



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

MISCELLANEOUS FIRST APPEAL NO.7046 OF 2017(MV-I)

BETWEEN:

THE RELIANCE GENERAL INSURANCE CO. LTD.,
BRANCH OFFICE AT,
MAXIMUS COMMERCIAL COMPLEX,
4TH FLOOR, LIGHT HOUSE HILL ROAD,
OPP. KMC COLLEGE,
MANGALORE-575 004,
REP. BY ITS REGIONAL MANAGER,
NO.28, EAST WING, 5TH FLOOR,
CENTENARY BUILDING,
M.G. ROAD,
BANGALORE-560 001.

...APPELLANT

(BY SRI. D VIJAYAKUMAR, ADVOCATE)

AND:

1. SRI. SUDHIR SHETTY
S/O. SHRIDHAR SHETTY,
AGED ABOUT 35 YEARS,
R/AT NEAR AYYAPPA BHAJANA MANDIR,
MULLAKADU, KAVOOR VILLAGE,
MANGALURU TALUK,
MANGALURU DISTRICT-575 001.
2. SRI. SACHIN KUMAR
S/O. JAGADISH ACHAR,
AGED ABOUT 23 YEARS,
R/AT D. NO. 11-113-22(1),
ULLANJE HOUSE,

Digitally
signed by
NANDINI R
Location:
HIGH COURT
OF
KARNATAKA



MENNABETTU,
KINNIGOLI POST,
MANGALURU-574 150.
(EXPARTE)

...RESPONDENTS

(R1-SERVED AND UNREPRESENTED
VIDE ORDER DATED 21.10.2022 NOTICE TO R2 IS HELD
SUFFICIENT)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE
JUDGMENT AND AWARD DATED 15.06.2016 PASSED IN MVC
NO.1217/2016 ON THE FILE OF THE II ADDITIONAL SENIOR
CIVIL JUDGE & MACT, MANGALURU, D.K. AWARDED A
COMPENSATION OF RS.90,774/- WITH INTEREST AT 6% P.A.
FROM THE DATE OF PETITION TILL THE DATE OF ITS
REALIZATION.

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

CORAM: HON'BLE MR. JUSTICE C M JOSHI

ORAL JUDGMENT

Heard the learned counsel appearing for the
appellant and none appeared for the respondents.

2. Being aggrieved by the judgment and award
dated 15.06.2017 passed in MVC.No.1217/2016 by the II
Additional Senior Civil Judge and MACT, Mangaluru, D.K.,
the insurer has preferred this appeal.



3. The factual matrix of the case is that on 05.06.2016 when the claimant was riding his motorcycle bearing registration No.KA-19-EG-2518 along with his brother Manoj Kumar as pillion rider, another motorcycle bearing number KA-19-ES-4974 owned by respondent No.2 herein and insured by the appellant came in rash and negligent manner and hit the motorcycle of the claimant. The claimant fell down and sustained injuries and he was taken to A.J. Hospital, Mangaluru where he was inpatient from 05.06.2016 to 09.06.2016 and as such, he preferred a claim petition claiming compensation from the owner and insurer of the offending vehicle.

4. The said petition was resisted by the appellant-insurer contending that there was no such accident involving the offending motorcycle and that the nexus between the offending vehicle and the injuries suffered by the claimant need to be established by the claimant. It was further contented that the accident had occurred due to the negligence of the claimant himself, who was riding



the motorcycle in a rash and negligent manner and therefore the vehicle insured by the insurer has been falsely implicated in order to claim compensation. All other contentions of the claimant were vehemently and meticulously denied by the insurer in its written statement.

5. Respondent No.2 herein who is the owner of the offending motorcycle did not appear, despite service of notice.

6. The Tribunal framed appropriate issues and when the matter was slated for adducing oral evidence, the claimant appeared and filed his affidavit and Exs.P1 to P6 were marked by him. Later, he did not turn up for the cross-examination. Thereafter, his brother, who was the pillion rider filed his affidavit evidence and claimed himself to be deposing on the basis of a General Power of Attorney executed by the claimant. He got marked two documents



as Exs.P7 and P8. Later, he also didn't turn up for cross-examination.

7. The Tribunal after hearing the arguments, proceeded to decide the matter and allowed the petition awarding a compensation of Rs.90,774/- along with interest at 6% per annum from the date of petition till its realization and held that the appellant-insurance company is liable to pay the compensation amount.

