HC-KAR

NC: 2026:KHC:64322
MFA No. 5458 of 2023
C/W MFA.CROB No. 118 of 2023

CNR: KAHC010405472023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MRS. JUSTICE GEETHA K.B.

MISCELLANEOUS FIRST APPEAL NO. 5458 OF 2023 (MV-D)

C/W

MFA CROSS OBJECTION NO. 118 OF 2023 (MV-D)

IN MFA No. 5458/2023

BETWEEN:

M/S. THE ORIENTAL INSURANCE
COMPANY LIMITED,
NO. 42/1, CHANDRA COMPLEX,
1ST FLOOR, KALIDASA ROAD,
V.V. MOHALLA, MYSURU - 570 002.

NOW REPRESENTED BY
M/S. THE ORIENTAL INSURANCE
COMPANY LIMITED,
REGIONAL OFFICE NO. 44/45,
4TH FLOOR, LEO SHOPPING COMPLEX,
RESIDENCY ROAD, M.G. ROAD,
BENGALURU - 560 001,
REPRESENTED BY ITS AUTHORISED SIGNATORY.

...APPELLANT

(BY SRI SURESH K., ADVOCATE)

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K B GEETHA

AND:

1. SRI. P. MADAPPA
   S/O LATE SRI. PUTTAMADAPA,
   AGED ABOUT 67 YEARS,

2. SMT. AMMANAMMA
   W/O SRI. P. MADAPPA,
   AGED ABOUT 67 YEARS,

   BOTH ARE R/AT HALEPURA VILLAGE,
   HARAVE HOBLI,
   CHAMARAJANAGAR TALUK AND DISTRICT.

3. SRI. GANDHARASWAMI
   S/O SRI. VEERBHADRAPPA D.P,
   AGED ABOUT 58 YEARS,
   R/AT NO. 199, DUGGAHATTI VILLAGE,
   HONNUR POST, YALANDURU TALUK,
   CHAMARAJANAGARA DIST.
   (OWNER AND DRIVER OF THE CAR)

…RESPONDENTS

(BY SRI NANJUNDA SWAMY N., ADVOCATE FOR R1 AND R2;
R3 - GANDHARASWAMI - SERVED)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 10.04.2023 PASSED IN MVC NO.285/2016 ON THE FILE OF THE SENIOR CIVIL JUDGE AND C.J.M., MACT, CHAMARAJANAGAR, AWARDING COMPENSATION OF RS. 22,91,318/- WITH INTEREST AT 6 PERCENT P.A. FROM THE DATE OF PETITION TILL REALIZATION.

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IN MFA.CROB NO. 118/2023

BETWEEN:

1. SRI. P. MADAPPA
   S/O LATE PUTTAMADAPPA,
   AGED ABOUT 61 YEARS,

2. SMT. AMMANNAMMA
   W/O P. MADAPPA,
   AGED ABOUT 61 YEARS,

   BOTH RESIDING AT HALEPURA VILLAGE,
   HARAVE HOBLI, CHAMARAJANAGARA TALUK
   AND DISTRICT - 571 128.

...PETITIONERS

(BY SRI NANJUNDA SWAMY N., ADVOCATE)

AND:

1. SRI. GANGADARA SWAMY
   S/O SRI. VEERABHADRAPPA D.P.
   AGED ABOUT 59 YEARS,
   R/AT NO.199, DUGGAHATTI VILLAGE,
   HONNUR POST, YELANDUR TALUK,
   CHAMARAJANAGAR DISTRICT - 571 441.

2. THE M/S. ORIENTAL INSURANCE CO. LTD.,
   NO.42, CHANDRA COMPLEX
   1ST FLOOR, KALIDASA ROAD,
   V.V. MOHALLA, MYSURU - 570 002,
   REP. BY ITS MANAGER.

...RESPONDENTS

(BY SRI K. SURESH, ADVOCATE FOR R2;

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NOTICE TO R1 IS DISPENSED WITH)

THIS MFA.CROB FILED U/O.41 RULE 22 R/W SEC.173(1) OF MV ACT, AGAINST THE JUDGMENT AND AWARD DT. 10.04.2023 PASSED IN MVC NO.285/2016 ON THE FILE OF THE SENIOR CIVIL JUDGE, CJM AND MACT, CHAMARAJANAGAR, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS MFA AND MFA.CROB, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MRS. JUSTICE GEETHA K.B.

ORAL JUDGMENT

1. MFA No.5458/2023 is filed by the insurance Company under Section 173(1) of the Motor Vehicles Act, 1988 (in short 'MV Act') challenging the Judgment and award dated 10.04.2023 in MVC No.285/2016 on the file of Senior Civil Judge and MACT, Chamarajanagar (in short 'the Tribunal').

2. MFA CROB No.118/2023 is filed by the legal representatives of the claimant for enhancement of the compensation in the same case.

