

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 1ST DAY OF JUNE, 2026

PRESENT

THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

MISCELLANEOUS FIRST APPEAL NO.101739 OF

2014(MV)

BETWEEN:

ANASUYA W/O H.S. GIRIRAJ HULMANI
AGE: 35 YEARS,
OCC: AGRICULTURE AND MILK VENDING,
R/O: HALLIYAL,
TQ: HARIHAR, DIST: DAVANGERE.

...APPELLANT

(BY SRI M.H. PATIL, ADVOCATE)

AND:

1 . H.S. GIRIRAJ S/O H.G. SHIVAPPA,
AGE: MAJOR, OCC: AGRICULTURE,
R/O: HALLIYAL, TQ: HARIHAR,
DIST: DAVANAGERE.

2 . THE MANAGER
BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.,
4TH FLOOR KALBURGI MANSION,
OPP: MUNICIPAL CORPORATION,
LAMINGTON ROAD, HUBLI.

...RESPONDENTS

(BY SRI R.R. MANE, ADVOCATE FOR R2;
NOTICE TO RESPONDENT NO.1 IS SERVED)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER
SECTION 173 (1) OF THE MOTOR VEHICLE ACT, PRAYING TO

SET ASIDE JUDGMENT AND AWARD DATED:25.03.2014, PASSED IN MVC.NO.137/2011 ON THE FILE OF THE PRL. SENIOR CIVIL JUDGE AND MACT RANEBENNUR, DISMISSING THE CLAIM PETITION FILED U/S.166 OF MV ACT AND ETC.,.

THIS APPEAL IS COMING ON PRONOUNCEMENT AND THE SAME HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 17.03.2026, THIS DAY, DELIVERED THE FOLLOWING:

CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI)

The claimant in MVC No.137/2011 on the file of learned Principal Senior Civil Judge and MACT, Ranebennur has preferred this appeal being aggrieved by dismissal of her claim petition vide judgment and award dated 25.03.2014.

2. The case of the claimant is that on 14.09.2008 at about 04.00 p.m., while she was proceeding as a pillion rider on her husband's motorcycle bearing No.KA-17-X-5560 from Hallal to Byadagi, near Ramagondanahalli on Rattihalli-Byadagi Road, it collided with another motorcycle bearing No.KA-27-K-9786 due to actionable negligence on the part of the rider of latter motorcycle and as a result, she sustained grievous injuries. Consequently, she filed a petition in MVC No.137/2011 against the owner and insurer of motorcycle bearing No.KA-17-X-5560 under Section 163A of the Motor Vehicles Act, praying for compensation of Rs.3,00,000/-.

3. On service of the notice, both the owner and insurer of the motorcycle appeared before the Tribunal through their counsel and filed their objection.

4. Based on the pleadings, the Tribunal framed relevant issues, recorded evidence of the parties and then dismissed the claim petition on merits of the case. The Tribunal arrived at this conclusion on the ground that notwithstanding the insurer's specific objection as to maintainability of the petition, the claimant made no attempt to implead relevant persons as parties to the proceeding. The police papers relied on by the claimant disclose that the accident occurred due to the sole rash and negligent act of the rider of the other motorcycle, who is not a party to the proceeding. The Tribunal also relied on decision in **National Insurance Company Ltd. Vs Sinitita and Others**, reported in AIR 2012 SC 797, and held that the question of insurer indemnifying the owner would arise only when it is proved that the rider/driver caused the accident, which material fact has not been proved in the case.

5. Being aggrieved, the claimant has directed this appeal on the ground that the impugned judgment and award is not a sound and sustainable judgment and a judgment passed by misinterpreting the judgment of the Apex Court.

6. Sri M.H. Patil, learned Counsel for the Claimant vehemently submitted that the Tribunal reached the wrong conclusion and held that the claimant had not proved the negligence on the part of the rider of the motorcycle as if the petition had been filed under Section 166 of M.V. Act. He submitted that the Tribunal misinterpreted the judgment of the Apex Court and dismissed the petition on the grounds which are not based on sound reasoning. He further submitted that the Tribunal failed to consider the petition was filed under Section 163A of M.V Act and the claimant was a third party. He contended that the impugned judgment and award are highly capricious and unsustainable. Hence, he prayed the appeal be allowed and the reliefs sought in the claim petition be granted.

