

KABI020019462018



**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL
NO.V AND FIRST ADDITIONAL SENIOR CIVIL JUDGE**

AT BALLARI

PRESENT: SHRI. SATISH J.BALI., B.COM.,LL.M.
FIRST ADDITIONAL SENIOR CIVIL JUDGE,
BALLARI

MEMBER, M A C T – V,
BALLARI

DATED: 19th day of August-2021

M.V.C. No.990 of 2018

Petitioner:-

Parthap Kumar @ Parathap S/o.
Parashuram, aged about 35 years,
Working as Cashier in Society
Bank, R/o. Rupanagudi Village,
Ballari taluk and district

(Sri. C.A.P.,Adv.)

V/s

Respondents:-

1. J.Jagadish S/o. J.Obanna, aged
about 50 years, Driver of the Van
bearing Reg.No.KA-34/G-0472,
R/o. H.No.105, New Block No.7,
Police quarters, DAR Line, S.N.Pet.
Ballari

2.The Superintendent of Police,
District Police Office, Ballari R.C

owner of the Police Van bearing
Reg.No.KA-34/G-0472

3.The Director, KGID, Bengaluru,
bearing Policy No.1221481, valid
from 06.07.2016 to 05.07.2017

**(Respondent No.2 & 3 by D.G.P)
(Respondent No.1 - exparte)**

: JUDGMENT :

The petitioner has filed this petition under section 166 of Motor Vehicle Act, claiming compensation on account of injuries sustained by him in motor vehicle accident which took place on 23.10.2016 at 09.30 p.m, in front of Ediga hostel, near under bridge, Ballari

2. Brief facts of the petition are that:-

On the above said date, time and place, petitioner was proceedings on his motorcycle bearing Reg.No.KA-34/EB-6122 to give food to his father who was admitted in Adhrasha Hospital, Ballari. He was proceedings on his motorcycle slowly and cautiously on proper side of the road, at that time one Police Van bearing Regn.No.KA-34/G-0472 driven by first respondent in a rash and negligent manner came from old bus stand side and

dashed to the petitioner's motorcycle. Due to which petitioner fell down and sustained injuries.

3. It is submitted that petitioner in the above said accident has sustained grievous in nature of injuries to his right wrist, right ulna and sustained injuries all over the body and immediately he was shifted VIMS Hospital, Ballari and thereafter he took treatment at Sanjeevini Hospital, Ballari as inpatient from 28.10.2016 to 02.11.2016. In the said hospital petitioner underwent operation to his right wrist and implant was inserted. The petitioner has spent a sum of Rs.1,50,000/- towards his medical and other costs, till today under follow up treatment with private doctors.

4.It is submitted that, prior to the accident petitioner was hale and healthy aged about 35 years and working as cashier in Co-Operative Society Bank, drawing salary of Rs.25,000/- p.m. Due to accidental injuries, petitioner is not in position to attend his work or to do any kind of work. Due to sudden accident, petitioner is not in position to write or lift weight from one place to another

place and has got appointed one attender for a period of three months on a salary of Rs.6000/- p.m. Hence, on all these grounds petitioner prayed to award the compensation of Rs.12,00,000/- with interest at the rate of 24% p.a.

5.In response to the notice, Respondent No.1 & 2 appeared and filed objections to main petition.

6.The Respondents denied the entire petition averments as false and frivolous by calling upon the petitioner to prove the same with street proof .

7. The Respondent No.1 admitted that he was driver of the Police van bearing Regn.No.KA-34/G-0742 on the date of accident and second respondent was its RC owner which was insured with departmental Insurance KGID. It is submitted that as on the date of accident policy of the said vehicle was in force. Hence, prayed to saddle liability on the KGID who is respondent No.3.

8.The respondent No.1 submitted that compensation claimed by petitioner is exorbitant, unsustainable and

unsupported by any documentary evidence. The rashness and negligent on his part is denied by calling upon petitioner to prove the same with street proof.

