



CNR: KAHC010330212016

NC: 2026:KHC:52788
MFA No. 4454 of 2016
C/W MFA No. 4860 of 2016

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

MISCELLANEOUS FIRST APPEAL NO.4454 OF 2016

(MV-I)

C/W

MISCELLANEOUS FIRST APPEAL NO.4860 OF 2016

(MV-I)

IN MFA No.4454/2016:

BETWEEN:

BASHEERA BI
W/O HUSSAIN PEERAN SAB,
AGED ABOUT 49 YEARS
NOW R/O D.NO.1562,
13TH CROSS, BEHIND KALYANA MANTPA,
BASHA NAGAR,
DAVANAGERE - 577 002

...APPELLANT

(BY SRI. SREEHARSHA A K & SRI. SPOORTHY HEGDE NAGARAJ,
ADVOCATES)

AND:

1. NATIONAL INSURANCE CO. LTD.,
REP. BY THE MANAGER,
DIVISIONAL OFFICE,
"MELAGIRI PLAZA",
DENTAL COLLEGE ROAD,
DAVANAGERE - 577 002
2. MEHBUB SUBHAN
S/O PEER SAB,

Digitally
signed by
ANUSHA V
Location:
High Court
of Karnataka



CNR: KAHC010330212016

NC: 2026:KHC:52788
MFA No. 4454 of 2016
C/W MFA No. 4860 of 2016

AGED ABOUT 43 YEARS
RIDER OF MOTOR CYCLE
BEARING REG. NO.KA-35/V-3034
R/O HARAKABHAVAI VILLAGE,
KUDLIGI TQ,
BELLARY DISTRICT - 583 126

3. SATHISH S
S/O SHEKARAPPA,
MAJOR, OWNER OF MOTOR CYCLE
BEARING NO.KA-35/V-3034,
R/O HARAKABHAVAI VILLAGE,
KUDLIGI TALUK
BELLARY DISTRICT - 583 126

...RESPONDENTS

(BY SRI. A.N.KRISHNA SWAMY, ADVOCATE FOR R1;
R3 - NOTICE SERVED, UNREPRESENTED;
VIDE COURT ORDER DATED 26.09.2016, NOTICE TO R2 IS
DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT
PRAYING TO MODIFY THE JUDGMENT AND AWARD DATED
01.04.2016 PASSED IN MVC NO.278/2012 ON THE FILE OF
THE PRINCIPAL SENIOR CIVIL JUDGE & MEMBER MACT-IV,
DAVANAGERE, BY ENHANCING THE COMPENSATION WHICH IS
JUST AND REASONABLE HAVING REGARD TO THE FACTS OF
THE CASE BY ALLOWING THIS APPEAL IN THE INTEREST OF
JUSTICE AND EQUITY.

IN MFA NO.4860/2016:

BETWEEN:

1. THE MANAGER
NATIONAL INSURANCE CO. LTD.,
DIVISIONAL OFFICE,
MELAGIRI PLAZA,
DENTAL COLLEGE ROAD,
DAVANAGERE



CNR: KAHC010330212016

NC: 2026:KHC:52788
MFA No. 4454 of 2016
C/W MFA No. 4860 of 2016

NOW REPRESENTED BY ITS
REGIONAL MANAGER,
NATIONAL INSURANCE CO. LTD.,
REGIONAL OFFICE,
SUBHARAM COMPLEX, 144, M G ROAD,
BANGALORE - 560 001

...APPELLANT

(BY SRI. A N KRISHNA SWAMY, ADVOCATE)

AND:

1. SMT. BASHEERA BI
W/O HUSSAIN PEERAM SAB,
NOW AGED ABOUT 49 YEARS,
NOW R/A D.NO.1562, 13TH CROSS,
BEHIND KALYANA MANTAPA,
BASHA NAGAR, DAVANAGERE - 583 131

2. MEHBUB SUBHAN
S/O PEER SAB,
NOW AGED ABOUT 43 YEARS,
R/O HARAKABHAVI VILLAGE,
KUDLIGI TALUK,
BALLARI DISTRICT- 583 114

3. SATISH S
S/O SHEKARAPPA, MAJOR
R/O HARAKABHAVI VILLAGE,
KUDLIGI TALUK,
BALLARI DISTRICT - 583 114

...RESPONDENTS

(BY SRI. SREEHARSHA A K, ADVOCATE FOR R1;
R2 & R3 NOTICE SERVED, UNREPRESENTED)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV
ACT PRAYING TO SET ASIDE THE JUDGMENT AND AWARD
DATED 01.04.2016 PASSED IN MVC NO.278/12 ON THE
FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE & MEMBER,
MACT-4, DAVANAGERE AND TO PASS SUCH OTHER ORDER



CNR: KAHC010330212016

NC: 2026:KHC:52788
MFA No. 4454 of 2016
C/W MFA No. 4860 of 2016

OR ORDERS AS THIS HON'BLE COURT DEEMS FIT UNDER THE FACTS AND CIRCUMSTANCES OF THE CASE, INCLUDING THE COSTS, IN THE INTEREST OF JUSTICE AND EQUITY.