7. Per contra, Sri Ravindra R. Mane, learned Counsel for Insurer supported the findings recorded by the Tribunal and prayed for dismissal of the appeal.

8. Having heard the learned counsel appearing for the parties and perused the materials on the record, the following points arise for the consideration of this Court:

- i. Whether the Tribunal was justified in dismissing the petition?
- ii. Whether the claimant is entitled for compensation? If so, what amount?

Point No.(i) :

9. The case of the claimant is that on 14.09.2008 at about 04.00 p.m., while she was proceeding as a pillion rider on her husband's motorcycle bearing No.KA-17-X-5560 from Hallal to Byadagi, near Ramagondanahalli on Rattihalli-Byadagi Road, the rider of another motorcycle bearing No.KA-27-K-9786 came in rash and negligent manner and dashed against their motorcycle, causing the accident. It is stated that the claimant sustained grievous injuries in the said incident.

10. The insurer opposed the petition mainly on the ground that there was no negligence on the part of the rider of motorcycle bearing No.KA-17-X-5560 and therefore, the petition is not maintainable without impleading the owner and insurer of the offending vehicle i.e., the motorcycle bearing No.KA-27-K-9786.

11. It is true that in the averments of claim petition and during her evidence, the claimant has specifically stated that the accident was caused by the rider of the motorcycle bearing No.KA-27-K-9786, due to his rash and negligent driving. Further, even the police papers placed on record indicate that after the investigation of the case the jurisdictional police laid

the charge sheet against the rider of said motorcycle. However, the material question would be whether such materials are sufficient to dismiss the petition filed under Section 163A of M.V. Act.

12. First of all, Section 163A of M.V. Act itself stipulates that the owner or authorized insurer is liable to pay compensation for death or permanent disablement arising out of the use of a motor vehicle and that in such proceeding the claimant is not required to plead or establish that the death or grievous hurt was due to any wrongful act or neglect or default of the owner of the vehicle or of the vehicle concerned or of any other person. Admittedly, Section 163A of MV Act is a special provision, to pay compensation on the basis of structured formula, operating on a no-fault basis.

13. It is to be noted that in last portion of Para 22 of the claim petition it was averred that "...The accident took place due to the rash and negligent act of the drivers of vehicles ...". Further, it was a case of head-on collision between two 2-wheelers. The spot mahazar (Ex.P3) indicates that there was 20' width tar road at the place of accident and that the accident occurred almost in middle of the road. According to the document, there was a 14' wide road on eastern side and a 6'

wide road on western side of the place of incident, apart from a 6' wide unmetalled road on either side of the road. In the above narrated peculiar facts and circumstances of the case, this Court holds that the Tribunal committed an error in ignoring these materials aspects that had a bearing on the determination of negligence in the accident.

14. Added to the above, the claimant was a pillion rider on the motorcycle. That means she was a third party, entitled to maintain a claim petition against the owner and the insurer of the vehicle in which she was travelling. Moreover, the Certificate-cum-Policy Schedule produced as Ex.R1 and the admissions of RW-2 Sri Mahantesh, the Law Officer of the Insurer, show that there was a valid Package Policy in respect of the motorcycle in question, covering the risk of all including the pillion rider. In the above circumstances, this Court holds that that there is no merit in the objection raised by the insurer either regarding non-joinder of necessary parties or the maintainability of the petition. Hence, Point No.(i) is answered in the negative.

Point No.(ii) :

15. The claimant states that she was aged 32 years at the time of the accident and she was earning a sum of Rs.3,300/- per month from agriculture and milk vending. The claimant further states that she had suffered compression fracture of T12 vertebra in the accident and as a result, she sustained permanent physical disability, rendering her unable to do the work as she was doing prior to the accident. In support of this contention, she examined Dr. Umanath R. Ullal as PW-2.

16. In his evidence, PW-2 stated that on examination of the claimant he found wasting of neck muscles, gibbus deformity at thoraco-lumber spine, thickened and mal-united T12 vertebra bone, 4/5 muscle power in spin flexors and in extensors group of muscles, restriction in spin joint upto 20 degree and painful restriction in extension upto 5 degree. He further stated that in his opinion the claimant has around 35 degree of total permanent physical disability and loss of physical function with respect to the spine region. The above narrated assessment of disability by PW-2 has not been seriously disputed by the insurer.

