



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 31<sup>ST</sup> DAY OF OCTOBER, 2023**

**BEFORE**

**THE HON'BLE MR JUSTICE RAJENDRA BADAMIKAR**

**MISCELLANEOUS FIRST APPEAL NO. 10703 OF 2012 (MV-I)**

**C/W**

**MISCELLANEOUS FIRST APPEAL NO. 11408 OF 2012 (MV-I)**

**IN MFA NO.10703/2012**

**BETWEEN:**

UNITED INDIA INSURANCE CO.LTD.,  
NO.112, I FLOOR, 80 FEET ROAD,  
NEAR CANARA BANK, SANJAYANAGAR,  
ASHWATHANAGAR BUS STOP,  
BANGALORE.

THROUGH ITS REGIONAL OFFICE,  
# 5 & 6TH FLOORS,  
KRISHI BHAVAN BUILDING,  
NRUPATHUNGA ROAD,  
BANGALORE - 560 0001,  
REP. BY ITS DEPUTY MANAGER  
SRI. K. CHANDRASHEKAR.

...APPELLANT

(BY SRI. S. KRISHNA KISHORE, ADVOCATE)

**AND:**

1. SMT. G. SHYALASHREE,  
AGED ABOUT 45 YEARS,  
W/O B.S. VENKATESH MURTHY,  
RESIDING AT NO. 189,  
60 FEET ROAD,  
MEI LAYOUT, 2<sup>ND</sup> STAGE,



BAGALAGUNTE,  
BANGALORE.

2. SMT. M.A. SUNITHA,  
MAJOR,  
W/O LATE SURESH,  
"KOKILA NILAYA", NO.66,  
3<sup>RD</sup> CROSS, KEB LAYOUT,  
GEDDALAHALLI,  
BANGALORE - 560 094.

...RESPONDENTS

(BY SRI. P. MAHADEVA SWAMY, ADVOCATE FOR R1;  
SMT. B.V. VIDYULATHA, ADVOCATE FOR R2)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE  
JUDGMENT AND AWARD DATED:01.08.2012 PASSED IN MVC  
NO.4895/2011 ON THE FILE OF THE VIII ADDITIONAL JUDGE,  
MEMBER, MACT, COURT OF SMALL CAUSES, BANGALORE,  
AWARDING A COMPENSATION OF RS.3,25,000/- WITH  
INTEREST @ 6% P.A.(EXCEPT FUTURE MEDICAL EXPENSES)  
FROM THE DATE OF PETITION TILL DEPOSIT IN COURT AND  
ETC.,

**IN MFA NO.11408/2012**

**BETWEEN:**

G. SHYLASHREE,  
AGED ABOUT 45 YEARS,  
W/O B.S. VENKATESH MURTHY,  
RESIDING AT NO. 189,  
60 FEET MAIN ROAD,  
MEJ LAYOUT,  
2<sup>ND</sup> STAGE,  
BAGALAGUNTE,  
BANGALORE - 43.

...APPELLANT



(BY SRI. P. MAHADEVA SWAMY, ADVOCATE)

**AND:**

1. THE MANAGER,  
THE UNITED INDIA INSURANCE CO.LTD.,  
NO.112, 1ST FLOOR, 80 FEET ROAD,  
NEAR CANARA BANK, SANJAYANAGAR,  
ASHWATHANAGAR BUS STOP,  
BANGALORE - 70.
2. M.A. SUNITHA,  
W/O LATE SURESH,  
"KOKILA NILAYA", NO.66,  
3<sup>RD</sup> CROSS, KEB LAYOUT,  
GEDDALAHALLI,  
BANGALORE - 560 094.

...RESPONDENTS

(BY SRI. S. KRISHNA KISHORE, ADVOCATE FOR R1;  
VIDE ORDER DATED 28.02.2014, NOTICE TO  
R2 DISPENSED WITH)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE  
JUDGMENT AND AWARD DATED:01.08.2012 PASSED IN MVC  
NO.4895/2011 ON THE FILE OF THE MEMBER, MACT, VIII  
ADDITIONAL JUDGE, COURT OF SMALL CAUSES, BANGALORE,  
PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION  
AND SEEKING ENHANCEMENT OF COMPENSATION AND ETC.,

THESE APPEALS ARE COMING ON FOR FINAL HEARING,  
THIS DAY, THE COURT DELIVERED THE FOLLOWING:

**JUDGMENT**

These MFA Nos.11408/2012 and 10703/2012 are  
filed by the claimant as well as the Insurance Company,  
challenging the judgment and award passed in MVC



No.4895/2011 by MACT-V, Court of Small Causes, Bengaluru City dated 01.08.2012.