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

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL JUDGMENT

Challenging judgment and award dated 01.04.2016 passed by Principal Senior Civil Judge and MACT-IV, Davanagere in MVC no.278 of 2012, these appeals are filed.

2. MFA no.4454 of 2016 is filed by claimant for enhancement of compensation. While MFA no.4860 of 2016 is filed by insurer challenging finding on liability.

3. Brief facts leading to these appeals as per claimant are that on 07.11.2011 at about 7.00 a.m. claimant was travelling as a pillion rider on a motor cycle no.K-35/V-3034, ridden by her nephew, to go to Masjid at Harakabavi Village when a she-buffalo came in front of motorcycle. Due to same, rider lost control and caused accident. As a result, claimant fell down along with motorcycle and sustained grievous injuries to



CNR: KAHC010330212016

NC: 2026:KHC:52788
MFA No. 4454 of 2016
C/W MFA No. 4860 of 2016

temporoparietal region and shoulder etc. Despite treatment at Community Health Centre Ujjain, C.G. Hospital Davanagere and S.S.Hospital, Davanagere, the claimant did not fully recover and suffered permanent physical disability, resulting in loss of earning capacity. Claiming compensation, claimant filed a claim petition under Section 166 of the Motor Vehicles Act against rider, owner and insurer of motorcycle.

4. On service of summons, respondents no.1 and 2, while denying entire claim petition averments, stated that, at time of accident, rider was having valid and effective driving licence and vehicle was duly covered by an insurance policy issued by respondent no.3 and sought indemnification.

5. Insurer, respondent no.3, filed its objections denying all claim petition averments. Apart from contending that claim was excessive and speculative, insurer denied age, occupation, income of claimant, and loss of earning capacity of claimant as well as alleged violation of policy conditions by rider.



CNR: KAHC010330212016

NC: 2026:KHC:52788
MFA No. 4454 of 2016
C/W MFA No. 4860 of 2016

6. Based on pleadings, Tribunal framed following issues:-

- "1. Whether the petitioner proves that this Tribunal has got jurisdiction to try the petition?*
- 2. Whether the petitioner proves that she sustained injuries in a road traffic accident that occurred on 07.11.2011 at about 7.00 a.m., near masjid, Nimbageri, Ujjini road, Kudligi taluk, Bellary district, solely due to negligent riding of the motor cycle bearing Reg.No.KA-35/V-3034 by respondent No.1 ?*
- 3. Whether the petitioner is entitled for compensation? If so, to what extent and from whom?*
- 4. What order or award?"*

7. Thereafter, claimant along with Dr.M.V.V. Sathyanarayana and Dr.Prakash V.Suranagi, Neurosurgeon and Ophthalmologist deposed as PWs-1 to 3 and got marked Exs.P1 to P81. Insurer examined its Officer as well as Dr.Guruswamy N.T. as RWs-1 and RWs-2 and got marked Exs.R1 to R9.

8. On consideration, Tribunal answered issues no.1 and 2 in affirmative, issue no.3 partly in affirmative and partly in negative and issue no.4 by assessing total compensation of



CNR: KAHC010330212016

NC: 2026:KHC:52788
MFA No. 4454 of 2016
C/W MFA No. 4860 of 2016

Rs.50,000/- with interest at 6% per annum and held respondents no.1 to 3 jointly and severally liable to pay compensation. Aggrieved by quantum of compensation, claimant preferred an appeal while insurer challenged liability on it.

9. Sri.A.N.Krishna Swamy, learned counsel for appellant-insurer, submitted that, despite a specific contention, claimant did not produce driving licence of rider. He further submitted that Ex.R9, extract of driving licence issued by RTO, Hospet, disclose that rider had driving licence to drive a light motor vehicle and not motorcycle with gear. Thus, insurer established breach of terms and conditions of insurance policy. In view of same, insurer cannot be held liable. He also submitted that claimant had sustained fracture of clavicle which would not result in any disability. Therefore, award passed by Tribunal was justified and that there were no good grounds for entertaining claimant's appeal.

10. On other hand, Sri.A.K.Sreeharsha, learned counsel appearing for claimant-appellant, opposing insurer's appeal, relied upon decisions of Hon'ble Supreme Court in **Pappu and**



CNR: KAHC010330212016

NC: 2026:KHC:52788
MFA No. 4454 of 2016
C/W MFA No. 4860 of 2016

Others v. Vinod Kumar Lamba and Another reported in ***(2018) 3 SCC 208*** and ***Shamanna and Another v. Divisional Manager, Oriental Insurance Company Limited and Others*** reported in ***(2018) 9 SCC 650***, wherein under similar circumstances it was held insurer would be liable to pay compensation to claimant in first place and thereafter recover it from owner of vehicle. Therefore, there was no merit in insurer's appeal.