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3. The parties would be referred with their ranks, as they were before the Tribunal for the sake of convenience and clarity.

4. Initially, the original claimant has filed the claim petition before the Tribunal praying for compensation in respect of injuries suffered by him in the road traffic accident that has taken place on 18.12.2015 at 09:45 p.m. involving the motorcycle bearing registration No.KA-10/K-9568, and Tavera car (in short, 'the offending car') bearing registration No.KA-10/N-5005 near the lake of Alur main road.

5. It is the contention of the claimant that he was the pillion rider of the motorcycle and it was being driven by one M. Mahesh; offending car was being driven by its driver rash and negligently and dashed against the motorcycle and thereby caused the accident. Due to the accident, the claimant sustained injuries on his head, back, right shoulder and immediately he was taken to Government Hospital, Chamarajanagar, wherein he has

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taken first aid treatment and then shifted to JSS Hospital, Mysuru, wherein he has taken treatment as inpatient for one month and then shifted to NIMHANS, Bengaluru and Sparsha Hospital, Bengaluru, wherein the surgery conducted for his right shoulder and right arm. Before the accident, he was working as private surveyor earning ₹25,000/- per month and also doing agriculture. Even now, he was taking treatment as outpatient. Hence, claimed compensation from the owner and the Insurance Company of the offending car.

6. After filing the petition, respondent No.2/ insurance Company has filed the objection statement denying the averments made in the claim petition and further took contention that the rider of the motorcycle was not having valid and effective driving licence, but admitted that the offending car was covered with the policy of insurance issued by respondent No.2 and denied other averments made in the petition. Hence, prayed for dismissal of the petition.

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7. Afterwards issues were framed on 29.12.2017.

8. During pendency of the said petition, the original claimant died on 28.05.2021. Then his parents were brought on record as his legal heirs.

9. Afterwards, the respondent No.2/Insurance Company has filed the additional objection statement; based on it, the additional issues were framed.

10. On behalf of the LRs. Of claimant, father of the original claimant was examined as PW.1 before the Tribunal and marked some documents.

11. After recording evidence of both sides, the Tribunal concluded that the LRs. of original claimant are entitled for total compensation of ₹22,91,318/- under the following heads:

1	Loss of dependency	₹18,90,000/-
2	Loss of filial consortium of petitioner 1 and 2	₹80,000/-
3	Loss of estate	₹15,000/-
4	Medical bills	₹2,86,318/-
5	Transportation of dead body	₹5,000/-
6	For funeral expenses	₹15,000/-

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	Total compensation amount	**₹22,91,318/-**

12. At that time, the Tribunal held that the claimant died due to accidental injuries and awarded the compensation as the claimants are the LRs. of the deceased by taking his notional income and awarding loss of dependency, etc.

13. Aggrieved by the same, the insurance Company is before this court in MFA No.5458/2023.

14. The LRs. of the claimants praying for enhancement are before this court in MFA CROB No.118/2023.

15. In this MFA CROB, the learned counsel for LRs. of the claimants has filed IA No.1/2026 under Order XLI Rule 27 read with section 151 of CPC, 1908 with some Xerox documents.

16. In the affidavit annexed to this IA No.1/2026, one of the LRs. of the appellant has stated that the

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claimant has taken treatment in various hospitals i.e., JSS Hospital, NIMHANS, Sparsh Hospital, Swasthika Hospital, KOVAI Medical Centre and those documents were kept in the bag of deceased and he could not notice them but now he noticed them after thorough search. Hence, prayed for allowing those documents.

17. The learned counsel for the insurance Company would submit that Xerox copies of documents produced along with IA No.1/2026 and no admissible reason is assigned to allow IA No.1/2026. Hence, prayed for dismissal of IA No.1/2026.

18. The learned counsel for the insurance Company Sri Suresh K., would submit that, it is not the case of claimant or his LRs. that the claimant died due to accidental injuries. They have not at all pleaded so after the death of claimant. But the additional objection was filed by the insurance Company before the trial Court. However, the Tribunal has placed burden on the Insurance

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Company only because, it has filed the additional objection to prove negative aspect.

19. The learned counsel would further submit that afterwards, the Tribunal with a presumption that the claimant died due to accidental injuries and awarded the compensation which is not proper. Hence, prayed for setting aside the judgment and to dismiss the claim petition.

20. The learned counsel for LRs. of the claimant Sri Nanjunda Swamy N., would submit that the Tribunal held that the income of the deceased as private surveyor is not proved; considered his income as per notional income chart and not considered the certificate issued by the department that he was private surveyor and thus his income ought to have been taken at ₹25,000/- and thus the compensation awarded by the Tribunal is on lower side. Hence, prayed for enhancement of the compensation.

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21. The learned counsel for the LRs. of the claimant would further submit that the documents produced along with IA No.1/2026 were traced recently and they would throw light that the claimant not died due to Corona but due to difficulty in breathing. Hence, prayed for allowing the annexed application.

