

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 25th DAY OF JUNE, 2026

PRESENT

THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

MISCELLANEOUS FIRST APPEAL NO.103214/2015(MV)

BETWEEN:

SHRI BABAJAN MURTUSAB HIREMANI,
AGE:29 YEARS, OCC: DRIVER (NOW NIL),
R/O: GAJENDRAGAD, TQ: RON,
DIST: GADAG, NOW RESIDING AT
MOUNESHWAR NAGAR, BAILHONGAL.

...APPELLANT

(BY SRI HANAMANT R. LATUR, ADVOCATE)

AND:

1. KHADARSAB H. HIREMANI,
AGE: 51 YEARS, OCC: TRANSPORT BUSINESS,
R/O: SHYAM ELECTRICAL, BUS STAND,
GAJENDRAGAD, TQ: RON, DIST: GADAG.
(OWNER OF TATA INDICA CAR,
BEARING REG NO.KA-26/7415)
2. THE DIVISIONAL MANAGER,
UNITED INDIA INSURANCE COMPANY LIMITED,
MARUTI GALLI, BELAGAVI.
(INSURER OF TATA INDICA CAR,
BEARING REGN NO.KA-26/7415)
(POL.NO.240702/31/09/01/0004878
VALID FROM 29.10.2009 TO 28.10.2010)

...RESPONDENTS

(BY SRI M.K. SOUDAGAR, ADVOCATE FOR R2)
(NOTICE SERVED TO R1)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173 (1) OF THE MOTOR VEHICLES ACT, 1988, PRAYING TO ALLOW THIS APPEAL BY AWARDING THE COMPENSATION OF RS.5,00,000/- BY MODIFYING THE JUDGMENT AND AWARD OF SENIOR CIVIL JUDGE AND MEMBER ADDL. MACT., AT BAILHONGAL DATED 25.08.2015 PASSED IN MVC NO.2248/2012, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL COMING ON FOR FINAL HEARING, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 15.04.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CAV JUDGMENT

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

The claimant in M.V.C. No.2248/2012 on the file of learned Senior Civil Judge and Additional Motor Accident Claims Tribunal, Bailhongal (hereinafter referred to as 'the Tribunal') has directed this appeal being aggrieved by the dismissal of his claim petition vide judgment and award dated 25.08.2015.

2. Brief facts leading to this appeal are as under:

- (i) The claimant viz., Sri Babajan Murtusab Hiremani maintained the petition in M.V.C. No.2248/2012 under Section 163A of the Motor Vehicles Act, against the owner and insurer of TATA Indica Car bearing No.KA-26-7415, claiming compensation of Rs.5,00,000/- for the injuries sustained by him in a road traffic accident occurred on 18.10.2010 at about 11.50 p.m. near High Court of Karnataka, Dharwad Bench, on NH-4, claiming that he was discharging his duty as the driver of the said car, at the time of accident.

- (ii) On service of notice, both the owner and Insurer of the vehicle appeared before the Tribunal through their counsel and filed their objection. The owner of the vehicle admitted the accident as well as to the claimant being the driver of the car at the time of accident. However, he denied the claimant having suffered injuries and having spent amount towards his treatment as averred in the petition. He contended that the accident occurred due to negligence attributable to the driver of unknown lorry and he is not liable to pay any compensation.
- (iii) On the other hand, the Insurer not only denied all the material averments of the claim petition but also denied the claimant having suffered permanent physical disability on account of accidental injuries. They specifically contended that an inmate of the car filed the complaint alleging rash and negligent driving on the part of the claimant, and that, after the investigation, the jurisdictional police have laid a charge sheet against him. In the above

circumstances, they contended that the claimant is not entitled to seek compensation from the Insurer for his own negligence and the claim petition under Section 163A of MV Act is not maintainable.

- (iv) Based on the pleadings and the documents available on record, the Tribunal framed relevant issues, recorded evidence of the parties and then, disposed of the claim petition on merits of the case vide impugned judgment. On appreciation of the materials on record, the Tribunal held that the accident occurred due to negligent act of the claimant himself. Further, the Tribunal, relying on the decision in MFA No.7408/2007 dated 21.09.2012 passed by this Court, held that the claimant himself being responsible for the accident, the owner and the Insurer of the vehicle are not liable to pay compensation to him. Accordingly, the Tribunal dismissed the claim petition. Being aggrieved, the claimant has preferred this appeal.

3. Sri Hanmant R.Latur, learned Counsel for the Claimant vehemently submitted that the dismissal of the

claim petition by the Tribunal is wholly erroneous and it is against the law laid down by Hon'ble Apex Court and this Court. He submitted that the Tribunal failed to appreciate the facts which led to the accident and the fault on the part of the lorry driver. As such, he prayed to set aside the impugned judgment and award and to allow the claim petition, as prayed for.

4. Per contra, Sri M.K. Soudagar, learned Counsel for the Insurer strenuously submitted that the claim petition is patently not maintainable. He submitted that the claimant was a workman under the vehicle's owner, and if the claimant is entitled to any compensation at all, he must seek it from his employer. He further submitted that personal cover was not applicable in this case, and the claimant has not suffered any permanent disability. On these grounds, he sought to dismiss the appeal against the Insurer.

