HC-KAR

NC: 2026:KHC:32691
MFA No. 2516 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

MISCELLANEOUS FIRST APPEAL No. 2516 OF 2023

(MV-I)

BETWEEN:

1. NATIONAL INSURANCE CO. LTD.,
   1ST FLOOR S.S COMPLEX
   (CHURCH OPP), B.H ROAD
   SHIVAMOGGA - 577 201.

   REPRESENTED BY
   THE REGIONAL MANAGER,
   NATIONAL INSURANCE CO. LTD.,
   No.144, II FLOOR
   SUBHRAM COMPLEX, M.G. ROAD,
   BANGALORE - 560 001.

   ...APPELLANT

(BY SMT. MANJULA NEMICHANDRA TEJASWI, ADVOCATE)

AND:

Digitally signed by LAKSHMINARAYANA MURTHY RAJASHRI
Location: HIGH COURT OF KARNATAKA

1. MALLIK RIHAN
   S/O HAZARATH ALI
   AGED ABOUT 9 YEARS
   MINOR REPRESENTED BY
   NEXT FRIEND GUARDIAN FATHER
   HAZARATH ALI
   S/O ABDUL SAB
   AGED ABOUT 43 YEARS

   R/O KAGINELE VILLAGE
   BYADGI TALUK
   HAVERI DISTRICT.

2. SRI SHEKARAYYA
S/O GURULINGAYYA
AGE: MAJOR
R/O TOGARSI VILLAGE
TALUK SHIKARIPURA
SHIVAMOGGA DISTRICT - 577 201.

…RESPONDENTS

(BY SRI RAJATH S, ADVOCATE FOR
SRI MAHESH R UPPIN, ADVOCATE FOR R1
SRI K NAGALINGAPPA, ADVOCATE FOR R2)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED: 18.10.2022 PASSED IN MVC No.1049/2018 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC, ADDITIONAL MACT-15, SHIKARIPURA, AWARDING COMPENSATION OF Rs.3,42,600/- WITH INTEREST AT 6 PERCENT P.A. FROM THE DATE OF PETITION TILL THE DATE OF DEPOSIT.

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

CORAM: HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

ORAL JUDGMENT

This appeal is filed by the appellant / insurer challenging the liability and also quantum of compensation awarded in judgment and award dated 18.10.2022 passed in MVC No.1049/2018 by the Senior Civil Judge and AMACT-15, Shikaripura.

2. Respondent No.1 / claimant made a claim petition praying to award compensation for the injuries sustained by him in a road traffic accident that took place on 10.03.2017 contending that the accident occurred due to rash and negligent driving of the rider of motor cycle bearing Regn.No.KA-15/Y-1981. The Tribunal recorded evidence and appreciating the evidence, assessed the compensation and awarded compensation under different heads as under:

Sl.No.	Particulars	Amount in (Rs.)
01.	Pain and agony	2,37,600/-
02.	Medical expenses	95,000/-
03.	Traveling, attendant expenses and food and nourishment	10,000/-
	Total	**3,42,600**

3. The Tribunal has also awarded interest @ 6% p.a. from the date of petition till realization and directed the appellant/insurer to deposit the award amount with interest. The appellant/insurer has filed the present appeal challenging the liability to pay compensation and also on quantum of compensation awarded.

4. Heard learned counsel for the appellant/insurer, learned counsel for respondent No.1 and learned counsel for respondent No.2

5. Learned counsel for the appellant / insurer would contend that respondent No.2 is the owner and driver of the insured vehicle and he was not holding the driving license as on the date of accident. The charge sheet has been filed against respondent No.2 for the offence under Sections 3(1) r/w 181 of the Motor Vehicles Act along with the offences under Indian Penal Code. Respondent No.2 who has been examined as RW.2 has admitted in the cross-examination that he was not holding the driving license as on the date of accident. As there is no driving license, there is violation of the policy condition and therefore, the appellant/insurer is not liable to pay the compensation amount and at the most, there should be an order to pay the compensation and recover the same from the owner of the vehicle. She further contends that claimant was aged 2 years as on the date of accident and

he has sustained fracture of femur of left leg and Doctor has assessed the disability of left lower limb @ 26% and the Tribunal has erred in taking the disability of the whole body @ 10%. The claimant is a child and there are chances of healing of entire wound and the fracture is united. Considering the said aspect, there is no disability and even though the disability is of particular limb, 1/3 of it has to be taken as disability to the whole body. She further contends that that the owner is participating in the present appeal and he should give undertaking to pay the amount to the insurer and thereafter, the insurer to be directed to deposit the award amount. She further submits that the multiplier applicable for the persons aged upto 15 years is '15' as per the decision of the Hon'ble Apex Court in the case of **Divya vs. The National Insurance Co.Ltd (Civil Appeal No.7605/2022)** wherein the decision of **Reshma Kumari's** case has been relied upon. With this, she prayed to allow the appeal.

