

IN THE COURT OF THE SENIOR CIVIL JUDGE
AND ADDL.MACT AT HIRIYUR

Present: **Sri M. B. Chandrashekar,**
B.A.,LL.B.,
Senior Civil Judge and
Addl. MACT, Hiriya.

Dated this 6th day of December 2014

MVC No. 4 / 2013

Petitioner : Lakshmana S/o Late Thimmabhovi
@ Thimmanna,
Aged about 45 years,
Occupation Agriculturist,
R/o Hoovinahole village & at post,
Hiriyur Taluk, Chitradurga District.
(By Sri S. Eranna, Adv.)

V/s

Respondents :

1. M. Sundar S/o Marada Chalam,
Major, RC Owner of TATA ACE bearing
registration No. AP-16-B-4137,
R/o Maskal Matti village,
Maskal Post, Hiriyur Taluk,
Chitradurga District.
(Exparte.)
2. The Manager
Reliance General Insurance Co. Ltd.,
1st Floor, Maganur Complex,
B. D. Road, Near KSRTC Bus Stand,
Chitradurga Town,
Chitradurga Tq. & District,
(By Sri B. M. Ravichandra , Adv.)

Date of filing of the petition	22-10-2013
Nature of claim petition/s	For compensation
Date of commencement of recording evidence	01-04-2014
Date on which the judgment was pronounced	06-12 -2014
Total Duration	Year/s Month/s Day/s

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:: JUDGMENT ::

1. This claim petition is filed under section 166 of the Motor Vehicles Act, 1988 claiming compensation for the alleged injuries sustained by petitioner in a motor vehicle accident.
2. **Brief averments of petition is that** ; 13-09-2012 at about 7 p.m., the petitioner and one Masiyappa son of Thimmanna were coming from Hiriyr Town to reach Hoovinahole village in their motorcycle bearing registration No. KA-05-EX-8225, when they proceed near Byadarahally Gollarahatty, at that time one TATA ACE bearing registration No. KA-16-B-4137 coming from Dharmapura side with great speed, rash and negligent manner and dashed to motorcycle in which petitioner was travelling, as a result petitioner sustained severe injuries and fractures all over body. Immediately after accident petitioner was taken to Government Hospital Hiriyr, after first aid treatment he was shifted to Sanjay Gandhi Institute of Trauma and Orthopedics Hospital, Bengaluru, wherein took treatment as inpatient for a period of fifteen days and he spent Rs.1,75,000/- towards medical expenses.

It is further contended that, petitioner was hale and healthy prior to date of accident, he was an agriculturist and used to earn Rs.2,00,000/- per annum. Due to accidental injuries, now he is unable to do his work properly as before. It is further contended

that, accident caused due to actionable negligence of rider of offending vehicle. Respondent No.1 is owner and Respondent No.2 is insurer of said TATA ACE and policy was in force as on the date of accident, hence both respondents are jointly and severally liable to pay compensation and prayed for awarding compensation as prayed in the petition.

3. In spite of service of notice, respondent No.1 did not appear before court, hence he was placed ex parte. The respondents No. 2 appeared through its counsel and filed objection statement. Wherein he denied age, occupation, income, and nature of accident as narrated in petition. It is further contended by respondent No.2 company that, driver of offending vehicle is not having valid and effective driving licence as on the date of accident, the respondent No.1 owner has entrusted his vehicle to such a person and he violated the terms and conditions of policy. It is further contended by insurance company that, since driver of TATA ACE had no valid and effective driving licence as on the date of accident, the petitioner and owner colluded with police officers and impleaded one Babu @ Balasundar son of Mani who is not a resident of Maskalmatti village as driver of said TATA Ace. It is further contended that, liability if any of this respondent is subject to proof of RC, FC, IC of the vehicle and also valid and effective driving licence of

driver of offending vehicle. Hence, respondent No.2 Company prays to dismiss the petition.

