HC-KAR
CNR: KAHC020116512015

NC: 2026:KHC-D:9771
MFA No. 103137 of 2015
C/W MFA No. 101316 of 2015

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 16TH DAY OF JULY 2026

BEFORE

THE HON'BLE MRS JUSTICE GEETHA K.B.

<u>MISCELLANEOUS FIRST APPEAL NO. 103137 OF 2015 (MV-I)</u>
<u>C/W</u>
<u>MISCELLANEOUS FIRST APPEAL NO. 101316 OF 2015 (MV-I)</u>

<u>IN MFA NO.103137/2015:</u>
<u>BETWEEN:</u>

SMT. BORAWWA W/O. KALLAPPA BELAGALI
AGE: 53 YEARS, OCC: TAILORING AND
HOUSEHOLD WORK (BEFORE ACCIDENT),
R/O: MUDALAGI, TQ: GOKAK,
DIST: BELAGAVI.

...APPELLANT

(BY SRI.SANJAY S.KATAGERI, ADVOCATE)

<u>AND:</u>

1. SHRI. KEMPANNA S/O. PAVADEPPA MAGADUM
AGE: 47 YEARS, OCC: ADVOCATE,
R/O: VIVEKANAND NAGAR, 10TH CROSS,
GOKAK, DIST: BELAGAVI,
(OWNER OF MOTOR CYCLE BEARING NO.KA-23/H-6016).

2. THE NATIONAL INSURANCE COMPANY LIMITED
BY ITS SR. DIVISIONAL MANAGER,
RAMADEV GALLI, BELAGAVI.

...RESPONDENTS

(BY SRI.CHETAN T.LIMBIKAI, ADVOCATE FOR R1;
SRI.RAVINDRA R.MANE, ADVOCATE FOR R2)

THIS MFA IS FILED U/S. 173(1) OF MV ACT, 1988, AGAINST THE JUDGMENT AND AWARD DATED 30.12.2014 PASSED IN MVC NO.2501/2012 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND MEMBER ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL GOKAK, AWARDING THE

COMPENSATION OF RS.33,000/- WITH INTEREST AT THE RATE OF 6% P.A. FROM 27.06.2014 PETITION TILL ITS REALIZATION WITHIN ONE MONTH FROM THE DATE OF AWARD.

IN MFA NO.101316/2015:
BETWEEN:

NATIONAL INSURANCE CO., LTD.,
BY ITS SR. DIVISIONAL MANAGER,
DIVISIONAL OFFICE, RAMDEV GALLI,
BELAGAVI, HEREIN REPRESENTED
BY NATIONAL INSURANCE CO. LTD.,
REGIONAL OFFICE, 2ND FLOOR,
ARIHANT PLAZA, KUSUGAL ROAD,
KESHWAPUR, HUBLI-580 023,
REPRESENTED BY ITS DEPUTY MANAGER.

...APPELLANT

(BY SRI.RAVINDRA R.MANE, ADVOCATE)

AND:

1. SMT. BORAWWA W/O. KALLAPPA BELAGALI,
AGE: ABOUT 52 YEARS, OCC: TAILORING,
R/O: MUDALAGI, TQ: GOKAK,
DIST: BELAGAVI.

2. KEMPANNA S/O. PAVADEPPA MAGADUM,
AGE: ABOUT 46 YEARS, OCC: ADVOCATE,
R/O: VIVEKANAND NAGAR,
10TH CROSS, GOKAK.

...RESPONDENTS

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

THIS MFA IS FILED U/S. 173(1) OF MV ACT, 1988, AGAINST THE JUDGMENT AND AWARD DATED 30.12.2014 PASSED IN MVC NO.2501/2012 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND MEMBER ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL GOKAK, AWARDING THE COMPENSATION OF RS.33,000/- WITH INTEREST AT THE RATE OF 6% P.A. FROM 27.06.2014 PETITION TILL ITS REALIZATION WITHIN ONE MONTH FROM THE DATE OF AWARD.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 07.07.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, DELIVERED THE FOLLOWING:

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

CAV JUDGMENT

These appeals are filed under Section 173(1) of the Motor Vehicles Act, 1988 (for short, "the M.V. Act"), challenging the judgment and award dated 30.12.2014, passed in MVC No. 2501/2012 on the file of Prl. Senior Civil Judge & Addl. M.A.C.T Gokak. (for short, 'Tribunal').

2. MFA No.103137/2015 is filed by the claimant, being dissatisfied with the compensation awarded by the Tribunal. MFA No.101316/2015 is filed by the appellant/insurer challenging saddling liability on the insurer.

