on the driver's license (i.e., the kind of vehicle said driver is permitted to operate) then, **in such a case, pay and recover shall be permitted.**

7.5. In *Chatha Service Station v. Lalmati Devi* it was held that when a vehicle involved in an accident is found to be carrying certain goods which it was not authorized to as per law (in the instant case hazardous goods within the meaning of Rule 9 of Central Motor Vehicles Rules, 1989) the insurance company **while would be required to compensate the victim of the accident, it shall be entitled to recover the amount so paid from the holder of the insurance policy.**

8. Now, let us consider the instant case. The record reveals that the offending vehicle did not have the permit to enter Channapatna City, where the accident took place. **This position is not in dispute. Unquestionably, therefore, the terms of the permit have been deviated.**

**9. The purpose of an insurance policy in the present context is to shield the owner/operator from direct liability when such an unforeseen/unfortunate incident takes place.** To deny the victim/dependents of the victim compensation simply because the accident took place outside the bounds of the permit and, therefore, is outside the purview of the insurance policy, would be offensive to the sense of justice, for the accident itself is for no fault of his. **Then, the Insurance Company most certainly ought to pay.**



**10. At the same time though, when an Insurance Company takes on a policy and accepts payments of premium in pursuance thereto, it agrees to do so within certain bounds. The contract lays down the four corners within which such an insurance policy would operate. If that is the case, to expect the insurer to pay compensation to a third party, which is clearly outside the bounds of the said agreement would be unfair. Balancing the need for payment of compensation to the victim vis-à-vis the interests of the insurer, the order of the High Court applying the pay and recover principle, in our considered view, is entirely justified and requires no interference."**

[Emphasis Supplied]

24. In addition, the Supreme Court in ***Mukund Dewangan v. Oriental Insurance Co. Ltd.***<sup>2</sup>, has held that a holder of a driving licence to drive a class of light motor vehicle is competent to drive a transport vehicle falling within the said class and that no separate endorsement is required on the licence to drive such a transport vehicle. The relevant extract reads as follows:

58. "Transport vehicle" has been defined in Section 2(47) of the Act, to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. "Public service vehicle" has been defined in Section 2(35) to mean any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward and includes a maxi cab, a motor cab, contract carriage and stage carriage. "Goods carriage" which is also a transport vehicle is defined in Section

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<sup>2</sup> (2017) 14 SCC 663



2(14) to mean a motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods. **It was rightly submitted that a person holding licence to drive light motor vehicle registered for private use, who is driving a similar vehicle which is registered or insured, for the purpose of carrying passengers for hire or reward, would not require an endorsement as to drive a transport vehicle, as the same is not contemplated by the provisions of the Act.** It was also rightly contended that there are several vehicles which can be used for private use as well as for carrying passengers for hire or reward. **When a driver is authorised to drive a vehicle, he can drive it irrespective of the fact whether it is used for a private purpose or for purpose of hire or reward or for carrying the goods in the said vehicle.** It is what is intended by the provision of the Act, and Amendment Act 54 of 1994.

59. Section 10 of the Act **requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles.** In one class of vehicles, there may be different kinds of vehicles. **If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles.** It was pre-amended position as well the post-amended position of Form 4 as amended on 28-3-2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in Section 2(21) and the provisions of Section 10(2)(d), Rule 8 of the 1989 Rules, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of "light motor vehicles" and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in **Section 10(2)(e) of the Act "Transport Vehicle" would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in Sections 10(2)(e) to (h) and**



**our conclusion is fortified by the syllabus and rules which we have discussed.**

60. Thus, we answer the questions which are referred to us thus:

xxx

xxx

xxx

**60.2. A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg would be a light motor vehicle and also motor car or tractor** or a roadroller, "unladen weight" of which does not exceed 7500 kg and holder of a driving licence to drive class of "light motor vehicle" as provided in Section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg or a motor car or tractor or roadroller, the "unladen weight" of which does not exceed 7500 kg. **That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under Section 10(2)(d) continues to be valid after Amendment Act 54 of 1994 and 28-3-2001 in the form.**

[Emphasis Supplied]

25. In the present case, it is undisputed that the offending vehicle did possess a valid permit as a city taxi upto a limit of 25 kms outside Bengaluru city area. However, it was found plying on NH-206 near Tumkur KB Cross.

26. Thus, given the settled legal position, this Court directs that the compensation awarded in the present case would be paid by the Insurance Company. After making



good the payment, the Insurance Company is at liberty to recover the compensation so paid, from the Owner of the offending vehicle / M/s. V. Link Taxies Private Limited.

27. Hence, the appellant in MFA No.474/2017 / petitioner No.1 is entitled to a total compensation of **Rs.3,99,510/-** along with interest at 9% as awarded by the learned from the date of the petition till its realization.

28. Accordingly, this Court proceeds to pass the following:

**ORDER**

- (i) All these appeals are ***allowed in part;***
- (ii) The impugned common Judgment and Award dated 02.03.2016 in MVC No.1824/2013 and MVC No.1825/2013 passed by the X Additional Judge, Court of Small Causes (SCCH-16), Bangalore is modified, awarding a total compensation of **Rs.3,99,510/-** to petitioner No.1 / appellant in MFA No.474/2017 along with interest at the rate of 9% per annum as awarded by the learned



Tribunal from the date of petition till the date of realization.

(iii) The Insurance Company shall deposit the entire compensation awarded by the learned Tribunal in MVC No.1824/2013 as well as in MVC No.1825/2013 with interest applicable thereon, as well as the enhanced compensation awarded by this Court in MVC No.1824/2013, within a period of eight weeks from the date of receipt of a copy of this judgment;

(iv) The Insurance Company is at liberty to recover the compensation thus paid, from the Owner of the offending vehicle, in accordance with law.

(v) On such deposit of the compensation, the same shall be released in favour of the respective claimants in MVC No.1824/2013 as well as in MVC No.1825/2013 on filing of an appropriate application for withdrawal of the amount;



- (vi) The remaining portion of the Impugned Award of the learned Tribunal remains undisturbed.
- (vii) The amount in deposit before this Court shall be transmitted to the learned Tribunal forthwith;
- (viii) The Registry is directed to transmit a copy of this judgment and records to the concerned Tribunal;
- (ix) The Registry is also directed to send a copy of this order to the Insurance Company at its local office, by registered post acknowledgement due.
- (viii) The Registry is directed to draw the modified Award accordingly;
- (xi) Pending application(s), if any, stand closed.

**Sd/-**  
**(JAYANT BANERJI)**  
**JUDGE**

**Sd/-**  
**(TARA VITASTA GANJU)**  
**JUDGE**

KS

List No.: 1 Sl No.: 15