

IN THE COURT OF SENIOR CIVIL JUDGE AND
MACT, HUNGUND.

Dated: 2nd day of MAR-2017.

PRESENT: **Sri. Devaraju H.M.**
B.A., LL.B.,
Senior Civil Judge, Hungund.

M.V.C. No. 189/2013.

Petitioner: 1. Kum. Afrin
D/o. Rajesab Mulla,
Aged about: 11 Yrs.,
Occ: Student,
Since minor by her natural father
Rajesab
S/o. Husensab Mulla,
Aged about: 35 Yrs.,
Occ: Coolie,
R/o. Gudur village,
Tq: Hungund,
Dist: Bagalkot.

(By Shri. N.L. Thasildar, Adv.,)

V/s.

Respondents: 1. Srikant
S/o. Ningappa Gotur,
Aged about: 30 Yrs.,
Occ: Owner of Crusher Jeep
Bearing No. K.A. 34/MD-9944,
R/o. H. No. 87A,
Kodihal village,
Tq: Hungund,
Dist: Bagalkot.

2. SHRIRAM GENERAL INSURANCE CO., LTD.,
E-8, EPIP, RIICO INDUSTRIAL AREA,
SITAPURA,

JAIPUR,
RAJASTHAN-302022.
POLICY NO. 10003/31/265719.
VALIDITY FROM 09-08-2012 TO 08-08-13.

**(Sri. S.H. Chalawadi, Adv., for R-1,
R-2: Ex-parte)**

-: J U D G M E N T :-

The petitioner filed a petition U/Sec.166 of Motor Vehicle Act, seeking compensation of Rs.7,25,000/- with interest at the rate of Rs.18% p.a. from the date of accident, till payment of compensation, from respondent, for the injuries sustained in an accident dated 11-10-2012.

2. Petitioner is minor. Therefore, petition is instituted by natural guardian/father of minor petitioner.

3. Brief facts of the petitioner's case is as under:-

That on 11-10-2012 at about 04-15 p.m. petitioner and her grand-father were standing by the side of Mudagal-Ilkal P.W.D. road in front of Shadi Mahal at Mudagal of Lingasaguru Taluk. At that time the driver of Jeep bearing registration No. K.A.34/MD-9944 driven the same from Ilkal side towards Mudagal in a rash and negligent manner and dashed against petitioner. Due to

the alleged accident, petitioner sustained grievous injuries. She was shifted to Government Hospital Mudagal, where she was given first aid and then she was shifted to Dr. Soragavi Nursing Home at Bagalkot. She was inpatient in the said hospital from 11-10-2012 to 04-12-2012. She had undergone surgery for the fracture of metatarsal bones of right foot. Petitioner spent more than Rs.1,00,000/- for treatment of minor petitioner. An additional amount of Rs.50,000/- for future medical expenses.

4. Petitioner was very hale and healthy prior to the date of accident. She was aged about 11 years at the time of accident. She was very intelligent and active student. She was very active even in the sports also. Due to the injuries, she is unable to do any work, as she was doing earlier. Petitioner lost her bright future due to injuries sustained in the road traffic accident.

5. The respondent No.1 is the owner of Jeep bearing registration No. K.A.-34/MD-9944. The accident took place due to sole negligence on the part of driver of alleged Jeep. Respondent No.2 is the insurer of the Jeep in question. The insurance was in force as on the date of accident. Therefore, the respondents are jointly and severally liable to pay compensation. With these reasons,

petitioner prayed for compensation of Rs.7,25,000/- with interest at the rate of Rs.18% p.a. from the date of accident, till realization.

6. In response to the notice, respondent No.1 appeared through counsel and filed objection. Respondent No.2 remained absent and placed ex-parte as per order dated 28-10-2014.

7. The respondent No.1 denied the entire petition averments as false and concocted. It is the defence of respondent No.1 that alleged accident took place due to sole negligent act of petitioner. In the event, court comes to the conclusion that petitioner is entitled for compensation, the compensation may be awarded against respondent No.2, as the Jeep in question duly insured with respondent No.2 as on the date of accident. With these reasons prays to dismiss the petition as against respondent No.1.

8. On the basis of the pleadings, my learned predecessor has framed the following:-

:- I S S U E S :-

1. Whether the petitioner proves that she has sustained grievous injuries in the road accident, that was occurred on 11-10-2012 at about

16-15 hours on Mudgal-Ilkal P.W.D. road in front of Shadi mahal at Mudgal, due to rash and negligent driving of the driver of Crusier jeep bearing No. KA-34/MD-9944?

2. Whether petitioner is entitled for compensation? If so, how much? and from whom?
3. What order or decree?

9. In order to substantiate the case, natural guardian/father of minor petitioner examined as P.W.1 and got admitted ten documents at Ex.P.1 to P.10. Petitioner examined the doctor as P.W.2 and got admitted document at Ex.P.11. The petitioner counsel closed the petitioner side evidence.

