

BEFORE THE PRINCIPAL M.A.C.T. &
CHIEF JUDGE,
COURT OF SMALL CAUSES BANGALORE
AT BANGALORE

DATED THIS THE 16th DAY OF MARCH` 2012

PRESENT : SRI PRADEEP D.WAINGANKAR, .MA, LL.B.,
PRL. M.A.C.T.

MVC No. 9254/2009

Petitioner: Krishnamurthy,
s/o Hanume Gowda,
aged 26 years,
r/a. No.84, Anjananagar,
4th Cross, Magadi Main
Road, Bengaluru 560 091
(By Mrs. Gayathri
Ravishankar, Advocate)
Vs.

Respondents: 1. HDFC ERGO General
Insurance Co.Ltd. No.14,
H.M.Genewa House, 1st
floor, Cunninghyam road,
Bangalore 560052
(Policy Cover Note No.
000002020594 date of
validity is from 10.10.2009
to 9.10.2010.

2. Siddesh s/o Kempanna,
Kadusonnappanahalli,
Kannuru Post,
Bengaluru 562 149
(RC owner of the vehicle in
question)

(By Sri K.Prakash for R-1,
R-2 exparte)

JUDGMENT

This petition is one under Sec. 166 of the M.V.Act claiming compensation of Rs. 15 lakhs for the injuries sustained by Petitioner in a motor vehicle accident.

2. On 13.10.2009 the Petitioner was proceeding on his two wheeler bearing Reg. No. CKO 8533 towards his resident at Anjananagar from side of Tavakal Mosque slowly and carefully. At about 2.00 p.m when he reached near Bande hosur petrol bunk road a Tractor-Trailer bearing Reg. No. KA-04-T-568 and KA-04-T-569 came from left side of the Petitioner's Motorcycle in a rash and negligent manner and dashed against the Motorcycle. Consequently the Petitioner fell down and suffered grievous injuries. He was taken to Shushrusha Nursing Home, Bangalore and later on he took treatment in Manasa Hospital. He spent about Rs. 80,000/- for his treatment. He was working as Mason and earning Rs. 20,000/- per month. He lost his earnings apart from suffering disability. Therefore, he has filed this petition

claiming compensation of Rs. 15 lakhs from the owner and insurer of the Tractor-Trailer.

3. In response to the notice of the petition the 2nd Respondent the owner of the Tractor-Trailer remained absent and he has been placed *exparte*.

4. The first Respondent-the insurance company in its reply has denied all the material averments made out in the claim petition such as the manner in which the accident occurred, the nature of injuries sustained by the Petitioner, the expenditure incurred, the period of hospitalization, the avocation and monthly income of the Petitioner, the loss of earnings, the disability said to have been suffered by the Petitioner etc. etc. apart from denying the negligence attributed to the driver of the Tractor-Trailer. It is contended that, the driver of the Tractor-Trailer as well as the rider of the Motorcycle had no valid and effective D.L. and thereby it is a case of negligence of the Petitioner himself due to lack of experience in riding the Motorcycle. For all these reasons the first Respondent has sought for dismissal of the claim petition.

5. Pleadings gave rise to the following;

ISSUES

1. Whether the petitioner proves that he sustained injuries in a motor vehicle accident that occurred on 13.10.2009 at about 2.00 p.m on Bande Hosur Petrol bunk road in front of Bande Hosur petrol bunk, on account of rash and negligent driving of Tractor-Trailer bearing registration No. KA-04-T-568?
2. Whether the Insurer proves that driver of the vehicle bearing registration No. KA-04-T-568 was not holding valid and effective Driving Licence as on the date of the accident?
3. Whether the petitioner is entitled for compensation? If so, how much and from whom?
3. What order?

6. After framing of the Issues, the Petitioner in order to prove the claim examined himself as PW.1, one Narasimhamurthy, Administrative Assistant at Shushrusha Nursing Home as PW.2 and Dr. S.Ramachandra, Orthopedic Surgeon from Bowring Hospital as PW.2 and got marked as many as 11 documents which are at Ex.P-1 to P-11. On behalf of the Respondent Insurance Company one Jayashekara V.R, Assistant Manager Legal is examined as RW.1 and one V.Sudheendra, RTO, Indiranagar is examined as RW.2. The D.L. extract

pertaining to the driver of the Tractor-Trailer is marked as Ex.R-1 and insurance policy is marked as Ex.R-2.

