

KADG310004562021



Presented on : 24-08-2021  
Registered on : 24-08-2021  
Decided on : 07-04-2026  
Duration : 04 years, 07 months, 14 days

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND MACT  
VIII, HARIHAR**

**PRESENT: Smt. Padmashri A. Munnoli,**  
B.A.L, LL.B.  
SENIOR CIVIL JUDGE AND  
MACT VIII, HARIHAR

**Dated this the 7<sup>th</sup> day of April , 2026**

**M.V.C. No. 473 / 2021**

**PETITIONER:**

Petitioner : Reshma K., W/o Mehaboob Sab, Aged  
about 37 years, R/o Near Srikantha  
Talkies, Harihar, Davangere District.

**(By Sri. M. Nagendrappa, Adv)**

**-Versus -**

**RESPONDENTS:**

- Respondents: 1. Diwakar Saliyana, S/o Sundervyali,  
Aged about 42 yers, Kumbara Caste,  
Driver of Lorry No. KA-19-AC-0371,  
R/o Shirali village, Beltangadi taluk,  
Dakshina Kannada District.
2. Kyatharin D'Souza, W/o Igneshiyas D.  
Souza, Proprietor of AVE Mariya Fvels,  
Permude Panchayath, Permude,  
Mangalore - 574 509.

3. Divisional Manager, The Oriental Insurance Co. Ltd., A.M. Arcade, Near Vidyardhibhavan, Davangere.

(Policy No. 422203/31/2021/2495 valid from 25.08.2020 to 24.08.2021.)

(R.1 & 2 Ex-parte)  
(R.3 by Sri. H.M. Shadaksharaiah, Adv.)

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

The present petition is filed by the petitioner against the respondents No.1 to 3 U/s.166 of Motor Vehicles Act, seeking a total compensation amount of Rs.21,00,000/- with interest at the rate of 18% p.a. in respect of injuries suffered by her in a road traffic accident, which took place on 16.08.2019.

**2. Brief facts of the case are as under:-**

It is the case of the petitioner that, on 20.11.2020 at around 8.30 p.m. at Nanditavare village on Shivamogga – Honnali road, petitioner along with one Manjunath were returning to Harihar on motorcycle bearing Reg. No. KA-17-HG-1716 and when they came near Nanditavare village, respondent

No.1 being the driver of the lorry bearing Reg. No. KA-19-AC-0373 came on a high speed in a rash and negligent manner from Harihar side and dashed against the motorcycle of said Manjunath, as a result, petitioner who was the pillion rider fell down from the motorcycle, sustained grievous injuries to her right hand, right leg, thigh and feet. It is averred that petitioner was taken to SSIMS hospital, Davangere and was operated upon at the said hospital. Later petitioner also took treatment at one Sahyadri Narayana Hospital, Shivamogga as an indoor patient. That the petitioner has spent around Rs.4,00,000/- for her treatment. That petitioner was an inpatient at SSIMS, hospital from 21.11.2020 to 01.12.2020. That because of the accidental injuries petitioner has suffered a permanent disability.

**3.** That at the time of accident petitioner was aged around 36 years, she was doing work of tying the beedi and earning Rs.1,000/- per day. Now because of the accidental injuries she is unable to work like before. She is unable to sit, squat and walk independently. That the accident was caused by the

respondent No.1. Respondent No.2 is the owner and respondent No.3 is the insurer of the vehicle. Hence it is averred that respondent No.1 to 3 jointly and severally liable to pay compensation.

**4.** In pursuance of the petition notices issued, respondent No.3, insurance company alone appeared through its counsel. Respondent No.1 and 2 though served remained absent. Hence, placed ex-parte. Respondent No.3 has filed statement of objections to the main petition.

**5.** Respondent No.3 in its statement of objections admitted about the issuance of the policy to policy bearing Reg. No. KA-19/AC-0373, but the rest of the petition averments are denied. It is contended that at the time of accident driver of the offending lorry did not possess a valid and effective driving licence and as such, there is violation of policy conditions. That there was no negligence on the part of respondent No.1. That the insured and insurer of the motorcycle bearing Reg. No. KA-17-HG-1716 are also necessary parties to the petition. That the

liability of the insurance company is subject to terms and condition of the policy. Hence it was prayed that the petition be dismissed.