10. The respondent No.1 examined himself as R.W.1 and got admitted one document at Ex.R.1. Counsel for respondent No.1 closed his side evidence.

11. Heard the learned counsel for both side.

12. Perused the pleadings and materials placed on record.

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

Issue No.1: In the affirmative.

Issue No.2: In the partly affirmative.

Issue No.3: As per final order for the following:

-: R E A S O N S :-

14. ISSUE No.1 : It is the case of the petitioner that the driver of Jeep bearing registration No. K.A.34/MD-9944 driven the same in a rash and negligent manner and caused the accident on 11-10-2012 at about 04-15 p.m. on Mudagal-Ilkal P.W.D. road in front of Shadi Mahal at Mudagal of Lingasaguru Taluk.

15. It is the case of the respondent No.1 that the alleged accident took place due to sole negligent act of petitioner.

16. In order to prove the fact of accident, natural guardian of minor petitioner examined as P.W.1 and got admitted ten documents at Ex.P.1 to P.10. Ex.P.1 to P.7 are certified copies of FIR, First Information of Cr. No.121/2012 of Mudagal police station, as to the accident taken place on 11-10-2012 at about 04-15 p.m. on Mudagal-Ilkal P.W.D. road in front of Shadi Mahal at Mudagal of Lingasaguru Taluk, final report, panchanama, IMV report and wound certificate of petitioner.

17. Ex.P.3 is the certified copy of charge sheet filed against driver of Jeep for the offence punishable U/s.

279, 338 of IPC and U/s. 181 of M.V.Act. Ex.P.6 & 7 clearly reveals that petitioner sustained injuries in the road traffic accident stated to be taken place on 11-10-2012.

18. Ex.P.4 is the certified copy of panchanama. On perusal of this document, the investigation officer drawn the sketch of spot of alleged accident. It appears from Ex.P.4 that alleged accident took place on the footpath of Mudagal-Ilkal PWD road.

19. According to the Ex.P.4 the alleged accident took place extremely on the footpath of Mudagal-Ilkal road. Why the Jeep gone to footpath is not explained, either by driver of Jeep or owner of the alleged vehicle. In the case on hand, the accident was taken place on the footpath of the road. This shows that the driver of Jeep bearing registration No. K.A.34/MD-9944, driven the said Jeep in a rash and negligent manner and caused the accident. The driver of Jeep or respondent No.1 not challenged the charge sheet filed against driver of Jeep. From the reasons stated above, it is crystal clear that the alleged accident took place due to sole negligence on the part of driver of Jeep bearing registration No. K.A.34/MD-9944. The petitioner sustained injuries in the alleged

accident. Accordingly, this issued is answered in the **affirmative.**

20. **ISSUE NO.2:** In view of my findings recorded on issue No.1, petitioner sustained injury due to negligence on the part of driver of Jeep bearing registration No. K.A.34/MD-9944.

21. The next question is to determine the quantum of compensation.

22. It is the case of the petitioner that she was aged about 11 years at the time of accident. She was an intelligent student and active in curricular activities. Petitioner has not produced the document as to proof of her age. The Ex.P.6 and 7 are certified copy of wound certificate of petitioner clearly reveals that petitioner was aged about 11 years as on the date of accident. Therefore, in the absence of contrary, it is accepted that petitioner was aged about 11 years as on the date of accident.

23. Ex.P.8 is the disability certificate of petitioner. In Ex.P.8, it is mentioned that petitioner sustained 10-15% permanent physical disability to right foot. The doctor who treated the petitioner and issued disability certificate at Ex.P.8 is examined as P.W.2. He deposed in consonance with the Ex.P.8 and case sheet at Ex.P.11. According to

petitioner, she sustained crush injury to the right foot. Ex.P.11 reveals that petitioner underwent surgery for crush injury to right foot.

24. As per Ex.P.8 petitioner is having permanent physical disability of 10-15% to right foot. If the same is converted to the whole body, it may come to 10%. Therefore, the permanent physical disability of petitioner is assessed at 10% to the whole body.

25. It is the case of the petitioner that she had spent more than Rs.1 lakh for medical expenses. Petitioner produced the medical and hospital bill at Ex.P.9 & 10. As per Ex.P.9 & 10 petitioner had spent an amount of Rs.78,031/- towards medical expenses. As per Ex.P.11, petitioner was inpatient for more than 55 days. Considering the nature of injury sustained by petitioner and period of treatment, the petitioner might have spent more than Rs.78,031/- for treatment.

