



CNR: KAHC010242372023

NC: 2026:KHC:53666
MFA No. 3209 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MRS. JUSTICE GEETHA K.B.

MISCELLANEOUS FIRST APPEAL NO. 3209/2023 (MV-I)

BETWEEN:

SRI. DIVISIONAL MANAGER
UNITED INDIA INSURANCE COMPANY LTD.,
PB NO.21, J.C. ROAD, SAGAR,
SHIVAMOGGA DISTRICT-577401
REPRESENTED BY ITS DIVISIONAL MANAGER,
UNITED INDIA INSURANCE CO. LTD.,
NO.1137/947, 2ND FLOOR, RUB BUILDING
A.A. CIRCLE, B.H. ROAD,
SHIVAMOGGA-577201.

...APPELLANT

(BY SRI. BENNI RAVISH CHANDRASHEKAR, ADVOCATE)

AND:

1. BASAVARAJU
S/O VEERABHADRAPPA
AGED ABOUT 62 YEARS
AGRICULTURAL WORK,
RESIDENT OF GULEHALLI VILLAGE,
SAGAR TALUK
SHIVAMOGGA DISTRICT-577453.
2. HARSHA @ HARSHA B M
S/O MANJAPPA H B
AGED ABOUT 34 YEARS
RESIDENT OF GULEHALLI VILLAGE,
SAGAR TALUK,
SHIVAMOGGA DISTRICT-577453.

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3. ANILKUMAR V N
S/O NEELAKANTHAPPA GOWDA
AGED ABOUT 49 YEARS
BUSINESS,
RESIDENT OF KUGWE VILLAGE
OODDINAGADDE, SAGAR TALUK-577401.
4. MANJUNATHA @ MANJUNATHA H A
S/O ANANTHARAO
AGED ABOUT 38 YEARS
RESIDENT OF HAGAROODI, SAGAR TALUK,
SHIVAMOGGA DISTRICT - 577453.
5. H ANANTHARAO
S/O SUBBARAO
AGED ABOUT 76 YEARS
BRAHMANA KEPPIGE,
RESIDENT OF HAGAROODI, SAGAR TALUK,
SHIVAMOGGA DISTRICT-577453.
6. THE ORIENTAL INSURANCE CO LTD
VINAYAKA COMPLEX,
GARDEN AREA, 1ST CROSS,
SHIVAMOGGA-577201.

...RESPONDENTS

(BY SRI. H V MANJUNATHA, ADVOCATE FOR R1;
SRI. K.N. SRINIVAS, ADVOCATE FOR R6;
R2 TO R5 ARE SERVED)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 06.01.2023 PASSED IN MVC NO.463/2017, ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND ADDITIONAL MACT NO.IX, SAGAR, AWARDED COMPENSATION OF RS.11,05,300/- WITH INTEREST AT 6 PERCENT P.A. FROM THE DATE OF PETITION TILL REALIZATION.

THIS APPEAL, COMING ON FOR FURTHER ARGUMENTS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

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CORAM: HON'BLE MRS. JUSTICE GEETHA K.B.

ORAL JUDGMENT

1. This is the appeal filed by the insurer under Section 173(1) of the Motor Vehicles Act, 1988 (for short 'M.V. Act') challenging the judgment and award dated 06.01.2023 passed in M.V.C.No.463/2017 on the file of Principal Senior Civil Judge & Additional M.A.C.T (IX) Sagar (for short 'the Tribunal').

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

3. The petitioner has filed the claim petition under Section 166 of the M.V. Act praying for compensation in respect of the injuries sustained by him in the road traffic accident that has taken place on 21.09.2015 at 11.15 a.m. near Kuruvari Cross, Aavinahalli Village involving the TVS Victor Motorcycle bearing registration No.KA-15-J-1021. The contention of the claimant is that he was the pillion rider of the said motor vehicle. At the time of accident,

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another vehicle-Yamaha Crux motorcycle bearing registration No.KA-15-S-1220 came from the opposite side and dashed against the motorcycle in which he was the pillion rider thereby caused the accident. Due to the accident, the claimant has sustained grievous injuries on his right leg and his five teeth were broken. Hence, he had taken treatment as inpatient in Kasturba Hospital, Manipal. Hence, claimed compensation under several heads.