**6.** On the basis of above pleading, the following issues have been framed:

1. Whether the petitioner proves that, she sustained injuries mentioned in column 11 of the petition in a road traffic accident which took place on 20.11.2020 at around 8.30 a.m. on Malebennur-Harihar road due to the actionable negligence on the part of driver of the lorry bearing Reg. No. KA-19-AC-0373?
2. Whether the petitioner is entitled for compensation? If so from whom and to what extent?
3. What order or award?

**7.** Thereafter, in order to prove her case, petitioner got her self examined as PW.1. The doctors on commission are examined as PW.2 and 3. Ex.P.1 to 28 and Ex.C.1 are marked for the petitioner. No oral evidence lead by respondent No.3. The fitness certificate and copy of insurance with consent are marked as Ex.R.1 and 2.

8. Heard, Perused the material on record.

9. My findings on the above Issues are as under;

Issue No.1: In the Affirmative;

Issue No.2: Partly in the Affirmative;

Issue No.3: As per final order

for the following.....

**:REASONS:**

10. **Issue No.1:-** In order to prove that she sustained injuries in the accident which took place on 20.11.2020 due to rash and negligent act of respondent No.1 got herself examined as PW.1. Ex.P.1 to 28 are marked for her .The insurance company has not lead any oral evidence.

11. PW.1 in her cross-examination states that she along with Manjunath were going on the Aactiva Motor vehicle. That said Manjunath is her acquaintance. She denies the suggestion that it is Manjunath who himself drove the motorcycle on a high speed and dashed against the lorry.

**12.** There is no oral evidence of respondent No.3 to establish about the factum of occurrence of the accident due to negligence of said Manjunath as suggested in the cross-examination of PW.1.

**13.** Learned counsel for petitioner would argue that the petitioner has established occurrence of the accident. She has suffered a permanent disability in the accident. Hence, it was prayed that the petition be allowed as prayed for.

**14.** Learned counsel for respondent No.3 would argue that there was no negligence on the part of deponent No.1. That it is rider of the motorcycle who caused the accident. Hence, it was prayed that the petition be dismissed.

**15.** Respondent No.1 and 2 have not contested the petition. No oral evidence lead by respondent No.3 to establish that there was no negligence on the part of respondent No.1. Petitioner is the injured. Ex.P.1 is the copy of FIR in Cr. No. 124/2020 registered against driver of the lorry. Ex.P.7 is the chargesheet filed against respondent No.1 for the

offences punishable U/Sec. 279, 337, 338 of IPC and Sec. 187 of MV Act. Ex.P.6 is the wound certificate of petitioner which discloses that she was taken to SSIMS Hospital on 20.11.2020 with history of RTA. Therefore, the material on record establishes that petitioner sustained injuries in the accident which took place on 20.11.2020. Therefore, for these reasons I answer **issue No.1 in the Affirmative.**

**16. Issue No.2:** The petitioner avers that she sustained grievous injuries in the accident. That there was a commuted displaced fracture of distal 1/3rd right femur and visualized extending tibia-obliqnal displaced fracture of distal 1/3rd of Tibia. That after the accident on 20.11.2020, she took treatment at S.S.I.M.S. Hospital Davangere and also one at Sahyadri Narayana Hospital of Shivamogga as a indoor patient and has spent Rs.4,00,000/- for her treatment. That she was aged 36 years at the time of accident and was earning Rs.1,000/- per day by tying beedi.

**17.** To prove the said facts, petitioner has produced Ex.P.8 to Ex.P.23, Ex.P.27 and 28. The doctor by name Dr. Arunkumar G.S., Orthopedic Surgeon on commission is examined as PW.2 and another doctor by name Dr. Nithin A.B. on commission is examined as PW.3.

