

KABC020126302023



**IN THE COURT OF II ADDL. SMALL CAUSES  
JUDGE, ACJM AND MEMBER-MOTOR ACCIDENT  
CLAIMS TRIBUNAL, BENGALURU. (SCCH-13)**

**DATED THE 6<sup>th</sup> DAY OF MARCH 2026.**

**PRESENT: Smt.Shyla S.M., B.B.M. LL.B.,  
II Addl.Judge & ACJM,  
Court of Small Causes  
BENGALURU**

**M.V.C.No.2813 OF 2023**

Petitioner: Mr.Mallikarjuna  
S/o. Uthareddy  
Aged about 25 years  
R/At Chimmangharpalli  
Somanathapura Post,  
Pathapalya Hobli, Bagepalli Taluk,  
Chikkaballapura Dist.

(By Smt.P.V.Kalpana, Adv.,)

Vs.

Respondents: 1. Mr.Mohan  
S/o.Munishamappa  
Major

R/At Munganahalli Village,  
Chinthamani Taluk,  
Chikkaballapura Dist-563125.

(RC Owner Of Tempo No.KA-03-A-5614)

(By Sri.S.R.Desai, Advocete)

2. The Manager  
United India Ins Co Ltd  
Hub, Regional Office  
5th Floor, Krishi Bhavana  
Hudson Circle, Bengaluru-560001.

(Insurer Of Tempo No.KA-03-A-5614)  
Policy No.0731023122P108708612  
Validity 19-12-2022 To 18-12-2023)

( By Sri.R.S.Srikanta Reddy, Adv.)

### **JUDGMENT**

This petition under Section 166 MV act is filed by the Petitioner seeking compensation of Rs.20,00,000/- for the injuries sustained by him in a road traffic accident.

2. It is the specific case of the petitioner that on 29-01-2023 at about 8-45 a.m., he was proceeding on a motorcycle bearing registration number KA-01-HA-

3386 along with a pillion rider proceeding towards Baikonda temple, near Munaganahalli village arch, Chintamani Taluk, Chikkaballapura District. At that time, the driver of the Tempo bearing registration number KA-03-A-5614 (hereinafter referred to as the offending tempo) drove at high speed in a rash and negligent manner, endangering human life, and dashed against the petitioner's motorcycle.

3. Due to the forceful impact, the petitioner and pillion rider fell and sustained grievous injuries. Immediately, after the accident, the petitioner was shifted to General Hospital, Chinthamani, where he was given first aid treatment was administered. Thereafter, he was admitted as an inpatient at R.L.Jalappa Hospital, Kolar, where he continued to receive inpatient treatment.

4. The petitioner has stated that, due to the injuries sustained in the accident, he has suffered in the permanent medical disability and is unable to lead a normal life as he did prior to the accident. It is further stated that he has incurred expenses exceeding Rs.1,00,000/- towards treatment, medicines,

conveyance, nourishment, and other incidental charges.

5. At the time of the accident, the petitioner was aged about 25 years and was working as a Station support analyst at Amazon, drawing salary of Rs.19,000/-p.m. Due to the injuries and the resulting permanent disability, he has suffered loss of income and earning capacity. Apart from the physical injuries, he has also suffered mental agony and pain and suffering.

6. The petitioner contends that the accident occurred solely due to the rash and negligent driving of the driver of the offending tempo. Hence, he has sought for just and reasonable compensation from Respondent No.1 and Respondent No.2, being the owner and insurer of the offending tempo respectively.

7. In response to the notice of the petition, Respondent Nos.1 and 2 have appeared through their counsel and filed their written statements.

8. Respondent No.1 has denied all the averments made in the petition, inter alia contending that the alleged accident did not occur due to rash and

negligent driving of the driver of the offending tempo and has denied the manner of the accident. However, he has admitted that as on the date of the accident, the offending vehicle was duly insured and that the driver possessed a valid and effective driving licence. On these grounds, he has prayed for dismissal of the petition against him.

9. Respondent No.2 – Insurance Company, in its written statement, has denied all the allegations made in the petition. It has specifically contended that the concerned police authorities failed to comply with the mandatory provisions under Section 158(6) of the Motor Vehicles Act, and therefore the petition is liable to be dismissed. While admitting the issuance of the insurance policy and its validity as on the date of the accident, Respondent No.2 has contended that its liability, if any, is subject to the terms and conditions of the policy.

