



CNR: KAHC010058302021

NC: 2026:KHC:54137-DB
MFA No. 1011 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

MISCELLANEOUS FIRST APPEAL NO. 1011/2021 (MV-I)

BETWEEN:

MAHESH
S/O HOMBALEGOWDA
AGED ABOUT 26 YEARS,
R/O BEVINAHALLY VILLAGE
KOTHATHI HOBLI,
MANDYA TALUK AND DISTRICT

...APPELLANT

(BY SRI. N S BHAT.,ADVOCATE)

AND:

1. SOMASHEKHAR K R
S/O RAMALINGAIAH
MAJOR,
R/O NO.40, KOMMERAHALLI VILLAGE,
KASABA HOBLI, MANDYA TALUK

2. THE MANAGER
IFFCO TOKIO GENERAL
INSURANCE COMPANY LTD.,
NO.1586, OPPOSITE TO BEO OFFICE,
1ST FLOOR, K R ROAD, VIDYANAGAR
MANDYA

...RESPONDENTS

(BY SRI. PRITHVI RAJ B.N.,ADVOCATE FOR R1;
V.C.O DATED 24.08.2021,
SRI. B.PRADEEP, ADVOCATE FOR R2 (VK NOT FILED))

Digitally
signed by
MALAK N
Location
HIGH COURT
OF
KARNATAKA



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THIS MFA FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED. 20.11.2019, PASSED IN MVC NO.69/2017, ON THE FILE OF THE II-ADDITIONAL SENIOR CIVIL JUDGE AND MACT, MANDYA, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

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

CORAM: HON'BLE MR. JUSTICE D K SINGH
AND
HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN)

This appeal is filed challenging the impugned judgment and award dated 20th November 2019 passed by the Court of II Additional Senior Civil Judge and Motor Accident Claims Tribunal (MACT), Mandya, (Tribunal) in M.V.C. No. 69/2017, wherein the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (MV Act) was partly allowed, awarding a sum of Rs.5,62,658/- with interest at 6% per annum, while exonerating respondent No. 2-Insurance Company from liability and fastening the sole liability upon respondent No. 1.

2. For the sake of convenience, parties shall be referred to as per their status before the Tribunal.



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3. It is the case of the petitioner that the petitioner, aged about 23 years, residing at Bevinahally village, Kothathi Hobli, Mandya Taluk, was an agriculturist personally cultivating landed properties and engaged in milk vending, earning Rs.40,000/- per month as the sole breadwinner of his family. On 26.08.2016 at approximately 12:00 noon, while the petitioner was riding his motorcycle bearing registration No. KA-11-EC-3351 from his village towards Bhumisiddeswara temple along the Bhumisiddeswara Temple-Kothathi road, a motorcycle bearing registration No. KA-09-EK-0091 came from the opposite direction at high speed, ridden in an actionable rash and negligent manner. In front of the land belonging to Chikka Kariyappa Ramesh, the offending motorcycle violently collided head-on with the petitioner's motorcycle. Consequently, the petitioner fell to the ground, sustaining multiple life-threatening injuries, while his motorcycle suffered extensive structural damage. The petitioner was initially shifted to the District Hospital, Mandya, and subsequently referred to Apollo BGS Hospital, Mysore, where he was managed as an inpatient from 26.08.2016 to 31.08.2016. The wound certificate and medical records establish that he suffered severe injuries.



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Asserting total economic and physical devastation, the petitioner filed a claim petition in M.V.C. No. 69/2017 before the MACT, Mandya, seeking total compensation of Rs.40,25,000/- with interest at 18% per annum, jointly and severally against the owner and insurer of the offending motorcycle.