5. Having heard Counsel appearing for the parties and perused the record, the following points arise for the consideration of this Court:

(i) Whether the claimant's petition under Section 163A of the MV Act is maintainable?

(ii) Whether the claimant is entitled for compensation? If so, what amount and from whom?

Point Nos.(i) and (ii)

6. The case of the claimant is that on 18.10.2010 at about 11.50 p.m. while he was discharging his duties as the driver in TATA Indica Car bearing No.KA-26-7415 and driving the car from Belagavi towards Hubballi, on NH-4, near High Court of Karnataka, Dharwad Bench, within the limits of Garag Police Station, he lost control over his car and dashed it against the lorry going ahead of him as one unknown lorry proceeding in front of the car, suddenly stopped in the middle of the road without giving any indication or signal, and due to darkness, he could not see the lorry. The Respondent No.1, the owner of the car, also contended that the driver of unknown lorry was responsible for the accident.

7. Whereas, the documents produced by the claimant himself at Ex.P.1 and Ex.P.2 go to show that the

jurisdictional police had registered a case against the claimant in Crime No.218/2010 in connection with the accident based on a complaint lodged by an inmate of the car. In the said complaint, it is alleged that the accident occurred due to actionable negligence on the part of the claimant. Added to the above, the claimant, during his cross-examination admitted the filing of a charge sheet against him, in connection with the accident. Thus, there is ample evidence on record to establish negligence attributable to the claimant.

8. In the present case, the occurrence of the accident and the involvement of vehicle No. KA-26-7415 are undisputed by the parties. It is also admitted that the car was duly insured as on the date of accident. The Tribunal, relying on decision of this Court in M.F.A. No.7408/2007 DD 21.09.2012, proceeded to hold that the owner and insurer of the vehicle are not liable to pay any compensation to the claimant as the accident occurred due to negligence on the part of the claimant. In the above referred decision, this Court relying on pronouncement of

the Apex Court in Sunita's case that where the injured or the deceased was negligent and was the cause for the accident, then no compensation is payable by the insurer or the insured if they are able to plead and prove the said negligence, held that there is no liability on the part of the Insurer or the insured as they are not at fault.

9. As noted above, the claimant has maintained the petition under Section 163A of the MV Act. In ***United India Insurance Co.Ltd. Vs Sunil Kumar and another*** [2018 ACJ 1] and ***Shivaji and another Vs Divisional Manager, United India Insurance Co.Ltd. and Others*** [2018 ACJ 2161] it is held that in a proceeding under Section 163A of the Act, the Insurer cannot raise any defence of negligence on the part of the victim to counter a claim for compensation. Thus, the question of negligence is immaterial for deciding the claim petition.

10. Per contra, learned Counsel for Insurer relied on decisions in ***Ramkhiladi and another Vs United India Insurance Company Ltd. and Another***, [2020 ACJ 627] and ***Smt. Pushpalata and Others Vs Sharanabasappa and***

Another [MFA No.101420/2019 - DD 16.12.2022] of this Court. In **Ramkhiladi's** case, Hon'ble Apex Court has held that ultimately liability under Section 163A is on the owner of vehicle and a person cannot be both a claimant as also a person on whom liability falls. It further held that the Insurer is liable to pay compensation to third party and not to the owner. Similarly, in **Smt. Pushpalata's case**, this Court relying on the decision in **Ramkhiladi's** case held that the deceased steps into the shoes of the owner of the vehicle and the claimants cannot claim compensation against the Insurer of the motor cycle.

11. The factual matrix of the case makes it clear that since the claimant herein was driving the car at the time of the accident, he is precluded from claiming the status of a third party. On the other hand, he steps into the shoes of the owner of the vehicle. In the light of above referred decisions, it is held that the claimant is not entitled to make a claim against the owner or the Insurer of the vehicle under Section 163A of the MV Act. Accordingly, Point No.(i) is answered in the negative.

12. Perusal of impugned judgment and award indicates that the Tribunal while answering Issue No.2 determined the quantum of compensation as Rs.4,72,000/- but proceeded to dismiss the claim petition on the ground that the accident occurred due to negligence attributable to the claimant. The reasoning assigned by the Tribunal indicates that it has quantified the compensation as if the petition is filed under Section 166 of the MV Act. Whereas, the present petition is filed under Section 163A of MV Act which requires determination of the compensation with reference to structured formula. As such, the compensation determined by the Tribunal is not in compliance with Section 163A of the MV Act.

13. Apart from the above, this Court has held that the claimant herein is a person, who steps into the shoes of the owner of the vehicle and he is not a third party. It is well settled that a person cannot be both a claimant and the person having liability of paying the compensation. In view of the same, it is held that the claimant cannot seek

compensation by invoking Section 163A of the MV Act. Accordingly, Point No.(ii) is answered in the negative.

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

ORDER

- (i) The appeal is dismissed.
- (ii) The judgment and award dated 25.08.2015 passed in MVC No.2248/2012 by learned Senior Civil Judge and Additional MACT, Bailhongal, is confirmed.
- (iii) Draw award accordingly.
- (iv) Registry is directed to return the trial court records to the concerned tribunal at the earliest.

**Sd/-
(B. MURALIDHARA PAI)
JUDGE**

KMS
CT: CMU