9. The respondent No.2 admitted that he is the owner of above said van and it was insured with respondent No.3 from 06.07.2016 to 05.07.2017. It is submitted that, as on the date of accident policy was in force and called upon the petitioner to prove that the respondent No.1 was holding valid and effective driving license to drive the said van involved in the accident. The rest of the petition averments are denied in toto by contending that the compensation amount of Rs.12,00,000/- claimed by the petitioner with interest @ 24 % p.a, is exorbitant. Hence, on all these grounds prayed dismiss the petition with costs.

10.The respondent No.3 filed memo adopting the objections filed by respondent No.2 as its objections.

11.On the basis of the above pleadings and proposition of law, following issues are framed by my predecessor in office:-

1. Whether the petitioner proves that, on 23.10.2016 at about 9.30 P.M., when the petitioner was proceeding on his motorcycle bearing No.KA-34/EB-6122 in front of Ediga Hostel, Near under Bridge, Ballari with slowly, cautiously and on proper side of the road, at that time the respondent No.1 being the driver of Police Van bearing No.KA-34/G-0472 came from Old Bus stand side with high speed in rash and negligent manner and dashed to the petitioner's motorcycle, as a result of which the petitioner was fell down from the motorcycle on the road and sustained grievous nature of injuries all over the body?

2. Whether the petitioner is entitle for the compensation? If so, for what quantum and from whom?

3. What order or award?

12. In order to prove his case, petitioner examined himself as PW-1 and got marked documents at Ex.P.1 to P-11. The Orthopedic Surgeon, VIMS Hospital, Ballari and Anuskha Orthopedic and Maternity Clinic was examined as PW-2. Per contra, Respondent inspite of sufficient opportunities neither lead their evidence nor argued the matter.

13. My finding to the above issues are as under:-

Issue No.1 : In the Affirmative
Issue No.2 :- Partly in the Affirmative
Issue No.3 :- As per the final order
for the following:

:-REASONS:-

14.**ISSUE No.1 :-** It is specific case of the petitioner that, on 23.10.2016, when he was proceedings on his motorcycle bearing Regn.No.KA-34/EB-6122 in front of Ediga Hostel, near under bridge, at that time respondent No.1 being driver of Police Van bearing Reg.No.KA-34/G-0472 came in rash and negligent manner with great speed and dashed to his motorcycle which resulted in accident in which he sustained grievous injuries.

15.The respondent No.1 at paragraph No.4 of his objections to the main petition contended that the accident in question was due to negligence on the part of the petitioner who was riding his motorcycle with great speed in a rash and negligent manner without following traffic rules without seeing vehicle playing on the road tried to overtake and dashed to the police van resulting

in the accident. As per respondent No.1 the alleged accident was due to sole negligence on the part of the petitioner.

16.Since the present petition is filed U/Section 166 of Motor Vehicle Act, initial burden is on the petitioner to prove that due to rash and negligent driving of respondent No.1 the accident took place. It is not in dispute that as on the date of accident respondent No.1 was driver of police van bearing Regn.No.KA-34/G.0472. It is also not in dispute that respondent No.2 was owner of the said van which was insured with respondent No.3.

17.From the perusal of oral as well as documentary evidence on record it is crystal clear that, there is no dispute as to the involvement of motorcycle bearing Reg.No.KA-34/EB-6122 and police van bearing Reg.No.KA-34/G-0472 in the accident.

