HC-KAR

NC: 2026:KHC:17634
MFA No. 2209 of 2013
C/W MFA No. 11509 of 2012

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE C.M. POONACHA

MISCELLANEOUS FIRST APPEAL NO. 2209 OF 2013 (MV)

C/W

MISCELLANEOUS FIRST APPEAL NO. 11509 OF 2012 (MV-I)

IN MFA No. 2209/2013

BETWEEN:

SRI PURUSHOTHAM
AGED ABOUT 56 YEARS
S/O SRINIVASAYYA
R/O MANDARA, ULLASNAGAR
KAVOOR,
MANGALORE D.K.-575015

...APPELLANT

(BY SRI. PUNDIKAI ISHWARA BHAT, ADVOCATE)

Digitally signed by NIRMALA DEVI
Location: HIGH COURT OF KARNATAKA

AND:

1. ATHMA N
   GREEN HILL APARTMENTS,
   BLOCK-1A,KAPIKAD, BEJAI,
   1ST CROSS
   MANGALORE-575004, D.K.

2. THE BRANCH MANAGER
   BAJAJ ALLIANZ GENERAL
   INSURANCE COMPANY LTD
   107, 1ST FLOOR
   CRYSTAL ARCADE,

BALMATTA ROAD,
MANGALORE-575001

…RESPONDENTS

(BY SMT. H R RENUKA, ADVOCATE FOR R2
NOTICE TO R1 IS DISPENSED WITH V/O DTD 27.3.2026)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 10.09.2012 PASSED IN MVC NO.564/2007 ON THE FILE OF THE III ADDITIONAL DISTRICT JUDGE, MEMBER, MACT, D.K., MANGALORE, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

IN MFA NO. 11509/2012

BETWEEN:

BAJAJ ALLIANZ GENERAL INSURANCE
CO. LTD. NO.107, 1ST FLOOR,
CRYSTAL ARCADE,
BALMATTA ROAD,
MANGALORE-575 001.
REP. BY ITS REGIONAL OFFICE
NO. 107, MISSION ROAD,
BANGALORE
REP. BY ITS ASST VICE PRESIDENT (CLAIMS)

...APPELLANT

(BY SMT. H R RENUKA, ADVOCATE)

AND:

1. PURUSHOTHAM
   S/O SRINIVASAYYA,
   AGED ABOUT 55 YEARS,
   R/O MANDARA, ULLASNAGAR,
   KAVOOR,
   MANGALORE, D.K-575 015

2. ATHMA N
   ADULT,

GREEN HILL APARTMENTS
BLOCK-1A, KAPIKAD BEJAI,
I CROSS, MANGALORE,
D.K-575 001.

...RESPONDENTS

(BY SRI. PUNDIKAISHWARA BHAT, ADVOCATE FOR R1
NOTICE TO R2 IS HELD SUFFICIENT V/O DTD 1.10.2015)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 10.09.2012 PASSED IN MVC NO.564/2007 ON THE FILE OF THE III ADDITIONAL DISTRICT JUDGE, MEMBER, MACT, D.K., MANGALORE, AWARDING A COMPENSATION OF Rs.1,72,000/- WITH INTEREST @ 6% P.A. FROM THE DATE OF PETITION TILL REALIZATION.

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

CORAM: HON'BLE MR. JUSTICE C.M. POONACHA

ORAL JUDGMENT

1. MFA No.11509/2012 is filed by the insurer. MFA No.2209/2013 is filed by the claimant. Both the appeals are filed impugning the judgment and award dated 10.09.2012 passed in MVC No.564/2007 by the III Additional District Judge, Member, MACT, D.K., Mangalore[1].

2. The insurer impugns the finding of the Tribunal on the ground of involvement of the insured vehicle. The claimant

[1] hereinafter referred to as the 'Tribunal'

assails the findings of the Tribunal regarding negligence as also seeks for enhancement of the quantum of compensation.

3. Heard the submissions of the learned counsel for the claimant and the learned counsel for the insurer.

4. It is the case of the claimant that on 18.09.2005, when he was riding scooter bearing No.CNX-3738, another motor cycle bearing No.KA-19S-5898 (offending motor cycle) came and hit the motor cycle, which was driven by the claimant and caused the accident in question. Claiming compensation for the injuries sustained in the said accident, the claimant filed a claim petition arraying the owner and insurer of the offending motor cycle as respondent Nos.1 and 2 respectively.

