



NC: 2026:KHC:30788-DB
MFA No. 5433 of 2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF JUNE, 2026

PRESENT

HON'BLE MR. JUSTICE JAYANT BANERJI

AND

HON'BLE MS. JUSTICE TARA VITASTA GANJU

MISCELLANEOUS FIRST APPEAL NO. 5433 OF 2018 (MV-D)

BETWEEN:

1. SMT. RATHNAMMA R
W/O LATE SATHISH G
AGED ABOUT 36 YEARS.
2. MASTER CHINTHAN S
S/O LATE SATHISH G
AGED ABOUT 06 YEARS.
3. MASTER SHRUJAN S
S/O LATE SATHISH G
AGED ABOUT 03 YEARS.
4. SMT. AKKAMMA
W/O LATE GANGAPPA
AGED ABOUT 64 YEARS

PETITIONERS NOS.2 AND 3 ARE MINORS
REP. BY THEIR MOTHER AND NATURAL GUARDIAN
1ST APPELLANT HEREIN

ALL ARE R/AT NO.4, 12TH CROSS
LAKSHMAIAH BLOCK,
GANGANAGAR
BENGALURU-560 024.

...APPELLANTS

(BY SRI. CHANDRASHEKAR B.A., ADVOCATE)

Digitally signed by
SUMATHY KANNAN
Location: HIGH
COURT OF
KARNATAKA



AND:

1. M/S. SOFTRADE INFOWARE PVT. LTD.,
NO.54, 7TH CROSS, 2ND MAIN
BASAVESHWARA HOUSING LAYOUT
CHANDRA LAYOUT
BENGALURU-560 040.
2. SMT. VASANTHI GURUPRASAD
W/O GURUPRASAD S
NO.13, 2ND MAIN
BASAVESHWARA HSG LAYOUT
2ND STAGE, CHANDRA LAYOUT
BENGALURU-560 040.
3. NATIONAL INSURANCE CO. LTD.,
DIVISIONAL III
SHRI LAKSHMI COMPLEX
15-17-19, ST.MARKS ROAD
BENGALURU-560 001.

...RESPONDENTS

(BY SMT. MANJULA NEMICHANDRA TEJASWI, ADVOCATE
FOR R3;
V/O/D.11.09.2023 SERVICE OF NOTICE
THROUGH PAPER PUBLICATION IN
R/O.R1 & R2 IS ACCEPTED)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE
JUDGMENT AND AWARD DATED 07.04.2018 PASSED IN MVC
NO.4203/2016 ON THE FILE OF THE 21ST ACMM & 23RD
ADDITIONAL SMALL CAUSE JUDGE, COURT OF SMALL CAUSES,
MACT, BENGALURU, DISMISSING THE CLAIM PETITION FOR
COMPENSATION.

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



CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
and
HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORAL JUDGMENT

(PER: HON'BLE MS. JUSTICE TARA VITASTA GANJU)

1. The present appeal seeks to challenge the Judgment and Award dated 07.04.2018, in M.V.C. No.4203/2016 passed by the learned XXI ACMM and XXIII ASCJ, Court of Small Causes and Motor Accident Claims Tribunal, Bengaluru, (hereinafter referred to as the 'Impugned Award'). By the Impugned Award, the claim petition filed by the appellants/claimants has been dismissed. The principal reason that has been accorded by the learned Tribunal is that the complete documents in relation to the accident had not been produced.

2. Heard the learned counsel for the appellants/claimants and the learned counsel for respondent No.3/Insurance Company. Although notice was served to respondents No.1 and 2 by publication, they did not appear and the notice was deemed sufficient by this Court by its order dated 11.09.2023.



IA No.1/2018 :

3. At the outset, learned counsel for the appellants/claimants draws the attention of the Court to IA No.1/2018 to submit that the documents which were relevant for the adjudication of the claim petition could not be placed before the learned Tribunal. He submits that the appellant No.1/claimant No.1 had lost her husband who was the main breadwinner of the family and she did not have the means or wherewithal to get the documents in time to file the case before the learned Tribunal. Thus, the case was dismissed. Learned counsel further submits that these documents are necessary for the adjudication of the disputes *inter-se* the parties and especially on the aspect of negligence.

4. No reply has been filed to this application despite this application pending for the last eight years.

5. The learned counsel for the respondent No.3/Insurance Company however, orally contends that there is no explanation given in this application with



affidavit as to why these documents were not placed before the learned Tribunal.

