

KAVP020093592022



Presented on : 27-10-2022
Registered on : 27-10-2022
Decided on : 04-08-2026
Duration:03 years, 09 months, 09 days

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL NO.XV

VIJAYAPURA

Present:

Sri. Sameer Kolli., B.A.L.L.B.,

**IV Addl. Senior Civil Judge and
Member, MACT-XV, Vijayapura**

Dated this the 04th day of August 2026

:MVC No.1272/2022:

PETITIONER/S:

1. Sunil S/o Yamanappa @ Yamanuri Kolakar,
Age: 42 years, Occ: Student,
Represented by his M/G i.e., Yamanappa @ Yamanuri
S/o Sidramappa Kolakar,
R/o Hunashyal Tq.B.Bagewadi Dist.Vijayapur,
now at Darbar Galli, Vijayapur,

(By Sri. H.B.S., Adv for petitioner)

V/s

RESPONDENT/S:

1. Sudeep S/o Basavaraj Bangara.
Age: 40 years, Occ: Business,
R/o Agasbal, Tq.B.Bagewadi,
Dist-Vijayapur-586 208,

(Owner of Goods tum-tum No. KA-28/C-9556 as per RC)

2. Gajusa S/o Moulasa Chapparband,
Age: 42 years, Occ: Business,
R/o Jainapur, Tq.B.Bagewadi, Dist-Vijayapur,

3. The Manager Legal/Claims,
HDFC ERGO General Insurance Co.Ltd.
1st Floor, Virupaksha Building,
Opp. KIMS Hospital, Main Gate,
P. B. Road, Vidya Nagar,
Hubli-580 021,

P No. 2315 2044 0294 7790 000.

Valid from: 26.11.2021 to 25.11.2022

(By Sri. N.B.W., Adv. for Respondent No.1)

(Respondent No.2 placed exparte)

(By Sri. B.S.S.,Adv. for Respondent No.3)

: J U D G M E N T :

This petition is filed by the minor injured-petitioner through his guardian u/s.166 of Motor Vehicles Act, 1988 (MV Act for short) seeking compensation of Rs.10,00,000/- on account of injuries sustained in a road traffic accident.

The brief averments of the petition are as under:

2. That, on 01.04.2022 at about 15:00 hours, when the minor petitioner was traveling in a passenger tum-tum bearing Reg. No. KA-29/A-3064 from Huvinhipparagi to Jayawadagi and when the said tum-tum came near Paramanand temple cross, at that time, another Goods tum-tum bearing Reg. No.KA-28/C-9556 (offending vehicle for short) came in opposite direction at a high speed and in a rash and negligent manner and dashed against the passenger tum tum bearing Reg. No. KA-29/A-3064, due to which minor petitioner sustained grievous viz, *fracture of left radius, right clavicle, depressed fracture of frontal bone and*

other injuries. Immediately, he was shifted to Sanjeevini hospital, Vijayapura and incurred medical expenses of Rs.2,00,000/-. It is further pleaded that, at the time of accident, petitioner was 15 years old and due to the accident he has suffered permanent disability. It is alleged that, the accident has occurred due to gross negligence of driver of the offending vehicle against whom a complaint in Basavan-Bagewadi PS Crime No.79/2022 has been registered. Thus, he has sought compensation of Rs.10,00,000/- with interest at the rate of 18% per annum.

3. In spite of service of notice, the respondent No.2 has not entered appearance, hence, he is placed *exparte*.

Defence of respondent No.1:

4. The respondent has filed written statement denying the petition averments. It is contended that he is the owner of offending vehicle and respondent No.2 was its previous owner and that the time of accident, the offending vehicle was insured with respondent No.3 and thus, respondent No.3 is liable to pay compensation. Thus, he has sought to dismiss the petition.

Defence of respondent No.3:

5. The respondent has filed written statement denying the petition averments and *inter alia*, contending that section 157 (2) of MV Act mandates that once a vehicle is transferred from one owner to another, in that event, the policy has to be transferred within 14 days and in this case the respondent No.1 and 2 have not made any efforts for getting the policy changed and therefore, the respondent No.2 has to be absolved from liability. It is further contended that, there is no contribution of negligence on the part of offending vehicle and in fact, the driver of tum-tum bearing Reg. No. KA-29/A-3064 was negligent and he was driving the said

vehicle in the middle of the road at a high speed and therefore, the liability cannot be saddled upon respondent No.3. On the date of accident, the driver of offending vehicle was not holding a valid driving license and thus, there is breach of policy conditions. On the above grounds, the respondent No.3 has sought to dismiss the petition.

