



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

MISCELLANEOUS FIRST APPEAL NO. 8143 OF 2016 (MV-I)

C/W

MISCELLANEOUS FIRST APPEAL NO. 8142 OF 2016 (MV-I)

IN MFA No. 8143/2016

BETWEEN:

MR. ASHPAK,
AGED ABOUT 26 YEARS,
S/O. AHAMM,
R/O. JAMEEL MANZIL, M. KODI,
KASABA VILLAGE AND POST,
KUNDAPURA TALUK, UDUPI DISTRICT,
PIN CODE: 576 201.

...APPELLANT

(BY SRI NAGARAJA HEGDE, ADVOCATE)

AND:

1. MR. CHANDRA POOJARY,
AGED ABOUT 43 YEARS,
S/O. VENKATA POOJARY,
R/O. MAVEENAKATTE,
KERKUNJE VILLAGE,
KUNDAPURA TALUK,
UDUPI DISTRICT-576 201.
2. SMT. VIMALA BAI,
AGED ABOUT 55 YEARS,
W/O. PURUSHOTHAMA NAIK,
R/O. NEM CANARA BANK, TEKKATTE VILLAGE,

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by NANDINI R

Location: HIGH
COURT OF
KARNATAKA



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MFA No. 8143 of 2016
C/W MFA No. 8142 of 2016

KUNDAPURA TALUK,
UDUPI DISTRICT-576 201.

3. THE ORIENTAL INSURANCE CO. LTD.
BRANCH OFFICE, 2ND FLOOR,
VISHNUPRAKASH BUILDING,
COURT ROAD, UDUPI-576 234.
4. MR. JABBAR,
AGED ABOUT 50 YEARS,
S/O. LATE HUSAINAR,
R/O. SUHEL MANZIL,
M. KODI, KASABA VILLAGE & POST,
KUNDAPURA TALUK,
UDUPI DISTRICT-576 201.
5. THE UNITED INCLIA INSURANCE CO. LTD.,
KUNDAPURA BRANCH,
KANCHAN TOWERS, NO.11.66,
KUNDAPURA TALUK-576 201.

...RESPONDENTS

(BY SRI M ARUN PONAPPA, ADVOCATE FOR R-3;
SRI RAVISH BENNI, ADVOCATE FOR R-5;
R-1, R-2 & R-4 SERVED)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE
JUDGMENT AND AWARD DATED 19.10.2016 PASSED IN MVC
NO.1015/2011 ON THE FILE OF THE ADDITIONAL DISTRICT
JUDGE & MEMBER, ADDITIONAL MACT, UDUPI, (SITTING AT
KUNDAPURA), KUNDAPURA, PARTLY ALLOWING THE CLAIM
PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT
OF COMPENSATION.

IN MFA NO. 8142/2016

BETWEEN:

MR. MASHOOD,
AGED ABOUT 29 YEARS,
S/O. FAKEER AHAMMED,
R/O. M. KODI,



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KASABA VILLAGE & POST,
KUNDAPURA TALUK, UDUPI DISTRICT,
PIN CODE: 576 201.

...APPELLANT

(BY SRI NAGARAJA HEGDE, ADVOCATE)

AND:

1. MR. CHANDRA POOJARY,
AGED ABOUT 43 YEARS,
S/O. VENKATA POOJARY,
R/O. MAVEENAKATTE, KERKUNJE VILLAGE,
KUNDAPURA TALUK, UDUPI DISTRICT,
PIN CODE: 576 201.
2. SMT. VIMALA BAI,
AGED ABOUT 55 YEARS,
W/O. PURUSHOTHAMA NAIK,
R/O. NEM CANARA BANK,
TEKKATTE VILLAGE, KUNDAPURA TALUK,
UDUPI DISTRICT, PIN CODE: 576 201.
3. THE ORIENTAL INSURANCE CO. LTD.,
BRANCH OFFICE, 2ND FLOOR,
VISHNUPRAKASH BUILDING,
COURT ROAD, UDUPI, PIN CODE: 576 234.
4. MR. JABBAR,
AGED ABOUT 50 YEARS,
S/O. LATE HUSAINAR,
R/O. SUHEL MANZIL,
M. KODI, KASABA VILLAGE & POST,
KUNDAPURA TALUK, UDUPI DISTRICT,
PIN CODE: 576 201.
5. THE UNITED INDIA INSURANCE CO. LTD.,
KUNDAPURA BRANCH, KANCHAN TOWERS,
NO.11.66, KUNDAPURA TALUK,
PIN CODE: 576 201.