8. Being aggrieved, the appellant - insurance company is before this Court in this appeal.

9. Despite service of notice to the respondents in this appeal, they have not appeared before this Court.

10. Learned counsel appearing for the appellant would submit that when there is no documentary evidence which would show the involvement of the offending vehicle, the Tribunal could not have fastened the liability upon the appellant. It is pointed out that in the written statement the appellant had denied the involvement of the



vehicle in the said accident. The testimony of PWs.1 and 2 remained untested, since they did not offer themselves for cross-examination despite granting ample opportunities.

11. Moreover, investigation papers were not produced on behalf of the claimant to show that the vehicle owned by respondent No.2 and insured by the appellant was the offending vehicle and it had caused the accident. The FIR and the complaint filed by PW.2-Manoj Kumar, do not mention the vehicle number and the name of the rider. Therefore, it was essential for the claimant to offer himself for cross-examination.

12. It is submitted that when the charge sheet has not been produced by the claimant which indicates the involvement of the motorcycle owned by respondent No.2 and insured by the appellant, it was not fair on the part of the Tribunal to pass the award directing the appellant to pay the compensation. Hence, he seeks to allow the appeal and dismiss the claim petition.



13. A careful perusal of the records would reveal that the FIR and complaint, which are produced at Exs.P1 and P2 would indicate that an unknown rider with two pillion riders had dashed against the motorcycle of the petitioner and he fell down. The FIR do not mention the offending vehicle number at all. The other documents produced by the petitioner are the medical records and in none of these documents, there is any mention about the involvement of the vehicle owned by respondent No.1 and insured by respondent No.2. The petition filed by the petitioner contend that the motorcycle bearing No.KA-19-ES-4974 was involved in the accident. But the investigation papers nowhere show that the vehicle owned by R-1 and insured by R-2 was involved in the accident. It is worth to note that the respondent No.2 in the written statement has vehemently denied the involvement of the motorcycle insured by it. Obviously, respondent No.1 did not appear before the Tribunal. The petitioner rely upon his own testimony and the Accident Information Report to



establish that the vehicle owned by respondent No.1 and insured by respondent No.2 is involved in the accident.

14. It is pertinent to note that there is heavy reliance by the petitioner on his own testimony and the testimony of his brother who was the pillion rider. Therefore, it was essential for the petitioner and the eyewitness to the accident i.e., PW2 to offer themselves for the cross-examination. Curiously, PW.2 claims to be the Power of Attorney Holder of PW.1. In an action for compensation for personal injury, it is difficult to accept that the testimony of the GPA holder would be an acceptable testimony. Therefore, It is evident that the cross-examination of PWs.1 and 2 was an essential part of the enquiry, which should have been conducted by the Tribunal. The perusal of the impugned judgment of the Tribunal would indicate that simply relying upon the affidavits of PWs.1 and 2, it has thrown the burden on the respondent to disprove a fact. First of all, the fact contented by the petitioner had not been proved at all.



There were no material on record to show the involvement of the vehicle owned by the respondent No.1 except the Accident Information Report at Ex.P7. It is only the oral testimony of PWs.1 and 2, which indicts the vehicle owned by respondent No.1. Therefore, the observation of the Tribunal that the vehicle bearing No.KA-19-ES-4974 was involved in the accident become doubtful. It appears that it relied only on Ex.P7, which is accident information report, wherein, the number of vehicle owned by respondent No.1 and insured by respondent No.2 is mentioned. Therefore, unless the PWs.1 and 2 were subjected to cross-examination, it was not proper on the part of the Tribunal to pass a judgment awarding compensation and fastening liability on the respondent. In the result, the matter deserves to be remanded to the Tribunal.

15. This Court could have allowed the appeal and dismissed the claim petition straightaway, but the Motor Vehicles Act being a beneficial legislation, meant for



helping the injured in an accident, this Court feels that it is a fit case, where the matter has to be remanded. Hence, the following:

ORDER

- i) The appeal is allowed.
- ii) The impugned judgment and award passed by the Tribunal is set aside. The matter is remanded to the Tribunal with following directions:
 - a) The Tribunal shall issue notice to the petitioner or his counsel and direct him to offer PWs.1 and 2 for cross-examination.
 - b) If PWs.1 and 2 do not offer themselves for cross examination, despite an effort by the Tribunal, or after exhausting three opportunities to them, the Tribunal may decide the matter in accordance with law.



- c) The effect of not offering PWs.1 and 2 for cross-examination, particularly in view of the observations made by this Court in the body of this judgment, the Tribunal shall decide the matter or may dismiss the matter by striking down the evidence led.
- d) The appellant is directed to appear before the Tribunal on 03.03.2026 without waiting for any notice by the Tribunal.

The amount in deposit, if any, be refunded to the appellant.

The Registry is directed to send back the trial Court records, forthwith.

Sd/-
(C M JOSHI)
JUDGE