HC-KAR

NC: 2026:KHC:59607
MFA No. 1265 of 2014
C/W MFA No. 2873 of 2017

CNR: KAHC010095972014

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

MISCELLANEOUS FIRST APPEAL NO. 1265 OF 2014 (MV-I)

C/W

MISCELLANEOUS FIRST APPEAL NO. 2873 OF 2017 (MV-I)

IN MFA No. 1265/2014

BETWEEN:

PUTTAMMA
W/O POOJARI DODDAIAH
AGED ABOUT 42 YEARS
R/AT CHANDANAMANE
BIKKODU HOBI
BELUR TALUK
HASSAN DISTRICT

PRESENTLY R/AT
C/O GOVINDAIAH
2ND CROSS, CPC BOUNDARY
BALEGADDHE,
SAKALESHPUR TOWN
HASSAN DISTRICT.

...APPELLANT

Digitally signed by ANUSHA V
Location: High Court of Karnataka

(BY SRI. ABHIJITH M.M., ADVOCATE)

AND:

1. MOHAN KUMAR
   S/O MOHAN KUMAR
   AGED ABOUT MAJOR
   R/AT NO.42,
   1ST MAIN ROAD, 6TH CROSS,
   NARAYANAPPA GARDEN

THAVAREKERE
BANGALORE-560 029.

2. THE BRANCH MNAGER
UNITED INSURANCE CO. LTD.,
VENKATESHWAR BUIDLING
B M ROAD, HASSAN-573 201.

…RESPONDENTS

(BY SRI AM VENKATESH, ADVOCATE FOR R2;
V/C/O/DATED 05.12.2017 - NOTICE TO R1
IS DISPENSED WITH)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 06.11.2013 PASSED IN MVC NO.1234/2012 ON THE FILE OF THE SENIOR CIVIL JUDGE & JMFC, MACT, SAKLESHPUR, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

IN MFA NO. 2873/2017

BETWEEN:

M/S UNITED INDIA
INSURANCE COMPANY LIMITED
VENKATESHWARA BUILDING
B R ROAD, HASSAN-573 201.

NOW REP.BY ITS REGIONAL OFFICE
6TH FLOOR, KRISHI BHAVAN
NRUPATHUNGA ROAD
BENGALURU-560 001
REP.BY ITS MANAGER.

...APPELLANT

(BY SRI A M VENKATESH, ADVOCATE)

AND:

1. PUTTAMMA
W/O POOJARI DODDAIAH
MAJOR

R/AT CHANDRANAMANE
BIKKODU HOBLI, BELUR TALUK
HASSAN DISTRICT - 573 164.

PRESENT ADDRESS:-
C/O GOVINDAIAH, 2ND CROSS
CPC BOUNDARY, BALEGADDE
SAKALESHPUR TOWN
HASSAN DISTRICT.

2. MOHAN KUMAR
S/O MOHAN KUMAR
NO.42, 1ST MAIN ROAD
6TH CROSS
NARAYANAPPA GARDEN
THAVAREKERE
BENGALURU-560 029.

...RESPONDENTS

(BY SRI. ABIJITH M.M., ADVOCATE FOR R1;
V/C/O/DATED 05.10.2026 - NOTICE TO R2
IS HELD SUFFICIENT)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 06.11.2013 PASSED IN MVC NO.1234/2012 ON THE FILE OF THE SENIOR CIVIL JUDGE AND J.M.F.C, SAKALESHPUR, AWARDING COMPENSATION OF RS.1,00,500/- WITH INTEREST AT 6% P.A. FROM THE DATE OF PETITION TILL REALIZATION.

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

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL JUDGMENT

Challenging judgment and award dated 06.11.2013 passed by Senior Civil Judge & Member-MACT, Sakaleshpur in

MVC no.1234/2012, these appeals are filed. While MFA no.1265/2014 is filed by claimant for enhancement of compensation and MFA no.2873/2017 is by insurer challenging finding of Tribunal on liability.

2. Sri Abhijith M.M., learned counsel for appellant in MFA no.1265/2014 submitted that appeal was by claimant for enhancement of compensation. Brief facts leading to these appeals were that at 07:00 a.m. on 25.04.2012, when claimant was near water tank of Chandanmane village, rider of motorcycle no.KA-05-W-5230 rode it in rash and negligent manner and it dashed against her causing accident. Alleging that despite treatment, she did not recover fully and sustained loss of earning capacity, she filed claim petition against owner and United India Insurance Co.Ltd. under Section 166 of Motor Vehicles Act, 1988 (**MV Act**). On appearance, owner appeared and stated that offending motorcycle was insured with respondent no.2 and he was entitled for indemnification. Insurer opposed claim petition on all grounds including denying issuance of insurance policy and stating that Insurance

Company was unable to confirm issuance of insurance policy to motorcycle in question, based on particulars provided.

