



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 26TH DAY OF MARCH 2026

BEFORE

THE HON'BLE MRS JUSTICE GEETHA K.B.

MISCELLANEOUS FIRST APPEAL NO. 20281 OF 2013 (MV)

BETWEEN

SHRI NARAYAN S/O. YALLAPPA KOLI,
AGE: 46 YEARS, OCC: HAMALI/AGRICULTURE
(NOW NIL), R/O: DEVALATTI, TQ: KHANAPUR,
DIST: BELGAUM.

...APPELLANT

(BY SRI. B.M. PATIL, ADVOCATE)

AND

1. SHRI UMESH S/O. BASAPPA AKKI,
AGE: MAJOR, OCC: BUSINESS,
R/O: DEVALATTI, TQ: KHANAPUR, DIST: BELGAUM.

2. THE RELIANCE GENERAL
INSURANCE COMPANY LIMITED,
CTS.472-474, V.A. KABULGI SQUARE,
DESAI CROSS, DESHPANDE NAGAR,
HUBLI - 580 029,
REPRESENTED BY ITS DIVISIONAL MANAGER.

...RESPONDENTS

(BY SRI. S.K. KAYAKMATH, ADVOCATE FOR R2;
NOTICE TO R1 IS SERVED)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT PRAYING TO MODIFY THE JUDGMENT AND AWARD DATED 01-10-2012 IN M.V.C.NO.149/2011 PASSED BY SENIOR CIVIL JUDGE AND MEMBER M.A.C.T., KHANAPUR IMPOSING JOINT AND SEVERAL LIABILITY UPON BOTH THE RESPONDENTS NO.1 AND 2 AND A REASONABLE COMPENSATION MAY BE AWARDED, IN THE INTEREST OF JUSTICE AND EQUITY.



THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 06.03.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, DELIVERED THE FOLLOWING:

CORAM: THE HON'BLE MRS JUSTICE GEETHA K.B.

CAV JUDGMENT

This is the appeal filed under Section 173(1) of the Motor Vehicles Act, 1988 (for short, 'M.V. Act) paying for modifying the judgment and award dated 01.10.2012 in MVC No.149/2011 on the file of Senior Civil Judge and Member M.A.C.T., Khanapur, (for short, 'the Tribunal') saddling joint and several liability upon both respondents No.1 and 2 and praying for awarding of reasonable compensation.

2. Parties would be referred with their ranks as they were before Tribunal for the sake of convenience and clarity.

3. The claimant has filed claim petition under Section 166 of M.V. Act, praying for compensation of ₹.8,00,000/- in respect of the injuries sustained by him in a



motor vehicle accident that had taken place on 07.11.2010 at 05.30 p.m. on M. K. Hubli-Parishwad Road involving truck bearing Reg.No.KA-23/5632. It is stated in the claim petition that due to the accident, the claimant has sustained grievous injuries and unable to work as he was doing earlier. Hence, prayed for compensation under different heads.

4. On behalf of claimant, claimant was examined as P.W.1 apart from examining a witness as P.W.2 and marking Exs.P.1 to P.16 before the Tribunal and closed his side. On behalf of respondent No.2, R.W.1 was examined apart from marking Ex.R.1-insurance policy.

5. The Tribunal has assessed the compensation to claimant under the following heads:

1.	Pain and sufferings	Rs. 30,000/-
2.	Loss of happiness & Future amenities	Rs. 30,000/-
3.	Loss of income during the treatment period	Rs. 20,000/-
4.	Incidental charges	Rs. 12,000/-
5.	Medical Expenses	Rs. 38,000/-
	Total	Rs.1,30,000/-



6. Insurance Company has not preferred any appeal against the judgment and award of the Tribunal.

7. The contention of claimant is that he was working as Hamali (labourer) in a truck bearing No.KA-23/5632 and the truck belonged to respondent No.1. On 07.11.2010 after completion of the work, when truck was returning from M.K. Hubli to Devalatti, due to rash and negligent driving of driver of the truck, it hit on the road side tree and thereby caused the accident. Due to the said accident, claimant has sustained grievous injuries.

8. The Tribunal has allowed the claim petition in part and dismissed the same against respondent No.2 holding that the claimant was gratuitous passenger in truck and thus the owner and driver of the truck have violated the terms and conditions of the policy and thus the insurer is not liable to pay compensation.

