

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAJESH RAI K

MISCELLANEOUS FIRST APPEAL NO.5213 OF 2021(MV-I)

C/W

MFA CROSS OBJECTION NO. 63 OF 2023 (MV-I)

IN MFA No. 5213/2021

BETWEEN:

THE ORIENTAL INSURANCE COMPANY LIMITED
REGIONAL OFFICE,
NO.44/45, 4TH FLOOR,
LEO SHOPPING COMPLEX,
RESIDENCY ROAD CROSS,
BENGALURU-560025
REP. BY ITS AUTHORISED SIGNATORY.

...APPELLANT

(BY SRI. A.M VENKATESH, ADVOCATE)

AND:

Digitally signed
by PANKAJA S
Location: HIGH
COURT OF
KARNATAKA

1. SRI. M SUBRAMANYAM
S/O M. PEEDDA CHENGAL RAYULU,
AGED ABOUT 50 YEARS,
R/O.AYYAVANDLA PALLI,
PULICHERLA MANDAL,
CHITTOOR DISTRICT 571712,
ANDHRA PRADESH.
2. SMT M MANJULA
W/O M. SUBRAMANYAM,
MAJOR,
R/O AYYAVANDLA PALLI,
PULICHERLA MANDAL,
CHITTOOR DISTRICT 571712,

ANDHRA PRADESH.

...RESPONDENTS

(BY SRI. N. GOPALA KRISHNA, ADVOCATE FOR R1,
R2 NOTICE SERVED)

THIS MFA IS FILED U/S.173(1) OF MV ACT, AGAINST THE JUDGMENT AND AWARD DT.28.07.2021 PASSED IN MVC NO.3929/2019 ON THE FILE OF THE I ADDITIONAL SMALL CAUSES JUDGE, MACT, BENGALURU, (SCCH-11), AWARDED COMPENSATION OF RS.11,64,200/- WITH INTEREST AT 9 PERCENT P.A. FROM THE DATE OF PETITION TILL THE DATE OF REALIZATION.

IN MFA.CROB NO. 63/2023

BETWEEN:

SRI. M. SUBRAMANYAM
S/O M PEDDA CHENGAL RAYULU
NOW AGED ABOUT 52 YEARS,
RESIDING AT AYYAVANDLA PALLI,
PULICHERLA MANDAL,
CHITTOR DISTRICT,
ANDHRA PRADESH

...CROSS OBJECTOR

(BY SRI. SUBRAMANYAM AND
SMT. SUSHMITHA G, ADVOCATES)

AND:

1. THE ORIENTAL INSURANCE COMPANY LTD.
REGIONAL OFFICE,
NO 44/45, 4TH FLOOR,
LEO SHOPPING COMPLEX,
RESIDENCY ROAD CROSS,
BENGALURU 560025
REP BY ITS MANAGER
2. SMT M MANJULA
W/O M SUBRAMANYAM,
MAJOR BY AGE,
RESIDING AT AYYAVANDLA PALLI,
PULICHERLA MANDAL,

CHITTOR DISTRICT,
ANDHRA PRADESH 571712

...RESPONDENTS

(BY SRI. A.M.VENKATESH, ADVOCATE FOR R1,
NOTICE TO R2 DISPENSED WITH)

THIS MFA CROB IS FILED UNDER ORDER 41 RULE 22 R/W SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 28.07.2021 PASSED IN MVC.NO.3929/2019 ON THE FILE OF THE I ADDITIONAL SMALL CAUSES JUDGE AND MACT, BENGALURU SCCH-11, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THESE APPEALS HAVING BEEN RESERVED FOR JUDGMENT ON 29.08.2026 COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE RAJESH RAI K

CAV JUDGMENT

The appeal and the cross objection arise out of the judgment and award dated 28.07.2021 passed in MVC No.3929/2019 by the Motor Accident Claims Tribunal, Bengaluru (SCCH-11) [for brevity, "the Tribunal"], whereby the Tribunal partly allowed the claim petition and awarded compensation of Rs.11,64,200/- to the claimant along with interest at the rate of 9% per annum saddling the liability on the insurer to make good the compensation and thereafter, to recover the same from the insured.

