



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD
DATED THIS THE 25TH DAY OF MARCH, 2026
BEFORE
THE HON'BLE MR. JUSTICE RAVI V.HOSMANI
MISCELLANEOUS FIRST APPEAL NO.24606 OF 2012 (MV)

BETWEEN:

1. SHRI SHREEDHAR SUBRAY MADIVAL,
AGE: 39 YEARS, OCC: COOLIE,
2. SMT.MANGALA W/O SHREEDHAR MADIVAL,
AGE: 34 YEARS, OCC: HOUSEWIFE,
BOTH ARE R/O HOSAKULI, HONNAVAR, KARWAR.
...APPELLANTS

(BY SMT.INDIRA M. NAIK, ADVOCATE-ABSENT)

AND:

1. SHRI VENKATESH G. GOUDA,
REGD. OWNER OF AUTO RICKSHAW
BEARING NO.KA-47/1091,
R/O HARKADE, DIVIGI KUMATA, U.K. DISTRICT.
2. THE DIVISIONAL MANAGER,
UNITED INDIA INSURANCE CO. LTD.,
DIVISIONAL OFFICE, KAIKINI ROAD, KARWAR.
...RESPONDENTS

(BY SRI MK SOUDAGAR, ADVOCATE FOR R2-ABSENT;
NOTICE TO R1 IS SERVED)

THIS MFA IS FILED UNDER SECTION 173(1) OF
MOTOR VEHICLES ACT PRAYING TO SET ASIDE THE
JUDGMENT AND AWARD DATED 22.11.2011 IN MVC
NO.9/2010 ON THE FILE OF ADDITIONAL M.A.C.T. AT
HONNAVAR AND ETC.

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



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

ORAL JUDGMENT

Challenging judgment and award dated 22.11.2011 passed by Additional MACT, Honnavar (**'Tribunal'** for short) in MVC no.9/2010, this appeal is filed.

2. Though matter is of year 2012, there is no representation from any party. Since appeal is 13 years old, it is taken up for disposal based on available material.

3. Appeal is by claimant challenging dismissal of claim petition. As per impugned award, claim petition was filed under Section 166 of Motor Vehicles Act, 1988 (**'MV Act'** for short) stating that on 17.08.2009, Tanuja Shreedhar Madival was travelling in an auto rickshaw no.KA-47/1091 along with her mother from Kumta towards Manki, when an unknown vehicle dashed against auto rickshaw from behind. In accident, Tanuja sustained grievous injuries and died during treatment. It was alleged that driver of auto rickshaw was driving it in rash and negligent manner on



highway and accident occurred due to his rash and negligence driving also.

4. On service of notice, respondents/owner and insurer entered appearance. Owner filed objections denying claim petition averments in general and specifically denying accident had occurred due to negligent driving of auto rickshaw by its driver. It was contended, accident occurred due to rash and negligent driving of unknown vehicle that had dashed against auto rickshaw. It was stated auto was duly insured with respondent no.2 - insurer and driver was having valid licence as on date of accident and therefore, owner was entitled for indemnification.

5. Respondent no.2 - insurer opposed claim petition on all counts including violation of terms and conditions of policy and seeking for exoneration of insurer.

6. Based on pleading, Tribunal framed following issues.

"1. *Whether the petitioners prove that on 17.8.2009 at about 6.00 p.m. near Ramaleela Hospital in Manaki of Kumta taluk the deceased Tanuja Shreedhar*



Madival being passenger in the Auto rickshaw bearing No.KA-47/1091 had met with an accident due to rash and negligent driving of the said Auto rickshaw by its driver and the deceased Tanuja Shreedhar Madival succumbed to injuries sustained in the accident as averred?

2. *Whether the petitioner is entitled to any compensation and if so, what amount and from whom?*
3. *What order and award?"*

7. Claimant no.2 deposed as PW1 and got marked Exhibits P1 to P11. Owner deposed as RW1 and got marked Exhibits R1 to R6. Insurer did not lead evidence.

8. On consideration, Tribunal held issue no.1 in negative, issue no.2 as not surviving for consideration and issue no.3 by dismissing claim petition. Aggrieved present appeal is filed.

9. Grounds urged in memorandum of appeal are that judgment and award passed by Tribunal was contrary to material on record and Section 147 of MV Act provided for seeking compensation in case of death or bodily injury caused by or arising out of use of vehicle in a public place.



Same would justify claim as arising out of use of vehicle.
Therefore, dismissal of claim petition was not justified.
There is no representation on behalf of insurer.

10. Perused impugned judgment and record.

11. Appeal is by claimant challenging dismissal of claim petition. Therefore, point that would arise for consideration is:

‘Whether dismissal of claim petition was justified or whether claimant was entitled for compensation?’

12. Perusal of award reveals, Tribunal took note of assertion by claimant in claim petition that accident occurred due to rash and negligent driving of auto by its driver as well as some unknown vehicle whereas contents of Ex.P1 - complaint filed on very day of accident alleged that an unknown vehicle dashed against auto rickshaw from behind causing it to go off road and fall into a ditch resulting in death one of occupants. There was no clarity about unknown vehicle. Even police after investigation were unable to trace same. Tribunal noted that complaint filed



was arraigning driver of auto rickshaw for accident whereas police investigation records produced, do not indicate that a driver of auto rickshaw was charge sheeted. Tribunal also referred to admission in cross-examination that claimant was unable to confirm contents of petition and examination-in-chief affidavit to be based on her instructions. It noted, claimant virtually disowned pleadings and deposition. She also denied knowledge of contents of complaint given to police.

13. Based on above, Tribunal held claimant had failed to establish actionable negligence against driver, owner and insurer of auto rickshaw and dismissed claim petition.

14. Perusal of FIR with complaint, spot panchanama, post-mortem report, hospital treatment records and ration card reveals that complaint was filed by mother of deceased i.e. claimant very day of accident. In complaint, it is clearly stated that accident was caused by unknown lorry which suddenly came to left side of road and dashing against auto from behind. Spot panchanama drawn would corroborate



accident spot and claimant's assertion. Treatment records or ration card would not be relevant in establishing actionable negligence against respondents.

15. Perusal of deposition of PW1 would indeed indicate, claimant disowning contents of complaint as well as contents of claim petition. She also candidly stated, claim petition was filed at instance of counsel. Under such circumstances, where party disowned pleadings, dismissal of claim petition by Tribunal cannot be said to be contrary to record or unjustified. Hence, no ground to interfere. Appeal is ***dismissed***.

Sd/-
(RAVI V.HOSMANI)
JUDGE

CLK
CT:VP
LIST NO.: 1 SL NO.: 8