



**IN THE HIGH COURT OF KARNATAKA,
AT DHARWAD**

DATED THIS THE 23RD DAY OF MARCH, 2026

**BEFORE
THE HON'BLE MR. JUSTICE RAVI V.HOSMANI**

MISCELLANEOUS FIRST APPEAL NO.102888 OF 2015 (MV-I)

BETWEEN:

SOU. SUPRIYA SUNILA SHINDE
AGE: 28 YEARS,
OCC: TAILORING & HOUSEHOLD (NOW NIL),
R/O: ANAGOL, BELAGAVI.

...APPELLANT

(BY SRI VITTHAL S. TELI, ADVOCATE)

AND:

1. MR. SUNIL BHARAMA SHINDE
AGE: MAJOR, OCC: SERVICE,
R/O: TANAJI GALLI, AT: NILAJI VILLAGE,
TQ: & DIST: BELAGAVI.
2. THE DIVISIONAL MANAGER,
THE NEW INDIA ASSURANCE COMPANY,
CLUB ROAD, BELAGAVI.

...RESPONDENTS

(BY SMT. SHARMILA M. PATIL, ADV. FOR R2;
NOTICE TO R1 IS SERVED)

THIS MFA IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLE ACT, AGAINST THE JUDGMENT AND AWARD DATED 19.06.2015 PASSED IN MVC NO.667/2013 ON THE FILE OF THE VI ADDITIONAL DISTRICT AND SESSIONS JUDGE AND ADDITIONAL MACT, BELAGAVI, DISMISSING THE PETITION FILED UNDER SECTION 166 OF MV ACT & ETC.



THIS MFA COMING ON FOR ADMISSION, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE RAVI V.HOSMANI

ORAL JUDGMENT

Challenging judgment and award dated 19.06.2015 passed by VI Additional District & Sessions Judge & Additional MACT, Belagavi, ('**Tribunal**' for short) in MVC no.667/2013, this appeal is filed.

2. Sri Vitthal S. Teli, learned counsel submitted, appeal was by claimant challenging dismissal of claim petition. It was submitted, on 08.12.2012, when claimant-petitioner was pillion rider on motorcycle no.KA-22/EC-155 on Belagavi-Goa road, her husband (rider) rode it in rash and negligent manner and near Jamboti village, lost control, due to which it skidded. Petitioner fell down and sustained injuries. Even after treatment, she sustained loss of earning capacity and filed claim petition against owner and insurer of motorcycle under Section 166 of Motor Vehicles Act, 1988 ('**MV Act**' for short).



3. Despite service of notice, owner did not appear and was placed *ex parte*. Only insurer opposed claim petition on all counts. Based on pleadings, Tribunal framed issues and recorded evidence.

4. Claimant along with Dr.AB Patil and another deposed as PWs.1 to PW.3 and got marked Exs.P1 to P11. Insurer examined its official as RW1 and got marked Exs.R1 and R2.

5. On consideration, Tribunal dismissed claim petition on ground that claimant had failed to file FIR immediately after accident and thereby failed to establish actionable negligence against owner and insurer of motorcycle. Aggrieved, present appeal was filed.

6. It was submitted, while there was no dispute about proposition that burden would lie on claimant to establish that she sustained injuries on account of rash and negligent riding/driving of motor vehicle by its rider/driver and it would suffice for claimant to rely on police investigation records to *prima facie* establish said aspect, it would be stretching



proposition too far to contend that without police complaint, claim petition would not be tenable. It was admitted, in order to establish actionable negligence against rider of offending motorcycle, claimant not only pleaded occurrence of accident due to rash and negligent riding of motorcycle by its rider, but also reiterated same in deposition. In cross-examination, suggestions made, admit occurrence of accident involving insured vehicle. Though a suggestion is made that claimant sustained injuries due to fall in kitchen, there is absolutely no material to support same. In fact, same is not even supported by insurer's own pleading.

7. On other hand, during cross-examination of RW1, it is elicited that insurance policy was in force as on date of accident and even pillion rider would be entitled for compensation since it was comprehensive policy. Besides, there are various suggestions about manner of occurrence of accident involving insured vehicle. There is also a suggestion about accident having occurred due to rider of motorcycle riding it in high speed. Even medical records produced by claimant are



consistency with claimant's version. Perusal of admission, as well as discharge summary would fall in line with claimant's version that accident occurred while claimant was proceeding on Goa - Belagavi road on 08.12.2012 at 05:30 p.m. and claimant is examined for injuries sustained on same day at 06:50 p.m. In view of said material, finding of Tribunal that in absence of filing of complaint, claimant could not establish actionable negligence against owner and insurer would be contrary to law and material on record. Hence dismissal of claim petition would not be justified.

8. On quantum, it was submitted, as on date of accident, claimant stated that she was 30 years of age doing tailoring and earning Rs.8,000/- per month. Even if notional income for said period at Rs.6,500/- is taken and physical disability assessed by PW2 is considered, claimant would be entitled for compensation towards 'future loss of income', 'pain and suffering', 'loss of amenities' apart from compensation towards 'loss of income during laid up period', 'medical expenses' and other 'incidental expenses'. It was submitted that claimant



had produced medical bills for a total sum of Rs.3,771/-. And entitled for same. On said ground sought for allowing appeal.