5. The first respondent - owner entered appearance before the Tribunal and admits the accident. The second respondent - insurer admits that the offending vehicle was insured with it, however denies the involvement of the insured vehicle in the accident in question. The Tribunal, has partly allowed the claim petition and awarded a total compensation of ₹3,44,000/- together with interest at 6% pa. The Tribunal has held that the

claimant was negligent to the extent of 50% in causing the accident in question and the rider of the insured motor cycle was negligent to the extent of 50%. Accordingly, out of the compensation assessed, the Tribunal has awarded 50% of the same in a sum of ₹1,72,000/-.

6. It is forthcoming that one Sri Vishwanath was riding as a pillion rider along with the claimant. Pursuant to the complaint given by him, Crime No.207/2005 (Ex.R2) was registered by the police authorities. After investigation, the police have filed a charge sheet (Ex.R5) against the claimant. The claimant has subsequently filed a private complaint, which was numbered as Crime No.46/2006 and subsequently, registered as CC No.1972/2006. The police authorities, after investigation, have filed a 'B' report (Ex.R6) in the said CC No.1972/2006.

7. The wife of the claimant was examined as PW.1, the pillion rider as PW.2 and three doctors were examined as PWs.3, 4 and 5. Exs.P1 to P140 have been marked in evidence on behalf of the claimant. The representatives of the insurer were examined as RWs.1 and 2. Exs.R1 to R9 have been marked on behalf of the respondent - insurer.

8. In the complaint (Ex.R2) lodged by PW.2 it is stated that when the claimant was riding his motor cycle (CNX 3738), he hit a cow causing the accident, in which he sustained injuries. In the cross-examination, PW.2 admits to having lodged the complaint (Ex.R2). In the spot mahazar (Ex.P6) there is no mention of the insured vehicle. The sketch (Ex.P7) also does not show the presence of the insured vehicle.

9. The Tribunal, solely on the ground that the insurer has not proved regarding the final outcome of the 'B' report, has recorded a finding of contributory negligence by holding that the claimant was negligent to the extent of 50% in causing the accident while the rider of the offending motor cycle was negligent to the extent of 50%. There is no basis on which the Tribunal has recorded the finding of negligence of 50% each. On the other hand, although the Tribunal has noticed that PW.2 has admitted to having lodged the complaint (Ex.R2), the consequential effect of the same has not been properly appreciated.

10. It is clear and forthcoming from the aforementioned that that the pillion rider (PW.2) who was riding along with the claimant, when the accident has occurred, has at an undisputed point of time lodged the complaint (Ex.R2) wherein, he mentioned that when the claimant was riding the scooter, he hit a cow causing the accident. The police authorities have also filed a charge sheet against the claimant. Although the claimant has subsequently filed a private complaint (Crime No.46/2006), the police authorities have filed a 'B' report in the said private complaint (CC No.1972/2006).

11. As already noticed above, even in the spot mahazar (Ex.P6) there is no reference to the insured vehicle. The testimony of PW.2 is clearly contrary to the complaint lodged by him (Ex.R2).

12. In view of the aforementioned circumstances, in the absence of material to demonstrate the involvement of the insured vehicle in the accident in question, the Tribunal erred in granting compensation and fastening 50% of the liability to pay the same on the owner and insurer of the insured vehicle.

13. In the present case, the claim for compensation having been made by the rider of the scooter and material on record indicating that the accident occurred when the claimant hit a cow, the question of awarding compensation in proceedings under Section 166 of the Motor Vehicles Act, 1988 does not arise.

14. In view of the aforementioned, the following:

ORDER

i. MFA No.11509/2012 is allowed;

ii. MFA No.2209/2013 is dismissed;

iii. The judgment and award dated judgment and award dated 10.09.2012 passed in MVC No.564/2007 by the III Additional District Judge, Member, MACT, D.K., Mangalore is set aside;

iv. The claim petition in MVC No.564/2007 on the file of III Additional District Judge, Member, MACT, D.K, stands dismissed;

v. The amount deposited by the appellant in MFA No.11509/2012 be refunded to the appellant;

vi. Registry to draw the modified decree accordingly;

vii. The records be transmitted to the Tribunal;

viii. No costs.

SD/-
(C.M. POONACHA)
JUDGE

ND
List No.: 1 Sl No.: 7