2. Brief facts of the case are that, on 19.01.2019, the injured-claimant, M. Subramanyam, was proceeding as a pillion rider on a motorcycle bearing registration No.AP-03/CW-1433, being ridden by his brother-in-law, P. Subramanyam. When they were proceeding on Chittoor Main Road, Piler Mandal, the rider rode the motorcycle in a rash and negligent manner and in an attempt to avoid hitting a lorry coming from opposite direction, he took the motorcycle towards the left side of the road and dashed against an iron pipe placed on the left margin of the road. Due to the impact, the claimant fell down and sustained grievous injuries to his left leg.

3. Immediately thereafter, the claimant was shifted to the Government Hospital, Piler, and thereafter to SVRRGG Hospital, Tirupati, where he was treated for the injuries sustained in the accident. During the course of treatment, his left leg was amputated below the knee. Hence, the claimant filed a claim petition seeking compensation for the accidental injuries.

4. The Tribunal, upon appreciation of the oral and documentary evidence on record, partly allowed the claim petition as stated supra.

5. Aggrieved by the said judgment and award, while the Insurance Company preferred MFA.No.5213/2021 challenging the quantum of compensation awarded, the rate of interest and the direction regarding pay and recovery issued by the Tribunal, the claimant preferred MFA.Crob.No.63/2023, seeking enhancement of compensation.

6. Heard the learned counsel for the respective parties.

7. Apart from urging several contentions, learned counsel for the Insurance Company primarily contended that the Tribunal has erred in passing the impugned judgment and award by directing the Insurance Company to pay the compensation to the claimant and thereafter, to recover the same from the owner of the offending motorcycle bearing registration No.AP-03/CW-1433, despite the fact that the rider of the motorcycle was not possessing a valid and effective driving licence as on the date of accident.

8. According to the learned counsel, in the instant case, the injured-claimant was travelling as a pillion rider on the motorcycle, which was being ridden by his brother-in-law, P. Subramanyam. The said motorcycle was, however, owned by

the claimant's wife, Smt.Manjula. Therefore, the Tribunal was not justified in directing the Insurance Company to pay and recover the compensation, as the insurer would ultimately have to recover the amount from the claimant's wife, who is the registered owner of the offending vehicle. It is further contended that, though the owner of the vehicle was arrayed as a party to the proceedings, she deliberately remained absent and was placed *ex parte* before the Tribunal.

9. Notwithstanding the above contention, learned counsel further submitted that the Tribunal has erred in not directing the owner of the offending vehicle to furnish adequate security for the entire amount payable by the Insurance Company to the claimant before permitting withdrawal of the amount deposited by the insurer pursuant to the order of pay and recovery. He also contended that the compensation awarded by the Tribunal is excessive and that the interest awarded at the rate of 9% per annum is on the higher side and liable to be reduced. With these submissions, he prays to allow the appeal preferred by the Insurance Company and dismiss the cross-objection filed by the claimant.

10. To buttress his argument, he relied on the following judgments:

i. MFA No.4052/2023 disposed of on 24.07.2026.

ii. MFA No.92/2023 disposed of on 10.06.2026.

iii. Oriental Insurance Company Ltd Vs. Nanjappan - Laws (SC) 2004-2-10.

iv. National Insurance Company Vs. Challa Upendra Rao - AIR 2004 SC 4882.

11. *Per contra*, learned counsel appearing for the claimant contended that, though an argument was advanced on behalf of the claimant before the Tribunal that the Insurance Company was liable to pay the compensation, in view of non-production of the driving licence by respondent No.1-owner, the Tribunal was justified in directing the Insurance Company to pay and recover the compensation, in view of the principles laid down by the Hon'ble Apex Court in the cases of **PAPPU Vs. VINOD KUMAR LAMBA AND ANOTHER - (2018) 3 SCC 208**, and **NATIONAL INSURANCE CO. LTD. VS. SWARAN SINGH - (2004) 3 SCC 297**.