18. The petitioner as PW-1 stepped into witness box and reiterated the petition averments by way of his examination in chief. He got marked documents at Ex.P.1 to Ex.P.11. The petitioner himself has lodged first

information before Traffic Police, Ballari on the very same day of the accident. The first information at Ex.P.2 reveals that at that time of accident, petitioner at about 9.45 p.m was proceeding on the above said motorcycle in front of Ediga Hostel, at that time respondent No.1 on his police van came from old bus stand in a rash and negligent manner and dashed to the motorcycle of the petitioner. On the basis of said first information, FIR as per Ex.P.1 came to be lodged against respondent No.1 by Ballari Traffic Police in their crime No.151/2016 for the offences punishable U/Section 279 and 337 of IPC. The panchanama at Ex.P.3 reveals that accident took place in front of Ediga Hostel, road having width of 60 feet and road on both sides was 30 feet and it was tar road. The investigation officer after completion of investigation, filed charge sheet as per Ex.P.4 against respondent No.1 for the offences punishable U/Section 279, 337 of IPC. Immediately after accident petitioner was admitted in VIMS, Ballari, which could be seen from the wound certificate at Ex.P.5. The petitioner sustained fracture of distal 1/3rd of right ulna in the said accident. The M.V

report at Ex.P.6 reveals that both above said vehicles sustained damages in the accident and accident was not due to any mechanical defects of both vehicles. Later on petitioner got admitted in Sanjiveeni Hospital, Ballari, wherein he was inpatient from 28.10.2016 to 02.11.2016 and underwent surgery for the above said fracture.

19.PW-1 was cross-examined, wherein nothing worth has been elicited from his mouth. It is suggested that the accident was caused due to his own negligence. It was suggested that accident was caused due to riding the motorcycle in great speed, because of skid petitioner fell down which resulted in the accident. The said suggestions are denied by PW-1.

20.It is pertinent to note that by placing above said documents at Ex.P.1 to Ex.P.6, petitioner has discharged his initial burden to prove that the accident in question was due to rash and negligent driving of the respondent No.1. Though the respondent No.1 contested the petition but for the reasons best known to him he did not step into witnesses box to speak regarding circumstances

under which accident took place. He is a better person to speak as to the circumstances under which accident took place. But for the reasons best known to him respondent No.1 did not stepped into witness box for which adverse inference has to be drawn against him. Therefore, when oral evidence of PW-1 is read along with Ex.P.1 to Ex.P.7, it is quite clear that due to rash and negligent driving of respondent No.1 the accident took place in which petitioner has sustained injuries. The charge sheet has not been challenged by any of the respondents. Therefore, the only irresistible conclusion which can drawn from the above said materials is accident in question was due to sole rash and negligent driving on the part of the respondent No.1. **Accordingly, I answer this issue in the Affirmative.**

21.**ISSUE No.2:-**This issue is in respect of quantum of compensation and its liability.

22. As per petition and also evidence of PW-1, prior to accident petitioner was working in private bank drawing salary of Rs.25,000/- p.m. In the cross-examination PW-

1 admitted that even after accident he continued said job drawing salary of Rs.6000/- p.m and he admitted that he has falsely stated that he was drawing salary of Rs.25,000/- p.m. Hence, it can be safely come to the conclusion on the basis of admission of PW-1 that he was drawing salary of Rs.6000/- p.m as on the date of accident and continued to receive the said salary till today.

23.The wound certificate at Ex.P.5 on VIMS, Ballari reveals that petitioner in the accident has sustained fracture of distal 1/3rd of right ulna. Thereafter, petitioner took treatment at Sanjiveena Hospital, Ballari as an inpatient from 28.10.2016 to 02.11.2016. The discharge summary of said hospital at Ex.P.7 reveals that in the accident petitioner has sustained PCL bone avulsion of right knee and fracture of lower third ulna, fracture of left 5th and 6th ribs. In the said hospital, petitioner underwent surgery and discharged on 02.11.2016. PW-2 has stated that petitioner has sustained permanent physical disability to the extent of

30% when comparing to the whole body. PW-2 only assessed disability of the petitioner and is not treated doctor. But, fact remains is that from 28.10.2016 to 02.11.2016, petitioner was inpatient in Sanjeevani Hospital and under went surgery for fracture of lower 1/3rd ulna (right). He has also sustained fracture of left 5th and 6th rib and abrasion over the right knee. The above said injuries might have caused lot of pain and suffering. Considering the nature of treatment and injuries by the petitioner, interest of justice will be met if a sum of Rs.40,000/- is awarded towards pain and suffering.