10. It is further contended that the driver of the offending tempo did not possess a valid and effective driving licence as on the date of the accident. Respondent No.2 has also denied the allegation of rash

and negligent driving on the part of the driver of the offending tempo and has contended that the accident occurred due to the negligence of the petitioner himself, who rode the motorcycle without following traffic rules, without wearing a helmet, and without possessing a valid driving licence.

11. It is further contended that the petition is bad for non-joinder of necessary parties, as the owner and insurer of the motorcycle have not been arrayed as respondents in the petition. Respondent No.2 has also denied the nature of injuries sustained by the petitioner, his avocation, income, medical expenses, future medical expenses, alleged disability, and the quantum of compensation claimed, terming the same as false, exaggerated and highly excessive. On these grounds, Respondent No.2 has prayed for dismissal of the petition.

12. On the basis of the above pleadings, the following Issues were framed :-

1. Whether the Petitioner proves that he sustained injuries when he was riding in his motorcycle bearing No.KA-01-HA-3386 on 29-01-2023 about 8.45 a.m. along with

pillion rider, near Munaganahalli village Arch, Chintamani Taluk, Chikkaballapura Taluk and district, due to the rash and negligent driving of the driver of the Tempo bearing No.KA-03-A-5614?

2. What compensation petitioner is entitled ?

3. What order ?

13. In order to prove the claim, the Petitioner examined himself as PW.1 and in support of his case, doctor is examined as PW-2 and got marked the documents as per Ex.P.1 to P.15.

14. The Respondent No.2 has examined its official as RW-1 and got marked the documents at Ex.R.1 to 6.

15. By considering the available materials on record and the arguments addressed by the parties, I have answered the above Issues as under:

Issue No.1: In the Affirmative.

Issue No.2: Partly in affirmative.

Issue No.3: As per the final order,

for the following:

**REASONS**

16. **ISSUE NO.1:-** The petitioner has specifically pleaded that on 29-01-2023 at about 8-45 a.m., he was proceeding on a motorcycle bearing registration number KA-01-HA-3386 along with a pillion rider proceeding towards Baikonda temple, near Munaganahalli village arch, Chintamani Taluk, Chikkaballapura District. At that time, the driver of the offending Tempo drove at high speed in a rash and negligent manner, endangering human life, and dashed against the petitioner's motorcycle. Due to the forceful impact, the petitioner and pillion rider fell and sustained grievous injuries.

17. To substantiate the said contention, the petitioner examined himself as PW-1 by filing an affidavit under Order XVIII Rule 4 of CPC. He has produced documentary evidence at Ex.P-1 to Ex.P-7, which include FIR, complaint, charge sheet, spot mahazar, rough sketch, IMV report and wound certificate. Further, the petitioner examined PW-2 – Dr. Nagaraj B.N., Orthopedic Surgeon, who produced medical documents marked as Ex.P-14 and Ex.P-15.

18. The wound certificate marked as Ex.P7 clearly discloses that the petitioner sustained penetrating abdominal injury, open displaced fracture of the right iliac wing with bone loss extending to the SI joint, and closed displaced comminuted fracture of the olecranon process of the right ulna, which the treating doctor has classified as grievous injuries. This document is a contemporaneous medical record prepared in the ordinary course of treatment and therefore carries high evidentiary value.

19. PW1 has categorically deposed regarding the manner of the accident, the involvement of the offending tempo, and the injuries sustained by him. On perusal of the FIR and charge sheet, it reveals that after due investigation the police have filed a charge sheet against the driver of the offending vehicle for the offences punishable under Sections 279 and 338 of the IPC, which strongly corroborates the case of the petitioner regarding the rash and negligent driving of the offending vehicle.

20. On the other hand, Respondent No.2 – the insurer of the offending tempo, has denied the

negligence on the part of the driver of the offending vehicle and contended that the accident occurred due to the negligence of the petitioner himself. It was further contended that the petitioner and the pillion rider were not wearing helmets and that the rider, i.e., the petitioner, did not possess a valid driving licence. Respondent No.2 has also alleged collusion between the petitioner and the police in lodging a false complaint against the driver of the offending tempo.

21. During the course of cross-examination, the learned counsel for Respondent No.2 suggested to PW1 that the accident occurred due to his own negligence and not due to the negligence of the driver of the offending tempo. However, except making such suggestions, Respondent No.2 has not produced any cogent documentary evidence to substantiate its plea. Though Respondent No.2 examined its official as a witness, the said witness merely reiterated the contents of the written statement and failed to place any material on record to rebut the evidence adduced by the petitioner. No independent eyewitnesses were examined on behalf of the respondents.