**18.** PW.1 in respect of the injuries and disability, in the cross-examination by respondent No.3 side states that one Dr. Venkataramana Rao and Dr. K.C. Shivamurthy treated her at the SSIMS hospital, she admits that she has obtained only disability certificate from PW.3. She states that she has taken treatment with PW.2 and states that a surgery is conducted and there is a rod inserted. She denies the suggestion that she is deposing falsely that she has suffered grievous injuries in the accident.

**19.** PW.2 in his examination-in-chief has stated that petitioner on 31.12.2020 got admitted to the Sahyadri Narayana Hospital of Shivamogga and he has treated the petitioner at the said hospital. That there was a fracture of Femur bone and Tibia and

Fibula bones and that he has conducted the surgery and inserted the rod. That petitioner was discharged from the hospital on 04.01.2021. That later petitioner at his private hospital at Bhadravathi is receiving follow up treatment. That petitioner on 25.09.2023 had come to him for examination and for assessing the disability and from the X-ray report, it was revealed that the fractures had united. That there is a physical disability which is caused to the petitioner to the tune of 28.62%. That Rs.70,000/- is further required for removal of the implant. Ex.C.1 was marked through PW.2. In the cross-examination, PW.2 states that petitioner prior to coming to the hospital had taken treatment at SSIMS hospital. That even at the said SSIMS hospital there was a surgery conducted on the petitioner. He admits that he has assessed the disability only to the particular limb. He admits that he has not mentioned the functional disability in Ex.P.18.

**20.** PW.3 the doctor of SSIMS hospital has issued Ex.P.27 which is a disability certificate. In the cross-examination by respondent No.3 counsel, PW.3

states that he has not treated the petitioner after the accident and that he has not conducted any surgery nor petitioner had come to him for follow up treatment. That petitioner had come to him on 05.10.2024 only for the purpose of assessment of disability. He denies the suggestion that as already PW.2 has assessed the disability, he once again cannot assess the same.

**21.** Ex.P.6 is the wound certificate of the petitioner, which discloses that petitioner has suffered commuted displaced fracture of the distal 1/3rd of right femur bone and also there is fracture of distal 1/3rd of Tibia. Ex.P.8 is the discharge summary of the petitioner which discloses that petitioner was admitted to the hospital on 21.11.2020 and discharged on 01.12.2020. Ex.P.9 is the discharge card of SSIMS hospital which shows that again petitioner got admitted on 01.12.2020 and discharged on 11.12.2020. Ex.P.11 is the discharge summary of Sahyadri Narayana Hospital of Shivamogga, which shows that petitioner got admitted to the said hospital on 31.12.2020 and discharged on 04.01.2021. PW.2

as per Ex.P.11 is the treated doctor and from the discharge summary it can be seen that it appears petitioner was again operated at said Sahyadri Narayana Hospital. Therefore, the material on record disclose that petitioner has suffered grievous injuries in the accident. Therefore, she is entitled to compensation under the following pecuniary heads. The petitioner avers that she was aged around 37 years at the time of accident. In the discharge summary the age is mentioned is 37 years. Even in the wound certificate the age of petitioner is shown as 37 years as on the date of accident. There is a xerox copy of the Aadhar card of petitioner wherein, her date of birth with Aadhar card No. 543782136141, is shown as 01.04.1975. Therefore, if this is considered, the petitioner has not placed on record any material to show her exact age as on the date of accident. Therefore, if date of birth is considered, the petitioner as on the date of accident appears to be aged around 45 years at the time of accident. Therefore, in my opinion the age of the petitioner, can be taken up at 45 years as on the date of accident. As petitioner has

failed to place on record any material about her actual income, as per the chart prepared by the KSLSA, as the accident took place in the year 2020. The notional income can be fixed at Rs. 14,500/-. Therefore, now I proceed to determine the compensation.

**22. PAIN AND SUFFERING**:- Ex.P.8, 9 and 11 are the discharge cards of the petitioner which disclose that petitioner took treatment at SSIMS hospital, Davangere and at Sahyadri Narayana Hospital of Shivamogga between the period of 21.11.2020 to 04.01.2021, which is for about 1 ½ month. Further petitioner suffered fracture of the right femur shaft and also right segmental tibia and fibula shaft fracture. Therefore, considering the said fact petitioner is entitled for a sum of Rs.30,000/- towards the head of pain and suffering.

