HC-KAR
NC: 2026:KHC:36445
MFA No. 2946 of 2023
CNR: KAHC010222842023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

MISCELLANEOUS FIRST APPEAL No. 2946 OF 2023

(MV-DM)

BETWEEN:

1. SRI BHARATH. H. N.
S/O NAGANNA
AGED ABOUT 30 YEARS
R/AT No.497
HULIVANA VILLAGE
MANDYA TALUK
AND DISTRICT.

...APPELLANT

(BY SMT. BHUSHANI KUMAR, ADVOCATE)

AND:

1. SRI S. PACKIYAM
D/O D SANMUGAM
MAJOR IN AGE
R/AT No. 171
KULICHOLAI PUDUMAND OOTY
TALUK, UDHAKAMANADALAM DISTRICT
THAMIL NADU – 643 001.

2. THE BRANCH MANAGER
THE NEW INDIA ASSURANCE CO. LTD.,

No. T P UB, J L B ROAD
CHAMUNDIPURAM
MYSORE.

...RESPONDENTS

(BY SRI B C SEETHARAMA RAO, ADVOCATE FOR R2
V/O DTD. 07.07.2025 NOTICE TO R1 D/W)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT, AGAINST THE JUDGMENT AND AWARD DATED:28.06.2022 PASSED IN MVC No.760/2019 ON THE FILE OF THE II ADDITIONAL SENIOR CIVIL JUDGE AND MACT, MANDYA, DISMISSING THE CLAIM PETITION FOR COMPENSATION.

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

CORAM: HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

ORAL JUDGMENT

This appeal is filed by the claimant challenging the judgment and award dated 28.06.2022 passed in MVC No.760/2019 of II Additional Senior Civil Judge and MACT, Mandya.

2. Even though this appeal is listed today for admission, it is taken up disposal with the consent of learned counsel for appellant and learned counsel for respondent No.2.

3. The appellant/claimant made a claim petition praying to award cost of repair of the vehicle which has sustained damage in a road traffic accident which occurred on 14.12.2018 contending that the accident occurred due to rash and negligent driving of driver of lorry bearing Regn.No.TN-43-H-2979. The claimant stated that he has spent Rs.1,40,655/- for repair of vehicle and he got reimbursement from the insurer of his vehicle i.e. Cholamandalam MS General Insurance Co.Ltd. in a sum of Rs.65,939/-. The claimant has been examined as PW.1 and examined one witness as PW.2 and got marked Exs.P1 to P17. The respondents have not lead any evidence. The Tribunal appreciating the evidence on record has dismissed the claim petition. Aggrieved by the judgment and award of the Tribunal, the claimant has filed the present appeal.

4. Heard learned counsel for the appellant and learned counsel for respondent No.2/insurer.

5. Learned counsel for the appellant would contend that the claimant/appellant has spent Rs.1,40,655/- and out of that claimant got reimbursement in a sum of Rs.65,939/- from Cholamandalam MS General Ins. Co.Ltd and as the accident is caused by respondent No.1 whose vehicle was insured with respondent No.2, they are liable to pay the balance amount. She further submits that PW.2, Service Manager, Akshara Motors, has stated that total bill amount of Rs.1,09,652/- out of that Cholamandalam MS General Ins.Co.Ltd has reimbursed Rs.65,939/- and balance of Rs.43,713/- has been paid by the claimant and he has issued invoice in that regard. With this she prayed to allow the appeal.

6. Learned counsel for respondent No.2/insurer would contend that claimant has not produced any document as to why portion of the claim has been rejected by the Cholamandalam MS General Ins.Co.Ltd. The claimant is having policy with Cholamandalam MS General

Ins.Co.Ltd. The claimant should not get double benefit from the claim made against respondent No.2/insurer. The claimant has not produced the bills for having paid Rs.43,713/- and what is issued by PW.2 is an estimation. Considering all these aspects, the Tribunal has rightly dismissed the claim petition.

7. Having heard the learned counsels, the Court has perused the judgment, award and trial Court records. The following point arise of consideration:

Whether the Tribunal is justified in dismissing the claim petition?

8. The case of the claimant is that goods tempo bearing Regn.No.KA-11-B-5156 has been damaged in a road traffic accident occurred on 14.12.2018 due to rash and negligent driving of driver of lorry bearing Regn.No.KA-11-V-0474 which caused the accident resulting in damage to the goods tempo of the claimant.

The Tribunal has considered the said aspect in issue No.1 and answered issue No.1 in affirmative holding that the claimant has proved that his goods tempo has been damaged in a road traffic accident due to rash and negligent driving of driver of lorry bearing No.KA-11-V-0474.

9. PW.2 is the Service Manager in Akshara Motors and he has stated in his evidence that goods vehicle KA-11-B-5156 was brought for repair to their show room and after examining it have given estimation in a sum of Rs.1,52,180/- for its repair. He further stated that total bill for repair of goods tempo is Rs.1,09,652/- and out of that amount they have received Rs.65,939/- from M/s.Cholamandalam General Ins.Co.Ltd and balance of Rs.43,713/- has been paid by the claimant and issued one invoice receipt to them. Exs.P13 to 17 are marked in the evidence of PW.2. Ex.P13 is the Job Card invoice containing details of repair of the vehicle of the claimant.

On the first page of the said document, the total bill amount is mentioned as Rs.1,09,652/- and out of it they have received Rs.65,939/- from Cholamandalam General Ins.Co.Ltd and balance is Rs.43,713/- Ex.P17 is the e-mail from Cholamandalam MS General Insurance Co.Ltd. The company has approved claim of Rs.65,939/- and deducted Rs.1,600/- towards salvage amount.

10. Considering all these aspects and evidence of PW.2 the claimant has paid a sum of Rs.43,713/- for the repair work out of Rs.1,09,652/- after getting reimbursement of Rs.65,939/- from Cholamandalam Insurance Company. What is the reason and why the Cholamandalam Insurance Company has not reimbursed entire repair bill amount is not brought on record either by the claimant or by respondent No.2. As the damage has been caused to the vehicle of the claimant due to rash and negligent driving of the insured vehicle, respondent No.2 being the insurer is liable to pay the said balance amount

in a sum of Rs.43,713/- with interest. Without considering this aspect the Tribunal has erred in dismissing the claim petition. Therefore, the impugned judgment requires to be set-aside and the claim petition requires to be allowed.

11. In the result, the following:

<u>ORDER</u>

(i) Appeal is allowed.

(ii) The impugned judgment dated 28.06.2022 passed in MVC No.760/2019 by the II Additional Senior Civil Judge, Member, MACT, Mandya, is set-aside.

(iii) The claim petition stands allowed in part.

(iv) Respondent No.2/insurer is liable to pay Rs.43,713/- with interest @ 6% p.a. from the date of petition till realization.

(v) Respondent No.2/insurer shall deposit the said amount with interest before the Tribunal within a period of six weeks from this day, failing which, it is liable to pay interest @ 9% p.a. from this day till payment.

Sd/-
(SHIVASHANKAR AMARANNAVAR)
JUDGE

DKB
List No.: 1 Sl No.: 34