11. On quantum, it was submitted that claimant was aged 45 years, working as a professional cook at functions and earning Rs.10,000/- per month. Due to accidental injuries and disability sustained, she had suffered loss of earning capacity. Under above circumstances, Tribunal was not justified in awarding global compensation. It was further submitted that claimant has taken inpatient treatment for about 19 days and had also undergone surgery, as stated by PW2. PW2 had deposed that, due to accidental injuries, claimant had suffered subdural haematoma and facial palsy. She was discharged with advice for revival treatment. She had also sustained a fracture of left clavicle fracture. It was submitted that PW3 - an



CNR: KAHC010330212016

NC: 2026:KHC:52788
MFA No. 4454 of 2016
C/W MFA No. 4860 of 2016

ophthalmologist, had stated that, due to accidental injuries, claimant suffered impairment of visual acuity in left eye while vision in right eye was 6/9, vision in left eye was 6/24. Therefore, claimant had suffered 20% loss of vision in her left eye, which affected her earning capacity. Under such circumstances, sought just compensation.

12. Heard learned counsel perused impugned judgment, award and record.

13. From above and since both insurer and claimant have preferred appeals with regard to liability and quantum, following points arise for consideration:

(i). Whether Tribunal was justified in holding insurer liable to pay compensation?

(ii). Whether assessment of compensation by Tribunal calls for modification?

14. **Point no.(i)**: Insurer's appeal on liability is principally based on contention that respondent no.1, rider of motorcycle at time of accident did not have valid and effective



CNR: KAHC010330212016

NC: 2026:KHC:52788
MFA No. 4454 of 2016
C/W MFA No. 4860 of 2016

driving licence to ride motorcycle. A perusal of written statement filed by insurer reveals that a specific contention was raised that rider of insured vehicle did not possess a valid and effective driving licence at time of accident. Respondent no.1 did not choose to step into witness box to rebut said contention. Even claimant did not produce driving licence of respondent No.1. On other hand, Ex.R9 driving licence extract of respondent no.1 would indicate that he had driving licence to drive a light motor vehicle, which was issued on 20.06.2007 and was valid up to 17.12.2015. Though, Ex.R9 indicate that licence was valid as on date of accident, admittedly, licence was issued in respect of a different class of vehicle namely, a light motor vehicle. Unless it is established that rider/driver possessed a driving licence in respect of specific category of vehicle, insurer would be justified in contending that there was a violation of terms and conditions of insurance policy.

15. But it is held by Hon'ble Supreme Court in **Pappu's** case as well as **Shamanna's** case, that in claims by third parties, insurer would be liable to pay compensation to third



CNR: KAHC010330212016

NC: 2026:KHC:52788
MFA No. 4454 of 2016
C/W MFA No. 4860 of 2016

party victims in first instance and thereafter recover same from insured.

16. On question of quantum, claimant seeks to rely on wound certificate, hospital bills, prescriptions, outpatient card, treatment summary, audiogram chart, cytopathology report, X-rays, photographs etc., which are marked as Exs.P4 and P6 to P81. She also relies upon her deposition as PW1 and depositions of neurosurgeon and ophthalmologist as PW2 and PW3 respectively.

17. In course of verification of records, a discrepancy was noted with regard to manner of occurrence of accident. As per claimant's version, accident occurred when a she-buffalo suddenly came in front of motorcycle, as a result of which motorcycle dashed against it and claimant sustained injuries. Ex.P63, patient admission card issued by Chitgere Hospital, Davangere, records history of injury as a result of fall from bike "**accidentally**". Likewise, Ex.P64-treatment summary, Exs.P65 to P71 - outpatient card and Ex.P79-case sheet, also record history of injury as a fall from bike. As per claimant, accident occurred at about 7.00 a.m. on 07.11.2011. However,



CNR: KAHC010330212016

NC: 2026:KHC:52788
MFA No. 4454 of 2016
C/W MFA No. 4860 of 2016

complaint was lodged three days after accident, without explanation for delay.

18. Apart from above, even if claimant's version that accident occurred when motorcycle dashed against she-buffalo, and claimant fell down from motorcycle and sustained injuries, is accepted, claimant has failed to examine rider of motorcycle or even to mention whether rider also sustained any injuries or underwent any treatment thereafter.

19. On overall consideration, claim does not appear to be genuine. In view of above, it is found that award of compensation by Tribunal in such cases would not be justified. Hence, while answering point no.(ii) in negative, it is held that claim petition itself is liable to be dismissed.

20. Consequently, following :

ORDER

- i. MFA no.4454/2016 filed by claimant is ***dismissed.***
- ii. MFA no.4860/2016 filed by insurer is ***allowed.***



CNR: KAHC010330212016

NC: 2026:KHC:52788
MFA No. 4454 of 2016
C/W MFA No. 4860 of 2016

iii. Impugned judgment and award dated 01.04.2016 passed by Principal Senior Civil Judge & MACT-IV, Davanagere, in M.V.C.no.278/2012 is set aside. Claim petition is **dismissed**.

iv. Amount in deposit, if any, is ordered to be refunded to insurer.

Sd/-
(RAVI V HOSMANI)
JUDGE

VMB
List No.: 1 Sl No.: 9