**23. LOSS OF INCOME DURING LAID UP PERIOD**:- Petitioner appears to have been admitted in the hospital for about 1 ½ month and if the nature of injuries are considered, she might have

taken rest for about 2 months, therefore, petitioner might have lost her earnings for about 3 months. Therefore, petitioner is entitled for a sum of Rs.43,500/- (Rs.14,500/- x 3).

**24. COMPENSATION FOR DISABILITY, LOSS OF FUTURE EARNINGS, HAPPINESS AND FUTURE AMENITIES:**

Ex.P.8 is the discharge summary of SSIMS hospital which discloses that petitioner suffered "compound type – III A Segmental Commuted Right Femur Shaft Fracture with closed Traumatic Right Segmental Tibia and Fibula Shaft Fracture with Compound Knee Injury". As per Ex.P.11 a surgery was also conducted on the petitioner. Ex.P.18 is the disability certificate issued by PW.2 wherein he has assessed the permanent disability at 28.62% in relation to her left lower limb and that further Rs.70,000/- is required towards removal of implants. Ex.P.18 discloses that PW.2 has mentioned that the fractures are united. The disability certificate at Ex.P.18 is dated: 25.09.2023. Ex.C.1 is a chart which

was prepared at the time of assessment of the disability marked through PW.2. Again PW.3 has issued another disability certificate as per Ex.P.27. It is not forthcoming as to why petitioner got another disability certificate from PW.3, when already the disability was assessed by PW.2. Admittedly, PW.3 has not treated the petitioner and has issued only the disability certificate. Nowhere it is forthcoming from the material on record that PW.3 has treated the petitioner soon after the accident. PW.2 is a treated doctor. Therefore, if the evidence of PW.2 is considered, the fractures are already united. The functional disability suffered by PW.1 is not forthcoming either from Ex.P.18 or Ex.P.27. Further, petitioners states that she was doing work of tying beedi, the fracture suffered is to the right leg. Therefore, if this is also considered, the functional disability is not satisfactory established by the petitioner and therefore, in my opinion looking into the nature of injury suffered by petitioner, the disability caused to the petitioner can be taken up at 8% to the whole body. As petitioner appears to be

aged around 45 years, as per Sarala Verma's case the multiplier applicable will be '14'. It is already observed that, the monthly income of the petitioner at the time of accident would have been Rs.14,500/- per month. Hence, petitioner is entitled for compensation of **Rs.1,94,880/-** ( $\text{Rs.14,500} \times 12 \times 14 \times 8 / 100 = \text{Rs.1,94,880/-}$ ) towards future income on account of permanent disability.

**25. MEDICAL EXPENSES INCLUDING EXTRA FOOD FOR NOURISHMENT, ATTENDANT CHARGES, CONVEYANCE CHARGES AND OTHER INCIDENTAL EXPENSES.**:- The petitioner has produced medical bills and prescriptions at Ex.P.21 and 22. From the medical bills it can be seen that it appears Rs.1,24,705/- is the total sum of advance paid by the petitioner at the hospital. The final bill of SSIMS hospital which is dated: 02.12.2020 discloses that the net bill is shown as Rs.1,04,705.32. Therefore, if the final bill of Rs.1,04,705.32 with the other acceptable medical bills which is for a sum of Rs.2,89,789/- is considered, it appears petitioner has spent around Rs.3,94,494/- for her medical expenses.

