

KACD210006562017



Presented on : 30-10-2017
Registered on : 30-10-2017
Decided on : 27-04-2026
Duration : 8 years, 5 months, 28 days

**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE & JMFC,
CHALLAKERE**

**PRESENT : SHAMEER P.NANDYAL,
B.A.,LL.B.(Hons.),LL.M.
Senior Civil Judge & JMFC
Challakere**

DATED THIS 27TH DAY OF APRIL 2026

E.C.A.No.10/2017

**PETITIONER : Govinda Reddy S/o Ganganna
Aged about 34 years, Occ: Driver
R/o Rampura village
Molakalmuru Taluk
Chitradurga District
(Rep By Sri VYM, Adv.)**

V/s

**RESPONDENTS : 1. Yerriswamy S/o Linganna,
Age: Major, Occ: Vehilce Owner
R/o House No.120, Ward No.1,
V.Ramasagara, Siddapura Post,
Molakalmuru Taluk,
Chitradurga District**

2. The Manager,
Lomboard Insurance Co Ltd,
Ballary.
**(R-1 Ex-parte,
R-2 Rep by Sri BMR., Adv.)**

J U D G M E N T

The present petition is filed under section 10 Workmen's Compensation Act.

2. It is pertinent to note here that initially the present petition was filed before the Labour Officer, Sub-Division II, Ballari. Later the same was transferred to the court of Principal Senior Civil Judge & CJM, Ballari and registered in ECA No.10-2017. An issue was framed was by the aforesaid court with regard to the territorial jurisdiction. Answering the said issue in the *negative*, the petition came to be transferred to this court 25-03-2017. The present petition came to be registered in ECA No.10-2017. Before this court the petition came to be dismissed for non-prosecution by virtue of order dated 24-08-2018. However in view of the orders passed by this court in Misc.No.4/2023 dated 02-04-2025, the present petition came to be restored and the matter was proceeded with. In this backdrop, this court proceeds to pass the judgment.

3. **Brief facts of the case of the petitioner:-**

The petitioner is a driver of Tata ace bearing Reg.No.KA-35-TR-4743. The respondent No.1 is the owner of the said vehicle. That on 11-11-2012 at about 6 a.m. near Devasamudra village of Molakalmuru taluk, the aforesaid vehicle met with an accident. The petitioner, while driving the said vehicle lost control and collided with the bridge. The said accident occurred, while the petitioner was under the employment of the respondent No.1. The petitioner sustained greivous injuries in the said accident. He was hospitalized for treatment at Government Hospital, Rampur and thereafter took treatment in a private hospital. The petitioner was earning Rs.8000/- per month and has now lost his ability to work. The respondent No.2 is the owner of the aforesaid vehilce. On these grounds and such others, it is prayed for allowing the petition.

4. The respondent No.1 is placed *ex parte*. The respondent No.2 has put in their appearance before this court and has filed their objection statement denying the petition averments. The respondent No.2 has specifically contended that the accident had not occurred during the course of employment of the petitioner with the respondent No.1. Further it is contended that at the time of the accident, the

petitioner did not possess a valid and effective driving license. On these grounds and such others, it is prayed for dismissal of the petition.

5. Based on these rival contentions the transferor court has framed the following:

ISSUES

1. Whether the petitioner proves that he had suffered injuries in an accident that occurred on 11-11-2012 at about 6 a.m. near muslim burial ground bridge, Devasamudra village, Molakalmuru taluk, Chitradurga district while he was discharging his duty as the driver of 1st respondent in TATA Ace bearing Reg.No.KA-35-TR-4743 i.e. during the course of his employment with 1st respondent?

2. Whether the petitioner is entitled to the compensation? If so, from whom and to what extent?

3. What order or award?

6. The petitioner has got him examined as PW-1 and got marked six documents at Ex.P-1 to P-6. Thereafter the petitioner has closed his side. The legal retainer of the respondent No.2 company has got him examined as RW-1. He has also got marked one document at Ex.R-1. Thereafter the respondent No.2 company has closed its side.

7. Heard arguments. Perused records.
8. On consideration of the oral and documentary evidences placed on record, this court answers the aforesaid issues as hereunder:

Issue No.1:- In the *affirmative*

Issue No.2:- *Partly in the affirmative*

Issue No.3:- As per final order

for the following

REASONS

9. **Issue No.1:** The petitioner claims that he was working as a driver under the respondent No.1 and during the course of his employment he has sustained grievous injuries. The petitioner has contended that on 11-11-2012 at 6 a.m., while he was driving the TATA Ace vehicle bearing Regn.No.35-TR-4743 he had lost control of his vehicle and had collided with the bridge, while he was under the employment of the respondent No.1. In order to prove his case, the petitioner has got him examined as PW-1. In lieu of his examination-in-chief, he has filed his affidavit reiterating the petition averments. In support of his case, the petitioner has produced 6 documents, which have been marked at Ex.P-1 to P-6. Ex.P-1 to 6 are the certified copies of the FIR, FIS, Spot mahazar, vehicle inspection mahazar, charge sheet and wound certificate respectively. The charge sheet materials

disclose that the petitioner was the driver of the TATA Ace vehicle as on the date of the accident and the accident had occurred due to his negligence. The fact that respondent No.1 was the owner of the TATA Ace vehicle is not in dispute. The respondent No.2 has denied any relationship employee and employer between the petitioner and the respondent No.1 respectively. It is the respondent No.1, who has to deny such relationship between him and the petitioner. As the respondent No.1 is placed ex-parte, this aspect has remained undisputed and unchallenged by the respondent No.2. That apart unless the petitioner was the driver of the TATA Ace vehicle, there is no reason for the said vehicle being driven by the petitioner as on the alleged date and time of the accident. Nothing worth is elicited from PW-1 by the respondent No.2 to disprove this aspect. Further the charge sheet materials are clearly suggestive of the fact that the petitioner was employee under the respondent No.2.

10. That apart the wound certificate marked at Ex.P-6. As per the said wound certificate, the petitioner had suffered severe tenderness with diffuse swelling with crepitus over lower 1/3rd of the left leg and left wrist joint. The said injuries are grievous in nature. The said injuries are suffered by the petitioner at the time of the accident. Thus the petitioner is able to establish the fact that he has suffered grievous injuries in the road traffic

accident, during the course of his employment under the respondent No.1. Accordingly issue No.1 is answered in the ***affirmative***.

11. **Issue No.2:** In view of the answering of issue No.1 in the affirmative, the petition is entitled for compensation. Now the quantum of compensation has to be assessed by this court. The petitioner claims that he was being paid a monthly salary of Rs.8000/- per month. However the petitioner has not produced any documents to substantiate the same. May that be so, as per Explanation II provided to section 4 (i) (b), the monthly wages is quantified as Rs.4000/-. Later on 18-01-2009 vide Act No.45/2009, amendment to Employees Compensation Act was brought and section 4 (1B) was introduced. As per the said section the Central Government was empowered to notify the monthly wages in relation to an employee. So, as per the official gazette notification dated 31-05-2010, the specified monthly wages has been fixed as Rs.8000/- for the purpose of calculation the compensation in terms of section 4 (1) of the Act. Further the same was revised to Rs.15000/- with effect from 03-01-2020. Now given the date of accident being 11-11-2012, it is appropriate to consider the wages of the petitioner to be at Rs.8000/- per month.

12. **Wages:** The next question which may arise for consideration is that whether the monthly wages as notified in section 4 (1B) of the Employees Compensation Act should be treated as minimum or maximum, the reason for raising such question arose in the context of increase in the minimum wages every year under the Minimum Wages Act-1948, which is higher than the monthly wages notified in the above section. In this regard it is pertinent to refer to a decision of Hon'ble High Court of Karnataka in **MFA No.8577/2017** in the case of **Mangalore Electricity Supply Company Vs Bellamma** at paragraph No.16, it is observed that the specified monthly wages has to be considered as maximum wages that can be considered per month. In view of this judgment, this court is of the view that the monthly wages of the petitioner is to be considered as Rs.8000/- per month.

13. **Age of the petitioner:** The petitioner claims his age to be 34 years. No documents are placed on record by the petitioner in proof of his age. However it is pertinent to note here that the age of the petitioner in the wound certificate marked at Ex.P-6 goes to show that the age of the petitioner as on the date of the accident was 48 years. Hence this court considers the age of the petitioner to be 48 years.

14. As per the schedule IV, 2nd Column the relevant factor for an employee, who is aged about **48** years is **159.80**. Further as per section 4 (1) (b) of Employee Compensation Act, where permanent physical disability results from the injury an amount equal to 60% of wages of the petitioner/injured has to be multiplied by relevant factor, which gives the amount of compensation. So, for the purpose of calculation the compensation amount the monthly wages of the injured will be Rs.8000/- X 60%, which comes to Rs.4800/-.

15. Even if it is presumed that the petitioner himself was negligent, then also Section 3 of the Employees Act, does not permit employer either to reduce or avoid compensation payable on the said ground. In this regard it is pertinent to refer to the decision of Hon'ble Apex court in the case of **Jaya Biswal & Ors. Vs Branch Manager, IFCO Tokiyo General Insurance Co. & Ors.** it was observed that the Employee Compensation Act does not envisage a situation where the compensation payable to an injured or deceased workman can be reduced on account of contributory negligence. As such no negligence could be attributed on part of the petitioner here.