4. On the basis of above pleadings, following common issues are framed: -

- 1) Whether the petitioner proves that he sustained injuries in a motor vehicle accident that occurred on 13-09-2012 at about 7 p.m., near Byadarahally Gollarahatty on Hiriur -Dharmapura Road, Hiriur Taluk, due to actionable negligence of driver of TATA ACE bearing registration No. KA-16-B-4137?
- 2) Whether respondent No.2 Company proves that accident occurred due to actionable negligence of rider of motorcycle bearing registration No. KA-05-EX-8225?
- 3) Whether petitioner is entitled to compensation? If so, what is the amount and who is liable to pay?

- 4) What order or award?

5. In order to prove his case, petitioner got examined himself and a witness as PW-1 and 2, he has produced 93 documents and got marked at Ex.P-1 to P-93. On the other hand, respondent No.2 Company got examined its Senior Executive as RW-1 and got marked three documents at Ex.R-1 to 3.

6. Heard arguments advanced by both the parties.

7. My findings on above issues are as follows:-

- Issue No.1 :- In Affirmative.
Issue No.2 :- In Affirmative.
Issue No.3:- Partly in Affirmative.

The petitioner is entitled for compensation of **Rs.2,40,720/-** with interest at 6% p.a. from the date of petition till realisation from Respondent No.1 Owner.

Issue No.4 :- As per final order for the following:-

:: REASONS ::

8. **Issue No.1 & 2:-** The petitioner filed affidavit in lieu of examination-in-chief as PW-1 and reiterated petition averments pertaining to accident. PW-1 deposed that on 13-09-2012 he had been going on in motorcycle bearing registration No. KA-05-EX-8225 as pillion rider along with one Masiyanna. He further deposed that when they came near Hoovinahole village at Byadarahally Gollarahatty driver of TATA ACE bearing registration No. KA-16-B-4137 came with great speed, rash and negligent manner and hit the motorcycle wherein he has been travelling as pillion rider. Further he deposed that said accident took place due to rash and negligent driving of TATA ACE by its driver. The petitioner has produced several documents that marked at Ex.P-1 to 93.
9. The learned counsel for respondent insurance company has cross-examined PW-1 to considerable stretch. It is contended by respondent No.2 company that very TATA ACE is not driven by accused by name Balasundara @ Babu son of Mani. It is contended by him that the very vehicle driven by one Babu son of Mani and not Balasundar son of Mani. It is also contended by him that **PW-1 himself during course of**

cross examination fairly admitted that one Balasundar and Babu are brothers and children of one Mani of Maskal village. Above said Babu son of Mani who driven TATA ACE had no valid and effective driving licence as on the date of accident, and hence petitioner colluded with owner of vehicle and police to insert name of Balasundar as accused at later stage that too in charge sheet only. He has been relying on the very complaint that marked at Ex.R-1. Further he also relying on the very cross examination of PW-1. The very cross-examination of PW-1 reads as under:-

I know one Mani's son Balasundara the elder son, Babu younger son. The said Babu has been residing at Maskal village, Balasudnar residing at Maskalmatti village. They have been residing in a house. I had been to Bangalore Sanjay Gandhi Hospital by early morning at 2-00 AM on 14-09-2012. It is true complaint is lodged against Babu S/o Mani by alleging that he had been driving the Tata Ace vehicle bearing registration No. KA-16-B-4137.

10. The very complaint Ex.R-1 pertaining to name of accused discloses as "Babu S/o Mani, Maskalmatti village". The above cross-examination of PW-1 clearly discloses that one driver by name Babu S/o Mani was driver of TATA ACE vehicle as on the date of accident and at later stage it was shown as Babu @ Balasundar.
11. The respondent No.1 who is owner of said vehicle has not at all appeared before court and placed exparte. As per PW-1 himself Babu and Balasundar are two different person who being children of one Mani of Maskal village. That means Babu was original driver of

TATA ace vehicle as on the date of accident and he had no licence. Therefore the petitioner cooked up false case by showing name of Balasundar as accused since he had licence to drive said vehicle. Moreover the petitioner has not produced the copy of complaint i.e., Ex.R-1 along with FIR Ex.P-1. He withheld said document to substantiate his false contention pertaining to the name of driver with an intention to gain wrongfully. He approached the court with unclean hands and suppressed material evidence.