22. The learned counsel for the insurance Company would submit that no admissible reason is assigned to produce the additional documents at this stage and all those documents are Xerox documents.

23. The learned counsel for LRs. of the claimant would submit that he possessed original documents and if necessary he can produce them.

24. Having heard arguments of both sides, verifying the appeal papers and the trial Court record; the points that arise for consideration are:

i) Whether the Tribunal is right in framing additional issues by casting burden on the respondent No.2 in the absence of any pleading on behalf of the LRs. of the

claimant that the death of the claimant was due to accidental injuries?

ii) Whether the Judgment and award passed by the Tribunal by presuming that there is nexus between accidental injuries and the death is erroneous?

25. Finding of this Court on the above points is in ***'Affirmative'*** for the following:

REASONS

26. The claim petition was filed by the original claimant contending that he sustained injuries in the road traffic accident involving the motorcycle and the offending car. After filing the petition, the insurance Company has filed objection statement in the year 2017 and issues were framed in the year 2017. Since then for a period of about 4 years, the matter was posted for the evidence of the claimant, but the claimant has not appeared before the Tribunal. In the meanwhile, he died on 28.05.2021 as per the submission of the father of the claimant. His death Certificate is not produced; PM report is not produced.

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There is specific averment in the affidavit of father of the claimant that his son died due to Corona and he admitted this fact even in his cross-examination. Now, he intends to produce the Certificate to show that he died due to difficulty in breathing and not due to Corona.

27. There is no averment either in the claim petition or in the amended claim petition that the death of the claimant was due to accidental injuries. The accident has taken place on 18.12.2015 and the claimant died on 28.05.2021 i.e. after lapse of 5 years 6 months of the accident. Even now it is not the case of LRs. of the claimant that he was inpatient in the hospital from the date of accident till his death.

28. The documents produced before the Tribunal are only established that the claimant has taken treatment for his head injury and also he undergone surgery for his fracture to the right upper limb. No other material was produced before the Tribunal. In the absence of the above document, the Tribunal concluded that the claimant died

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due to accidental injuries, which is grossly erroneous and without material evidence.

29. The Tribunal not at all stated the nature of injuries suffered by the claimant and not decided whether they were fatal injuries; no reason is assigned that because of those injuries, the claimant died five and half years after the accident. Even in the absence of PM report or death Certificate, the Tribunal concluded that the death was due to accidental injuries. The entire burden was placed on the insurance Company only because the insurance Company has filed objections that there is no nexus between injuries and death of the deceased; there is no pleading in the claim petition or amended claim petition that there is nexus between the injuries and the death. Because of such additional objections filed by the respondent No.2, the burden was cast upon respondent No.2 without following the Section 104 of the Bharathiya Sakshya Adhiniyam, 2023 (Section 101 of the Indian Evidence Act, 1872) and the Order XIV CPC, 1908.

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30. The entire judgment of the trial Court is bereft of cogent reasoning. The finding that there is nexus between death and the injuries is without assigning any reason that too in the absence of pleadings. Hence the entire judgment and award passed by the Tribunal is to be set aside.

31. It is to be noted here that some police records and documents are produced to show that there is an accident and in that accident, the original claimant has sustained some injuries. However, the Tribunal has not assessed the quantum of compensation for the injuries sustained by the claimant. Hence, the matter requires to be remanded back to the Tribunal to decide the case afresh.

32. Even though it is not the pleading of LRs. of the claimant that the claimant died due to accidental injuries, the MFA CROB is filed praying for enhancement to take the income of ₹25,000/- instead of notional income taken by

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the Tribunal to decide the 'loss of dependency'. Thus, this MFA CROB is not at all maintainable in law.

33. The documents produced along with the IA No.1/2026 are not the original documents. They are only Xerox documents and have no evidentiary value.

34. Hence, this Court passes the following:

ORDER

a) MFA No.5458/2023 filed by the insurance Company is ***allowed***.

b) MFA CROB No.118/2023 filed by the legal representatives of the claimant is ***dismissed*** and IA No.1/2026 is also dismissed.

c) Matter is remanded to the Tribunal;

d) However, liberty is granted to LRs. of the claimant to produce the original documents, if so advised.

e) The remand is only to a limited extent that the LRs. of the claimant are permitted to produce only the medical documents and

adduce evidence only on those medical documents and they are estopped from amending the pleading or to take the plea of nexus between the accident and the death.

f) Both parties shall appear before the Tribunal on 08.12.2026 without notice.

g) The Registry is directed to send a copy of this judgment to the judicial officer concerned, who has passed the judgment in MVC No.285/2016 dated 10.04.2023.

h) The amount in deposit be refunded to the insurance Company.

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(GEETHA K.B.)
JUDGE

JY,LL
List No.: 1 Sl No.: 23