24.This petitioner was inpatient at Sanjeevani Hospital, Ballari for a period of 06 days from 28.10.2016 to 02.11.2016 during which period he has to spent considerable amount towards conveyance, nutritious food and attendant charges. Hence, a sum of Rs.3,000/- is awarded under the said head. The petitioner has not produced any materials to show that he hired services of attender on salary of Rs.6000/- p.m for a period of three months.

25. The petitioner has not produced any documents to show that because of injuries he was absent to the duties. Merely because no document is produced to that effect it cannot be come to the conclusion that petitioner even after accident continued his job from date of accident. The Ex.P.7 discharge summary of Sanjeeveni Hospital reveals that he was an inpatient from 28.10.2016 to 02.11.2016. The petitioner has not produced any documents to show that for what period he was inpatient at VIMS Hospital, Ballari. The petitioner has not produced any documents to show that because of injuries he did not attend his job but looking to the above said injuries it cannot be lost fact that petitioner ought to have taken rest for atleast period of two months during which he has to lose his income. Hence, a sum of Rs.12,000/- is awarded under the head loss of income during laid of period.

26. So far as loss of income due to disability is concerned, PW-1 in his cross-examination admitted that even after accident he continued in service on the salary

which was drawn by prior to the accident. When court questioned, learned counsel for petitioner during arguments fairly submitted that petitioner even after accident continued his service on the same salary which he was drawn prior to the accident. Though petitioner by examining PW-2 made an efforts to show that because of accidental injuries he has sustained permanent physical disability but in view of he continued service even after accident drawing the same salary, question of awarding any compensation under the head loss of income due to disability does not arise at all.

27.The petitioner has produced prescriptions and medicals bills as per Ex.P.9 & 10, X-rays at Ex.P.11 reveals that fracture right ulna is mal-united. The total of medical bills comes to of Rs.3789/-. It is not in dispute that petitioner was inpatient in Sanjeevini Hospital, Ballari from 28.10.2016 to 02.11.2016, wherein he underwent surgery for right upper limp. Even though petitioner has not produced final bill of the above said hospital but it cannot be lost fact that he has to spent

considerable amount for his treatment. Hence, interest of justice will be met, if a sum of Rs.45,000/- is awarded under the head medical bills and medical expneses.

28. The medical records reveals that petitioner was aged about 35 years, at that time of accident. He sustained fracture right 1/3rgh ulna which is mal-united and fracture of left 5th and 6th of rib for which he under went surgery. Because of accidental injuries he cannot enjoy the life as prior to the accident. He has lost amenities of the life as he has to lead life with above said injuries. Hence, a sum of Rs.30,000/- is awarded under the head of loss of amenity.

29. Therefore, the petitioner is entitled for compensation as below:-

1	Pain and suffering	Rs.40,000/-
2	Conveyance, nutritious food and attendant charges	Rs.3000/-
3	Medical expenses	Rs.45,000/-
4	Loss of income during laid up period	Rs.12,000/-
5	Loss of amenities	Rs.30,000/-
	Total	Rs.1,30,000/-

30.**Regarding Interest:** As far as awarding of interest on the compensation amount is concerned, in a recent decision reported in **2018 ACJ 1300 between Mangla Ram V/s. Oriental Insurance Co., Ltd., and others (in CA Nos.2499 of 2018 arising out of SLP(C) Nos.28141-42 of 2017 decided on 06.04.2018)** wherein the Hon'ble Supreme Court with regard to interest at the rate of 9% p.a. on the compensation amount, in para No.28 of the judgment held that, The appellant would also be entitled to interest on the total amount of compensation at the rate of 9 per cent per annum on the compensation from the date of filing of the claim petition till date of realization" and also by following the principles laid down in **(2018) ACJ 1020 in between ICICI Lombard General Insurance Co., Ltd., V/s. Ajay Kumar Mohanty and another decided on 6.3.2018 (in CA Nos.7181 of 2015 and 1879 of 2016)** at para No.1 and 12 Hon'ble Supreme Court held that: "Quantum-Interest-Tribunal allowed interest at the rate of 7.5 per cent which was reduced by High Court to 7 per cent-Apex