12. The learned counsel for petitioner has not whispered anything whether Babu the accused had licence to drive said vehicle. Therefore it is crystal clear that offending vehicle was driven by **one Babu S/o Mani and not Balasundar S/o Mani** as shown in charge sheet. Therefore, I hold that very driver Balasundar son of Mani who produced licence before court in instant case was not hold any water. At the same time it is crystal clear that Babu who had no licence had driven said vehicle as on the date of accident. Further more material on hand clearly discloses that above said Babu who driven said TATA ACE vehicle had driven the same with rash and negligent driving and caused accident. Accordingly I answered this issue in affirmative and issue No.2 in negative.

13. **Issue No.3:-** The PW-1 contended that he received simple and grievous injuries and he had taken to government hospital Hiriur, later he shifted to Basaveshwara Hospital. Further he deposed that he has received comminuted fracture of lower end of left femur closed fracture of lower tibia, fracture of both bone of right leg. The same are all grievous injuries and a simple injury. Therefore, I hold that petitioner is entitled for **Rs.35,000/-** towards pain and suffering.
14. Further petitioner contended that, he has incurred medical expenses. To substantiate the same petitioner has produced medical bills that marked at Ex.P-8 to 62. I perused medical bills, which belongs to a same hospital. Moreover respondent No.1 had not appeared before court and had not objected any specific objection to said medical bills. Petitioner has also produced prescriptions that marked at Ex.P-63 to 88. The said prescriptions coupled with medical bills Ex.P-8 to 62. Therefore, I hold that petitioner is entitled for **Rs.75,000/-** towards medical expenses.
15. Further it is crystal clear from the testimony of PW-1 that, he had undergone operation and fixed with interlocking nail and fracture of both bones of left leg was fixed with external fixator was applied, during course of operation. Petitioner has required of future treatment and also operation so as to remove the

same. Therefore, I hold that petitioner is entitled for **Rs.25,000/-** towards medical expenses.

16. To substantiate the assessment of permanent disability petitioner has got examined doctor as PW-2 through court commissioner. The PW-2 doctor had opined that petitioner sustained 34% of permanent physical disability. The said doctor deposed that petitioner got admitted to his clinic on 14-09-2012 with history of RTA and he treated him from 14-09-2012 to 28-09-2012. He further deposed that PW-1 sustained injuries of fracture shaft femur (L), compound fracture both bones of left leg, fracture of both bones of right leg and hence PW-1 has undergone surgery. He operated with external fixator for left leg and internal fixator for right tibia and left femur and hence he sustained in all 34% of permanent disability. PW-2 is cross-examined by respondent insurance company. He admits that there may be chances of decrease of disability as compared to the entire body of PW-1. Moreover, the opinion of said doctor is pertaining to a particular limb only. Then $\frac{1}{3}^{\text{rd}}$ of said disability is to be taken into consideration as compared to entire body. Therefore, I hold that, 12% of permanent physical disability is to be consideration it would meet ends of justice.
17. As per medical records on hand, i.e., wound certificate, discharge card, petitioner aged about 46

years as on the date of accident. Since there is no specific document to that effect, it appears that petitioner might have aged about 45 years as on the date of accident.

18. PW-1 further deposed that, he has been working as agricultural work and earned Rs.2,00,000/- per month. But he has not produced any material evidence to that effect. Therefore, a notional income of Rs.4,500/- is to be taken into consideration. As per **Saralaverma case** the appropriate multiplier 14 is applicable to the age group of 41 to 45 years. Then automatically, loss of income due to permanent disability would be Rs.90,720/- (monthly income of Rs.4,500/- X 12 months X 12% of permanent disability X 14 multiplier / 100 = Rs.90,720/-). Accordingly **Rs.90,720/-** is awarded towards loss of future income due to disability.
19. PW-1 contended that, he took treatment as inpatient and undergone operation for the fractured injuries, he has produced discharge card that marked at Ex.P-6 and 7, which discloses that petitioner undergone operation to femur, and nail were implanted and he took treatment as inpatient from 14-09-2012 to 28-09-2012. Therefore, I hold that petitioner is entitled for **Rs.10,000/-** towards attendant charges. **Rs.5,000/-** towards travelling expenses etc., Accordingly in all petitioner is entitled for **Rs.2,40,720/-** under following heads.

