



**IN THE HIGH COURT OF KARNATAKA, AT DHARWAD**

**DATED THIS THE 29<sup>TH</sup> DAY OF APRIL, 2026**

**BEFORE**

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

**MISCELLANEOUS FIRST APPEAL NO.21451 OF 2013 (MV)**

**BETWEEN:**

SRI CHIDANAND SHANKAR CHAMAKERI,  
AGE: 35 YEARS, OCC: BUSINESS,  
R/O: GARDEN AREA, SIDDESHWAR AUTO  
WELDING WORKS, POST: ATHANI, TQ: ATHANI,  
DIST: BELGAUM-591 304,  
(OWNER OF MAHINDRA JEEP  
BEARING NO.KA-23/M-2423)

...APPELLANT

(BY SRI RAGHUVeer R. SATTIGERI, ADVOCATE FOR  
SRI CHETAN MUNNOLI, ADVOCATE)

**AND:**

1. SMT.SHARAWWA @ KAMALAWWA  
W/O SURESH ADIHUDI,  
AGE: 42 YEARS, OCC: COOLIE,  
R/O: ATHANI, NOW AT BALIGERI,  
TQ: ATHANI, DIST: BELGAUM-591304.
2. KUMAR. SADEV @ SANJU  
S/O SANJU ADIHUDI,  
AGE: 15 YEARS, OCC: STUDENT,  
REST -DO-
3. KUMAR. SHRAVAN  
S/O SANJU ADIHUDI,  
AGE: 12 YEARS, OCC: STUDENT,  
REST-DO-  
(RESPONDENT NOS. 2 & 3 ARE MINORS  
REPRESENTED BY RESPONDENT NO.1  
AS MINOR GUARDIAN)
4. SRI SADASHIV  
S/O KALLAPPA ADIHUDI,  
AGE: 56 YEARS, OCC: COOLIE,





R/O: NEAR GANESH TEMPLE,  
SHEDBAL ROAD, ATHANI-591304.

5. SMT.NEELAWWA  
W/O SADASHIV ADIHUDI,  
AGE: 54 YEARS, OCC: HOUSEHOLD WORK,  
R/O: NEAR GANESH TEMPLE,  
SHEDBAL ROAD, ATHANI-591304.
6. THE DIVISIONAL MANAGER,  
NATIONAL INSURANCE CO. LTD.,  
COSMOS COMMERCIAL COMPLEX,  
205/B.E.WARD NEW SHAHUPURI EN ROAD,  
KOLHAPUR-416008, (INSURER OF MAHINDRA JEEP  
BEARING NO.KA-23/M-2423, UNDER POLICY  
NO.270807/31/06/6700000621)

...RESPONDENTS

(BY SRI ANANDKUMAR A. MAGADUM, ADVOCATE FOR R1;  
SRI MK SOUDAGAR, ADVOCATE FOR R6;  
R2 AND R3 ARE MINORS R/BY R1;  
NOTICE TO R4 & R5 SERVED)

THIS MFA IS FILED UNDER SEC.173(1) OF MOTOR VEHICLES ACT, AGAINST THE JUDGMENT AND AWARD DATED 31-12-2012 PASSED IN MVC.NO.2606/2007 ON THE FILE OF THE FAST TRACK COURT AT ATHANI, AWARDING THE COMPENSATION OF RS.5,15,000/- WITH INTEREST AT THE RATE OF 6% P.A., FROM THE DATE OF CLAIM PETITION TILL THE DATE OF REALIZATION OF ENTIRE COMPENSATION AMOUNT & ETC.

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

CORAM: THE HON'BLE MR. JUSTICE RAVI V.HOSMANI

### **ORAL JUDGMENT**

Challenging judgment and award dated 31.12.2012 passed by Fast Track Court, Athani ('*Tribunal*' for short) in MVC no.2606/2007, this appeal is filed.



2. Sri Raghuv eer R. Sattigeri, learned counsel for appellant submitted appeal was by owner of vehicle challenging dismissal claim petition as against insurer as well as challenging award on quantum. It was submitted as per claimant, at about 12:30 pm on 29.04.2007 Suresh S. Adihudi was traveling in Jeep no.KA-23/M-2423 from Athani to Balligeri, when driver drove it in rash and negligently in zig-zag manner due to which Suresh fell down and sustained injuries. Though he was taken to Civil Hospital, Athani and later to Civil Hospital, Sangli, he succumbed to same. Alleging loss of dependency, his wife and two children filed claim petition against owner and insurer of Jeep as well as parents of deceased.