26. In a decision reported in **2013 ACJ 2445(SC)** (**Mallikarjun V. Divisional Manager, National Insurance Co., Ltd.,**) it is held as under:

“Principles of assessment-Assessment of compensation in case of children suffering disability – Apex Court observed that appropriate compensation on all

other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10 per cent and up to 30 per cent to the whole body, Rs. 3,00,000; up to 60 per cent, Rs. 4,00,000; up to 90 per cent, Rs.5,00,000 and above 90 per cent, it should be Rs. 6,00,000; for permanent disability up to 10 per cent, it should be Rs.1,00,000, unless there are exceptional circumstances to take a different yardstick.”

27. According to the dictum of Hon’ble Apex Court referred to above, if the children sustained disability up to 10% to the whole body, compensation of Rs.1,00,000/- should be awarded on all other heads, in addition to the actual expenditure for treatment, attendant and etc.,

28. In the case on hand petitioner was minor at the time of accident. She had sustained permanent physical disability of 10% to the whole body. Therefore, the petitioner is entitled to get the compensation as follows:

SI. No.	HEAD	COMPENSATION AMOUNT
A.	Pain and suffering already undergone and to be suffered in future, mental and physical shock, hardship, inconvenience, and	Rs. 1,00,000/-

	discomforts, etc., and loss of amenities in life on account of permanent disability.	
B.	Discomfort, inconvenience and loss of earnings to the parents during the period of hospitalization.	Rs.25,000/-
C.	Medical and incidental expenses during the period of hospitalization for 55 days.	Rs.80,000/-
	Total	Rs. 2,05,000/-

29. From the above discussion, I am of the opinion that petitioner is entitled for total compensation of Rs.2,05,000/-. At present prevailing rate of bank interest is 8 to 9%. Therefore, petitioner is entitled for interest at the rate of Rs.8% p.a. from the date of petition till realisation.

30. The respondent No.1 contended that the vehicle in question duly insured with the respondent No.2. He produced the copy of policy at Ex.R.1. This document clearly reveals that the Jeep bearing Reg. No. K.A. 34/MD-9944 duly insured with respondent No.2. The policy was in force from 09-08-2012 to 08-08-2013. The accident in question took place on 11-10-2012. This fact establish that the policy at Ex.R.1 was in force as on the date of accident. The respondent No.1 being the owner of the Jeep is liable to pay the compensation to the petitioner. The respondent No.2 being the insurer of vehicle in question is

liable to indemnify the respondent No.1. Therefore, the respondent No.1 and 2 are jointly and severally liable to pay compensation to the petitioner. Accordingly, this issue is answered in the **partly affirmative**.

31. **ISSUE NO.3**: In view of findings recorded on issue No.1 & 2, petition is to be allowed in part with cost. In the result, I proceed to pass the following:-

-: ORDER :-

Petition is allowed in part with cost.

Petitioner is entitled for compensation of Rs.2,05,000/- with interest at the rate of Rs. 8% p.a. from the date of petition till realization..

Respondent No.2 shall deposit the compensation amount as ordered above within 60 days from the date of this judgment, lest it will carry interest at the rate of Rs.9% p.a. thereafter.

In the event of deposit, 75% of the compensation amount shall be kept in F.D. in the name of minor petitioner in any nationalized bank of choice of guardian of

minor petitioner till she attain the age of majority.

The remaining 25% of the compensation amount shall be ordered to be released in favour of guardian of minor petitioner.

Advocate fee is fixed at Rs.1000/-.

Draw award accordingly.

(Directly dictated to the Stenographer on laptop, corrected and then pronounced by me in the open court on 2nd day of Mar-2017).

(Sri. DEVARAJU H.M.)
Senior Civil Judge & Member,
MACT-X, Hungund.

-: ANNEXURE :-

List of witnesses examined for the petitioner side:

P.W.1: Rajesab S/o. Husensab Mulla.

P.W.2: Dr. Venkatesh Soragavi.

List of the documents marked for the petitioner:

Ex. P.1: Certified copy of F.I.R.

Ex. P.2: Certified copy of Complaint.

Ex. P.3: Certified copy of charge sheet.

Ex. P.4: Certified copy of Mahazar.

Ex. P.5: Certified copy of IMV report.

Ex. P.6: Certified copy of wound certificate.

Ex. P.7: Certified copy of wound certificate.

Ex. P.8: Physical disability certificate.

Ex. P.8(a): Signature of Dr. Venkatesh Soragavi.

Ex. P.9: 51 medical bills.

Ex. P.10: 37 doctor prescriptions.

Ex. P.11 : Case sheet.

List of witnesses examined for the respondent side:

R.W.1: Shrikant S/o. Ningappa Gotur.

List of the documents marked for the respondent :

Ex. R.1: Insurance Policy.

**Senior Civil Judge & Member,
MACT-X, Hungund.**