3. Based on pleadings, Tribunal framed following issues:

> 1. *Whether the petitioner proves that she sustained injuries due to the accident alleged to have taken placed on 25.04.2012 at about 7:00 a.m. Chandan House, near water tank and that the said accident occurred due to the rash and negligent riding of the Bike bearing no. KA-05-W-5230 by its rider?*
>
> 2. *What was the age, occupation and income of the injured person at the time of accident?*
>
> 3. *Whether the respondent no.1 proves that the driver of the offending vehicle having valid and effective driving licence at the time of accident?*
>
> 4. *Whether the petitioner is entitled for compensation? If so, to what amount? And from whom?*
>
> 5. *What award or order?*

4. Claimant examined herself and Dr.Sreeranga N., as PWs.1 and 2 and got marked Exhibits P1 to P18. There was no rebuttal evidence.

5. On consideration, Tribunal held accident had occurred due to rash and negligent riding of motorcycle by its rider and by stating that photocopy of insurance policy was

produced by claimant and no contrary evidence was led by insurer held owner and insurer jointly and severally liable to pay compensation of Rs.1,00,500/- with interest at 6% p.a. from date of petition till deposit. Dissatisfied with same, appeal was filed.

6. It was firstly submitted, as on date of accident, claimant was aged 40 years earning Rs.6,000/- per month as Coolie, who sustained fracture of left ankle assessed by PW.2 to have resulted in 23% of permanent physical disability. It was submitted that Tribunal erroneously under assessed monthly income at Rs.3,750/- and disability at 10% and granted inadequate compensation. It was submitted that even award of Rs.5,000/- towards attendance and other incidental expenses as against 24 days of in-patient treatment, Rs.20,000/- towards pain and suffering and Rs.5,000/- only towards medical expenses was on lower side and sought enhancement. It was submitted, failure to award any compensation towards future medical expenses for removal of implants as well as towards loss of amenities and loss of income during laid-up

period was also erroneous. On above grounds, sought for allowing appeal.

7. Sri AM Venkatesh, learned counsel for appellant in MFA no.2873/2017 submitted that appeal by insurer was on solitary ground that appellant was not insurer of offending vehicle at time of occurrence of accident. Insurance Company had verified policy particulars produced and was unable to confirm issuance of policy. It was stated that review petition on said contention and same having been dismissed, appeal was filed. It was submitted that learned Single Judge of this Court in ***Oriental Insurance Co.Ltd. v. N.S. Devaraja & Ors.*** reported in ***ILR 1997 Kar 1061***, under similar circumstances referring to various decisions had held, when Insurance Company had denied issuance of policy to offending vehicle, burden would lie on claimant or owner to establish issuance of policy. Merely on ground that insurer did not lead any evidence would not be a ground for fastening liability on insurer. It was submitted that said ratio would squarely apply and sought for allowing appeal.

8. On quantum, it was submitted that Tribunal had awarded just compensation and there would be no justification for enhancement.

9. In reply, learned counsel for claimant sought to rely upon decision of this Court in ***National Insurance Co.Ltd. v. Raju & Ors. [2018:KHC-K:330]*** to contend that this Court had held even if policy produced by claimant was alleged to be a fake policy, insurer cannot escape liability without leading evidence and therefore, direction for pay and recover was passed. It was submitted that claimant would be satisfied if there is modification to said extent.

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

11. From above and since claimant as well as insurer are in appeals following points would arise for consideration:

(i) Whether Tribunal was justified in holding insurer liable to pay compensation in absence of material to establish appellant as insurer of offending vehicle?

(ii) Whether claimant is entitled for enhancement of compensation as prayed?

Reg.Point no.1:

12. To establish actionable negligence against owner/insurer, claimant sought to rely on FIR, complaint, spot mahazar, seizure mahazar, Motor Vehicle Inspector's Report, charge sheet and MLC Intimation marked as Exs.P1 to P4, P6 and P17 respectively. Perusal of said records would indicate that rider of motorcycle was implicated for causing accident due to rash and negligent riding. Perusal of FIR and charge sheet do not indicate that owner/rider was implicated for offence under Section 146 read with Section 196 of MV Act. However, perusal of claim petition reveals that claimant had mentioned duration of insurance coverage in cause-title of claim petition. In written statement filed by owner, in para 4, he admits insurance coverage by insurer and prays for indemnification. Perusal of written statement filed by insurer reveals a specific assertion that it is unable to confirm issuance of insurance policy to motorcycle no.KA-05-W-5230 with a plea that in case of failure to establish policy, insurer would not be liable.