3. On appearance claim petition was contested on all grounds. Based on same, tribunal framed issues, additional issue and recorded evidence, wherein claimant no.1 and another deposed as PWs.1 and 2 and got marked Ex.P.1 to P.8, while official of insurer deposed as RW.1 and got marked Exs.R.1 to R6.

4. On consideration, tribunal had held accident had occurred due to rash and negligent driving of Jeep by its driver leading to death of Suresh and claimants along with parents of



deceased were entitled for compensation assessed by it at Rs.5,15,000/- with interest at 6% per annum from owner of Jeep. Aggrieved, present appeal was filed.

5. It was submitted, there was no dispute about occurrence of accident, driver holding valid and effective driving licence, vehicle being duly insured and claimants being entitled for compensation. Merely on ground that insurance policy issued was 'Act Liability Only Policy' not covering risk of passengers of insured vehicle, as well as on ground that Jeep did not have valid permit, tribunal dismissed claim petition against insurer. Same was contrary to ratio laid down by Hon'ble Supreme Court in case of ***Sunita and Ors. v. United India Insurance Co.Ltd. and Ors.***, reported in ***2025 SCC OnLine SC 1464***; ***National Insurance Co. Ltd. v. Baljit Kaur and Ors.***, reported in ***(2004) 2 SCC 1***, ***Anu Bhanvara and Ors. v. IFFCO Tokio General Insurance Co.Ltd. and Ors.***, reported in ***2020 SCC 63***. Hence, prayed for allowing appeal.

6. On other hand, Sri MK Soudagar, learned counsel for respondent – insurer opposed appeal. He submitted, question involved was whether claimant in passenger in private vehicle issued with Act Liability Only Policy, would be entitled to sustain



claim for compensation against insurer. Contending that same was answered in favour of insurer in various decisions namely ***United India Insurance Co. Ltd. v. Shravankumar and Ors.,*** reported in ***2023 ACJ 2569*** and ***Oriental Insurance Co. Ltd. v. Kashibai and Ors.,*** reported in ***2017 ACJ 1732***. Relying on same, he prayed for dismissal of Appeals.

7. In view of above, point arising for consideration is:

*"Whether principle of Pay and Recover would apply even in case of private vehicle issued with Act Liability Only Policy?"*

8. At outset, in this appeal by owner of insured vehicle against award passed by tribunal, occurrence of accident, driver holding valid and effective driving licence, vehicle being duly insured and claimants being entitled for compensation are admitted. While owner contends insurer cannot escape liability, insurer denies same on ground of non-coverage of risk of passengers.

9. Said question is covered by decision of this Court in MFA no.103406/2014 and C/m. [***2026:KHC-D:6014***], holding as follows:



"14..... There is also no dispute about fact that as on date of accident vehicle was covered under an 'Act Liability Only Insurance Policy', which covers risk against third party claims and not owner, driver or occupants of vehicle. Claimants contend even in such case, there has to be order of 'pay and recover' against insurer. Said issue has been answered by Hon'ble Supreme Court in favour of claimants in case of **Sunita**.

15. Though learned counsel for insurer relies on **Balakrishnan's** case, question involved therein as stated by Hon'ble Supreme Court was whether Policy therein was an 'Act Liability Only Policy' or a 'Comprehensive Package Policy'. In said context and noting that no premium was paid to cover risk of passengers, it was held claimants cannot seek compensation from insurer. Finding in **Sunita's** case would not directly militate against ratio in **Balakrishnan's** case and there is only addition of direction to pay and recover. Hence, point no.(i) is answered in negative. Insurer is held liable to pay compensation to claimant in first instance and thereafter recover it from insured."

10. Therefore, decisions relied upon by learned counsel for insurer, which are by learned Single Judges of this Court, would not hold. Consequently, point for consideration is answered in affirmative. Hence, following:



**ORDER**

- (i) Appeal is ***allowed in part***, judgment and award dated 31.12.2012 passed by Fast Track Court, Athani in MVC no.2606/2007 is ***modified***, dismissal of claim petition against insurer is ***set-aside***.
- (ii) Insurer is held liable to pay compensation to claimants in first instance, with liberty to recover same from insured without need for separate proceedings.
- (iii) Amount in deposit in owner's appeal is ordered to be transmitted to tribunal.
- (iv) No order as to costs.

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

EM  
LIST NO.: 1 SL NO.: 13