9. Learned counsel for appellant/claimant would submit that even though claimant was held to be a



gratuitous passenger, the insurance company was ordered to pay compensation to the claimant and to recover it from the owner. In this regard, he relied on the judgment of Hon'ble Apex Court in Civil Appeal No.9538/2025 arising out of Special Leave Petition (Civil) No.1412/2024 dated 17.07.2025.

10. In the aforesaid judgment, at para No.15 the Hon'ble Apex Court has held as follows:

*"15. The above position has been followed by this Court in **Anu Bhanvara v. IFFCO Tokio General Insurance Co. Ltd.**, wherein the injured person was travelling as a gratuitous passenger and was not covered under the Insurance Policy, the driver and owner of the vehicle was held liable for payment of compensation amount. This Court applied the principle of "Pay and Recover" and directed the Insurance Company to pay the amount and, thereafter, recover the same from the owner of the vehicle."*

11. In this regard, learned counsel for respondent No.2-Insurer contends that violation of terms and conditions of the policy absolve the insurance company to pay the compensation. In this regard, he relied on the judgment of Hon'ble Apex Court in the case of **Balu Krishna Chavan**



**vs. The Reliance General Insurance Company Limited
and Others** reported in **2022 LiveLaw (SC) 932**, wherein
at para No.13, it is held as follows:

"13. Therefore, keeping all aspects in view, and not making this case as a precedent, but, only to serve the ends of justice in the facts of this case, we direct that respondent no.1 (Insurance Company) to deposit the compensation amount before the MACT within eight weeks from the date of the receipt of a copy of this judgment, whereupon, the MACT shall disburse the amount of compensation to the appellant."

12. Learned counsel for respondent No.2 further
relied on the judgment of Division Bench of this Court dated
30.03.2021 in MFA No.101633/2014, wherein at para No.7
it is held as follows:

"7. With regard to liability, we do not find any fault in the judgment of the Tribunal. Though it is argued by the learned counsel for the appellants that the deceased hired the vehicle for the purpose of transporting sand and jelly, the evidence on record shows otherwise. There were about 8-10 passengers in the vehicle, the deceased was sitting in the cabin portion. Therefore, we have to confirm the findings of the Tribunal that the deceased was a gratuitous passenger. In view of this, insurance company cannot be directed to pay the compensation and then recover the same from the owner. The argument of the appellants' counsel cannot be accepted."

13. Learned counsel for respondent No.2 further
relied on the judgment of Full Bench of this Court in the



case of ***New India Assurance Co. Ltd. Bijapur vs. Yallavva and Another*** reported in **2020 (2) KCCR 1405 (FB)**, wherein it is held as follows:

"Points raised by Division Bench:

I) If it is shown the insurance policy is not 'Act' policy in terms of Sections 145 and 147 of the Motor Vehicles Act, but a contractual policy issued collecting extra premium indicating insurance company has enlarged its liability, will not the insurance company be liable to pay and recover even if there is any breach by the insurer?

II) In such cases, is not the rule to 'pay and recover' applicable in view of the mandate in Section 149, M.V.Act that upon issuance of policy, the insurer is bound to discharge the award as if it were a judgment debtor?"

Division Bench directing Insurer to discharge liability subject to result of reference to by the larger Bench.

Held, (Per Court): *i) Having regard to Section 149(1) r/w Section 149(7) whenever a case falls under Section 149(2)(a) and the same is successfully established or proved by the Insurance Company, as per the twin tests laid by the Hon'ble Supreme Court in Swaran Singh, nevertheless, the insurer or Insurance Company is liable to satisfy the award vis-a-vis a third*



party and is entitled to recover from the insured. This is irrespective of, the policy being an Act policy in terms of Section 147 pertaining to compulsory coverage of risks of third parties and other classes of persons stated therein or a policy covering other risks by specific contract being entered into in that regard and where additional premium is paid by the insured i.e., a contractual policy.

ii) The Insurer is liable to pay the third party and recover from the insured even if there is breach of any condition recognized under Section 149 (2), even if it is a fundamental breach (that is breach of condition which is the cause for the accident) and the insurer proves the said breach in view of the mandate under Section 149(1) of the Act. But, no such order can be passed against the insurer, if, on the facts and circumstances of a case, a finding is given by the Court that the third party (injured or deceased) had played any fraud or was in collusion with the insured, individually or collectively, for a wrongful gain to themselves or cause wrongful loss to the insurer.

iii) The Court can also fasten the absolute liability on the insurer, if there is any breach of condition which is enumerated under Section 149(2) of the Act or any other condition of the policy if the Insurance Company has waived breach of any such condition or has taken the special responsibility to pay by collecting extra premium by covering any type of risk depending upon facts of each case."