17. The Second Schedule of the Motor Vehicles Act stipulates the manner of computing compensation in case of death and disability in non fatal accidents. As per the second schedule in case of disability to the victim arising out of non fatal accidents, the victim is entitled to loss of income if any for actual period of disablement not exceeding 52 weeks and the amount arrived at by multiplying the annual loss of income by the multiplier applicable to the age on the date of determining the compensation.

18. In the complaint (Ex.P2) and the wound certificate (Ex.P5) the claimant's age is shown as 32 years. As such, the proper multiplier is 17. She claims that her income was Rs.3,300/- per month. The said claim seems to be reasonable and acceptable. Though PW-2 gave opinion regarding the claimant's disability, he did not specify the exact percentage of disability. He only stated that the claimant has around 35% of total permanent physical disability and loss of physical function with respect to the spine region. This Court finds no reason to disbelieve such assessment by PW-2 particularly when the materials on record indicate that the claimant suffered a compression fracture of T12 vertebra. As such, considering the physical difficulties noted by PW-2 and their effect on the

physical function of the entire body, this court opines that it would be proper to presume that the claimant has permanent partial disablement and permanent loss of earning capacity to an extent of 12% on account of the injury sustained in the accident. Accordingly, the claimant is entitled to a sum of Rs.80,784/- (i.e., Rs.3,300/- x 12 x 17 x 12%) by way of compensation towards permanent partial disablement and loss of earning capacity.

19. During her evidence, the claimant stated that she undergone treatment for about one month for the injuries sustained in the accident. However, she did not produce sufficient material on record to show exact period of treatment. The wound certificate marked as Ex.P5 contains a mention that the claimant underwent treatment as an inpatient from 14.09.2008 to 18.09.2008. Further, PW-2 categorically stated that the claimant underwent conservative treatment. Thus, taking into consideration the nature of injury sustained by the claimant and the treatment undergone by her, this Court holds that it would be proper to award a sum of Rs.3,300/- towards loss of income for actual period of disablement.

20. The Second Schedule provides for the award of general damages in case of injuries and disabilities. It provides

for Rs.5,000/- towards pain and sufferings in case of grievous injury and actual medical expenses supported by bills/vouchers. In the present case, the injury suffered by the claimant was grievous in nature. Further, the bills produced at Ex.P12 go to show that the claimant spent a total sum of Rs.2,914/- during her treatment. Hence, it is held that the claimant is entitled to Rs.5,000/- under the head of pain and sufferings and Rs.2,914/- towards medical expenses.

21. For the foregoing reasons, Point No.(ii) is answered partly in the affirmative and held that the claimant is entitled to total compensation of Rs.92,000/- under the following heads:

Sl. No.	Head	Amount (in Rs.)
1.	Amount payable for permanent partial disablement	80,784.00
2.	Loss of income for actual period of disablement	3,300.00
3.	Pain and sufferings	5,000.00
4.	Actual medical expenses	2,914.00
	Total	91,998.00
	Rounded of :	92,000.00

22. In the result, this Court proceeds to pass the following:

ORDER

- (i) The appeal is allowed in part.

- (ii) The judgment and award dated 25.03.2014 passed in MVC No.137/2011 passed by learned Principal Senior Civil Judge and MACT, Ranebennur is set aside and the claim petition filed under Section 163A of the Motor Vehicles Act is partly allowed.
- (iii) Consequently, it is held that the claimant is entitled to a total compensation of Rs.92,000/- together with interest thereon at the rate of 7.5% p.a. from the date of petition till its realization.
- (iv) The insurer is directed to deposit entire award amount together with the accrued interest before the Tribunal within a period of two (2) months from this day.
- (v) The claimant is entitled to withdraw entire amount on its deposit.
- (vi) Draw the award accordingly.
- (vii) The Registry is directed to send back trial court record to concerned Tribunal, forthwith.

Sd/-
(B. MURALIDHARA PAI)
JUDGE

RKM,YAN
CT: CMU