12. He further contended that the contention of the Insurance Company that the claimant, being the husband of the owner of the offending motorcycle, is not entitled to compensation, cannot be accepted, as no such distinction has been drawn by the Hon'ble Apex Court in the aforesaid judgments. He also contended that the further contention of the Insurance Company that the owner ought to furnish security for the entire amount of compensation before the same is released to the claimant is also untenable. According to him, the concept of "pay and recovery" evolved by the Hon'ble Apex Court is intended to protect the interest of the injured/deceased claimant by ensuring immediate payment of the compensation, leaving it open to the insurer to recover the amount subsequently from the insured in appropriate proceedings. The recovery proceedings, therefore, constitute a separate and independent proceeding between the insurer and the insured.

13. Learned counsel further contended that the Tribunal has erred in awarding meagre compensation in a case involving amputation, without properly assessing the extent of disability and awarding adequate compensation under the other permissible heads. Accordingly, he prays to allow the cross-

objection filed by the claimant and to dismiss the appeal preferred by the Insurance Company.

14. To buttress his argument, he relied on the following judgment:

i. ***National insurance co. Ltd. Vs. Swaran singh - (2004) 3 SCC 297.***

ii. ***New India Assurance Company Ltd. Vs. Nazeer Ahmed & Another - (2006) 6 AIR Kar R 386.***

iii. MFA No.7119/2023 disposed of on 21.07.2026.

iv. Civil Appeal No.1175/2025 disposed of on 29.01.2025

v. Civil Appeal No.9669/2024 disposed of on 24.09.2025.

15. I have given my anxious consideration to the submission made by learned counsel for the respective parties and perused the impugned judgment and award so also the other documents made available before this Court.

16. As could be gathered from records, the occurrence of the accident on 19.01.2019, when the claimant was travelling as a pillion rider on the motorcycle and sustained grievous injuries due to the negligent riding of the motorcycle by its rider, are not in dispute. It is also not in dispute that the rider of the motorcycle was not possessing a valid driving licence at the time of the accident. In the backdrop of these undisputed facts, the Tribunal directed the Insurance Company to pay the compensation in the first instance with liberty to recover the same from the owner of the offending vehicle.

17. The first limb of the contention advanced by learned counsel for the Insurance Company is that, since the wife of the claimant was the owner of the offending motorcycle and the claimant's brother-in-law was riding the same without a valid driving licence, an order of pay and recovery could not have been passed. To appreciate the said contention, it is necessary to refer to the principles laid down by the Hon'ble Apex Court in **SWARAN SINGH** (supra). While interpreting Section 149 of the Motor Vehicles Act, the Hon'ble Apex Court held that, in order to avoid its liability towards a third party, the insurer must establish not only the defence available under Section 149(2) of the Act, but also a willful breach of the policy

condition by the insured. Even where such breach relating to the driving licence is established, the insurer cannot avoid its liability towards the third party unless the breach is so fundamental as to have contributed to the cause of the accident. The question whether the owner had taken reasonable care to ascertain the validity of the driving licence has to be determined having regard to the facts and circumstances of each case.

18. The Hon'ble Apex Court further held that the liability of the Insurance Company to satisfy the award in favour of a third party is statutory in nature and cannot be avoided merely on the ground that the vehicle was driven by a person who did not possess a valid driving licence. Where the insurer establishes a breach of the policy condition contemplated under Section 149(2)(a)(ii), it is nevertheless required to satisfy the award in the first instance and is entitled to recover the amount so paid from the owner or driver of the vehicle, as the case may be. Such recovery may be directed in the same proceedings or, where the circumstances so warrant, by initiating appropriate separate proceedings.

19. Thus, the settled position of law is that the absence of a valid driving licence may constitute a breach of the policy condition between the insurer and the insured, but it does not, by itself, absolve the insurer of its statutory liability towards a third-party claimant. The insurer, after satisfying the award, would be entitled to recover the amount from the person liable for the breach in accordance with law.

20. The aforesaid principles laid down in **Swaran Singh** (supra) have consistently held the field. The Hon'ble Apex Court, in the concluding portion of the said judgment, has accordingly laid down the manner in which the Insurance Company, after satisfying the award in the first instance, can recover the amount from the owner or driver of the offending vehicle, which reads as under:

"We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause

(ii) of clause (a) of sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the Act . However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it had not been able to do so, the insurance company may initiate a separate action therefor against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given opportunity to defend at all. Such a course of action may also be resorted when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage.