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

4. The case of claimant before the Tribunal in nutshell is that on 22.06.2012, at about 12:00 noon, the claimant, as pillion rider of the motorcycle bearing registration number KA-23/H-6016, was going near Iranna Temple on Gokak Mudalagi Road; at that time, the rider of the said motorcycle rode it with high speed rashly and negligently, lost his control and caused the accident; because of that the claimant fell down in a pit and sustained a left elbow dislocation. Hence, claimed compensation of ₹5,00,000/- under different heads.

5. Respondent No.1 in the objection statement denied the contention taken by the claimant in the petition and further contended that the vehicle is validly insured with respondent No.2, and he was having a valid and effective driving license as on the date of the accident. Hence, liability shall be fastened on respondent No.2.

6. Respondent No.2 filed its objections before the Tribunal, wherein it denied the petition averments *in toto*,

including the involvement of the vehicle. The insurer would further take the contention that ₹70/- paid towards premium is only to cover the personal accident of an unknown passenger limited up to ₹1,00,000/-. Said coverage is not covered under the Motor Vehicles Act and he has to approach the appropriate authority for such recovery. Hence, petition is not maintainable. Further, the rider of the motorcycle was not having valid and effective driving license. Hence, prayed for dismissal of the petition.

7. After completion of pleadings, framing of issues, recording evidence and hearing arguments of both sides, the Tribunal came to the conclusion that the insurer is liable to pay compensation for the injury sustained by the claimant as pillion rider of the offending motorcycle amounting to ₹33,000/- with interest at 6% per annum.

8. Aggrieved by the same, the appellant-insurer has filed the appeal. Dissatisfied with the quantum of compensation, claimant is also before this Court.

9. Heard arguments of both sides.

10. Learned counsel for the appellant/insurer would submit that the claimant is pillion rider of motorcycle. The policy is only 'Act policy'. Even though additional premium of ₹70/- is collected towards unnamed passenger; as per IMT No.18, if there is death or bodily injury as noted in IMT No.18, insurer would be liable to pay; otherwise he is not liable to pay. The pillion rider is not a third party. In this regard, he places reliance on the judgment of the Hon'ble Apex Court in ***National Insurance Company Ltd. Vs. Balakrishnan and another*** reported in ***2013 (1) T.A.C. 1 (S.C.)***; the judgments of coordinate Benches of this Court in **MFA Nos.20624/2008 C/W 20553/2008,** dated 18.12.2014, in the case of ***Shri Sanjay S/o Basavaraj Nirwani Vs. Shri Abubakar and another***; and also in ***The Branch Manager, The Oriental Insurance Co. Ltd. Vs. Kashibai and others*** reported in ***2017 ACJ 1732*** and contended that pillion rider is not a third party as per the Motor Vehicles Act, 1988.

11. Learned counsel for respondent No.1/claimant Sri Sanjay S. Katageri would submit that when additional premium of ₹70/- is collected towards unnamed passenger, then the insurance company is liable to pay compensation and it cannot go beyond the terms and conditions of the policy. He would further rely upon Section 145(g) of the Motor Vehicles Act, 1988.

12. Learned counsel for respondent No.1-owner of the vehicle Sri Chetan T. Limbikai, would submit that he has already paid additional premium and thus, the nomenclature 'Act policy' has no value and it is virtually package policy and hence, Insurance Company is liable to pay compensation. The Insurance policy refers only IMT No.16 and not IMT No.18. The insurer cannot rely upon IMT No.18.

13. Having heard arguments of both sides, verifying the appeal papers along with records of the Tribunal, the points that arise for consideration are:

"1) Whether IMT No.18/16 bars the insurer to pay compensation to the pillion rider?

2) Whether the quantum of compensation awarded by the Tribunal requires modification?"

14. Finding of this Court on Point No.1 is in NEGATIVE and Point No.2 is in AFFIRMATIVE for the following:

<u>REASONS</u>

15. The facts which are not in dispute are that the claimant is a pillion rider of the offending motorcycle as on the date of the accident and the motorcycle met with an accident. In the said accident claimant sustained dislocation of the left elbow, which is grievous in nature and he was treated by the doctor. The doctor has assessed disability at 35% to the particular limb.

16. Learned counsel for the appellant relied on the judgment of coordinate bench of this Court in ***Sanjay's*** case cited (supra). In the aforesaid case, the petition was filed under Section 163-A, and the rider himself was the owner of the vehicle. Said petition is not pertaining to Section 166 or the liability of a pillion rider. Hence, the facts and circumstances of the said case are distinguishable from the facts and circumstances of the present case.