6. ***Based on the rival contentions of the parties, my predecessor in office has framed the following issues:***

: ISSUES :

- 1) *Whether the petitioner proves that, on 01.04.2022 at about 15:00 hours, on Huvin-Hipparagi- Jaayawadagi road, near Paramanand temple cross, due to negligence of driver of Goods tum-tum bearing Reg. No.28/C-9556 he sustained injuries?*
- 2) *Whether the minor petitioner is entitled to the compensation? If so, to what extent and from whom?*
- 3) *What order or award?*

7. In order to prove the case, the minor guardian of injured-petitioner is examined as PW-1 and got marked 08 documents at Exs.P-1 to 8 and closed the side. In rebuttal, the Manager of respondent No.3 is examined as RW-1 and got marked Ex.R-1 and thereby closed the side.

8. Heard the learned counsel for the petitioner and learned counsel for respondent No.3. No arguments are advanced by respondent No.1.

9. Examined the oral and documentary evidence placed on record.

10. ***My findings on the above issues are as under:***

Issue No.1 : In the Affirmative

Issue No.2 : Partly in the Affirmative

Issue No.3 : As per final order

for the following:

:REASONS:

11. **Issue No.1: Documents produced by the petitioner:**

11.1. EX.P.1 is the certified copy of FIR. Ex.P.2 is the certified copy of Complaint. Ex.P.3 is copy of spot panchanama. Ex.P.4 is the copy of MVA report. Ex.P.5 is the wound certificate. Ex.P.6 is the certified copy of charge sheet. Ex.P.7 are 1 to 32 medical bills and Ex.P.8 are 25 medical prescriptions.

Evidence of petitioner:

12. PW.1 has filed his examination – in - chief by way of affidavit reiterating the contents of the petition. He is fully cross-examined by the learned counsel for respondent No.3.

Documents produced by the respondent No.3:

13. EX.P.1 is the insurance policy.

Evidence of respondent No.3:

14. RW.1 has filed his examination - in - chief by way of affidavit reiterating the contents of the written statement. He is fully cross-examined by the learned counsel for petitioner.

Submissions:

15. The learned counsel for petitioner has contended during the course of his arguments that, the minor petitioner has suffered fracture of left radius, fracture of right clavicle, depressed fracture of frontal bone and other injuries in the road traffic accident and the accident has occurred solely due to rash and

negligent driving of the driver of Tum-Tum bearing Reg.No. KA-28/C-9556 against whom the police have filed charge sheet. He further contended that, EX.P.5 reveals the injuries sustained by the minor petitioner and the said injury is grievous in nature. Thus, he has sought to allow the petition.

16. Per contra, the learned counsel for respondent No.3 contended that, there is no nexus with injuries sustained by the minor petitioner and the alleged accident. He further contended that, the accident has occurred solely due to rash and negligent driving of the tum-tum bearing Reg. No. KA-29/A-3064 and the offending vehicle is not at all involved. He has further contended that, after transfer of ownership of offending vehicle from respondent No.2 to respondent No.1, the policy has not been effectively changed and therefore, the respondent No.3 is not liable to pay compensation. Thus, he has sought to dismiss the petition.

17. No arguments are advanced by respondent No.1.

Discussion:

18. Having heard the learned counsel for the petitioner and learned counsel for respondent No.3, I have bestowed my thoughtful consideration to the rival contentions and to the oral and documentary evidence placed on record.

19. A conjoint reading of FIR and complaint at Ex.P-1 and P-2 would reveal that, the alleged incident has occurred on 01.04.2022 at about 15:00 hours, when the minor petitioner was traveling in a passenger tum-tum bearing Reg. No. KA-29/A-3064 from Huvinhipparagi to Jayawadagi and when the said tum-tum came near Paramanand temple cross, at that time, another Goods tum-tum bearing Reg. No.KA-28/C-9556 came in opposite

direction at a high speed and in a rash and negligent manner and dashed against the passenger tum tum bearing Reg. No. KA-29/A-3064 in which the minor petitioner was traveling, due to which minor petitioner sustained grievous injuries.