7. Heard the arguments.

8. My findings are as under:

- | | | |
|---------------|---|-----------------------|
| 1. Issue No.1 | : | In affirmative |
| 2. Issue No.2 | : | In |
| 2. Issue No.3 | : | Partly in affirmative |
| 3. Issue No.4 | : | As per final order |
- for the following;

REASONS

9. ISSUE No.1: The Petitioner has attributed negligence on the part of the driver of the Tractor-Trailer. Therefore, after obtaining permission as required u/sec. 170 of the M.V.Act the learned counsel for the Insurance Company cross examined the Petitioner who has been examined as PW.1 on the aspect of negligence. The suggestion made to PW.1 that because of lack of negligence in riding the two wheeler the Motorcycle went and dashed against the Tractor-Trailer has been denied by him. Similarly he has denied the suggestion that there was no negligence on the part of the drive of the Tractor-Trailer. So far as licence is concerned PW.1 has stated that he has got D.L. to ride two wheeler,

but he has not produced the same. Further he has stated in the cross examination that he has sold the Motorcycle after the accident and he does not have even the copy of the Insurance policy pertaining to his Motorcycle. Apart from oral evidence, the Petitioner has produced police documents to show that in connection with the said accident the driver of the Tractor-Trailer was prosecuted by Rajajinagar Traffic Police on the strength of the complaint lodged by the Petitioner Krishnamurthy wherein he has stated that the Tractor-Trailer came from his left side and dashed against the Motorcycle. Ex.P-1 is the FIR for having registered a case against the driver of the Tractor-Trailer. Ex.P.2 is the Charge Sheet filed against the driver of the Tractor-Trailer Venkatesh for the offence punishable u/sec. 279, 338 of IPC. Ex.P.3 is the spot sketch. From the Spot Sketch it is seen that the Petitioner was proceeding on his Motorcycle on the main road. The Tractor-Trailer came from the cross road i.e. Manjunath Service road from the left side of the Motorcycle and dashed against the Motorcycle. Since the Tractor-Trailer came from the cross road, it is the duty of the driver of the Tractor-Trailer to stop or to reduce the speed of the Tractor-Trailer and

observe the vehicles coming on the main road and thereby to proceed. It is evident from the spot sketch that the Tractor-Trailer driver has not taken precautions which was required to be taken from him and thereby it is because of his own negligence the accident occurred and really for the said reason the police after investigation have filed Charge Sheet against the driver of the Tractor-Trailer . Ex.P.4 is the spot panchanama, which also speaks that the Tractor-Trailer came from cross road that too from the left side of the Motorcycle. Ex.P.5 is the Wound Certificate issued by Shushrusha Nursing Home wherein it is shown that the Petitioner sustained fracture of both bones of left leg in the said accident. Even if it is presumed for a while that the Petitioner had no licence to ride the Motorcycle, if he is coming on its correct side and if the Tractor-Trailer comes from the cross road and dashed against him, the negligence is that of the Tractor-Trailer driver only and no negligence can be attributed to the Petitioner merely because he had no D.L. As against the oral and documentary evidence the first Respondent Insurance Company has examined its Assistant Manager Legal Jayashekara V.R as RW.1 and RTO, Indiranagar V.Sudheendra as RW.2. But their

evidence is not a material evidence so far as the aspect of negligence is concerned since they are not an eye witness to the accident. Thus there is no rebuttal evidence so far as negligence is concerned. As such in the absence of rebuttal evidence the evidence placed on record by the Petitioner is sufficient to come to the conclusion that the accident and the resultant injuries sustained by the Petitioner are due to rash and negligent driving of the Tractor-Trailer by its driver. Accordingly, issue No.1 is answered in affirmative.

10. Issue No.3: The Petitioner has claimed compensation of Rs.15 lakhs from the Respondents. The evidence of the Petitioner who has been examined as PW.1 would go to show that in the said accident he sustained grievous injuries and that he was treated in Shushrusha Nursing Home. Ex.P-5 is the Wound Certificate issued by the Shushrusha Nursing Home wherein the injury is shown as fracture of both bones of left leg. Ex.P-6 is the Discharge Summary issued by Shushrusha Nursing Home which discloses that he was admitted on 13.10.2009 the date of the accident and discharged on 16.10.2009, it also

speaks that he sustained fracture both bones lower third left leg with pin point wound. Regarding the treatment it is stated in the Discharge Summary that above knee long leg ready splint applied. Interlocking nailing with bolts, DCP plating with screws for fibula done on 13.10.2009 under S.A. He was advised at the time of discharge to continue exercise, walking and non weight bearing of left leg with walker and to come for dressing after 5 days. Therefore, having regard to nature of injuries and treatment he has been awarded a sum of Rs. 40,000/- under the head injury, pain and sufferings.

