



CNR: KAHC010389512026

NC: 2026:KHC:45229
MFA No. 4280 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

MISCELLANEOUS FIRST APPEAL NO.4280 OF 2026(MV-I)

BETWEEN:

KUM KAVYA B.K.,
D/O KATMAYYA,
AGED ABOUT 20 YEARS,
R/AT KOTAGARALAHALLI POST,
BULLASANDRA, DODDERI HOBLI,
MADHUGIRI TALUK,
TUMKUR – 572 132.

...APPELLANT

(BY SRI. P. MAHADEVASWAMY., ADVOCATE)

AND:

Digitally signed by
LAKSHMINARAYANA
MURTHY RAJASHRI
Location: HIGH
COURT OF
KARNATAKA

1. THE MANAGER,
NEW INDIA ASSURANCE CO. LTD,
T. P. HUB, MAHALAKSHMI CHAMBERS,
M.G.ROAD,
BENGALURU – 560 001.
2. MANISH KUMAR,
S/O MAHINDER PAUL SHARMA,
MAJOR,
R/AT 8TH CROSS, VINAYAKANAGAR,
MURUGEPALYA, HAL,
BENGALURU – 08.



CNR: KAHC010389512026

NC: 2026:KHC:45229
MFA No. 4280 of 2026

PERMANENT ADDRESS
SUHIN P.O., NEHRANPOKHER,
THE RAKKAR CHAMBA,
HIMACHAL PRADESH – 177 108.

...RESPONDENTS

(BY SRI. RAVISHANKAR C R., ADVOCATE FOR R1;
NOTICE TO R2 IS DISPENSED WITH VIDE ORDER DATED
22.06.2026)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE
JUDGMENT AND AWARD DATED 06.01.2026, PASSED IN MVC
NO.7955/2024, ON THE FILE OF THE XII ADDITIONAL SMALL
CAUSES JUDGE AND ACJM, MEMBER, MACT, BENGALURU
(SCCH 8), PARTLY ALLOWING THE CLAIM PETITION FOR
COMPENSATION AND SEEKING ENHANCEMENT OF
COMPENSATION.

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

CORAM: HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

ORAL JUDGMENT

This appeal is filed by the appellant/claimant
challenging the Judgment and Award dated 06.01.2026,
passed in MVC No.7955/2024, by XII Additional Small
Causes Judge & Member, MACT, Bengaluru (SCCH-8), (for



CNR: KAHC010389512026

short, `Tribunal'). The appellant has challenged the deduction of 60% of compensation assessed by the Tribunal on the ground that the rider of the motorcycle has also contributed to the accident, on which, the claimant was a pillion rider.

2. Even though the matter is listed today for admission, with the consent of both the learned counsel for appellant and learned counsel for respondent No.1-insurer, the matter is taken up for disposal.

3. The appellant/claimant made a claim petition praying to award compensation for the injuries sustained by her in a road traffic accident occurred on 10.08.2024 contending that the accident occurred due to rash and negligent riding of the motorcycle bearing registration No.HP-36/E-3372.

4. The Tribunal recorded the evidence adduced by the parties and upon appreciating the evidence on record, assessed the total compensation of Rs.1,33,769/-. The



NC: 2026:KHC:45229
MFA No. 4280 of 2026

CNR: KAHC010389512026

Tribunal held that the rider of the motorcycle bearing registration No.KA-06/HL-4273 and the rider of motorcycle bearing registration No.HP-36/E-3372 have contributed to the accident and their negligence is assessed in the ratio of 60:40 respectively. The Tribunal has held that the claimant is entitled to 40% of the total compensation of Rs.1,33,769/- and the respondent No.1-insurer is liable to pay the said compensation amount. The claimant has challenged the said finding of the Tribunal in the present appeal.

5. Heard the learned counsel for appellant and learned counsel for respondent No.1/insurer.

6. Learned counsel for the appellant would contend that, there is a composite negligence on the part of rider of the motorcycle bearing registration No.KA-06/HL-4273, on which, the claimant was a pillion rider and the rider of the motorcycle bearing registration No.HP-36/E-3372. As there is a composite negligence on



CNR: KAHC010389512026

the part of riders of two motorcycles, the claimant can make a claim against any of the joint tortfeasors. On this point, learned counsel relies upon the judgment of the Hon'ble Apex Court in the case of ***Khenyei -vs- New India Assurance Co. Ltd., and others***, reported in **2015 ACJ 1441 (SC)**, and prays to allow the appeal.