4. Respondent No.1 is the rider, respondent No.2 is the owner and respondent No.5 is the insurer of TVS Victor Motorcycle; respondent No.3 is the rider, respondent No.4 is the owner and respondent No.6 is the insurer of Yamaha Crux motorbike.

5. After Receipt of objections of respondent Nos.1, 3 to 6 and after framing issues, recording evidence and hearing arguments of both sides, the Tribunal came to the conclusion that, the accident has taken place due to rash and negligent riding of riders of both the vehicles and there is equal contributory negligence from both sides.

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Thus, held that respondents Nos.2 and 4-owners of both vehicles are liable to pay 50% each with a further direction to the respondents Nos.5 and 6- the insurance Companies to indemnify the respondents Nos.2 and 4 respectively.

6. Respondent No.6-insurance Company of Yamaha motorcycle has satisfied the award; Respondent No.5-insurance Company of TVS Victor motor cycle is before this Court challenging the fastening liability on it by the Tribunal in the absence of policy coverage to the pillion rider of the vehicle.

7. Heard arguments of both sides.

8. The learned counsel for the appellant/respondent No.5-insurance Company of TVS Victor motorcycle, Sri Benni Ravish Chandrasekhar would submit that the policy issued by respondent No.5 in favour of respondent No.2 is 'liability only policy'; additional premium of only Rs.50/- is paid by the owner to cover the risk of owner-driver. In the absence of covering the risk of

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pillion rider in case of 'liability only policy', pillion rider cannot be considered as third party. Hence, the liability fastened on the insurance Company by the trial Court is improper and erroneous and thus requires interference. In this regard, the learned counsel for appellant places reliance on the judgment of Hon'ble Apex Court in ***Oriental Insurance Co. Ltd. vs. Sudhakaran K.V. & Ors.***¹.

9. The learned counsel for the respondent No.1/claimant Sri H.V.Manjunath would submit that in the absence of payment of premium, the insurance Company's liability cannot be absolved in entirety. Initially, the insurance Company shall pay the compensation and recover the same from the owner. In this regard, he places reliance on the judgment of Hon'ble Apex Court in ***Sunitha and Others vs. United India Insurance Co. Ltd. and Others***².

¹ 2008 AIR SCW 4549

² 2025 SCC OnLine SC 1464



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10. The learned counsel for the respondent No.1 would further submit that by placing reliance on the said judgment, Division Bench of this Court has passed the similar judgment of 'pay and recover' in ***M/s.United India Insurance Co. Ltd. vs. Shobha and others***³. Hence prayed for modification of the judgment and to issue direction to 'pay and recover'.

11. At this juncture, the learned counsel for the appellant would submit that in the absence of appeal from respondent no.1/claimant, he cannot pray for such modification.

12. Having heard arguments of both sides, verifying the appeal papers and trial Court records, the point that arises for consideration is :

"Whether fastening liability on respondent no. 5/insurance Company by the trial Court, in the absence of coverage of the risk of pillion rider in the policy requires interference?."

³ MFA No.517/2020 dd 25.04.2026



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13. Finding of this Court on above point is in ***affirmative*** for the following :

REASONS

14. The facts established before the Tribunal are that the claimant has sustained injuries in the road traffic accident involving the two motor vehicles. It is established that there is 50% contributory negligence from the side of both the riders. Due to the accident, claimant has sustained grievous injuries.

15. The only dispute raised by the insurance Company of TVS Victor motor cycle is that the policy issued by the insurance Company is, 'liability only policy' and risk of pillion rider is not covered.

16. On careful perusal of Ex.R.1, the policy, it is clear that the respondent No.2 has paid the total premium of Rs.588/-; out of this, Rs.538/- is towards basic third party liability and Rs.50/- is towards compulsory PA for

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owner-driver. Admittedly, this is 'liability only policy' as per the heading of policy.