11. So far as medical expenditure is concerned, the Petitioner has produced 19 medical bills as per Ex.P-8 series for Rs. 56,624/- apart from producing 15 prescriptions as per Ex.P.17 series. The bills are inclusive of the inpatient bill of Shushrusha Nursing Home for Rs. 45,350/-. As such he has been awarded a sum of Rs. 56,624/- under the head medical expenses.

12. Since the Petitioner had sustained fracture of both bones of left leg and that he underwent surgery it goes without saying that he was in need of services of an attendant atleast for

a period of two months, so he has been awarded a sum of Rs. 6000/- under the head attendant charges at the rate of Rs. 100/- per day for about two months.

13. Immediately after the accident the Petitioner was taken to Shushrusha Nursing Home. Since he had fracture of both bones of left leg the services of special vehicle was indispensable both at the time of admission and even at the time of discharge. So he has been awarded a sum of Rs. 2000/- towards conveyance charges.

14. The Petitioner in his evidence has also stated that he was working as mason and earning Rs. 20,000/- per month and on account of the accidental injuries he lost his earnings for a considerable period. To show that he was working as Mason or for that matter he was earning Rs. 20,000/- there is no evidence except the interested testimony of the Petitioner. In the absence of the evidence, I am inclined to take his monthly income as Rs. 4000/- having regard to his age as 26 years. Since he had fracture of both bones it was virtually impossible for him to go for his work for a period of 3 months. So he has been

awarded a sum of Rs. 12000/- under the head loss of earnings during the period of treatment.

15. The Petitioner has stated that he has suffered disability on account of the accidental injuries. In order to prove the same he examined Dr. S.Ramachandra, Orthopedic Surgeon from Bowring Hospital as PW.3. The evidence of PW.3 on disability is that he examined him on 20.8.2011. On clinical examination he found the following disability:

- a. Swelling and tenderness in left leg and around left ankle region – 4
Difficulty to stand, walk and bear weight on left leg – 4
Difficulty to sit cross legged, to squat, to use indian toilet – 6+5
To climb up and down the stair case - 2
 $4+4+6+5+2=21$
- b. Loss of power (strength) of the muscles acting on left ankle is $\frac{3}{5}$ ($\frac{5}{5}$) is $40 \times 0.3 + 12$

Thus he has opined that the Petitioner has suffered 30.2% disability of left lower limb and 15% to the whole body. He states that radiological examination revealed he fractures of tibia and fibula are united with implants in situ. He has produced the OPD card as per Ex.P.10 for having examined the Petitioner on that day for

assessment of disability apart from producing x-rays that were taken on that day as per Ex.P.11. In the cross examination he has admitted that he has not treated the Petitioner. He has also admitted that there is no restriction of movement. There is no wasting of muscle. The fracture was very close to ankle joint and that there were no injuries in the ankle joint or knee joint. The suggestion made to him that the Petitioner has no problem to walk, sit cross leg, to climb stairs has been denied by him. No explanation is forthcoming as to why the Petitioner has not examined the Doctor who treated him in Shushrusha Nursing Home and why he has chosen to examine Dr.S.Ramachandra, Orthopedic Surgeon from Bowring Hospital. Be that as it may he is also an Orthopedic Surgeon from Bowring Hospital. But since the Petitioner has not examined the Doctor who actually treated him and no explanation is forthcoming, the evidence of Dr.S.Ramachandra has to be assessed with due care and caution. Nodoubt he has stated that the Petitioner is left with 15% disability of the whole body. He has also given calculation as to how he arrived at said disability. Since he is not the Doctor who treated the Petitioner I am inclined to take the disability of

the whole body as 10%. Therefore, the loss of earnings on account of 10% disability is Rs. 400/- per month and Rs. 4800/- per annum. If it is multiplied by 17 multiplier having regard to the age of the Petitioner as 26 years the total loss of future earnings comes to Rs. 81,600/- (Rs. $400 \times 12 \times 17 = 81,600/-$) So an amount of Rs. 81,600/- is awarded under the head loss of future earnings on account of disability.

16. Dr. S.Ramachandra in his evidence has stated that the implants are in situ. He has to undergo another surgery for removal of implants. But he has not spoken about the cost of surgery. Since the Petitioner has approached Dr.S.Ramachandra, Orthopedic Surgeon from Bowring Hospital which is the Government Hospital for assessment of disability, it appears to me that he will approach the same Doctor for removal of implants. In that case the cost of surgery the Petitioner has to spend at the most Rs. 5000/-. So an amount of Rs. 5000/- is awarded under the future medical expenditure.