4. Upon service of notice, respondents appeared through counsel and filed separate written statements. Respondent No. 1 admitted ownership of the motorcycle bearing registration No. KA-09-EK-0091 but pleaded ignorance regarding the accident, asserting that as the vehicle was validly insured with respondent No. 2 under Policy No. 1-3VR4QQS. Any liability to pay compensation rested exclusively upon respondent No. 2. Respondent No. 2 Insurance Company filed a detailed written statement denying the occurrence of the accident, the nature of injuries, period of treatment, medical expenses, and the petitioner's alleged income and disability. Crucially, respondent No. 2 raised a statutory defense that the rider of the offending motorcycle did not possess a valid and effective driving license at the time of the accident, constituting a fundamental breach of policy conditions under Section 149(2)



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of the MV Act, thereby absolving the insurer of any liability to indemnify respondent No. 1.

5. The petitioner examined himself as PW-1 and produced 16 marked documents, Ex.P-1 to Ex.P-16. Furthermore, three treating doctors were examined through Court Commissioner as CW-1 (Neurosurgeon), CW-2 (Ophthalmologist), and CW-3 (Plastic Surgeon), and 5 commission documents were marked as Ex.C-1 to Ex.C-5. On the other hand, respondent No. 2 Insurance Company examined its official as RW-1, and respondent No. 1 examined himself as RW-2. One document was marked on behalf of the respondents as Ex.R-1 (Copy of Insurance Policy No. 1-3VR4QQS).

6. Upon a comprehensive evaluation of the oral and documentary evidence on record, the Tribunal answered Issue No. 1 in the affirmative, holding that the accident occurred solely due to the actionable rash and negligent riding of the motorcycle bearing registration No. KA-09-EK-0091, relying squarely upon the FIR (Ex.P-1), Spot Mahazar (Ex.P-3), IMV Report (Ex.P-4), and the Charge Sheet (Ex.P-6) filed against



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the rider under Sections 279 and 337 of IPC. In answering Issue No. 2 partly in the affirmative, the Tribunal assessed the petitioner's notional income at Rs.8,000/- per month and fixed his functional disability at 10% to the whole body, thereby awarding an aggregate compensation of Rs.5,62,658/- along with interest at 6% per annum. On the question of liability, the Tribunal observed that the rider of the offending vehicle lacked a valid and effective driving license at the time of the collision, a statutory breach conceded by the owner (RW-2) during cross-examination and corroborated by the charge sheet. However, the Tribunal exonerated respondent No. 2 Insurance Company completely and fastened sole financial liability upon respondent No. 1 (owner). Crucially, the Tribunal declined to invoke the equitable doctrine of "*Pay and Recover*", reasoning that since RW-2 deposed in chief that he possessed no movable or immovable assets and was financially incapable of satisfying the award, the owner was seeking to pass off his monetary burden onto the insurer, which, in the estimation of the Tribunal, ousted the application of pay-and-recover directions.

7. Aggrieved by the said order, the petitioner preferred this appeal.



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8. Heard the arguments of Sri N.S. Bhat, learned counsel for the petitioner, Sri Somashekhar K.R, learned counsel for respondent No. 1, and Sri Prithviraj B N, learned counsel for respondent No. 2 Insurance Company, and perused the records.

9. Sri N.S. Bhat, learned counsel for the petitioner submitted that the impugned judgment in exonerating the Insurance Company and refusing to order "Pay and Recover" is fundamentally illegal, arbitrary, and directly antithetical to settled binding precedents. It is undisputed that the insurance policy (Ex.R-1) was validly in force as on the date of the accident. Under the authoritative mandates of the Supreme Court in ***National Insurance Co. Ltd. v. Swaran Singh*¹**, ***Shamanna v. Divisional Manager, Oriental Insurance Co. Ltd.*²** and ***Pappu v. Vinod Kumar Lamba*³** as well as the Full Bench decision of this Court in ***New India Assurance Co. Ltd. v. Yellavva*⁴**, even where a breach of policy conditions is established owing to the absence of a driving license, the

¹ (2004) 3 SCC 297

² (2018) 9 SCC 650

³ (2018) 3 SCC 208

⁴ 2020 SCC ONLINE KAR 1660



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insurer is statutorily bound to satisfy the award in the first instance towards a third-party victim and subsequently recover the amount from the owner. The Tribunal misdirected itself by considering the financial standing of the owner as a ground to decline pay-and-recover directions.

