

KABC020275512022



IN THE COURT OF III ADDL. JUDGE AND MOTOR
ACCIDENT CLAIMS TRIBUNAL,
COURT OF SMALL CAUSES, BENGALURU (**SCCH-18**)

Dated this the 2nd day of July 2026

Present: **DHANESH MUGALI**
B.Com., LL.B.,(Spl.)
III ADDL. JUDGE & MEMBER, MACT
COURT OF SMALL CAUSES,
BENGALURU.

Misc.No.125/2022
in
(MVC.No.1424/2017)

Petitioner/s : Sri Ravi K.H. @ Ravikumar,
S/o Hanumantarayappa,
Aged about 34 years.
R/o No.971, Kodihalli Village,
Konaghatta Post,
Doddaballapura Taluk,
Bangalore Rural District.

(By Pleader Sri.Prashanth K)

V/s

Respondent/s : 1. Smt.Kamalamma @ Kamala,
W/o Late Manjunath,
Aged about 34 years,
2. Varsha, D/o Late Manjunatha,
Aged about 16 years,
3. Sreerasha & Chaithra,
D/o Late Manjunatha,
Aged about 13 years,

Respondents No.2 and 3 are minors
Rep by their mother & natural
Guardian Smt.Kamamma.

4. Smt. Sarojamma
W/o Late. Muniyappa,
Aged about 58 years, **(Dead)**

Respondent No.1 to 4 are R/at:
Handiganala, Keshavara Post,
Sidlagatta Taluk,
Chikkaballapura District.

5. Smt. Munirathana @
Munirathanamma,
W/o Late Manjunath,
Aged about 44 years, **(Dead)**

6. Mrs. Chaithra,
D/o Late Manjunath,
Aged about 25 years,

Respondents No.5 and 6 are
R/at: Ward No.23, Ullur Pete,
Near Srirama Temple,
Sidlaghatta Post & Taluk.
**(Respondents No.1 to 6 by Sri.
Suresh .M.Latur Advocate)**

7. Sri. Madhu,
S/o Sri.Muninarayanappa,
Aged about -- years,
Bangalore Kaluve Village,
Dibbur Post, Gudibande Taluk,
Chikkabalaplura District
(Dismissed)

8. The Regional Manager,
National Insurance Co., Ltd.,
Subbaram Complex,
M.G.Road, Bangalore-560001.
(By Pleader Sri.S.R. Murthy)

* * * * *

ORDER

This Miscellaneous petition is filed by the Petitioner, who was respondent No.1 in MVC.No.1424/2017, under Order IX Rule 13 of C.P.C. to set aside the judgment and award passed in MVC.No.1424/2017 dated 21-04-2022 and restore the petition in its original number.

2. Brief facts of the Petitioner's case is as under:

The petitioner has stated that, the respondent No.1 to 6 were filed the claim petition in MVC No.1424/2017 against him, respondent No.7 and respondent No.8 before this tribunal for seeking compensation due to death of M.Manjunatha son of Late Muniyappa in R.T.A. dated 09.08.2012. After receipt of notice in MVC No.1424/2017, he appeared through his counsel, but he could not file written statement. The respondent No.8 had taken specific defense in MVC No.1424/2017 that owner of the offending vehicle had entrusted his Motor Cycle to rider i.e. respondent No.7 to ride the vehicle who was not having driving license at the time of alleged accident and thereby violated the terms and conditions of the policy and provision of the M.V. Act, therefore, respondent No.8 is not liable to pay the compensation. This tribunal has passed judgment and award against him to pay the compensation of Rs.14,98,200/- to the petitioners, who are respondent No.1 to 6 herein and exonerated respondent no.8 from liability.

3. The petitioner has further stated that he is the permanent resident of Kodihalli Village, Bengaluru Rural District and working as Essilor Manufacturing India Pvt. Ltd. In the last week of April 2017, he was deputed to Gujarat state for the purpose of training for 6 months and he came back to his native during the month of November 2017. Soon after, he had fallen ill and he underwent treatment for Chickungunya for a brief period and again he went to Chennai for further training and came back on March 2018. Thereafter, he tried to approach his counsel to ascertain the status of the case, but the advocate who represented him had changed his office and his mobile number, hence he could not trace changed address and mobile number of his counsel. He traced his counsel in second week of July-2022 and came to know that the judgment and award has been passed in MVC No.1424/2017 and then applied for certified copies of the same on 16.07.2022 and obtained the said copies on 26.07.2022. His non-appearance was bonafide and was not an intentional. Hence, this Miscellaneous petition to set-aside the judgment and award passed in MVC.No.1424/2017.