9. On other hand Smt.Sharmila M. Patil learned counsel for respondent no.2-insurer opposed appeal. It was submitted, admittedly there was no complaint filed immediately after accident. Admittedly rider of motorcycle was none other than Claimant's husband. Therefore, absence of any police investigation records would raise serious doubt about claimant's version and rightly appreciating said facts and circumstances, claim petition was dismissed. Therefore there was no ground for interference.

10. Heard learned counsel, perused impugned judgment and award and record.

11. From above, and since only claimant is in appeal, points that arise for consideration are:

- i. Whether dismissal of claim petition calls for interference?*
- ii. If so, quantum of compensation to be awarded?*



12. **Point no.1** : Indeed a claim petition under Section 166 of MV Act could be maintained only if claimant pleads and establishes actionable negligence against owner/insurer of vehicle involved in accident. Claim petition herein bears such assertions. In instant case, insurer has not denied or disputed injuries sustained by claimant, but sought to contend that injuries were not on account of any accident involving insured vehicle. Though normally it is wont on part of claimant to rely on police investigation records to establish negligence, same is not mandatory requirement. It would be open for claimant to establish actionable negligence based on any other relevant material. As per claimant's version expressed in claim petition, accident occurred at 05:30 p.m. on 08.12.2012, when claimant was travelling as pillion on motorcycle, her husband was riding. Ex.P3-discharge card and Ex.P9-OPD record are consistent insofar as date of occurrence of accident. In fact, discharge summary bears 'MLC' endorsement. Date and time of examination of claimant at hospital is 06:50 p.m. on 08.12.2012, which would also corroborate claimant's pleadings. Manner of occurrence of accident as per pleadings are reiterated in



deposition of claimant as PW1. In cross-examination there is no suggestion that without any accident, claim petition was filed.

13. On other hand there is a specific suggestion by insurer that claimant sustained injuries on account of fall at her house, without any basis for such suggestion.

14. On other hand, suggestion that accident occurred on Goa road and claimant fell on left side after accident, that accident occurred due to riding of motorcycle in high speed would indicate tacit admission about occurrence of accident involving insured vehicle. Further, RW1 admitted Ex.R2-policy was in force as on date of accident and inmates of insured vehicle would be covered would require no further corroboration.

15. Under above circumstances finding of Tribunal that claimant failed to establish actionable negligence against owner/insurer would be contrary to material on record and perverse. Hence point no.1 is answered in affirmative.

16. **Point no.2** : On quantum, though claimant stated that she was 28 years of age and earning Rs.8,000/- per month



by tailoring work, same is not substantiated. Therefore notional income for year 2012 at Rs.6,500/- has to be considered. As per medical treatment records, claimant sustained fracture of right radius, assessed by PW2 to have caused disability to extent of 35% to affected limb by issuing Ex.P5-disability certificate. Perusal of same reveals restriction of movement of right wrist is noted. Considering age and occupation of claimant, assessment of limb disability may be considered at 10% towards 'loss of earning capacity'. Multiplier applicable to age of claimant would be '17'. Thus, compensation towards 'future loss of income' would be:

$$\text{Rs.6,500/-} \times 10\% \times 12 \times 17 = \textbf{1,32,600/-}$$

17. Claimant sustained one fracture. As such, claimant is held entitled for compensation of **Rs.30,000/-** towards 'pain and suffering'. Claimant has produced medical bills for a total sum of **Rs.3,771/-** supported with Ex.P7- prescriptions. Therefore claimant is awarded said amount towards 'medical expenses'. Though claimant has stated that she had visited hospital several times as outpatient and took inpatient



treatment, same is not supported by any specific material. Hence, global compensation of **Rs.5,000/-** is awarded towards 'conveyance, attendance and other incident expenses'.

18. Normally fractures take about 3 months to heal. Taking said period as layoff, claimant is awarded **Rs.19,500/-** towards 'loss of income during laid up period'. Claimant is noted to have sustained permanent physical disability. Considering extent of disability sustained and age, it is found appropriate to award sum of **Rs.30,000/-** towards 'loss of amenities'.

19. Thus, claimant is held entitled for total compensation of **Rs.2,20,871/-**. Point no.2 is answered partly in affirmative. Consequently, following:

ORDER

- i. Appeal is allowed in part.
- ii. Dismissal of claim petition under Judgment and award dated 19.06.2015 passed by VI Additional District & Sessions Judge & Additional MACT, Belagavi in MVC no.667/2013 is set aside. Claim petition is allowed in part.



- iii. Claimant is held entitled for total compensation of Rs.2,20,871/- with interest at 6% per annum from date of claim petition till deposit.
- iv. Respondent no.2-Insurer is directed to deposit compensation amount within a period of 6 weeks from date of receipt of certified copy of this judgment.
- v. On deposit, Tribunal is directed to release entire compensation to claimant.

Sd/-
(RAVI V.HOSMANI)
JUDGE

EM, CT:VP
LIST NO.: 1 SL NO.: 17