22. Further, Respondent No.2 has failed to produce any material to substantiate the serious allegation that the police registered a false case in collusion with the petitioner. On the contrary, the charge sheet filed after investigation clearly indicates that the police have found the driver of the offending tempo negligent.

23. It is well settled that non-examination of eyewitnesses is not fatal to a claim petition under the Motor Vehicles Act, particularly when the documentary evidence such as the FIR, complaint and charge sheet support the case of the petitioner and there is no rebuttal evidence produced by the respondents.

24. In the absence of any convincing evidence from the respondents, the contention that the accident occurred due to the negligence of the petitioner cannot be accepted. Accordingly, this Tribunal holds that the accident occurred due to the rash and negligent driving of the driver of the offending tempo, as a result of which the petitioner sustained injuries. **Accordingly, Issue No. 1 is answered in the Affirmative.**

25. **Issue No.2:** The wound certificate marked as Ex.P7 clearly discloses that the petitioner sustained penetrating abdominal injury, open displaced fracture of the right iliac wing with bone loss extending to the SI joint, and closed displaced comminuted fracture of the olecranon process of the right ulna, which the treating doctor has classified as grievous injuries. Immediately after the accident, the petitioner was shifted to Government Hospital, Chintamani, where he received first aid treatment. Thereafter, he was shifted to R.L. Jalappa Hospital, Kolar, where he was admitted as an inpatient and underwent surgical intervention.

26. In order to substantiate the extent of permanent disability, the petitioner has examined PW2 – Dr. Nagraj B.N., Orthopaedic Surgeon at Sai Ortho Dental Centre, who has produced the relevant medical documents, which are marked as Ex.P14 and Ex.P15.

27. PW2 has deposed that the petitioner sustained penetrating abdominal injury, open displaced fracture of the right iliac wing with bone loss extending to the SI joint, and closed displaced comminuted fracture of the olecranon process of the

right ulna. He further stated that the petitioner was treated at R.L. Jalappa Hospital, Kolar, where ORIF with LCP was performed for the displaced olecranon fracture.

28. PW2 has further deposed that upon clinical and radiological examination, the petitioner complained of inability to fully flex and extend the right elbow, difficulty in lifting weights with the right upper limb, inability to sit down, squat, or sit cross-legged, and restriction of movements of the right elbow and right hip joint. Based on his assessment, PW2 has opined that the petitioner has suffered 30% permanent physical disability to the right lower limb, 32% disability to the right upper limb, and 20% disability to the whole body.

29. However, during the course of cross-examination, PW2 admitted that he had not personally treated the petitioner and that his assessment of disability was made on the basis of the discharge summary and wound certificate. He further admitted that he had not obtained any opinion from the treating doctor who had actually treated the petitioner.

Therefore, the disability assessed by PW2 cannot be accepted in its entirety as representing the functional disability of the petitioner.

30. At the same time, it cannot be ignored that the petitioner had sustained grievous injuries, namely fracture of the right ulna and right iliac wing, and had undergone surgical intervention. The medical records clearly indicate that the petitioner continues to experience pain and restriction of movements of the right elbow and right hip joint. Considering the nature and location of the injuries, it is evident that the petitioner would suffer certain residual discomfort and physical restriction.

31. However, it is pertinent to note that during the course of evidence, the petitioner himself has admitted that he is presently drawing a salary of Rs.23,000/- per month. This admission elicited during cross-examination by the learned counsel for Respondent No.2 clearly indicates that the petitioner continues to remain employed and has not suffered any substantial loss of employment or earning

capacity on account of the injuries sustained in the accident.

32. In view of this admission, this Tribunal is of the considered opinion that the petitioner has not established any loss of future earning capacity arising out of the alleged permanent disability. Therefore, the question of awarding compensation under the head of loss of future income due to disability does not arise in the present case.

33. The petitioner has contended that at the time of the accident he was working as a Station Support Analyst at Amazon and earning a salary of Rs.19,000/- per month.

34. In support of his contention, the petitioner has produced a bank statement marked as Ex.P11. On perusal of Ex.P11, it is seen that an amount of Rs.18,424/- was credited to the petitioner's account. However, except producing the said bank statement, the petitioner has not produced any other supporting documents such as salary slips, appointment letter, income certificate, or certificate from the employer to

substantiate his claim that he was working at Amazon and earning Rs.19,000/- per month. The petitioner has also not examined any representative or employer from the said company to prove his employment and income.

