



CNR: KAHC010488132014

NC: 2026:KHC:50159  
MFA No. 4726 of 2014

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 15<sup>TH</sup> DAY OF SEPTEMBER, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE RAVI V HOSMANI**

**MISCELLANEOUS FIRST APPEAL NO.4726 OF 2014(MV-I)**

**BETWEEN:**

THE BRANCH MANAGER  
ORIENTAL INSURANCE CO. LTD.,  
BEHIND VIDHYA GANAPATHI TEMPLE  
V V ROAD, MANDYA  
NOW REPRESENTED BY  
M/s. THE ORIENTAL INS. CO. LTD.,  
REGIONAL OFFICE  
LEO SHOPPING COMPLEX  
T PHUB NO. 44/45  
RESIDENCY ROAD CROSS  
BANGALORE - 560 025,  
REP BY ITS  
AUTHORISED SIGNATORY

...APPELLANT

[BY SRI SURESH K., ADVOCATE (VC)]

**AND:**

1. SRI M.J.NAVEEN KUMAR  
S/O SRI M T JAYARAMU  
AGED ABOUT 22 YEARS  
MARAKADADODDI  
GORAVANAHALLI POST  
MADDUR TALUK  
MANDYA DISTRICT.

Digitally signed  
by ANUSHA V  
Location: High  
Court of  
Karnataka



**NC: 2026:KHC:50159**  
**MFA No. 4726 of 2014**

**CNR: KAHC010488132014**

2. SRI M MAHESH  
S/O SRI MAYIGAIAH  
MAJOR  
R/AT CHANNEGOWDANADODDI VILLAGE  
MADDUR TALUK  
MANDYA DISTRICT.

2a SMT. CHOWDAMMA @  
CHIKKA CHOWDAMMA  
MOTHER OF LATE M.MAHESH AND  
W/O LATE SRI MAYIGAIAH,  
MAJOR,  
R/A H.K.V.NAGAR, 1<sup>ST</sup> WARD  
MARIGUDI ROAD,  
CHANNEGOWDANADODDI  
MADDUR, MANDYA DISTRICT.

...RESPONDENTS

[BY SRI MARIGOWDA, ADVOCATE FOR R1;  
R2 (a) - NOTICE SERVED & UNREPRESENTED]

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE  
JUDGMENT AND AWARD DATED 17.3.2014 PASSED IN MVC  
NO.5/2013 ON THE FILE OF THE SENIOR CIVIL JUDGE, MACT,  
MADDUR, AWARDED A COMPENSATION OF RS.1,62,200/-  
WITH INTEREST @ 6% P.A ON RS.1,42,200/- FROM THE DATE  
OF PETITION TILL REALIZATION.

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

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI



CNR: KAHC010488132014

NC: 2026:KHC:50159  
MFA No. 4726 of 2014

### **ORAL JUDGMENT**

Challenging judgment and awarded dated 17.03.2014 passed by Senior Civil Judge and MACT, Maddur ('**Tribunal**') in MVC no.5/2013, this appeal is filed.

2. Sri K Suresh, learned counsel for appellant submitted that appeal was by insurer challenging award on ground of liability.

3. Brief facts leading to this appeal, as stated, are that at 7:00 p.m. on 04.05.2010 when claimant was standing near Kashyap Hotel in order to cross road and go to bus stand, rider of motorcycle no.KA-01/S-37 rode it in rash and negligent manner and dashed against claimant causing accident. In accident, claimant sustained grievous injuries and despite treatment at Government Hospital, Maddur, he did not recover fully and lost earning capacity. Therefore claiming compensation, he filed claim petition under Section 166 of Motor Vehicles Act, 1988 ('**MV Act**') against owner and insurer of motorcycle.



**CNR: KAHC010488132014**

4. Claim petition was opposed on all grounds including alleging contributory negligence and violation of terms and conditions of policy.

5. Based on pleadings, Tribunal framed issues and recorded evidence. Claimant deposed as PW.1 and examined Clerk of Government Hospital, Maddur as PW.2 and got marked Exs.P1 to P11. He also got examined Dental Surgeon as CW.1 through Court Commissioner and got marked Exs.C1 to C3. There was no rebuttal evidence by insurance.

6. On consideration, Tribunal held accident occurred due to sole negligence of rider of motorcycle, claimant had sustained loss of earning capacity and was entitled for total compensation assessed by it at Rs.1,62,200/- and held insurer liable to pay same. Aggrieved by said award, insurer was in appeal.

7. Learned counsel submitted that in course of cross-examination of claimant - PW.1, it was elicited that prior to present claim petition, claimant had earlier filed MVC no.259/2011 and same was dismissed for non-prosecution on



**CNR: KAHC010488132014**

account of non-appearance. Without any effort for restoration and continuation of said claim petition, present petition was filed suppressing dismissal of earlier claim petition. Therefore, instant awarded was liable to be set aside. Further in cross-examination, it was elicited from claimant that he was at present working as Chartered Accountant and earning Rs.8,500/- per month. In view of said admission, Tribunal would not be justified in assessing compensation towards future loss of income. On said grounds sought for allowing appeal.

8. On other hand, Sri Marigowda for respondent no.1 - claimant sought to oppose appeal. It was submitted that though claimant had stated that he was earning Rs.9,500/- per month from Agriculture, Tribunal erred it to consider his monthly income at only Rs.4,500/-. In view of above, even if there was scope for reduction, same would be clearly offset same and sought dismissal.

9. Heard learned counsel, perused impugned judgment, award and record.



**CNR: KAHC010488132014**

10. This appeal is by insurer challenging award on finding of liability as well as on quantum. Therefore, points that arise for consideration are:

1. Whether Tribunal was justified in holding insurer liable to pay compensation even when earlier claim petition filed by claimant was dismissed for non-persecution?
2. Whether assessment of compensation by Tribunal was excessive and call for reduction?

11. Though as rightly submitted in course of cross-examination of claimant, a suggestion was made to claimant about his earlier claim petition in MVC no.259/2011 having been dismissed for non-prosecution on account of non-appearance. But statement of objections of respondent - insurer would not indicate any such plea having been taken. Besides, there is no material produced to corroborate or to establish said fact.

12. It is settled law that no amount of admission without pleadings would constitute evidence. Therefore on



CNR: KAHC010488132014

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MFA No. 4726 of 2014

ground of failure to take plea as well as on ground of dismissal of earlier claim petition for non-prosecution would not be bar against filing of fresh claim petition as held in **Jagdish v. Rahul Bus Service and Ors.**, reported in **2015 SCC OnLine HP 1137** said contention would not be justified to upset award.

13. Even challenge on quantum is based on admission. Firstly about avocation of claimant as Chartered Accountant and secondly about his monthly income at Rs.8,500/- elicited in cross-examination of PW.1. But same would not bear much weight as there were no records or documents to establish that claimant was into any avocation as on date of accident and continued therein after accident. Compensation has to be determined as per avocation and income as on date of accident and not subsequent. In view of above, none of contentions urged by insurer are acceptable. Hence, following:

**ORDER**

- i) Appeal is ***dismissed***;
- ii) Amount in deposit is ordered to be transmitted to Tribunal for disbursal.



CNR: KAHC010488132014

NC: 2026:KHC:50159  
MFA No. 4726 of 2014

- iii) Balance amount, if any, is directed to deposit before Tribunal within six weeks.
- iv) On deposit, Tribunal is directed to release same in favour of claimant to his account.

**Sd/-**  
**(RAVI V HOSMANI)**  
**JUDGE**

GRD  
List No.: 1 Sl No.: 30