4. In response to the notice, the respondent No.1,2,3,4 and 6 and 8 have appeared before the tribunal through their respective counsels.

5. Notice issued to Respondent No.5 reported as respondent No.5 dead.

6. As per order sheet dated 15.07.2025 it appears that despite sufficient opportunity the petitioner could not take proper steps against respondent No.7, hence petition has been dismissed against respondent No.7.

7. The respondent No.8 has filed objections to main petition contending that the petition is not maintainable either in law or on facts of the case and same is liable to be dismissed. The petitioner herein is Respondent No.1 in MVC No.1424/2017. This petition is not filed within limitation period. The petitioner has created a story to escape from liability to pay the compensation to respondent No.1 to 6. Hence, prays to dismiss the petition.

8. The respondent No.1 to 4 and 6 have filed objections to main petition contending that the petition filed under Sec.9 Rule 13 of C.P.C. is illegal and against the facts and circumstances of this case. The petitioner has approached this Court to set aside the judgment and Award passed by this Court on 21.04.2022. The petitioner had appeared before this Court and did not contest the matter. Only ex parte decree of judgment can be recalled as per the provision of Order 9 Rule 13 of C.P.C. The only remedy is available to the petitioner to file an appeal. They have filed MFA No.8718/2022 before Hon'ble High Court of Karnataka, Bengaluru challenging the judgment and award passed by this Tribunal. The reasons given by the petitioner is not sufficient to recall judgment and

award passed in MVC No.1424/2017. Hence, prays to dismiss the petition.

9. As per memo dated: 06.06.2026 the Respondent No.4. is reported as dead. Hence, petition against R4 is dismissed as abated.

10. The petitioner got examined himself as PW-1 and got marked documents as Ex.P1 to Ex.P.3. On the other hand, the respondents have not lead any evidence from their side.

11. Heard arguments and perused the materials available on record.

12. The points that would arise for my consideration are as follows:

1. Whether the Petitioner proves that judgment and award passed in MVC No.1424/2017 dated 21-04-2017 on the file of this tribunal is an exparte decree?
2. Whether the petition filed by the petitioner Under Order IX Rule 13 of C.P.C. deserves to be allowed?
3. What Order?

13. My findings on the above points are as under:

- | | |
|--------------------|--|
| Point No.1: | In the Negative |
| Point No.2: | In the Negative |
| Point No.3: | As per the final Order
for the following: |

REASONS

14. **POINT No.1 & 2:-** These two points are inter linked with each other, hence I have taken together for common discussion.

15. The petitioner has filed the above petition against respondents with a prayer to set aside the judgment and award passed in MVC No.1424/2017 dated 21-04-2017 and restore the petition in its original number.

16. To prove his case, the petitioner himself got examined as PW.1 and got marked Ex.P1 to Ex.P3. In his chief examination, he has reiterated the averments made in the petition.

17. Ex.P1 is the certified copy of judgment passed in M.V.C. No.1424/20117 dated:21.04.2017. Ex.P2 is the Certified Copy Award passed in MVC No.1424/2017. Wherein it appears that the tribunal has passed judgment on 21-04-2017 directing the respondent No.1 who is petitioner herein to pay compensation of Rs.14,98,200/- with interest at the rate of 6% p.a. from the date of petition till its realization within two months from the date of order. Ex.P3 is the certified copy of order sheet in M.V.C. 1424/2017.

18. Before appreciating evidence, it is better to look into the provision of Order IX Rule 13 of C.P.C., which reads as under:-

13. Setting aside decree ex parte against defendant:-

In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

[Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

Provided further that no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.]

[Explanation:- *Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside the ex parte decree].*

19. On plain reading of above provision, it is clear that the petitioner has to satisfy that the summons was not duly served upon him and he was prevented by any sufficient cause from appearing and the suit was called on for hearing, the court shall make an order setting aside the decree as against it upon such terms as to cost.