14. On examination of the oral and documentary evidence put forth before the Tribunal, Tribunal came to the conclusion that the claimant was a gratuitous passenger in the truck.

15. On perusal of said oral and documentary evidence, the said finding of the Tribunal is proper because even though in the affidavit evidence the claimant states that he was working as Hamali in the truck, in the complaint it is also stated that the claimant was Hamalidara. However, before doctor when for the first time the claimant was taken for treatment, it is stated that the truck hit to the tree and patient was conscious and normal at the time. In the cross-examination, the claimant has specifically deposed that he was working as teacher in primary school, Duradundi of Gokak for a period of 2 years. He further deposed that his profession is teacher profession. Thus, his say in the complaint and also in affidavit evidence that he was working as Hamali in truck is only to get compensation and not for any other purpose. Considering these facts, rightly the



Tribunal held that the claimant was working as teacher at the time of accident and not as Hamali.

16. Thus, it is clear that the claimant was a gratuitous passenger in the truck, which caused the accident. With this background, 'Whether the insurer is liable to pay and recover compensation to gratuitous passenger or not is to be examined'.

17. As discussed above, in the Full Bench judgment of this Court, it is held that the insurer is liable to pay the third party and recover from the insurer even if there is breach of any condition recognized under Section 149(2) of M.V. Act even if it is fundamental breach of the Act. Further, the Hon'ble Apex Court in the recent judgment in the case of ***National Insurance Company Ltd. Vs. Parvathneni*** reported in **(2009) 8 SCC 785** held that the insurance company is liable to pay compensation to the gratuitous passengers initially and recover the compensation from the



Insured. Thus, the said principle of 'pay and recover' is followed.

18. The judgment of Division Bench of this Court relied upon by the Insurer is of the year 2021, whereas the judgment of Hon'ble Apex Court relied upon by the appellant is of the year 2025, wherein the earlier judgment was reiterated. Hence, considering these aspects, I am of the opinion that the gratuitous passenger in the truck is entitled for compensation from the insurer and insurer has to first pay it to the claimant and then recover it from the owner.

19. As far as compensation awarded by the Tribunal is concerned, claimant has sustained two grievous injuries and thus compensation of ₹.30,000/- was awarded towards pain and suffering and the accident has taken place in the year 2010 and thus the compensation under the head pain and suffering granted by the Tribunal is proper. The Tribunal has awarded compensation to the claimant as he



sustained fracture of neck of humerus and also fracture of 9th rib of left side. Hence, the claimant is entitled for additional compensation of ₹.10,000/- under the head pain and suffering.

20. As far as other heads are concerned, ₹.20,000/- was awarded towards loss of income during treatment. Claimant has taken treatment for 2 months and thus this compensation is sufficient under this head. Towards loss of happiness and future amenities, the Tribunal has granted ₹.30,000/- because the claimant was working as teacher and doctor opined that there is no functional disability to the claimant. Considering these facts, granting ₹.30,000/- by the Tribunal under the said head is also proper.

21. As far as medical expenses are concerned, the amount spent towards medical expenses i.e. the bills produced by claimant was honored by granting ₹.38,000/-, which is also sufficient. As far as incidental charges of



₹.12,000/- awarded by the Tribunal, same is just and proper.

22. Hence, the claimant is entitled for additional compensation of ₹.10,000/- only under the head pain and suffering and not under any other heads.

ORDER

- 1)Appeal filed under Section 173(1) of Motor Vehicles Act, 1988 is allowed in part;
- 2)The impugned judgment and award dated 01.10.2012 in MVC No.149/2011 on the file of Senior Civil Judge and Member M.A.C.T., Khanapur is modified by holding that the appellant/claimant is entitled for additional compensation of ₹.10,000/- in addition to what has been awarded by the Tribunal;
- 3)The enhanced compensation amount will bear interest at the rate of 6% per annum from the date of claim petition till the date of realization;



- 4) Respondent-Insurance Company is hereby directed to pay the compensation at the first instance and recover it from the insured in accordance with law;
- 5) Respondent-Insurance Company shall deposit the compensation amount with accrued interest before the Tribunal within four weeks from the date of receipt of certified copy of this judgment;
- 6) No order as to costs;
- 7) Draw modified award accordingly.

Sd/-
(GEETHA K.B.)
JUDGE

SH
CT-MCK
List No.: 1 Sl No.: 50