16. **Disability:** It is the contention of the petitioner that the grievous injury suffered by him has resulted in disability. To substantiate this contention, the petitioner has produced the

wound certificate issued by Community Health Centre, Rampur. The same is marked at Ex.P-6. As per Ex.P-6 the petitioner has sustained severe tenderness with diffuse swelling of lower 1/3rd of left leg and left wrist joint. Further, the doctor who has issued the injury certificate has opined that the aforesaid injuries are grievous in nature. Though the petitioner contends that he had sustained permanent disability due to the said injury, there are no materials placed on record to substantiate this fact. No doctor is examined by the petitioner to show the same. Since the petitioner claims that he has suffered permanent disability, it was incumbent on him to have examined the doctor and establish his case as to whether he had suffered any permanent disability or not, if he had; what is the percentage of disability suffered. The petitioner has neither got the treated doctor examined nor has made any efforts to get himself referred to medical board also. No disability certificate is also produced by him. Had he suffered any functional disability, the petitioner would have got examined the doctor or got him referred to medical board at the least. In the absence of any such efforts on part of the petitioner, the only inference which could be drawn is that the petitioner has not suffered any functional disability. No medical bills are also produced by the petitioner. As the petitioner has not suffered any functional disability, the compensation amount cannot be calculated. However

considering the fact that the petitioner has suffered greivous injuries, if global compensation amount of Rs.50,000/- is awarded, the same will suffice the cause of justice.

17. Further as per the ratio laid down by the Hon'ble Apex Court in the case of ***K.Shivaram & ors. Vs P.Satishkumar & Ors.*** reported in (2020) 4 SCC 594, as per section 4 (A) of Employees Compensation Act, the obligation to pay the compensation arises as on the date of the accident and interest payable is 12% per annum on the compensation amount. As per the said ratio, the petitioner is also entitled for interest at the rate of 12% p.a. on the compensation amount from the date of accident till realization of the entire compensation amount.

18. ***Liability:*** The respondent No.2 has contended that the driver of the offending vehicle did not possess valid and effective driving license. The burden to prove this aspect was upon the respondent No.2. The respondent No.2 company has examined its legal retainer as RW-1. In lieu of his examination-in-chief, he has filed his affidavit reiterating the contents of his objection statement. It is pertinent to note here that the investigation officer after a detailed investigation has submitted the charge sheet against the driver/petitioner for the offences punishable under sections 279, 337, 338 and 304-A of IPC. No offence is made out against the petitioner for the offence punishable

under section 3 R/W 181 of Motor Vehicles Act. Thus the contention of the respondent No.2 company that the cannot be accepted.

19. The fact that the offending vehicle was insured with respondent No.2 company is not in dispute. The same is admitted by the respondent No.2 company. As such, it is the respondent No.2, which is liable to indemnify the owner of the offending vehicle. Accordingly issue No.2 is answered **partly in the affirmative.**

20. **Issue No.3** : In the light of foregoing discussions, this Tribunal proceeds to pass the following:

ORDER

The petition filed under section 10 of Workmen Compensation Act is hereby allowed in part.

Petitioner is entitled for total compensation of Rs.50,000/- [Fifty thousand rupees only] along with interest at the rate of 12% p.a. from the date of the accident i.e. 11-11-2012 till realization of entire compensation amount.

The petitioner is not entitled for any interest during the periods 24-08-2018 to 02-04-2025 i.e. the date of dismissal of the petition and its restoration

as per orders passed in Misc.No.4/2023 dated 02-04-2025.

The respondents Nos.1 and 2 are jointly liable to pay the compensation amount.

The respondent No.2, being the insurer shall indemnify the respondent No.1 and shall deposit the compensation awarded within a period of 60 days from the date of this order.

Given the delay caused in disposal of the matter, on deposit of the aforesaid compensation amount petitioner is entitled for its entire release.

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

Draw award accordingly.

(Dictated to the Stenographer directly on the computer, printouts taken, corrected by me and then pronounced, in presence of both the learned counsel, on this the 27th day of APRIL 2026)

[SHAMEER P. NANDYAL]
Senior Civil Judge & JMFC
Challakere

ANNEXURES

Witnesses examined for petitioner :

PW-1 : Govindareddy

Documents marked on behalf of the Petitioner :

Ex.P-1 : C/c of the FIR

- Ex.P-2 : C/c of the FIS
Ex.P-3 : C/c of Spot mahazar
Ex.P-4 : C/c of MVA Inspection Report
Ex.P-5 : C/c of the Charge sheet
Ex.P-6 : T/c of Wound certificate

Witnesses examined for Respondents:

- RW-1 : Prasad S Chalawadi

Documents marked on behalf of the Respondents :

- Ex.R-1 : Letter of Authorization

Senior Civil Judge & JMFC
Challakere