10. Learned counsel further urged that the quantum of compensation awarded is grossly inadequate. The Tribunal erred in fixing a meager notional income of Rs.8,000/- per month for an accident of the year 2016, ignoring the milk vending certificate (Ex.P-9) establishing an income of Rs.40,000/- per month. Moreover, fixing functional disability at a paltry 10% is perverse, considering that CW-1 (Neurosurgeon) certified 51% moderate IQ disability, CW-2 (Ophthalmologist) certified 30% vision loss in the left eye, and CW-3 (Plastic Surgeon) testified to 10% facial disfigurement. The Tribunal failed to award any compensation towards facial disfigurement, loss of marriage prospects, vehicle repair expenses (Ex.P-10 bill for Rs.22,213/-), and future medical expenses, while awarding inadequate sums under pain and suffering and loss of amenities.



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11. Sri Prithviraj B N, learned counsel for respondent No. 2 Insurance Company submitted that the Tribunal was fully justified in exonerating the insurer. The charge sheet (Ex.P-6) unequivocally demonstrates that the rider of the offending vehicle was prosecuted for driving without a valid driving license, constituting an intentional, fundamental breach of policy conditions under Section 149(2)(a)(ii) of the MV Act. Learned counsel contended that because RW-2 (owner) explicitly stated in evidence that he has no movable or immovable property, directing the insurer to "pay and recover" would convert the recovery right into an empty formality, wrongfully shifting the financial burden permanently onto the insurer. On quantum, learned counsel submitted that the total award of Rs.5,62,658/- is fair and equitable.

12. Having heard the learned counsel for both sides and upon perusal of the material on record, the primary questions that arise for consideration are:

"(i) Whether respondent No. 2 Insurance Company ought to be directed to satisfy the award in the first instance and recover the same from respondent No. 1 (owner) under the doctrine of 'Pay and Recover' ?



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(ii) Whether the quantum of compensation awarded by the Tribunal requires enhancement in accordance with settled principles of assessment?"

13. Upon careful consideration of the statutory scheme under Chapter XI of the MV Act, we are of the considered view that the doctrine of "*Pay and Recover*" is appropriately applicable to the facts of the present case. Compulsory third-party insurance is anchored in beneficial social welfare legislation intended to protect innocent road accident victims. Under Section 149 of the Act, the statutory duty of the insurer towards a third-party victim remains paramount, notwithstanding an underlying breach of policy conditions between the insurer and the insured.

14. The legal proposition in this regard is well settled: even where a fundamental breach of policy conditions is established, such as the rider lacking a valid and effective driving license, the insurer is required in law to satisfy the award in favor of the third party in the first instance, with liberty to recover the amount so paid from the owner.



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15. In our opinion, the alleged financial standing or lack of personal assets of the vehicle owner cannot alter this statutory obligation or disentitle the third-party victim from securing the fruits of the award. Accordingly, we deem it just and proper that respondent No. 2 Insurance Company be directed to deposit the compensation awarded to the appellant in the first instance, with liberty to recover the same from respondent No. 1 (owner) in execution proceedings in accordance with law.

16. Turning to the question of quantum, the accident occurred on 26.08.2016. Although the appellant asserted an earning of Rs.40,000/- per month from agriculture and milk vending (Ex.P-9), in the absence of audited documentary proof of exact net monthly earnings, income must be determined on a notional basis. The Tribunal assessed the notional income at a conservative figure of Rs.8,000/- per month. Having regard to the standard guidelines issued by the Karnataka State Legal Services Authority (KSLSA) for accidents of the year 2016, the notional monthly income is re-assessed at Rs.9,500/- per month.