13. In course of trial, claimant produced photocopy of proposal form along with photocopy of RC book of offending vehicle. While passing impugned award, Tribunal observed that while claimant produced photocopy of insurance policy and RC book and insurer did not lead evidence to hold insurer jointly and severally liable to pay compensation. A bare perusal of document produced by claimant would reveal that it is only a 'proposal form' dated 30.04.2012 and not insurance policy. Apart from above, proposal form is dated 30.04.2012, when accident in question occurred on 25.04.2012.

14. In ***NS Devaraja***'s case (supra) referring to earlier Division Bench decisions, this Court had held fastening of liability on insurer on sole ground that it did not lead evidence to establish non-issuance of policy would not be justified as no party could be called upon to establish negative. Though in ***Raju***'s case (supra), this Court held insurer liable to pay compensation to claimant in first place and thereafter recover it from insurer and that was case where insurer taking contention of fake policy and would not be parallel on facts to instant case. In view of above, point no.1 is answered in *negative*.

Reg.Point no.2:

15. On quantum, though as on date of accident, claimant stated that she was 40 years of age working as Coolie and earning Rs.6,000/- per month, there was no material to establish income. In absence, Tribunal was justified in assessing it notionally. But notional income for year 2012 being Rs.7,000/-, same ought to have been considered. There is no dispute about claimant having sustained fracture of bimalleolar of left ankle. To establish permanent physical disability and loss of earning capacity, claimant examined PW.2. PW.2 doctor stated that there were restriction of movements of limb and disability was assessed at 23%. Considering nature of occupation and extent of disability, assessment of loss of earning capacity at 10% by Tribunal would appear justified. Multiplier applicable corresponding to age of claimant would be '15'. Thus, compensation towards future loss of income would be:

Rs.7,000/- X 12 X 15 X 10% = **Rs.1,26,000/-**.

16. Medical evidence would indicate that claimant took in-patient treatment for a period of 24 days. Considering same,

award of Rs.5,000/- only towards attendance and other incidental expenses would be grossly on lower side and is enhanced to **Rs.15,000/-**. Claimant sustained fracture of bimalleolar of left ankle, which is to a structural bone. Considering same, award of Rs.20,000/- towards fractural injury and Rs.3,000/- towards other injury under pain and suffering would be inadequate. It would be appropriate to enhance it to **Rs.40,000/-**. Tribunal has awarded **Rs.5,000/-** towards medical expenses. Since there is no contention towards proof of medical expenses by production of bills and taking note of fact that claimant has taken treatment in Government Hospital, award would to be justified. In course of his deposition, PW.2 stated about implants *in situ*. For removal, claimant would require to undergo surgery. PW.2 has also stated about correctional procedures. In view of above, it would be appropriate to award **Rs.20,000/-** towards future medical expenses. Since claimant has sustained physical disability, loss of amenities is assessed at **Rs.30,000/-**. Normally fractures take about 3 months to heal. Considering this as period of layoff, claimant is awarded **Rs.21,000/-** (Rs.7,000/- X 3). Thus, claimant is held entitled for total compensation of

Rs.2,52,000/-. Same shall carry interest at 6% p.a. from date of claim petition till deposit. Point no.2 is answered *partly in affirmative* as above.

17. Consequently following:

ORDER

(i) MFA no.2873/2017 filed by insurer is ***allowed***;

(ii) Judgment and award dated 06.11.2013 passed by Senior Civil Judge & Member-MACT, Sakaleshpur in MVC no.1234/2012 is *modified* holding owner liable to pay compensation to claimant and dismissing claim petition against insurer.

(iii) MFA no.1265/2014 filed by claimant is ***allowed in part;***

(iv) Compensation awarded by Tribunal at Rs.1,00,500/- is enhanced to **Rs.2,52,000/-** with interest at 6% p.a. from date of claim petition till deposit;

(v) Amount in deposit in insurer's appeal is ordered to be refunded to appellant-insurer by electronic means.

Sd/-
(RAVI V HOSMANI)
JUDGE

AV
List No.: 1 Sl No.: 21