

**(2016) 12 KAR CK 0013**  
**In the Karnataka High Court**  
**Case No : MFA No. 5015 of 2011(Mv)**

Divisional Manager, M/s. National Insurance Co. Ltd.

APPELLANT

Vs

M. Ganesh Muniswamy

RESPONDENT

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**Date of Decision :** 05-12-2016

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 166

**Citation :** (2017) 1 AirKarR 386

**Hon'ble Judges :** Mr. B. Manohar, J.

**Bench :** Single Bench

**Advocate :** Are Served, for the Respondent Nos. 1, 2 & 3; Sri. E.R. Diwakar,  
Advocate, for the Appellant

**Final Decision :** Dismissed

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## Judgement

B. Manohar, J. - The National Insurance Company has preferred this appeal challenging the legality and correctness of the judgment and award dated 24-12-2010 made in MVC No.1 135/2007 passed by the Motor Accident Claims Tribunal-II, Shimoga (hereinafter referred to as "the Tribunal for short).

2. The first respondent herein filed a claim petition contending that on 19-08-2007, at about 11.00 a.m., after performing pooja at Om Shakthi temple, while he was returning to his house, a motor cycle bearing Registration No.KA-14/S-9177 ridden by the second respondent in a rash and negligent manner dashed against the claimant. Due to that, the claimant fell down and sustained grievous injuries. Immediately after the accident, he had taken treatment in Meena Nursing Home at Bhadravathi. He claims that he had spent huge money for his treatment. Due to the rash and negligent riding of the motorcycle, the accident occurred and sought for compensation of Rs.22,90,000/-.

3. The insurance company defended the case by filing written statement and contended that the insured motor cycle was not involved in the accident. The complaint has been lodged one month after the accident. No material has been

produced to show that in the road traffic accident occurred on 19-08-2007, the claimant has sustained injuries and sought for dismissal of the claim petition.

4. On the basis of pleadings of the parties, the Tribunal framed necessary issues.

5. The claimant in order to prove his case got examined himself as P.W. 1 and also examined the doctor who treated him as P.W.2 and got marked the documents as Ex.PI 1 Ex.P9. On behalf of the respondents, two of the officers of the insurance company were examined as R.W.1 and R.W.2 and the insurance policy of the offending vehicle was marked as Ex.R1.

6. The Tribunal, after appreciating the oral and documentary evidence let in by the parties and taking into consideration IM V report, wound certificate, Panchanama, copy of the complaint and FIR held that due to the rash and negligent riding of the offending motor cycle by the second respondent, the accident occurred and the claimant is entitled for compensation. Though the insurance company had taken a contention that the insured vehicle was not involved in the accident and the same has been falsely implicated in the accident, no document has been produced to substantiate the same. With regard to quantum of compensation is concerned, for the injuries he has sustained in the accident he had spent huge money for his treatment. In support of which, he had also produced medical bills. Taking into consideration the injuries sustained by the claimant, the Tribunal awarded a sum of Rs.25,000/- towards pain and suffering and Rs.20,000/- towards loss of amenities, comforts and happiness. In all, the Tribunal has awarded a sum of Rs.45.000/- with interest at the rate of 6% p.a. Since the offending motorcycle was covered by the insurance policy, the liability was fastened on the insurance company to compensate the claimant. Being aggrieved by the said judgment and award, the insurance company has filed this appeal.

7. Heard Sri. E. R. Diwakar, learned counsel appearing for the appellant. Though Respondent Nos. 1 to 3 were served with notice, they remained unrepresented. Perused the judgment and award and oral and documentary evidence let in by the parties.

8. The records produced by the parties clearly disclose that the claimant has sustained injuries in the road traffic accident occurred on 19-08-2007. Immediately after the accident, the claimant had taken treatment in Meena Hospital. The Hospital records clearly disclose that he has sustained abrasion over the left knee, pain, loss of mobility and deformity to left clavicle. The doctor who treated the claimant has assessed injury No. 1 as grievous in nature. At the time of accident, the claimant was aged about 37 years. Though the appellant had taken a contention that the insured vehicle has been falsely implicated in the accident, no document has been produced to substantiate the same. At the time of accident, the vehicle was not registered, only the Engine number was mentioned. Subsequently, after registration, vehicle number was mentioned. Though there is delay of one month in lodging the complaint, while lodging the

complaint the reasons for the delay has been explained wherein it has been stated that the rider of the motor cycle Murugan had instructed the claimant not to lodge any complaint before the jurisdictional police and he will take care of his medical expenses and other incidental expenses. Though he admitted the claimant to the hospital, he has not taken care of him, subsequently after discharge from the hospital, the claimant lodged a complaint before the jurisdictional police. On the basis of the said complaint, action has been taken against the rider of the offending motor cycle. The Tribunal taking into consideration the injuries sustained and suffering undergone by the claimant has awarded just and fair compensation. Strict proof of evidence is not applicable to the motor vehicle accident cases, since the Motor Vehicles Act is a social peace of legislation. The duty casts upon the claimant to prove the accident by the offending vehicle. In the instant case, he has sustained injuries in the road traffic accident occurred on 19-08-2007, immediately after the accident, he was admitted to Meena Nursing home at about 12.30 p.m., and taken treatment, wherein he had clearly mentioned that he has sustained grievous injuries in the road traffic accident and MLC was sent to the jurisdictional police. Even though the claimant has not lodged any complaint, on the basis of the MLC report, the police would have taken action. Hence, the delay in lodging the complaint cannot be held against the claimant. Taking into consideration the injuries sustained and suffering undergone by the claimant, the Tribunal has awarded Rs.25,000/- towards pain and suffering and Rs.20,000/- towards loss of amenities, comforts and happiness, which is just and fair compensation. The appellant has not made out a case to interfere with the judgment and award passed by the Tribunal. Accordingly, the appeal is dismissed.

The amount in deposit is directed to be transferred to Motor Accident Claims Tribunal, Shimoga for disbursement.