...RESPONDENTS

(BY SRI M ARUN PONAPPA, ADVOCATE FOR R-3;



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SRI RAVISH BENNI, ADVOCATE FOR R-5;
R-1 NPTICE DISPENSED WITH V/O DATED 23.02.2023;
R-2, R-4 SERVED)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 19.10.2016 PASSED IN MVC NO.1017/2011 ON THE FILE OF THE ADDITIONAL DISTRICT JUDGE & MEMBER, ADDITIONAL MACT, UDUPI, (SITTING AT KUNDAPURA), KUNDAPURA, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

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

CORAM: HON'BLE MR. JUSTICE C M JOSHI

ORAL JUDGMENT

Both these appeals are filed by the claimants in MVC.No.1015/2011 and MVC.No.1017/2011 assailing the judgment and award passed by the Additional District Judge and Member Additional MACT, Udupi (Sitting at Kundapura) dated 19.10.2016.

2. The factual matrix of the case as is relevant for the purpose of these appeals is as below:

On 30.03.2011, the injured petitioners were traveling in a Jeep bearing Reg.No.KA-20M-442 belonging to one



Jabbar, who is arrayed as respondent No.4 in both these petitions. They were proceeding from Basrur towards Kundapura and near Hunasekatte Bridge, a tanker bearing registration No.KA-20/8547 came from the opposite direction in a rash and negligent manner and collided with Jeep. The driver of the Jeep as well as the petitioners sustained injuries in the accident and they were shifted to the hospital. It was contended that due to the injuries sustained in the accident, the petitioners are unable to carry on their avocation of fish business and therefore, they are entitled for compensation. They also contended that the accident was due to the negligence on the part of the driver of the tanker and therefore, the owner and insurer of the tanker are liable to pay the compensation to them.

3. On issuance of notice, respondent Nos.1 and 2 have appeared through their counsel. Since the contention was taken up that the owner and insurer of the Jeep are also necessary parties, they were also impleaded later. A



case was registered by the jurisdictional Police and after investigation, they filed charge sheet against respondent No.4-Jabbar, who was the owner and driver of the Jeep for the offences punishable under Sections 279, 337 and 338 of IPC and Sections 8 and 9 and 11 of Prevention of Cow Slaughter Act. It is submitted that the said respondent No.4 has pleaded guilty in the said charge sheet filed against him.

4. On service of notice, respondent Nos.1 and 2, the owner and insurer of tanker contended that the negligence was on the part of the Jeep driver and there was no such negligence on the part of driver of the tanker and as such, they be absolved from paying the compensation to the petitioners. The respondent No.5-insurer of the Jeep contended that the policy has been obtained by the owner of the Jeep after 03 days of the accident and therefore, the jeep was not covered under the contract of insurance as on the date of the accident.



5. *Inter alia*, all the respondents also contended that the compensation claimed is highly exorbitant, imaginary and untenable and the insurer contended that the terms and conditions of the policy were violated by the driver of the tanker.

6. On the basis of the above contentions, the Tribunal framed appropriate issues in both the claim petitions. The claim petitions were tried separately.

7. The petitioners in both the petitions were examined as PW.1 and doctors who had assessed the disability were also examined. After adducing evidence, learned Tribunal heard the arguments by both the sides and came to the conclusion that the petitioners are entitled for compensation of Rs.8,900/- and Rs.78,700, respectively. However, it held that the accident had occurred due to the negligence of the jeep driver and as such, it dismissed the petitions as against the owner and insurer of the tanker and fastened the liability on the owner of the jeep.



8. Being aggrieved, the petitioners have approached this Court in these two appeals.

9. Sri.Nagaraja Hegde, learned counsel appearing for the petitioners submits that the compensation awarded by the Tribunal is on the lower side and there should be enhancement of the compensation. Further, he contends that the liability should have been fastened upon both the vehicles. It is his contention that the Police papers produced show that the accident had occurred at the middle of the road on the bridge and therefore, the nature of the damages sustained by both the vehicles as well as the spot mahazar show that there was negligence on the part of both the vehicles. It is submitted that only because the jeep was containing certain contraband goods (skin and carcass of animals), the charge sheet has been filed against the driver of the jeep. It is relevant to note that the driver of the jeep had also approached this Court in MFA.No.8144/2016 assailing the fastening of liability upon



him and due to non-prosecution, the same has been dismissed.