Thus the Petitioner has been awarded compensation under the various heads as under:

Sl.No.	Head of Compensation	Amount/Rs
1	Injury, pain and sufferings	40,000-00
2	Medical expenses	56,624-00
3	Attendant charges	6,000-00
4	Conveyance Charges	2,000-00
5	Loss of earnings during the period of treatment	12,000-00
6	Loss of earnings on account of disability	81,600-00
7	Future medical expenditure	5,000-00
	Total	2,03,224-00

10. Issue No.2: The Insurance Company has taken up a contention that the Driver of the Tractor-Trailer had no valid and effective D.L. as on the date of the accident. In order to prove the same the Insurance Company has produced the D.L.extract of the driver of the Tractor-Trailer as per Ex.R-1 apart from examining V.Sudheendra, RTO, Indiranagar as RW.2. The learned counsel for the Insurance Company has placed reliance on the following decisions in support of his arguments:

1. 2008 AIR SCW 4048
2. 2009 AIR SCW 2865
3. 2008 ACJ 1307
4. AIR 2006 SC 2138
5. AIR (37) 1950 SC 265 (FB)
6. 2006 AIR SCW 5312
7. MANU/KJA/0718/2009
8. MFA No. 6267/2007
9. MFA No.13384/2006

I have gone through all these decisions. From the ratio laid down it is obvious that the licence is for a period of 20 years which was not for transport vehicle. If it is granted for 3 years it is for the transport vehicle. From the D.L. extract of the driver of the Tractor-Trailer which is marked as Ex.R-1 it is seen that the licence granted to him to drive transport vehicle for the period from 25.3.1999 to 1.2.2002 and the licence granted to him to drive motor vehicle other than transport vehicle is for a period from 25.3.1997 to 24.3.2017. It appears that the licence to drive transport vehicle has not been renewed by him after 1.2.2002. Further the concerned RTO, V.Sudheendra who has been examined as RW.2 has very clearly stated in his evidence that Ex.R-1 is the DL extract issued from his office. As per Ex.R-1 the DL extract he was not authorised to drive Tractor-Trailer which is a specified class of vehicle. In this case the licence of the driver of the Tractor-Trailer had expired much earlier to the date of the accident. Thus as on the date of the accident the driver of the Tractor-Trailer had no valid and effective DL to drive the Tractor-Trailer. As such the owner of the Tractor-Trailer has committed breach of policy conditions for which

the Insurance Company is not liable to indemnify the owner. It is the 2nd Respondent the owner of the Tractor-Trailer who is liable to pay the compensation awarded to the Petitioner together with 6% interest from the date of the petition till the date of realization. Accordingly, issue No.2 is answered in negative.

In the result I pass the following;

ORDER

Petition filed by the petitioner under Section 166 of the Motor Vehicles Act, 1988, is partly allowed with cost. Petitioner has been awarded compensation of Rs. 2,03,224-00 from Respondent No. 2 together with interest at the rate of 6% p.a from the date of petition till realization.

Respondent No.2 shall deposit the compensation amount within two months from the date of this order, failing which he is liable to pay interest at 9% p.a.

In the event of deposit, an amount of Rs. 1,00,000/- shall be invested in fixed deposit in the name of the Petitioner in any Nationalized/schedule bank of his choice for a period of 3 years and the balance together with interest shall be released to the Petitioner.

Advocate fee is fixed at Rs.1000/-.

Petition as against first Respondent Insurance
Company is dismissed.

(Dictated to the Judgment Writer, Script thereof is
corrected, signed and then pronounced by me in the open
court dated this the 16th day of March, 2012)

(PRADEEP D.WAINGANKAR)
Prl. M.A.C.T. Bangalore

ANNEXURE

Witnesses examined on behalf of the petitioner:

P.W.1	: Sri Krishnamurthy
P.W.2	: Narasimha Murthy
P.W.3	: Dr.S.Ramachandra

Witnesses examined on behalf of the respondents:

RW.1	: Jayashekara V.R
RW.2	: V.Sudheendra

Documents marked on behalf of the petitioner:

Ex.P.1	: FIR
Ex.P.2	: Charge Sheet
Ex.P.3	: Spot sketch
Ex.P.4	: Spot mahazar
Ex.P.5	: Wound Certificate
Ex.P.6	: Discharge summary
Ex.P.7	: Medical prescriptions
Ex.P-8	: Medical bills
Ex.P-9	: Case sheet
Ex.P.10	: OPD card
Ex.P-11	: X-ray

Documents marked on behalf of the respondents:

Ex.R-1	: DL extract
Ex.R-2	: Insurance policy

(PRADEEP D WAINGANKAR)
PRL.M.A.C.T.