20. Added to the minor petitioner, the other inmates have also sustained grievous injuries and it is clearly stated that the accident has occurred due to rash and negligent driving by the driver of offending vehicle. After the accident, the petitioner was taken to Sanjeevini hospital, Vijayapura. FIR is registered against the driver of offending vehicle for offence punishable under section 279, 337 and 338 of IPC and also under section 187 of MV Act.

21. Ex.P-3 which is the spot panchanama would indicate that, the accident has occurred near Paramanand temple on Huvinahipparagi-Jayawadagi road and it occurred due to rash and negligent driving by the driver of offending vehicle. The IMV report at Ex.P-4 reveals that, both vehicles have sustained damages and the brake system of both vehicles were in order and the accident has not occurred due to any mechanical defects in both vehicles.

22. Ex.P-5 is the wound certificate of petitioner which reveals that, he has sustained lacerated wound present over right forehead measuring 4 x 3 x 2 cm, abrasion present over right shoulder measuring 3 x 2 c.m with swelling, swelling present over the left wrist and X-ray revealed fracture of right clavicular and distal end of radius on left side and injury No.1 to 3 are grievous in nature.

23. Investigating Officer after completion of investigation has filed charge sheet vide Ex.P-6. A perusal of the contents would reveal that, the accident has occurred on 01.04.2022 at

3:00 p.m near Paramamanand temple cross on Huvinahipparagi-Jayawadagi road and the petitioner was traveling in tum-tum bearing Reg. No. KA-29/A-3064 and offending vehicle came in opposite direction at a high speed and in a rash and negligent manner so as to endanger human life and safety and dashed against the tum-tum in which the petitioner was traveling. The charge sheet is filed against driver of offending vehicle for offence punishable under section 279 and 338 of IPC and also under section 181 and 187 of MV Act.

24. PW.1 has been exhaustively cross-examined by learned counsel for respondent No.3 in which nothing is elicited except the denials. Though RW.1 has been examined, nothing is placed on record to show that the offending vehicle is not involved in the accident. The oral and documentary evidence placed on record would indicate that, the accident has occurred solely due to rash and negligent driving of the driver of the offending vehicle and respondent No.3 has not adduced any positive evidence to disbelieve the contents of the complaint. ***Thus, in view of my above discussion, I answer issue No.1 in the affirmative.***

25. **Issue No.2:** The minor petitioner claims that, he has sustained fracture of left radius, fracture of right clavicle, depressed fracture of frontal bone and other injuries and doctor has opined that, injuries No.1, 2 and 3 are grievous in nature and then he has taken treatment in Sanjeevini Super specialty hospital, Vijayapura and has incurred medical expenses to the tune of ***Rs.89,624/-***.

26. In this case, the petitioner in order to prove the graveness of the injuries sustained by him and whether such injuries would lead to any physical or functional disability has not examined the Doctor and further, no disability certificate has

been produced by the petitioner and in that view, there is no yardstick to assess the disability of the petitioner. Thus, considering the above, the tribunal is of the view that it is fit case for awarding global compensation.

27. A perusal of EX.P-5 which is the wound certificate reveals that, the lacerated wound present over right forehead measuring 4 x 3 x 2 cm, abrasion present over right shoulder measuring 3 x 2 c.m with swelling, swelling present over the left wrist and X-ray revealed fracture of right clavicular and distal end of radius on left side and injury No.1 to 3 are grievous in nature.

28. All the above aspects would clearly indicate that, the petitioner has not suffered any permanent physical, occupational or functional disability and further, in view of not examining the doctor, there is no any evidence to assess the disability also. Considering all the above, in my considered view, it is a fit case to award global compensation and the medical expenses as there is no evidence to award compensation under different heads.

29. Considering the over all evidence on record and that the injuries are sustained by minor child, the Tribunal is of the considered view that, the petitioner is entitled for global compensation of **Rs.50,000/- + medical expenses of Rs.89,624/- in total Rs.1,39,624/- (Rupees One lakh thirty nine thousand six hundred and twenty four only)** along with interest at the rate of 6% per annum from the date of petition till the date of payment of the award amount in the Tribunal.