20. On perusal of Ex.P3 it appear that, in MVC.No.1424/2017, one advocate by name Sri.E.C.M. was filed vakalath on behalf of respondent No.1. After sufficient opportunity, written statement of R1 was taken as nil. Respondent no.8 in herein was fully cross examined PW1 to PW4 in MVC No.1424/2017.

21. The petitioner has taken contention that, he was working at Essilor Manufacturing India Pvt Ltd and in the last week of April-2017 he was deputed to Gujarat State for the purpose of training for six months. During the course of training he used to contact his counsel through telephone and gathering status of the case. He came back in the month of November-2017. Soon after returning from Doddaballapura he had fallen ill and under went treatment of Chicken Gunya for brief period again he went to Chennai for further training and came back in the month of March-2018. But in this regard, the petitioner has not placed any documents to show that he was an employee of Essilor Manufacturing India Pvt Ltd and was deputed for training from April-2017 to November-2017 at Gujarat. Further, he went further training to Chennai and came back in March-2018.

22. As per Ex.P3 in MVC No.1424/2017 written statement of R1 was taken as nil on 19.08.2017. As per chief examination of PW1 he was contact with his counsel during that period. It discloses that the petitioner was fully aware about the non filing of written statement in MVC No.1424/2017. It is duty on the petitioner to see that

written statement in MVC No.1424/2017 could have filed and contested the matter.

23. Further, the petitioner has taken contention that after returning from Chennai he tried to contact his counsel but he did not succeed due to change of office address and mobile phone number of his counsel. But, he has not explained how he came contact with the said counsel in the year 2022 that too immediate passing of judgment and award in MVC No.1424/2017. It appears that the petitioner has not approached with clean hands.

24. In the case of **K.Ravindra Devadiga V/s Sebastian Britto, AIR 1989 KAR 280**, The Hon'ble High Court of Karnataka held as:

“ It is in that context, I now examine, whether the presence of the counsel who did not participate in the proceedings in the small cause suit for eviction when the plaintiff was giving evidence would amount to appearance or not. If the counsel had no instructions he had only the choice to retire from the case, but he cannot plead want of instructions and still claim that on that account the defendant should be treated as absent and exparte”.

25. The principle laid down in Supra decision is that, ***If the counsel had no instructions he had only the choice to retire from the case, but he cannot plead want of instructions and still claim that on that account the defendant should be treated as absent and exparte***. In this case also the petitioner was appeared in MVC No. 1424/2017 through his counsel. In entire petition, he has not pleaded that he

had not given instructions to his counsel to contest the case. Further, counsel for respondent No.1 in MVC No.1424/2017 was not intimated to the tribunal that, he was not having instructions and would retire from the case. The principle laid down in the Supra decision is aptly applicable to the case in hand. Further, the present petition does not come under the provision of Order IX Rule 13 of C.P.C. since it is decided on merit. Therefore, I am of the opinion that the petitioner has not made out sufficient grounds to set-aside judgment and award passed in MVC No.1424/2017 and restore the same. Accordingly, I have answered point No.1 & 2 in the Negative.

26. **POINT NO.3:** For the foregoing reasons, I proceed to pass the following:

ORDER

The petition filed by the Petitioner
Under Order IX Rule 13 R/w sec.151 of
C.P.C. is hereby dismissed.

(Dictated to the stenographer directly on computer, then corrected by
me and pronounced in the open Court on this the 2nd day of July 2026).

(DHANESH MUGALI)
III ADDL.SMALL CAUSES JUDGE,
MEMBER MACT & ACJM,
BENGALURU.

:ANNEXURE:

List of witnesses examined on petitioner's side:

PW1 Sri.Ravi K.H.

List of documents exhibited on petitioner's side:

- Ex.P1 Certified copy of Judgment in MVC
 1424/17
- Ex.P2 Certified Copy of Award passed in
 MVC.No.1424/2017.
- Ex.P3 Certified copy of Order sheet in MVC No.
 1424/2017

List of witnesses examined on respondent's side:

--NIL--

List of documents exhibited on respondent's side:

---NIL---

(DHANESH MUGALI)
III ADDL.SMALL CAUSES JUDGE,
MEMBER MACT & ACJM,
BENGALURU.