35. Therefore, in the absence of satisfactory documentary evidence regarding the actual income of the petitioner, this Tribunal cannot accept the claimed income of Rs.19,000/- per month. In such circumstances, this Tribunal is constrained to consider the notional income of the petitioner. Having regard to the guidelines issued by the Karnataka State Legal Services Authority for the year 2023, the notional income of the petitioner is taken at Rs.16,000/- per month.

36. This tribunal is of the opinion that the petitioner who sustained the injuries is entitled for compensation under the following heads:

**37. Pain and sufferings:** So far as the compensation under non-pecuniary damages are concerned, considering the nature of the grievous injury, which has resulted in performing daily vocational activities, as well as the duration of inpatient treatment and physical and mental suffering endured by the petitioner, this tribunal is of the opinion that an amount **of ₹.75,000/- would be just and fair compensation under the head of Pain and sufferings**

**38. Loss of amenities of life:** undoubtedly the petitioner is suffering from difficulties in performing day to day activities and is facing continuous hardship due to the disability. Therefore this tribunal finds to appropriate to award a sum **₹.40,000/- under the head of loss of amenities of life.**

**39. Medical expenses:** Considering the pecuniary damages under the head of medical expenses relating to treatment, hospitalization and medication, the petitioner has produced medical bills at Exhibit P12 amounting to Rs. 42,913/-. the medical bills are found to be directly connected with

the accidental injuries, genuine in nature and supported by medical records. Hence, the petitioner is entitled to reimbursement of medical expenses of Rs.42,913/- **Accordingly, Rs.42,913/- is awarded under the head of medical expenses.**

**40. Conveyance, food, nourishment and attendant charges:** On perusal of Discharge summary – Ex.P.10, which show that Petitioner was treated as an inpatient at R.L.Jalappa hospital, Kolar, from 01-02-2023 to 23-02-2023 i.e., for a period of 23 days. Therefore, it is just and reasonable to award compensation of **₹.24,000/-** under the head of **conveyance, food, nourishment and attendant charges.**

**41. Loss of earning during laid up period:** With regard to the loss of earnings during treatment period, Considering the nature of the grievous injury, which has resulted in significant difficulty in carrying out daily vocational activities, as well as the duration of inpatient treatment and recovery, this tribunal considers the 6 months for rest is considered . As the monthly income of the Petitioner is already considered

as ₹.16,000/- per month, **loss of earning during laid up period would be ₹.16,000 x 6 = Rs.96,000/-.**

**42.** Thus the compensation awarded under the various heads are as under:

<b>Sl. No.</b>	<b>Nature of Compensation</b>	<b>Amount</b>
1.	Pain and Sufferings	₹. 75,000/-
2.	Loss of amenities	₹. 40,000/-
3.	Medical expenses	₹ 42,913/-
4.	Conveyance, Food, Nourishment & Attendant charges	₹. 24,000/-
5.	Loss of income during laid up period	₹. 96,000/-
	<b>Total</b>	<b>₹. 2,77,913/-</b>

**43. Liability:** Respondent No.2 – Insurance Company has contended that the owner of the offending tempo has violated the terms and conditions of the insurance policy inasmuch as the offending tempo did not possess a valid permit as on the date of the accident. It is specifically alleged that the offending tempo was being operated without a valid permit and on this ground Respondent No.2 has asserted that it is

not liable to indemnify the owner and therefore seeks to absolve itself from liability to pay compensation to the petitioner.

44. In order to substantiate this contention, the official of Respondent No.2 was examined as RW1. RW1 has produced the permit particulars relating to the offending vehicle, which are marked as Ex.R3 to Ex.R5. RW1 has deposed that the permit of the offending vehicle was valid from 04-08-2016 to 03-08-2021.

45. The learned counsel for the Respondent no 2 has contended that it is not liable to indemnify the owner and, therefore, stands absolved of liability to pay compensation to the petitioners and relied upon the decision rendered in :

**1. ILR 2000 KAR 3443 – United India Ins.Co.Ltd., Vs. D.C. Rajanna and another.**

**2. 2010(2) KAR 592 – Bajaj Allianz Gen.Ins.Co.Ltd., Vs. V.N.M.Rajaprakash and another.**

**3. ILR 2010 KAR 2439 – Sri.Subash Vs. The New India Assurance Co.Ltd., and others.**

**4. 2008 ACJ SC 2131 – Rajesh Kumar Vs. Yudhvir Singh and another.0**

**5. 2010(2) KLJ 636 – Managing Director, KSRTC Vs. Ashok Rao @ Ashok.**

46. On perusal of Ex.R3 to Ex.R5, it clearly corroborates the contention of Respondent No.2. It is an undisputed fact that the accident occurred on 29-01-2023, which is subsequent to the expiry of the permit period and prior to any renewal. Therefore, as on the date of the accident, the offending tempo was being operated without a valid permit.