21. On careful perusal of the findings of the Hon'ble Apex Court in **Swaran Singh** (Supra), the Hon'ble Apex Court has categorically held that even in cases involving fraud or collusion between the victim and the owner, the insurer is required to satisfy the award in the first instance, with liberty

to recover the amount from the insured. Therefore, the relationship between the claimant, the insured and the rider, by itself, cannot disentitle the claimant from the benefit of the said principle.

22. In view of the settled position of law, the judgment of the Co-ordinate Bench relied upon by learned counsel for the Insurance Company cannot be treated as laying down a contrary binding proposition. The Division Bench as well as the Co-ordinate Benches of this Court have consistently followed the principles laid down in **Swarna Singh** and **Pappu Yadav** (supra) and have directed pay and recovery even in cases where the offending vehicle was driven by a person not possessing a valid driving licence. Accordingly, the first contention raised by learned counsel for the Insurance Company is rejected.

23. As regards the second limb of the contention advanced by learned counsel for the appellant that, in a case where a direction for pay and recovery is issued, the owner/insured should be directed to furnish security for the entire amount before the compensation deposited by the Insurance Company is released to the claimant is concerned,

the Hon'ble Apex Court in **Swaran Singh** (supra), while considering the mode of recovery of the amount paid by the insurer to the third-party claimant, has held in its summary conclusions as under:

"(x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of section the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal.

Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal."

24. Further, a Co-ordinate Bench of this Court, in **Naseer Ahmed** (supra) has considered the question of withholding the compensation amount deposited by the insurer until the owner furnishes security. In paragraphs 26 and 27, it was observed as under:

"26. It is not necessary for me to go further into the aspect of the manner of recovery by the insurance company against the owner in this writ petition. But suffice to say that in such inter dispute or rivalry between the in-sured and insurer, the claimant/victim should not suffer further. In such a situation if the insurance company should have made an ap-plication for stay of withdrawal of the amount as determined by the Tribunal and as depos-ited by the insurance company; that it is only a situation where the agony of the claimant continues and there is no reason as to why the claimant should be made to suffer further pending resolution of the inter se dispute be-tween the insured and insurer.

27. Though the learned counsel for the petitioner submitted that it is only during the interregnum and to safeguard the interest of the insurance company till owner of the vehicle furnishes security, the release of the award amount being made contingent on the

owner furnishing security or otherwise for the recovery of the amount by the Insurance company is definitely a retrograde step resulting in further harassment to the claimant. Such a development cannot be permitted by the Court or the Tribunal.”

25. On perusal of the findings of the Hon'ble Apex Court and the Co-ordinate Bench of this Court in the aforesaid cases, it is clear that the direction for pay and recovery is intended to ensure that the third-party claimant receives the compensation without being subjected to further delay on account of the dispute between the insurer and the insured. The right of the insurer to recover the amount from the insured is preserved and can be enforced in accordance with law; however, such right cannot be made a ground to withhold the compensation otherwise payable to the claimant. Moreover, the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue as held in **SWARNA SINGH** (supra).

26. In the instant case, the Tribunal has directed the Insurance Company to satisfy the award in the first instance, with liberty to recover the amount from the owner of the

offending vehicle. There is, therefore, no justification to make the release of compensation amount to the claimant conditional upon the owner furnishing security for the amount payable by the Insurance Company, the subsequent proceeding between the insurer and insured is total separate proceeding. Accordingly, the contention of learned counsel for the insurer to the said effect is rejected. The judgment relied upon by learned counsel for the insurer, in the facts and circumstances of the present case, does not advance the case of the Insurance Company and is distinguishable.

27. Coming to the question of enhancement of compensation, it is not in dispute that, due to the accident, the left leg of the claimant was amputated below the knee. The same is substantiated by Ex.P6—discharge summary and Ex.P7—photographs, which corroborate the evidence of PW.2—Doctor. The claimant, in his evidence, has stated that he was working as a mason and was earning Rs.20,000/- per month. PW.2—Doctor has assessed the disability arising out of the trans-tibial (below-knee) amputation up to the upper one-third of the leg at 70%. However, the Tribunal has assessed the functional disability at 50%. Having regard to the injuries suffered by the claimant and its effect on his avocation, in

view of the judgment of Hon'ble Apex Court in the case of **S.ETTIAPPAN Vs. D.KUMAR & ANOTHER** in SLP (C) No.15621/2025 dated 16.10.2025, I deem it just and appropriate to assess the functional disability of the claimant at **100%**.