6. Learned counsel for respondent No.1/claimant would contend that the Tribunal has rightly taken the disability @ 10% to the whole body considering the fact that claimant complains of pain in the left thigh, left hip and knee and also difficulty in sitting. The claimant has not been awarded compensation towards pain and suffering. The medical expenses awarded by the Tribunal is just and proper. With this he prayed to dismiss the appeal.

7. Learned counsel for respondent No.2 submits that respondent No.2 is the owner cum driver involved in the accident and subsequently, he got his driving license.

8. Having heard the learned counsels, the Court has perused the judgment and award and trial Court records. The following points arise for consideration:

(i) Whether the Tribunal is justified in saddling liability on the appellant/insurer even though the driver/owner was not

holding the driving license as on the date of the accident?

(ii) Whether the Tribunal is justified in taking the disability to the whole body @ 10% and compensation awarded by the Tribunal is just and proper?

On Point No.1:

9. Respondent No.2 is the owner of motor cycle bearing Regn.No.KA-15/Y-1981 and he was riding the said motor cycle at the time of the accident. Ex.P3, charge sheet has been filed against respondent No.2 for the offence punishable under Sections 279, 337 of IPC and Sections 3(1) and 181 of the Motor Vehicles Act. The offence under Sections 3(1) r/w 181 of the Motor Vehicles Act itself indicate the respondent being the rider of the motor cycle was not hoding driving license as on the date of accident. Respondent No.2 who has been examined as RW.2 has also admitted in the cross-examination that he was not holding the driving license as on the date of the accident. The Tribunal has not considered the said aspect.

As the rider of the motor cycle was not holding the driving license at the time of accident, there is violation of policy conditions. Therefore, the appellant/insurer is not liable to pay the compensation amount. The claimant is a third party and even though there is violation of policy condition, the insurer has to pay compensation amount to the claimant and recover the same from the owner of the vehicle. Point No.1 is answered accordingly.

On Point No.2:

10. The claimant/insurer has sustained fracture of left femur shaft and he was operated and also he was re-admitted and underwent implant removal surgery. The Doctor assessed the disability to left lower limb at 26%. The disability to the whole body is to be taken @ 1/3rd of the said disability to particular limb. The Tribunal has erred in taking the disability @ 10%. 1/3rd of 26% is 8.66%. Therefore, the disability to the whole body has to be taken at 8.66%. The Tribunal has rightly taken the income at Rs.11,000/- p.m. As the claimant is child aged

about 2 years as on the date of the accident. The multiplier applicable is 15 as per the decision of the Hon'ble Apex Court in the case of **Divya(supra)** wherein the decision of Reshma Kumari has been relied upon. Therefore, the multiplier applicable to the age group upto 15 years is '15'. Considering the said aspect, the loss of future income is calculated as under:

Rs.11,000 x 12 x 15 x 8.66% = Rs.1,71,468/-

11. The Tribunal has not awarded compensation towards pain and suffering. Considering the injuries sustained, the claimant is entitled to a sum of Rs.30,000/- towards pain and suffering.

12. The Tribunal has rightly awarded medical expenses of Rs.95,000/-, attendant and conveyance charges, food and nourishment in a sum of Rs.10,000/-. In view of the above, the claimant is entitled to total compensation as under:

Sl.No.	Particulars	Amount in (Rs.)
01.	Loss of future income	1,71,468/-
02.	Pain and suffering	30,000/-

03.	Traveling, attendant expenses and food and nourishment	10,000/-
04.	Medical expenses	95,000/-
	Total	**3,06,468/-**

13. The claimant is entitled to total compensation of Rs.3,06,468/- as against Rs.3,42,600/- awarded by the Tribunal with interest @ 6% p.a. Point No.2 is answered accordingly.

14. As there is violation of policy condition, since the rider of the motor cycle was not holding the driving license as on the date of accident, the appellant/insurer has to pay compensation amount to the claimant and recover the same from the owner of the vehicle. The Tribunal before releasing the amount deposited by the appellant/insurer shall issue notice to the owner of the vehicle, calling upon the owner to furnish the security of the entire amount which the insurer is liable to pay to the claimant.

15. In view of the above, the following:

ORDER

(i) The appeal is allowed in part.

(ii) Respondent No.1/claimant is entitled to total compensation of Rs.3,06,468/- as against Rs.3,42,600/- as awarded by the Tribunal with interest @ 6% p.a. from the date of petition till realization.

(iii) The appellant/insurer shall deposit the said compensation with interest before the Tribunal within a period of six weeks from this day.

(iv) The appellant/insurer is at liberty to recover the said amount from respondent No.2/owner.

(v) The Tribunal before releasing the amount deposited by the appellant/insurer shall issue notice to the owner of the vehicle, calling upon the owner to furnish the security of the entire amount which the insurer has deposited.

(vi) The entire compensation amount is to be kept in fixed deposit in the name of the claimant till he attains majority.

(vii) The guardian/father of the claimant is entitled to withdraw interest every three months for the expenses of the claimant.

Sd/-
(SHIVASHANKAR AMARANNAVAR)
JUDGE

DKB
List No.: 1 Sl No.: 72