7. Learned counsel for respondent No.1/insurer contended that the order of the Tribunal is just and proper and there are no grounds to interfere with the contributory negligence assessed by the Tribunal.

8. Having heard the learned counsel for appellant and learned counsel for respondent No.1/insurer, the Court has perused the Judgment and Award.

9. The appellant/claimant was a pillion rider on motorcycle bearing registration No.KA-06/HL-4273 and there was an accident between the said motorcycle and the motorcycle bearing registration No.HP-36/E-3372. The charge sheet at Ex.P-7 is filed against riders of both



the motorcycles for the offences punishable under Sections 279, 337 of IPC.

10. Considering the said aspect, there is a composite negligence on the part of riders of both the motorcycles. The Hon'ble Apex Court in the case of ***Khenyei (cited supra)***, has held at paras 10 to 12 as under :

"10. A Full Bench of the High Court of Karnataka at Bangalore in Karnataka State Road Transport Corporation, Bangalore and etc. v. Arun alias Aravind and etc. etc. [AIR 2004 Kar. 149] has affirmed the decision of another Full Bench of the same High Court in Ganesh v. Syed Munned Ahamed & Ors. [ILR (1999) Kar. 403]. A Division Bench referred the decision in Ganesh's case (supra) on following two questions to the larger Bench :

"1. If the proceedings are finally determined with an award made by the Tribunal and disposed of in some cases by the appeal against the same by the High Court, does the Tribunal not become functus officio for making any further proceedings like impleading the tortfeasor or initiating action against him legally impermissible ?

2. What is the remedy of a tortfeasor who has satisfied the award, but who does not know the particulars of the vehicle which was responsible for the accident?"



CNR: KAHC010389512026

NC: 2026:KHC:45229
MFA No. 4280 of 2026

11. A Full Bench in *KSRTC v. Arun @ Aravind (supra)* while answering aforesaid questions has observed that it was a case of composite negligence and the liability of tortfeasors was joint and several. Hence, even if there is non-impleadment of one of tortfeasors, the claimant was entitled to full compensation quantified by the Tribunal. The Full Bench referred to the decision of a Division Bench of the Gujarat High Court in *Hiraben Bhaga & Ors. v. Gujarat State Road Transport Corporation* [1982 ACJ (Supp.) 414 (Guj.)] in which it has been laid down that it is entirely the choice of the claimant whether to implead both the joint tortfeasors or either of them. On failure of the claimant to implead one of the joint tortfeasors, contributory liability cannot be fastened upon the claimant to the extent of the negligence of non-impleaded joint tortfeasors. It is for the joint tortfeasors made liable to pay compensation to take proceedings to settle the equities as against other joint tortfeasors who had not been impleaded. It is open to the impleaded joint tortfeasor to sue the other wrongdoer after the decree or award is given to realize to the extent of others' liability. It has been laid down that the law in *Ganesh's case (supra)* has been rightly laid down and it is not necessary to implead all joint tortfeasors and due to failure of impleadment of all joint tortfeasors, compensation cannot be reduced to the extent of negligence of non-impleaded tortfeasors. Non-impleadment of one of the joint tortfeasors is not a defence to reduce the compensation payable to the



CNR: KAHC010389512026

NC: 2026:KHC:45229
MFA No. 4280 of 2026

claimant. In our opinion, the law appears to have been correctly stated in KSRTC v. Arun @ Aravind (supra).