28. The Tribunal has determined the monthly income, notionally at Rs.10,000/-. Since there is no credible documentary evidence to ascertain the actual monthly income, it would be appropriate and prudent to adopt the monthly income determined by Karnataka State Legal Services Authority, which, for the accident of the year 2019, would be **Rs.14,000/-**.

29. As the claimant was aged about 48 years, a multiplier of '**13**' would have to be applied and as the claimant suffered 100% functional disability, **25%** requires to be added to the income towards future prospects. Consequently, the claimant would be entitled to a sum of **Rs.27,30,000/-** (Rs.14,000 + 25% X 12 x 13 x 100%) towards '*loss of future income*' as against Rs.1,09,200/- awarded by the Tribunal.

30. Consequently, the amount of Rs.20,000/- awarded by the Tribunal towards '*loss of income during the laid up*

period' would also stand enhanced to **Rs.42,000/-** (Rs.14,000 X 3 months) treating the laid up period as three months.

31. Having regard to the injuries suffered by the claimant, the claimant would be entitled to a sum of **Rs.1,00,000/-** towards '*pain and agony*' as against Rs.60,000/- awarded by the Tribunal.

32. Having regard to the lasting effects of the injuries on the claimant, the claimant would be entitled to a sum of **Rs.1,00,000/-** towards loss of amenities, as against the sum of Rs.30,000/- awarded by the Tribunal.

34. Having regard to the length of the stay of the claimant in the hospital, the claimant would also be entitled to '*Conveyance, food & nourishment and attendant charges*' at **Rs.50,000/-** as against the sum of Rs.29,200/- awarded by the Tribunal.

35. As regards future medical expenses, it is contended by the learned counsel for the claimant that the Tribunal has committed a grave error by awarding a sum of Rs.50,000/-. As stated by the Doctor - PW-2, the claimant's left lower limb, below knee has been amputated and he needs artificial limb,

which also needs to be maintained. In view of the recent judgment of the Hon'ble Apex Court in the case of **TATA AIG GENERAL INS. CO. LTD. Vs. SURAJ KUMAR AND OTHERS - 2025 ACJ 1314**, the Apex Court has come to the conclusion that the prosthesis limb would have to be changed every 5 years and while awarding compensation, it has taken the life expectancy at 70 years and awarded compensation under the head of artificial limb. In the instant case, the claimant is aged 48 years and taking note of life expectancy at 70 years, I deem it appropriate to award a total lumpsum of **Rs.8,00,000/-** towards artificial limb as against Rs.50,000/- awarded by the Tribunal.

36. Consequently, the award of the Tribunal is modified and the claimant would be entitled to the following compensation:

Sl. No.	Compensation under different Heads	As awarded by the Tribunal (Rs.)	As awarded by this Court (Rs.)
1.	Pain and sufferings	60,000	1,00,000
2.	Loss of future income	9,75,000	27,30,000
3.	Future medical expenses	50,000	8,00,000
4.	Loss of income during the laid up period	20,000	42,000
5.	Conveyance, attendant	29,200	50,000

	charges		
6.	Loss of amenities and nourishment	30,000	1,00,000
	Total	11,64,200	38,22,000

37. Thus, the claimant is held entitled to the total compensation of **Rs.38,22,000/-** as against Rs.11,64,200/-, along with interest at the rate of 6% per annum instead of 9% p.a. from the date of petition till its realization.

38. The Insurance Company is directed to deposit the amount of compensation awarded within six weeks from the date of receipt of a certified copy of this judgment and thereafter, shall recover the same from the owner of the offending vehicle.

39. The amount in deposit shall be transferred to the concerned Tribunal. The apportionment of compensation shall be in terms of the award of the Tribunal.

The appeal and the cross objection are accordingly ***allowed in part.***

SD/-
(RAJESH RAI K)
JUDGE

PKS