17. When policy is 'liability only policy' then it covers the risk of the third party. If additional premium is paid, then, the risk of others would be covered for whom the additional premium is paid.

18. In the instant case, the additional premium is paid towards 'compulsory PA for owner-driver' and not towards the 'pillion rider'.

19. These facts are not in dispute.

20. The learned counsel for the claimant vehemently submitted his arguments that in **Sunita's** case cited supra, even in the absence of policy coverage, the insurance Company was directed to pay the compensation and recover the same from owner. In this regard, in paragraph Nos. 11 to 13 and 17 of said judgment, it is held as follows:

"11. Then, the question which would arise is as to whether the liability could have been

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fastened upon the Insurer or not. In our considered view, not so, solely for the reason that the risk stood not covered, as no premium was paid.

12. The next question which arises for our consideration is whether the Insurance Company is liable to indemnify the compensation amount to the claimant-appellant and, thereafter, recover the same from the driver and owner of the vehicle.

13. Adverting to the facts in hand, from a bare perusal of the record, it is borne that the vehicle in question was insured with "Liability Only Policy" and no premium was paid to cover the driver, owner, or a gratuitous passenger travelling therein. However, even then, in our view, the Courts below erred in holding that the Insurance Company is not liable to pay the compensation to the claimant-appellants, for the principle of "Pay and Recover" ought to have been invoked. As such, we are inclined to interfere with the above findings of the Courts below.

17. Applying the above expositions of law, the Courts below ought to have directed the Insurance Company to indemnify the amount and thereafter recover the same."

21. In the aforesaid case, the vehicle involved in the accident is the goods vehicle i.e., TATA 407 Truck. In paragraph No.11, it is clearly held that liability could not have been fastened on the insurer in the absence of

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payment of premium. However, subsequently it is held that 'pay and recover' could be ordered. Always, the driver and cleaner shall travel in the goods vehicle; thus, the risk of both the driver and cleaner shall be covered. With that background, even though, it is not expressly stated in the aforesaid judgment of **Sunita's** case cited supra, the 'pay and recover' order was passed.

22. In the judgment of Division Bench of this Court in **Shobha's** case cited supra at paragraph No.12 held as follows:

"12. Sri Lakshmi Narasappa, learned counsel appearing on behalf of Sri.A.M.Venkatesh, tried to convince us on the judgment referred to by Ms.Vanchika Mathur, contending that the judgment is factually distinguishable. He tries to impress upon us that in the case on hand the deceased was an inmate in a private car and the policy issued is a private car - act policy i.e., "liability only policy". However, in the case of Sunita supra, the person died was an inmate traveling in a goods vehicle i.e., TATA 407 Truck, as such the facts are different, further, taking us through paragraph Nos.11 and 12 submits that since the special premium not paid in respect of

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the inmates, the policy cannot be extended to the inmate of the vehicle, since it is an act policy. On this he submits that the judgment of the Supreme Court is distinguishable. We failed understand what difference it would make for an inmate to be in a goods vehicle and in a private car. The facts referred in the judgment of the Supreme Court clearly stated that the deceased was an inmate in the TATA 407 Truck i.e., goods vehicle and the policy issued is act policy. The policy issued in respect of private car in the case on hand is also the same i.e., "liability only policy". In that view of the matter, the contentions of the learned counsel for the Insurer that judgments distinguishable on the facts cannot be countenanced. In that view of the matter, the latest judgment of the Supreme Court, in Sunita case supra in clear terms has held that even where the insurance policy is a "liability only policy" and no premium was paid to cover the driver, owner, or a gratuitous passenger traveling therein, the principle of pay and recovery can be invoked."

23. In the aforesaid case also the vehicle involved is the car and not the two-wheeler. Hence, these two citations are not helpful for the respondent to prove his contention.