Court allowed interest at 9 per cent per annum from the date of filing of claim application". In view of the above judgments with regard to the rate of interest and also it is settled principles of law that, while awarding interest on the compensation amount, the Court has to take into account the rate of interest on the Nationalized Bank and the rate of interest at the rate of 9% p.a, cannot said to be on the higher side. Accordingly, the Petitioner is entitled to interest at the rate of 9% p.a.

With regard to liability:-

31. So far as liability to pay compensation is concerned, the Respondent No.1 was the driver and Respondent No.2 is owner of police van bearing No.KA-34/G-0472 which was insured with Respondent No.3. It is not in dispute that the above said vehicle insured from 06-07-2016 to 05-07-2017. The respondents have failed to prove that, respondent No.1 did not had valid and effective driving license as on the date of accident. On the other hand, xerox copy of his DL reveals that, he was holding license to drive LMV, Transport, PSV bus from 21.10.1995, 10.07.2015 and 10.7.2015 till 31.05.2018.

He was holding valid and effective driving license as on the date of accident. Hence, Respondent Nos.2 & 3 are jointly and severally liable to pay above said compensation to the petitioner with interest at the rate of 9% p.a. from date of petition till actual realization. The primary liability to pay the above said compensation amount with interest is on the Respondent No.3 who shall deposit same before this court within 03 months from this day. **Hence, I answer this issue partly in the Affirmative.**

32.**ISSUE No.3** : For the forgoing reasons and discussions I proceed to pass the following :

ORDER

Petition filed Under Section 166 of M.V. Act, is hereby partly allowed.

The petitioner is entitled for a sum of Rs.1,30,000/- with interest at the rate of 9% from the date of petition till actual realization.

The Respondent No.2 & 3 are jointly and severally liable to pay compensation to the petitioner. Primary liability to pay above said compensation with interest is on Respondent

No.3 who should deposit same within 03 months from today.

On deposit of above said compensation amount, 60% is order to be released in favour of the petitioner by way of an account payee cheque and remaining 40% is order to be kept as fixed deposit in the name of the petitioner at any nationalized bank or scheduled bank of the choice of the petitioner for a period of 03 years.

Petition against respondent No.1 is hereby dismissed.

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

Draw award accordingly.

(Dictated to the Stenographer, transcribed and computerized by him, corrected by me and pronounced in the open Court on this 19th day of August, 2021).

(Satish J. Bali)
I Additional Senior Civil Judge
And Additional MACT-V, Ballari

ANNEXURE

Witnesses examined for the petitioner:

PW-1 : Pratap Kumar @ Pratap

PW-2 : Dr.Sreenivasa.N

Documents marked for petitioner:

Ex.P-1	:	FIR
Ex.P-2	:	Complaint
Ex.P-3	:	Mahajar
Ex.P-4	:	Final report
Ex.P.5	:	Wound certificate
Ex.P.6	:	M.V report.
Ex.P.7	:	Discharge Summery of Sanjeeni Hospital, Ballari
Ex.P.8	:	Disability Certificate.
Ex.P.9	:	12 Medical Bills
Ex.P.10	:	Three Doctor Advise Slips.
Ex.P.11	:	16 Xrays.

Witnesses examined for Respondents:

Nil

Documents marked on behalf of the Respondents:

Nil

(Satish J. Bali)
I Additional Senior Civil Judge
And Additional MACT-V, Ballari