10. *Per contra*, Sri.M.Arun Ponappa, learned counsel appearing for the respondent No.3-Insurer of the tanker would submit that the police papers and the evidence available on record has been sufficiently appreciated by the Tribunal and it has come to the conclusion that the negligence was on the part of the driver of the jeep. Therefore, he contends that fastening of the liability of the driver of the jeep cannot be interfered with. Secondly, he submits that the compensation awarded by the Tribunal is proper and correct and no enhancement is required.

11. Learned counsel appearing for respondent No.5-Insurer of the jeep would reiterate that he is not liable to pay the compensation since there was no effective and valid policy as on the date of the accident.



12. The first aspect to be considered is in respect of the liability to pay the compensation. It is worth to note that both the petitioners in these appeals are the inmates of the jeep. Obviously, charge sheet has been filed by the Police against the driver of the jeep i.e., Jabbar. The Tribunal has held that the negligence was on the part of the driver of the jeep. However, it is relevant to note that the accident involved two vehicles i.e., tanker as well as the jeep. The petitioners being the inmates of the jeep, they had nothing to contribute towards the negligence. The spot of the accident suggests that the accident took place at the center of the road. The sketch of the spot is not available and therefore, the spot mahazar which is available with the charge sheet in Ex.R2 in MFA.No.1015/2011 would indicate that the accident was at the center of the road. In that view of the matter, it is evident that it is the case of composite negligence so far as the petitioners are concerned. They being the inmates



of the jeep, they had nothing to contribute towards the negligence.

13. The law in respect of composite negligence has been dealt by this Court in the case of **GANESH VS. SYED MUNNED AHAMED AND OTHERS¹** and later, it was reiterated in the case of **KARNATAKA STATE ROAD TRANSPORT CORPORATION, BY ITS MANAGING DIRECTOR VS. ARUN @ ARAVIND AND OTHERS²**. Later, the principles laid down by this Court in these two judgments are reiterated by the Apex Court in the case of **KHENYEI VS. NEW INDIA ASSURANCE COMPANY LIMITED AND OTHERS³**. If the principles laid down are applied to the case on hand, it is evident that the petitioners had nothing to do with the contributory negligence, which was between the driver of the tanker and the driver of the jeep. Therefore, when both the tortfeasors are before this Court, the Court has to find out

¹ 1998 SCC OnLine Kar 603

² 2003 SCC OnLine Kar 715

³ (2015) 9 SCC 273



who has contributed the negligence. However, so far as the liability towards the petitioners is concerned, both the tortfeasors are jointly and severally liable. This would result in the insurer of the tanker being liable with a liberty to recover the compensation amount from the owner of the jeep. Therefore, to that extent, the impugned award deserves to be interfered with.

14. So far as the apportionment of negligence is concerned, it is to be noted that the driver of the jeep was charge sheeted by Police. The spot mahzar shows that accident occurred at the middle of the road. Therefore, the negligence of the jeep driver is held to be 50% and that of the tanker is held to be 50%.

15. So far as the quantum of compensation is concerned, it is evident that the petitioner in MVC.No.1015/2011 had sustained only minor injury and therefore, the amount of compensation of Rs.8,900/- awarded to him is adequate and no interference is required.



16. So far as MVC.No.1017/2011 is concerned, it is evident that he had sustained fracture of radius and ulna and the Tribunal has awarded a sum of Rs.78,700/- to him. The accident having occurred in the year 2011, therefore, the compensation awarded appears to be adequate and no interference is required regarding the same. Hence, the appeals deserves to be allowed in part. Therefore, the following order is passed:

ORDER

- (i) Both the appeals are allowed in part.
- (ii) The appellants in both the appeals are at liberty to recover the compensation amount jointly and severally from both the tortfeasors.
- (iii) Since respondent No.3-Oriental Insurance Company has indemnified respondent No.2-Vimala Bai, it is liable to indemnify the liability of Vimala Bai.
- (iv) The interse liability of the tanker and jeep (respondent No.2 and 4) is held to be 50%.



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(v) If the compensation amount is satisfied by the respondent No.3-Oriental Insurance Company, then it is at liberty to recover the same from respondent No.4-owner of the Jeep, as per the apportionment of the liability at clause IV above.

(vi) Rest of the order passed by the Tribunal remain unaltered.

Sd/-
(C M JOSHI)
JUDGE

NR/-
List No.: 1 SI No.: 7