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17. Considering the medical evidence of CW-1 (Neurosurgeon), CW-2 (Ophthalmologist), and CW-3 (Plastic Surgeon) regarding the 23-year-old appellant's head, ocular, and facial injuries, and evaluating their cumulative impact on his vocation as an agriculturist and milk vendor in light of **Raj Kumar v. Ajay Kumar**⁵ this Court affirms the functional whole-body disability at 10% as assessed by the Tribunal.

18. Applying the multiplier of **18** applicable to the age group of 23 years as per **Sarla Verma v. Delhi Transport Corporation**⁶, the loss of future earning capacity is recalculated as;

$$\text{Rs.}9,500 \times 12 \times 10\% \times 18 = \text{Rs.}2,05,200/-$$

19. Insofar as the remaining conventional heads are concerned, taking into account the revised notional income of Rs.9,500/- per month in accordance with the KSLSA guidelines, the loss of income during the 3-month laid-up period is reassessed at Rs.28,500/- (Rs.9500 x 3) yielding a net enhancement of Rs.4,500/- over the sum of Rs.24,000/-

⁵ (2011) 1 SCC 343

⁶ (2009) 6 SCC 121



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awarded by the Tribunal. All other compensation heads awarded by the Tribunal namely, Rs.60,000/-towards Pain and Suffering, Rs.2,29,858/- towards Medical Expenses (as duly supported by authentic bills under Ex.P-10), Rs.36,000/- towards Attendant, Conveyance, Nourishment & Incidental Charges, and Rs.40,000/- towards Loss of Amenities & Life Comforts are found to be just, fair, and reasonable, and are accordingly affirmed without modification.

RECALCULATED COMPENSATION COMPARISON TABLE

Head of Compensation	Amount Awarded by Tribunal	Amount Awarded by High Court
Pain and Suffering	Rs. 60,000/-	Rs. 60,000/-
Medical Expenses	Rs. 2,29,858/-	Rs. 2,29,858/-
Attendant, Conveyance & Nourishment	Rs. 36,000/-	Rs. 36,000/-
Loss of Income During Laid-up Period (3 months)	Rs. 24,000/- at 8,000 p.m.	Rs. 28,500/- at 9,500 p.m.
Loss of Future Income due to Disability	Rs. 1,72,800/- (10% at 8,000)	Rs. 2,05,200/- (10% at 9,500)
Loss of Amenities & Life Comforts	Rs. 40,000/-	Rs. 40,000/-
Total	Rs.5,62,658/-	Rs.5,99,558

20. Consequently, the total compensation stands enhanced from Rs.5,62,658/- to **Rs.5,99,558/-**, yielding a net enhancement of **Rs.36,900/-**, which shall carry interest at **6%**



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per annum from the date of the claim petition until the date of deposit.

ORDER

(i) The Miscellaneous First Appeal M.F.A. No. 1011 of 2021 filed by the appellant/claimant is **partly allowed** with costs.

(ii) The impugned judgment and award dated 20th November 2019 passed by the II Additional Senior Civil Judge & MACT, Mandya, in M.V.C. No. 69/2017 is hereby **modified**, enhancing the total compensation from Rs.5,62,658/- to **Rs.5,99,558/-** (a net enhancement of **Rs.36,900/-**), carrying interest at 6% per annum from the date of petition till the date of deposit.

(iii) Respondent No. 2/Insurance Company is held liable to pay the entire enhanced compensation amount. Respondent No. 2/Insurance Company shall deposit the total compensation along with accrued interest before the Tribunal within **eight weeks** from the date of receipt of a certified copy of this judgment, and recover the same



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from respondent No. 1 (owner) in execution proceedings
in accordance with law.

(iv) All other terms, conditions and directions stipulated
in the order passed by the Tribunal shall remain intact.

(v) Registry to draw up the award accordingly and
transmit the Trial Court Records forthwith.

Sd/-
(D K SINGH)
JUDGE

Sd/-
(H.SHANTHI BHUSHAN)
JUDGE

BVK
List No.: 1 Sl No.: 31