47. Further, Respondent No.1 – the owner of the offending vehicle has not produced any document to establish that the offending tempo possessed a valid permit as on the date of the accident. A careful perusal of Ex.R3 to Ex.R5 clearly indicates that the vehicle was not covered by any valid permit on the relevant date. The owner has also failed to place any rebuttal evidence to show that the vehicle was operating under a valid permit at the relevant point of time.

48. In the absence of any rebuttal evidence and in light of the clear oral and documentary evidence

produced by RW1, it stands established that the offending tempo did not possess a valid permit as on the date of the accident, which amounts to breach of the terms and conditions of the insurance policy.

49. However, this Tribunal is guided by the settled principle of “Pay and Recovery” laid down by the Hon’ble High Court of Karnataka in **MFA No. 202104/2024 (DB) (The Branch Manager, IcICI Gen.Ins.Co. Ltd. Vs. Pooja and others)** wherein it has been held that even in cases of breach of policy conditions, the interest of third-party victims must be protected.

50. Applying the ratio laid down in the above decision, this Tribunal is of the considered view that though there is a breach of policy condition by the owner of the offending vehicle, the Insurance Company cannot be completely exonerated as far as the claim of the third-party victim is concerned.

51. Accordingly, Respondent No.2 – Insurance Company is directed to first satisfy the award amount in favour of the petitioner and thereafter recover the same from Respondent No.1 – the owner of the

offending tempo, in accordance with law. Accordingly I have answered Issue No.2 ***partly in the Affirmative.***

**60. ISSUE NO.3** : In view of the above discussion, reasons stated and findings given to Issue Nos.1 and 2, I proceed to pass the following:

### **ORDER**

Claim petition filed under Sec.166 of M.V. Act is allowed in part with cost.

Petitioner is awarded compensation of **₹.2,77,913/-** together with interest @ 6% p.a. from the date of petition till the realization.

Respondent No.1 is liable to pay the compensation as awarded by this Tribunal.

Respondent No.2 - Insurance company shall deposit aforesaid amount within two months from the date of this order and recover the entire compensation amount along with interest from the Respondent No.1 in view of violation of terms of insurance policy.

After deposit of the compensation amount, the entire amount with interest shall be disbursed to the petitioner through E-payment on proper identification.

Advocate's fee is fixed at ₹.1,000/-.

Draw award accordingly.

(Dictated to the Stenographer directly on computer, corrected, signed and pronounced by me in open court dated this the 6<sup>th</sup> day of March 2026.)

**(SHYLA S.M.)  
II Addl. Judge & ACJM  
Member, MACT,  
Court of Small Causes,  
Bengaluru.**

**ANNEXURE**

**List of witnesses examined for Petitioner :**

PW.1 : Mallikarjuna  
PW.2 : Dr. Nagaraj B.N.,

**List of documents marked for Petitioners :**

Ex.P.1 : True copy of FIR  
Ex.P.2 : True copy of complaint  
Ex.P.3 : True copy of Charge sheet  
Ex.P.4 & 5 : True copy of spot mahazar and rough sketch  
Ex.P.6 : True copy of IMV report  
Ex.P.7 : True copy of Wound certificate  
Ex.P.8 & 9 : Notarized copy of Aadhar card & DL  
Ex.P.10 : Discharge summary  
Ex.P.11 : Bank statement

- Ex.P.12 : Prescriptions  
Ex.P.13 : Medical bills  
Ex.P.14 : Clinical notes  
Ex.P.15 : X-ray

**List of witnesses examined for Respondents :**

RW.1 : Prashanth N.G.

**List of documents marked for Respondents :**

- Ex.R.1 : Authorization letter  
Ex.R.2 : C/ copy of policy  
Ex.R.3 : C/copy of permit  
Ex.R.4 : C/copy of deposition of RW-2 in  
MVC.1985/2023  
Ex.R.5 : C/copy of registered vehicle details  
Ex.R.6 : C/copy of insured letter

**(SHYLA S.M.)  
II Addl. Judge & ACJM  
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