17. Learned counsel for the appellant places reliance on the judgment of a coordinate bench of this Court in ***Branch Manager, Oriental Insurance Company Limited vs. Kashibai and others*** reported in ***I(2018) ACC 670(Kar.)*** and ***National Insurance Company Limited vs. Balakrishnan and another*** reported in ***2013 (1) T.A.C. 1 (S.C).*** In these two cases, only whether an 'Act policy' covers the injury sustained by inmates of a car or jeep is discussed.

18. In the instant case, even though it is stated as 'Act policy', when the owner has paid the additional premium to cover the risk of a pillion rider, then it cannot be said that this is still an 'Act policy', it will be comprehensive policy. Hence, these two citations are not helpful for the appellant to prove his contention.

19. The main contention of the insurer is that as per IMT 18, even though the risk of the pillion rider is covered by paying an additional premium of ₹70/-, that covers if there is death of the pillion rider; OR if there is loss of two limbs or sight of two eyes; or loss of one or one limb and sight of one eye; or permanent total disablement from injuries other than named above and under those circumstances, the insurer is liable to pay compensation.

20. It is to be noted here that in policy instead of mentioning IMT 18, it is mentioned as IMT 16. Even under IMT 16, death or similar types of injuries were covered, but

not in respect of a two-wheeler, but in respect of other classes of vehicles, i.e., private cars and three-wheelers.

21. Anyway, it is not in dispute that the liability subjected to IMT 18 is not mentioned in the policy to say that the owner is aware about the existence of IMT 18 at the time of taking policy. Even otherwise, it is to be noted here that when the policy covers higher risks of death or permanent total disablement or loss of limbs, then it covers the risk of lower injuries. When the risk of a higher injury is covered, it implies that it covers the risk of lower injuries, but insurer is liable to pay proportionate to the percentage mentioned in IMT 18.

22. In the present case, it is not in dispute that the owner has paid ₹70/- to additional premium to cover the risk of a pillion rider.

23. The risk of pillion rider amounting to ₹1,00,000/- is covered by paying additional premium of ₹70/-. Thus, the contention of the insurer that the claimant

has sustained only a fractured injury to the elbow and it is not liable to pay compensation is not acceptable.

24. As far as quantum is concerned, the Tribunal has awarded totally ₹33,000/- under three heads, i.e., ₹20,000/- under the head 'pain and sufferings', ₹10,000/- under the head 'medical expenses', ₹3,000/- under the head 'conveyance' on the ground that there is no disability. The Tribunal has assigned proper reasons to hold that there is no disability to the claimant, which requires no interference. It was only a dislocation and not a fracture of the left elbow and the doctor has clearly admitted in his evidence that dislocation can be located properly. Dislocation means complete and persisting displacement of a joint, and it can be set properly. The Tribunal has awarded compensation of ₹10,000/- under the head 'medical expenses'. Considering the nature of the injury sustained by the claimant and the number of days he was inpatient in the hospital, i.e., 3-4 days, and other factors, this Court holds that the claimant is entitled for additional

global compensation of ₹30,000/- to the compensation already awarded by the Tribunal.

25. The aforesaid compensation is within ₹1,00,000/-.The insurer is liable to pay the entire compensation amount with interest at 6% per annum from the date of the petition till realization.

26. In view of the aforesaid discussion, this Court passes the following:

ORDER

i) The appeal filed by insurer in MFA No. 101316/2015 is dismissed. Appeal filed by claimant in MFA No. 103137/2015 is allowed in part.

ii) Judgment and award dated 30.12.2014, in MVC No.2501/2012 on the file of Principal Senior Civil Judge & Additional M.A.C.T Gokak is modified holding that the claimant is entitled for additional global compensation of ₹30,000/- in addition to the compensation awarded by the Tribunal.

iii) The enhanced compensation shall carry interest at 6% per annum from the date of petition till realization.

iv) The respondent-Insurance Company shall deposit the enhanced compensation amount with accrued interest before the Tribunal within a period of 8 weeks from the date of receipt of certified copy of this judgment.

v) The disbursement and deposit shall be as per the order of the Tribunal.

vi) The amount in deposit shall be transmitted to the Tribunal.

vii) No order as to costs.

viii) Draw modified decree accordingly.

ix) Registry to transmit the TCR to the Tribunal forthwith.

Sd/-
(GEETHA K.B.)
JUDGE

SSP
CT:VH
List No.: 2 Sl No.: 2