2. The brief factual matrix leading to the case are that on 27.04.2011 at about 3.30 p.m., the claimant was proceeding as an occupant of the car bearing registration No. KA 04 M 5683 from Badravathi to Benglauru, when car reached near the terminal bridge of outer ring road at Kyathsandra, Tumkur, the driver of the car drove the vehicle in a rash and negligent manner and lost control over the vehicle and dashed to a road side divider, resulting in the accident. Due to the said impact, the petitioner sustained grievous injuries. Hence, she was admitted in the hospital and she was taken treatment and spent a lot of amount towards treatment. Hence, she has filed a claim petition under Section 166 of Motor Vehicles Act, claiming compensation of Rs.5,00,000/-.

3. The claim petition was resisted by the respondents disputing the liability. The Tribunal after appreciating the oral and documentary evidence has



awarded a total compensation of Rs.3,25,000/- with interest at the rate of 6% p.a., from the date of the petition by fastening the liability on both the respondents and primary liability was fastened on respondent No.1 - Insurer.

4. By aggrieved by this judgment and award, the United India Insurance Company Ltd., has filed the appeal challenging the liability in MFA No. 10703/2012. The claimant has filed MFA No. 11408/2012 for seeking enhancement.

5. Heard the arguments and perused the records.

6. The learned counsel for the United Insurance Company Ltd., would contend that as per Ex.R2- Policy Copy, it is an act policy and admittedly, the claimant is not a owner and only an occupant of the vehicle and she does not fall under the category of third party. Hence, he would contend that no additional premium was paid for covering the risk of the inmates of the car and hence, question of



fastening the liability on the Insurance Company does not arise at all. As such, he would dispute the liability.

7. Per contra, the learned counsel appearing for the claimant would contend that the compensation awarded by the Tribunal was on lower side and the claimant-appellant has used her earned leave for undergoing treatment and the medical reimbursement was limited and hence, he would seek for enhancement and he has also filed I.A.No.2/2012, seeking production of additional evidence.

8. The learned counsel for respondent-owner would support the judgment and award passed by the Tribunal.

9. Having heard the arguments and perusing the records, it is undisputed fact that the appellant was inmate of the offending vehicle, which met with an accident near Kyathsandra in outer ring road of Tumkur. It is further an undisputed fact that the claimant has suffered cut lacerated wound over right forehead, cut lacerated wound



over face extending from filters on right nostril, right embed cut and tenderness of over right maxilla and mandible region.

10. Ex.P.6 is the wound certificate and Ex.P.7 is the discharge summary pertaining to the procedure she underwent for treatment. Ex.P.8 is the photograph of the claimant after completion of the procedure, which disclosed that her right portion of the face was disfigured. Hence, it is evident that the petitioner has suffered grievous injuries.

11. The Tribunal has awarded Rs.1,00,000/- under the head of pain and agony and looking to disfiguration and mental pain and suffering, I propose to award **Rs.1,25,000/-** under the said head. Towards medical expenses Rs.50,000/- was awarded by the Tribunal considering the benefit of reimbursement as she is a public servant.

12. Though the learned counsel for claimant has produced a document along with I.A.No.2/2012 in the



form of a certificate issued by the Deputy Director that only Rs.2,15,072/- was sought and no medical reimbursement was made, why the medical reimbursement was not allowed is not at all forthcoming and the Office Order is not produced to substantiate this aspect. Admittedly, the claimant is a public servant and she is entitled for reimbursement to the major extent and hence, this document in the form of certificate cannot be accepted.

13. Considering these aspects, the award of medical expenses to the tune of Rs.50,000/- and future medical expenses to the tune of Rs.50,000/- awarded by the Tribunal are reasonable one and does not call for any interference.