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24. In the judgment of Hon'ble Apex Court in ***Sudhakaran's*** case cited supra at paragraph No.19, it is held as follows;

"19. The law which emerges from the said decisions, is: (i) the liability of the insurance company in a case of this nature is not extended to a pillion rider of the motor vehicle unless the requisite amount of premium is paid for covering his/her risk; (ii) the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of vehicle or the pillion rider; (iii) the pillion rider in a two wheeler was not to be treated as a third party when the accident has taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle."

25. Thus, there is specific finding of Hon'ble Apex Court that when the liability of the insurance Company in a case of this nature-Act policy, risk of pillion rider of the motor vehicle is not covered; the liability cannot be fastened on the insurance Company; unless the requisite amount of premium is paid for covering the risk of pillion rider. The pillion rider in a two-wheeler was not to be

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treated as a third party when the accident has taken place due to rash and negligent riding of the rider of the said two-wheeler. This judgment of Hon'ble Supreme court still holds good.

26. In this regard, the learned counsel for the insurance Company of TVS Victor motor cycle places reliance on the judgment of Co-ordinate Bench of this Court in **Mr. Hanumantha Nayak v/s Umesh and others⁴** wherein at paragraph No.20 held as follows:

"20. The Tribunal has rightly held that the accident occurred due to contributory negligence of riders of both the motorcycles. The offending motorcycle bearing registration No.KA-17-X-9204 was having an act policy. Therefore, risk of the pillion rider was not covered. Under these circumstances, the owner of the said vehicle is liable to pay the compensation. Fastening the liability of respondent No.5(a) on the insurer by the Tribunal is incorrect. On the contrary, respondent No.5(a) - owner of the motorcycle bearing registration No.KA-17-X-9204 is personally liable to pay 50% of the compensation awarded by the Tribunal."

⁴ MFA No. 8386/2023 c/w 6682/2023 dd 03.12.2025



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27. When the risk of the pillion rider is not at all covered in the policy, then, definitely insurance Company cannot be held liable to pay the compensation and it cannot be directed to recover the compensation from the owner. Only if the risk of the pillion rider is covered by paying the premium, if there is some other lapses like no DL or ineffective DL or no permit, or violation of rules of permit or absence of fitness Certificate, the insurance Company can be directed to pay the compensation and recover the same from the owner. However, that is not the situation in the present case.

28. The facts and circumstances of **Sunita's** case cited supra and Division Bench case of this Court cited supra are entirely different and they are distinguishable from the present case for the reasons stated above. Hence, this Court holds that the insurance Company cannot be directed to pay the compensation and recover the same from the owner.

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29. In the instant case, even after service of notice, respondent No.3-Anilkumar V.N (owner of TVS Victor motorcycle), unrepresented and has not submitted any arguments.

30. The Tribunal has not at all examined the fact that risk the pillion rider is not covered under the policy; only discussed that, there is valid insurance policy as on the date of accident and fastened liability entirely on the insurance Company, which is erroneous. Even though, it was brought to the notice of the Tribunal that there was no coverage of pillion rider in the insurance policy, without making any observation on this point, the Tribunal has fastened liability on insurance Company of the TVS Victor motorcycle, which is erroneous and requires interference. Hence, this Court Passes the following:

ORDER

a) The appeal is ***allowed.***

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- b) The judgment and award dated 06.01.2023 passed in MVC No.463/2017 on the file of the Principal Senior Civil Judge and Additional MACT No. IX, Sagar, directing respondent No.5- Insurance Company of the TVS Victor Motorcycle, to indemnify respondent No.2 in respect of 50% of the compensation amount, is hereby set aside.
- c) It is made clear that respondent No.2-Anilkumar V.N is liable to pay 50% of the compensation amount with interest to the claimant.
- d) Except this modification, the other part of the judgment and award of the Tribunal is unaltered.
- e) No order as to costs.
- f) Draw modified award accordingly.
- g) Registry to transmit the TCR to the Tribunal forthwith.

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h) The amount deposited by the appellant shall be
refunded to the appellant on proper identification
through electronic mode.

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(GEETHA K.B.)
JUDGE

RS,SPV
List No.: 1 Sl No.: 25