As the petitioner took treatment as a indoor patient she might have spent for attending charges, food towards nourishment for speedy recovery, conveyance charges in making trips to hospital during laid up treatment and other incidental expenses. As such, in my opinion grant of an amount of Rs.4,50,000/- under this head would be just and proper. Thus the total award stands has follows;

Pain and suffering.	:	30,000/-
Loss of income during laid up period	:	43,500/-
Compensation for disability, loss of future earnings, happiness and future amenities:	:	1,94,880/-
Medical and incidental expenses.	:	4,50,000/-
<b>Total</b>	:	<b>7,18,380-00</b>

**26.** Therefore, petitioner is entitled for compensation of Rs.7,18,380/- with interest at the rate of 6% p.a. from the date of petition till realization. Accordingly, for these reasons I answer **issue No.2 partly in the Affirmative.**

**About liability:**

**27.** The accident has taken place on 20.11.2020. Ex.R.2 is the policy of insurance which discloses that the insurance policy was in force of the offending vehicle from 25.08.2020 to 24.08.2020. The liability is not seriously disputed by respondent No.3. Therefore, respondent No.2 and 3 being the insured and insurer are liable to pay the compensation to the petitioner.

**28. Issue No.3-** For findings given on the above said issues and reasons discussed therein I proceed to pass the following:-

**ORDER**

The petition filed by the petitioner U/Sec.166 of Motor Vehicles Act, 1988 is hereby allowed in part with costs.

The petitioner is entitled for a total compensation of Rs.7,18,380/- (Rupees Seven Lakhs Eighteen Thousand and Three hundred Eighty Three Only) with interest at the rate of 6% p.a. from the date of petition till the realization.

Respondents No.2 and 3 are jointly and severally liable to pay compensation amount.

Respondent No.3, being the insurer is directed to deposit award amount within two months from the date of award.

On deposit of the award amount, with accrued interest, 60% of the total compensation amount shall be released in favor of the petitioner and remaining 40% shall be kept as FD in the name of petitioner for a period of 5 years in any nationalized bank of the choice of the petitioner.

The Advocate's fees are fixed at Rs.500/-.

Draw Award accordingly.

(Part of dictation dictated to the stenographer, transcribed and typed by him and part of dictation dictated to the Stenographer directly on computer, corrected and signed by me, then pronounced in the open court on this the 7<sup>th</sup> day of April 2026).

**(Smt. Padmashri A. Munnoli)**  
**Sr. Civil Judge and VIII MACT, Harihar**

### **ANNEXURE**

**Witness examined for the petitioner/s:**

P.W.1 : Reshma K.  
P.W.2 : Arunkumar G.S.

P.W.3 : Dr. Nithin A.B.

**Documents marked for the petitioner/s:**

- Ex.P.1 : C/c of FIR  
Ex.P.2 : C/c of FIS  
Ex.P.3 : C/c of spot mahazar  
Ex.P.4 : C/c of spot mahazar  
Ex.P.5 : C/c of motor vehicles accident report  
Ex.P.6 : C/c of wound certificate  
Ex.P.7 : C/c of chargesheet  
Ex.P.8, 9 : Discharge summary and discharge card  
Ex.P.10 : Out patient record  
Ex.P.11 : Discharge summary  
Ex.P.12 : Consultation summary  
Ex.P.13 : Initial assessment physiotherapy  
Ex.P.14 : Doctor prescription  
Ex.P.15 : Patient slip  
Ex.P.16 : Lab report  
Ex.P.17 : Radiology report  
Ex.P.18 : Disability certificate  
Ex.P.19 : Photos (2 Nos.)  
Ex.P.20 : X-ray films (11 Nos.)  
Ex.P.21 : Medical bills (98 Nos.)  
Ex.P.22 : Medical prescriptions (41 Nos.)  
Ex.P.23 : Receipt of Suddi bidugade paper  
Ex.P.24 : Receipt of Suddi bidugade paper  
Ex.P.25 : Paper publication in newspaper  
Ex.P.26 : DL of Manjunath  
Ex.P.27 : Disability certificate  
Ex.P.28 : X-ray films

**Witnesses examined for the respondent/s:**

- Nil -

**Documents marked for the respondent/s:**

- Ex.R.1 : Letter of RTO (by consent)  
Ex.R.2 : Copy of insurance (by consent)

**Documents marked through court commissioner:**

- Ex.C.1 : Assessment of permanent physical impairment chart.

**(Smt. Padmashri A. Munnoli)**  
**Sr. Civil Judge and VIII MACT, Harihar**