Liability:

30. It is pertinent to note that, the accident has occurred due to rash and negligent driving of the driver of tum-tum bearing Reg. No. KA-28/C-9556 who came in opposite direction and

dashed against passenger tum-tum bearing Reg. No. KA-29/A-3064 for which the police have also filed charge sheet against the driver of tum-tum bearing Reg. No. KA-28/C-9556. The respondent No.3 has not placed any material on record to show that, the driver of offending vehicle was not holding a valid driving license.

31. The respondent No.3 could have obtained the DL extract from concerned RTO and produced the same but, no such efforts are made. The learned counsel for petitioner has relied upon a decision of **Hon'ble Apex Court reported in 2004 ACJ 1** in which the Hon'ble Apex Court has held that, *“Even if a person holds learners license is entitled to drive a vehicle and in that event the insurance company is liable to satisfy the award”*. The Hon'ble Apex Court in para No.86 of the judgment has held that, *“A learner’s license is, thus, also a license within the meaning of provisions of the Motor Vehicles Act and it cannot be said that a person holding learner’s license is not entitled to drive a vehicle”*.

32. He has further relied upon another decision of **Hon'ble Apex Court reported in 2025 ACJ 2820** in which it is held that, *“If the driver did not possess a valid driving license, in that event the principle of pay and recover would be applicable”*. In this case, the respondent No.3 has not produced any material on record to substantiate that, the driver of offending vehicle was not holding a valid driving license and interalia, RW.1 in his cross-examination has admitted that the driver of the car had applied for learner’s license on 30.12.2021 and he has undergone online test on 21.01.2022 but, he has denied that the learner’s license was issued in 28.04.2022. The petitioner has not produced the documents to substantiate the above contention that, as on the date of accident the driver of vehicle was holding learner’s license.

Even, assuming that the driver of offending vehicle was not holding learner's license and also the driving license, in that event the ratio of Hon'ble Apex Court in Sunita's case (2025) ACJ 2820 which is referred above comes to the rescue of petitioner. Therefore, the principle of pay and recover can be applied to the facts on hand. Thus, respondent No.3 is directed to satisfy the award and thereafter, recover the same from the owner of the vehicle. ***In view of my above discussion, I answer issue No.2 partly in the Affirmative.***

33. **Issue No.3:** In view of the findings on issue No.1 and 2, I proceed to pass the following order.

:O R D E R:

- (I) The petition filed u/s.166 of Motor Vehicles Act, 1988 is hereby allowed in part with costs.
- (II) The petitioner is entitled for compensation of ***Rs.1,39,624/- (Rupees One lakh thirty nine thousand six hundred and twenty four only)*** along with interest at the rate of 6% per annum from the date of petition till the date of deposit of the amount in the Tribunal.
- (III) The respondent No.3 being the insurer of the offending vehicle is directed to deposit the award amount of compensation in the Tribunal within 01 month from the date of this order, pay the same to the petitioner and thereafter, recover it from owner of the vehicle.

Advocate fee is fixed at Rs.1,000/-.

Draw award accordingly.

:APPORTIONMENT:

On deposit of the total compensation amount, the entire compensation shall be deposited as FD in any of Nationalized bank in the name of minor petitioner till he attains the age of majority.

(Dictated directly on computer to the stenographer, typed by her, script corrected, signed and then pronounced in the open court on this **04th day of August, 2026**)

(Sameer Kolli)
IV Addl. Civil Judge and JMFC,
Member, MACT-XV, Vijayapura

:ANNEXURES:**Witnesses examined for petitioner:**

PW-1 Yamanappa S. Kolkar.

Documents exhibited for petitioner:**Exhibit P series:**

1. Certified copy of FIR.
2. Certified copy of Complaint.
3. Copy of spot panchanama.
4. Copy of MVA report.
5. Wound certificate.
6. Certified copy of charge sheet.
7. 1 to 32 medical bills.
8. 25 medical prescriptions.

Witnesses examined for respondents:

RW-1 Vishal Kumar P.

Documents marked for respondents:

Ex.R-1 Insurance policy.

IV Addl. Civil Judge and JMFC,
Member, MACT-XV, Vijayapura