6. On examination of the application along with an affidavit filed reflects that the application sets out that the appellants may be permitted to produce the documents in the interest of justice and equity:

"The Appellants to produce the additional documents mentioned below, in the interest of justice and equity:

1. *Copy of the charge sheet,*
2. *Copy of the Notice U/Sec.133 of M.V.Act.*
3. *Copy of the spot mahazar,*
4. *Copy of the post mortem report,*
5. *Copy of the spot sketch,*
6. *Copy of the IMV report.*
7. *Copy of the inquest report.*

6.1. The affidavit, which is annexed along with the application, sets out that owing to an inadvertent error, the relevant documents like charge sheet, mahazar, spot sketch etc., could not be produced before the learned Tribunal. It further sets out that the appellant No.1/claimant No.1 lost her husband in the accident and he was the sole bread earner of the family. In addition, it sets out that the documents have now been produced.



7. Order XLI, Rule 27 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC') provides that where an appeal is admitted, a party seeking to produce additional evidence establishes that despite the exercise of due diligence, the evidence was not within his knowledge or could not after the exercise of due diligence be produced by him, can be produced in an Appeal against the decree. It further sets out that these documents are material for succeeding in the claim.

8. The provisions of Order XLI Rule 27 CPC require for certain circumstances in which documents can be produced at the appellate stage, these includes, where the parties has preferred an appeal but refused, where the court requires any document to be produced to enable it to pronounce judgment or for any other substantial cause. Order XLI, Rule 27 of the CPC is set out below:

"27. Production of additional evidence in Appellate Court:- (1) *The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court, But if:*



(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

[Emphasis Supplied]

9. The Supreme Court in the case of **Union of India V. Ibrahim Uddin and another**¹ while explaining this provision has held that the power under Order XLI, Rule 27 of the CPC is an exception and not a rule, and additional evidence cannot be permitted to fill up lacunae or to improve a party's case. However, it has been held that where the Appellate Court is unable to pronounce judgment, on the basis of the materials before it,

¹ (2012) 8 SCC 148



additional evidence can be allowed. It is apposite to set out relevant extract below:

"36. The general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. **However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. The appellate court may permit additional evidence only and only if the conditions laid down in this Rule are found to exist.** The parties are not entitled, as of right, to the admission of such evidence. **Thus, the provision does not apply, when on the basis of the evidence on record, the appellate court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly.** Such a discretion is only a judicial discretion circumscribed by the limitation specified in the Rule itself. (Vide K.Venkataramiahv.A.Seetharama Reddy², Municipal Corporation. Of Greater Bombay v. Lala Pancham³, Soonda Ramv. Rameshwarlal⁴ and Syed Abdul Khader v.Rami Reddy⁵."

XXX

XXX

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49. **An application under Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved.** The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. **The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the court.** (Vide Arjan Singh v. Kartar Singh⁶ and Natha Singh v. Financial Commr., Taxation⁷.)"

[Emphasis Supplied]



10. In the present case, as could be seen that the majority of the documents which reflect the accident would be the charge sheet, the spot mahazar, the spot sketch, the IMV Report and the Inquest Report, which have not been placed on record by the appellants/claimants. The appellant No.1/claimant No.1 has stated in her affidavit that she is a widow and could not place these documents on record. She has further averred that she did not have the wherewithal to produce these documents in time. The documents produced by her before the learned Tribunal were not adequate to prove negligence. The spot mahazar, sketch, charge-sheet, IMV Report and the Inquest Report are all documents that would be essential to prove a petition under Section 166 of the MV Act. In any event, these documents would be requisite for the purposes of pronouncing judgment in this matter. Given the circumstances of the case, this Court deemed it apposite to allow this application and take these documents on record.



11. At this stage, the learned counsel for the parties submits that since these documents have been placed on record, the matter may be remanded to the learned Tribunal to lead evidence afresh with respect to these documents.

12. Accordingly, in view of what is stated above, the Court proceeds to pass the following:

ORDER

- (i) The appeal and I.A. No.1 of 2018 are ***allowed.***
- (ii) The impugned Judgment and Award dated 07.04.2018 in MVC No.4203/2016 passed by the learned Tribunal is set aside and the matter is remanded to the learned Tribunal to take up the matter from the stage of evidence after giving due notice to all parties.
- (iii) The parties shall appear before the learned Tribunal on **13.07.2026.**
- (iv) The learned Tribunal is requested to examine the matter expeditiously and proceed with the matter in accordance with the law.



(v) The Registry is directed to transmit a copy of this Judgment to the concerned Tribunal along with its records.

(vi) The Appeal is disposed of in the foregoing terms.

(vii) No order as to costs.

**Sd/-
(JAYANT BANERJI)
JUDGE**

**Sd/-
(TARA VITASTA GANJU)
JUDGE**

tsn/JJ
List No.: 1 Sl No.: 27