12. A Full Bench of Madhya Pradesh High Court in Smt. Sushila Bhadoriya & Ors. v. M.P. State Road Transport Corpn. & Anr. [2005 (1) MPLJ 372] has also laid down that in case of composite negligence, the liability is joint and several and it is open to implead the driver, owner and the insurer one of the vehicles to recover the whole amount from one of the joint tortfeasors. As to apportionment also, it has been observed that both the vehicles will be jointly and severally liable to pay the compensation. Once the negligence and compensation is determined, it is not permissible to apportion the compensation between the two as it is difficult to determine the apportionment in the absence of the drivers of both the vehicles appearing in the witness box. Therefore, there cannot be apportionment of the claim between the joint tortfeasors. The relevant portion of decision of Full Bench is extracted hereunder :

"When injury is caused as a result of negligence of two joint tort-feasors, claimant is not required to lay his finger on the exact person regarding his proportion of liability. In the absence of any evidence enabling the Court to distinguish the act of each joint tort-feasor, liability can be fastened on both the tort-feasors jointly and in case only one of the joint tort-feasors is impleaded as party, then entire liability can be fastened upon one of the joint tort-feasors. If both the joint tort-feasors are before the Court and there is sufficient evidence regarding the act of each tort-feasors and it is possible for the Court to apportion the claim considering the exact nature of negligence



CNR: KAHC010389512026

NC: 2026:KHC:45229
MFA No. 4280 of 2026

by both the joint tort-feasors, it may apportion the claim. However, it is not necessary to apportion the claim when it is not possible to determine the ratio of negligence of joint tort-feasors. In such cases, joint tort-feasors will be jointly and severally liable to pay the compensation.

On the same principle, in the case of joint tort-feasors where the liability is joint and several, it is the choice of the claimant to claim damages from the owner and driver and insurer of both the vehicles or any one of them. If claim is made against one of them, entire amount of compensation on account of injury or death can be imposed against the owner, driver and insurer of that vehicle as their liability is joint and several and the claimant can recover the amount from any one of them. There can not be apportionment of claim of each tort- feasors in the absence of proper and cogent evidence on record and it is not necessary to apportion the claim.

To sum up, we hold as under:-

(i) Owner, driver and insurer of one of the vehicles can be sued and it is not necessary to sue owner, driver and insurer of both the vehicles.

Claimant may implead the owner, driver and insurer of both the vehicles or anyone of them.

(ii) There can not be apportionment of the liability of joint tort-feasors. In case both the joint tort-feasors are impleaded as party and if there is sufficient material on record, then the question of apportionment can be considered by the Claims Tribunal. However, on general



CNR: KAHC010389512026

principles of law, there is no necessity to apportion the inter se liability of joint tortfeasors.

Reference is answered accordingly. Appeal be placed before appropriate Bench for hearing."

11. In view of the above decision of the Hon'ble Apex Court, the owner, driver and insurer of one of the offending vehicles can be sued and it is not necessary to sue owner, driver and insurer of both the vehicles. The claimant may implead the owner, driver and insurer of both the vehicles or any one of them. There cannot be apportionment of liability of joint tortfeasors. But, in case both joint tortfeasors are impleaded as parties and if there is sufficient material on record, then the question of apportionment can be considered by the Claims Tribunal. However, on general principle of law, there is no necessity to apportion *inter se* the liability of the joint tortfeasors.

12. In the case on hand, the claimant was a pillion rider, has made a claim petition against the owner and insurer of motorcycle bearing registration



CNR: KAHC010389512026

No.HP-36/E-3372, one of the tortfeasor. Therefore, there cannot be any apportionment of the liability of the joint tortfeasors.

13. Considering the said aspect, the apportionment made by the Tribunal is not proper and is liable to be set aside. The appellant/claimant can recover the compensation of Rs.1,33,769/- awarded by the Tribunal from the owner and insurer of the motorcycle bearing registration No.HP-36/E-3372, who are respondent Nos.1 and 2 herein.

14. In view of the above, the following:

ORDER

- i) *Miscellaneous First Appeal is **allowed**..*
- ii) *The appellant/claimant is entitled to entire compensation of Rs.1,33,769/- with interest at the rate of 6% per annum from the date of petition till realisation.*
- iii) *Respondent No.1/insurer shall deposit the said compensation amount with interest before the Tribunal within a period of*



CNR: KAHC010389512026

NC: 2026:KHC:45229
MFA No. 4280 of 2026

six weeks from this day, including the amount already deposited.

- iv) *The claimant is entitled to release of entire compensation amount with interest.*

Sd/-
(SHIVASHANKAR AMARANNAVAR)
JUDGE

BK
List No.: 1 Sl No.: 5