14. Towards loss of amenities and unhappiness, the Tribunal has awarded Rs.1,00,000/- under the head. As observed the above, there is a disfiguration of the face of the claimant towards her right side of the face. Considering this disfiguration of face of the claimant and





that to a woman it is required to be considered seriously and considering this aspect towards loss of amenities and unhappiness, I propose to award **Rs.1,25,000/-** as against Rs.1,00,000/- awarded by the Tribunal.

15. The Tribunal has awarded Rs.25,000/- under the head of loss of income during treatment period. Along with I.A.No.2/2012 the petitioner has also produced an Office Memo, document at Sl.No.4 also disclosed that she has availed 63 days earned leave. Hence, she could have en-cashed this leave and as such, she is entitled for reimbursement of this encashment. The Tribunal has already awarded Rs.25,000/- towards loss of income during treatment period. Considering this aspect, she is entitled for another **Rs.25,000/-** under the head of loss of income during treatment for a period nearly two months to the tune of Rs.50,000/-. Hence, the claimant is entitled for total compensation under the various heads as under:



1.	Pain and agony	Rs.1,25,000/-
2.	Medical expenses	Rs.50,000/-
3.	Loss of income during laid of period for 2 months	Rs.50,000/-
4.	Loss of amenities and unhappiness	Rs.1,25,000/-
5.	Future medical expenses	Rs.50,000/-
	<b>Total</b>	<b>Rs.4,00,000/-</b>

Hence, the claimant would be entitle for compensation **Rs.4,00,000/-** as against Rs.3,25,000/- awarded by the Tribunal.

16. The Tribunal has fastened the liability on respondent No.1 - Insurance Company on the ground that the claimant being the inmate becomes a third party. From Ex.R2, it is evident that the policy was an act policy and no separate premium was paid covering the risk of the other inmates of the vehicle.

17. In this context, the learned counsel for the appellant/United Insurance Company Ltd., placed reliance on a unreported of this Court in MFA No.498/2014 and



connected matters dated 18.02.2020. The co-ordinate Bench of this Court in the said decision in para No.4, considering the decision reported in **2013 part (1) SCC 731** in the case of **National Insurance Company Ltd., v/s Balakrishnan and another** has held that the issue is not more res integra and the "Act policy" does not cover liability of an occupant in a car. The same view is also taken by the Apex Court in **Special Leave Petition (Civil) Diary No(s).36722/2019**, in the case of **The Branch Manager Legal National Insurance Company Limited V/s Pintu and Another**, wherein it is held that a pillion rider does not fall under the category of third party, when it is an "Act policy".

18. In view of these aspects, and considering Ex.R2, it is evident that no separate premium was paid to cover the risk of the inmates of the vehicle and hence, question of fastening the liability on the Insurance Company does not arise at all. As such the appeal filed by the Insurance Company in MFA No.10703/2012 needs to



be allowed. Simultaneously, the appeal filed by the claimant in MFA No.11408/2012 also needs to be allowed-in-part. Accordingly, I proceed to pass the following:

### **ORDER**

1. MFA No.10703/2012 is hereby ***allowed***.
2. The liability is fastened on respondent No.1 - Insurance Company, is set aside and the liability is restricted as against respondent No.2/owner alone.
3. MFA No.1108/2012 is ***allowed-in-part***. The claimant/appellant is held entitled for total compensation of **Rs.4,00,000/-** as against Rs.3,25,000/- awarded by the Tribunal to be paid by respondent No.2/owner.
3. The enhanced compensation of **Rs.75,000/-** shall carry interest at the rate of 6% p.a., from the date of petition. It shall be deposited before the Tribunal with in a period of six weeks from today.
4. Respondent No.2 - owner is directed to deposit the entire enhanced compensation with



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**MFA No. 10703 of 2012**  
***C/W MFA No. 11408 of 2012***

accrued interest thereon. The same shall be released infavour of the claimant.

5. The statutory deposit made by the United Insurance Company Ltd., in MFA No.10703/2012, shall be refunded to the Insurance Company.

**Sd/-**  
**JUDGE**

MS\*  
List No.: 1 Sl No.: 19  
CT:SNN