Towards pain and suffering	Rs.35,000/-
Towards medical expenses.	Rs.75,000/-
Towards future medical expenses.	Rs.25,000/-
Towards loss of future income due to disability	Rs.90,720/-
Towards attendant charges,	Rs.10,000/-
Towards travelling expenses and future etc.,	Rs.5,000/-
In all	Rs.2,40,720/-

20. In view of the principles laid down by the Hon'ble Supreme Court of India in a case reported in **2014 ACJ 1430** (Ramilaben Chinubhai Parmar and others Vs. National Insurance Co. Ltd and others) the rate of interest awarded by nationalized banks on fixed deposit amount for one year has considerably come down, it is reasonable to award interest at the rate of 7.5% per annum on the compensation amount from the date of petition till realisation.
21. It is clearly discussed above that one Babu S/o Mani was driver of the offending vehicle as on the date of accident. The said driver has not appeared before court but his brother Balasundar S/o Mani was not the driver of said vehicle. The said driver has not appeared before court and has not produced any driving licence. The respondent No.1 who being owner of offending vehicle is not at all appeared before court, so as to show who was driver of offending vehicle. Under these circumstances I am of considered opinion

that, respondent No.1 had let his vehicle to a person i.e., Babu S/o Mani who drove the vehicle without licence. Hence, the respondent No.1 has violated the terms and conditions of policy, accordingly the respondent No.1 is liable to pay compensation to petitioner. The Petition filed against respondent No.2 Insurance Company is hereby dismissed. Accordingly, this issue is answered.

22. **Issue No. 4 :** In view of my findings on Issue No.1 and 2 and reasons stated therein, I inclined to pass the following:-

:: ORDER ::

The petition filed by petitioner under Section 166 of M.V. Act is hereby allowed in part with costs against respondent No.1 owner.

The petition filed against respondent No.2 Insurance Company is hereby dismissed.

The petitioner is entitled to a total compensation of **Rs.2,40,720/-** with interest at 7.5% p.a. from the date of petition till realisation.

Respondent No.1 is liable to pay compensation to petitioner and he shall deposit compensation amount within 6 weeks from to day.

Out of the compensation amount awarded, 50% shall be kept in fixed deposit in any nationalized bank for a period of 5 years, choice of petitioner and remaining amount shall be release.

Advocate fee is fixed at Rs.750/-.

Draw up award accordingly.

(Dictated to Stenographer, transcribed and computerised by him, corrected, signed and then pronounced by me in the open court on this 6th day of December 2014).

(M. B. CHANDRASHEKAR)

Senior Civil Judge and
Addl. MACT, Hiriya.

:ANNEXURE:

Witnesses Examined on behalf of Petitioners:

PW-1 :-Lakshmana

PW-2:- Dr. T. H. Prakashappa,

Witnesses Examined on behalf of the Respondents:

RW-1:- Surendra,

Documents marked on behalf of the petitioners:

Ex.P-1:- FIR

Ex.P-2:- spot Mahazar,

Ex.P-3:- IMV report,

Ex.P-4:- Wound certificate,

Ex.P-5:- Charge sheet,

Ex.P-6 & 7:- Discharge summary,

Ex.P-8 to 62:- Medical bills (55),

Ex.P-63 to 88:- Prescriptions (26),

Ex.P-89 & 90:- RTC extracts,

Ex.P-91 to 93:- X-ray films,

Documents marked on behalf of Respondents:

Ex.R-1:- Complaint (through PW-1),

Ex.R-2:- MLC extract,

Ex.R-3 :- Policy copy,

Senior Civil Judge and
Addl. MACT, Hiriur.