

KASM600004372021



**IN THE COURT OF THE V ADDL. DISTRICT &
SESSIONS JUDGE & ADDL. MACT, SHIVAMOGGA,
SITTING AT : SAGAR.**

Present : SMT. PRABHAVATHI. G.

LL.M.

V Addl. District & Sessions Judge &
Addl. MACT Shivamogga, sitting at Sagar.

Dated this the 04th day of November - 2023

M.V.C. NO. 562 / 2021

P E T I T I O N E R S :

Sri.Swaroop .C @ Swaroop
S/o C. Chandrappa
Aged about 19 years,
Student,
R/o. Neerkodu Extension,
Vinobanagar, Sagar Taluk,
Shivamogga District.

(R/by Sri. Maridas., Adv.)

- V/s -

R E S P O N D E N T S :

- 1) Sri. Akash M. Bangera
S/o P. Narayana Poojari,
Aged about 19 years,
R/o. 1/29, Manjanottu mane,

Bellalu village,
Belthangadi Taluk,
Dakshina Kannada District.
Driver of Mahendra Scorpio,
bearing Reg.No.KA.21/M-5046,
D.L No. KA 70202110000630
Valid from 08-01-2021 till 04-10-2042
Bantvala RTO Office.

- 2) Sri. Jayakumar
S/o Kaliyappa,
Aged about 47 years,
R/o. Kalkani mane, Church road,
Kasba village, Belthangadi Taluk,
Dakshina Kannada District.
Owner of Mahendra Scorpio,
bearing Reg.No.KA.21/M-5046.
- 3) The Branch Manager,
Sri.Ram General Insurance Co. Ltd.
Door No.14-2-101/6, 3rd floor,
Mangaluru -575001,
Policy No. 418031/31/21/005944
Valid from 30-12-2020 till 29-12-2021.

(Respondent No.1 to 3 Exparte)

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

The petitioner has filed this petition U/Sec.166 of
Motor Vehicle Act seeking compensation for the injuries
sustained by him in a road traffic accident.

2. In brief the case of the petitioner is as follows;

That on 11.03.2021 the petitioner along with his friends were coming from Savanalu, Belthangadi Taluk towards Church road in Scarpio Car bearing Reg.No.KA.21/M-5046 which was driven by the respondent No.1, while moving near Kallugudde cross, Melanthabettu village the respondent No.1 drove his car in rash and negligent manner and suddenly applied the break as a result the vehicle flipped to the right side and caused an accident. Due to the said accident the vehicle got damaged and the petitioner has sustained grievous injuries to his nose and other parts of the body and he become unconscious and other inmates of the vehicle had been sustained injuries.

3. Further contended that immediately after an accident, the petitioner was taken to the Belthangadi hospital and after first aid as per the advise of the doctor he has been shifted to A.J. hospital Mangalore

there he has taken treatment as an inpatient for 3 days from 11.03.2021 to 13.03.2021. As he has sustained fracture to his nasal bone and he has undergone X-ray and scanning and his nose was stitched and got bandaged and he has taken rest as per the advise of the doctor.

4. Further contended that, the petitioner was studying Civil Engineering at Ujire in Dakshina Kannada District. The petitioner was hale and healthy prior to the accident. But due to the above said accidental injuries the petitioner has lost the learning capacity as earlier and it is affected to his future studies. He is suffering from headache and facing breathing problem. Due to the said accident he is disfigured (Nasal figure is changed) and it is affected to his future life even at the time of marriage also. Hence, the petitioner has become permanently physically disabled and he is put to mental agony, pain and suffering and the future of

the petitioner is totally affected and put into dark and misery and hence the petitioner has suffered mentally physically as well as financially.

5. Further contended that the accident in question took place due to rash and negligent driving by the driver of the offending vehicle. The respondent No.1 being the driver and respondent No.2 being the owner and the respondent No.3 being the insurer of the said vehicle, all are jointly and severally liable to pay compensation to the petitioner. Hence, the petition.

6. In spite of issuance and service of notice to the respondent No.1 to 3, they have not appeared before the court. Hence, the respondent No.1 to 3 have been placed as an *ex parte*.

7. Based on the above said pleadings, this tribunal has framed the following points :

:: POINTS ::

Point No. 1 Whether the petitioner proves that he met with an accident arising out of the use of the Scarpio Car bearing Registration No.KA.21/M-5046 on 11-03-2021 Near Kallugudde cross of Melanthabettu village and sustained injuries due to the rash and negligent act of the respondent No.1?

Point No.2 Whether the petitioner is entitled for compensation? If so, to what extent and from whom?

Point No.3 What Order or Award ?

8. In support of the petitioner's case, the petitioner himself has been examined as P.W.1 and got marked 11 documents as per Ex.P.1 to Ex.P.11 and closed his side.

9. Heard the arguments of petitioner's counsel.

10. My findings on the above said Points are as follows :

*Point No. 1 In the Affirmative,
Point No. 2 Partly in the Affirmative*

*Point No. 3 As per final order for the
following :*

:: REASONS ::

11. **POINT NO. 1** :- In support of the petitioner's case, the petitioner himself has been examined as PW.1, who has reiterated the petition averments in his oral evidence. Further in support of his oral evidence he got marked 11 documents at Ex.P.1 to Ex.P.11. Ex.P.1 is the Certified copy of F.I.R., Ex.P.2 is the certified copy of complaint, Ex.P.3 is the certified copy of sketch, Ex.P.4 is the certified copy of spot mahazar, Ex.P.5 is the certified copy of Charge sheet, Ex.P. 6 is the certified copy of wound certificate, Ex.P.7 are the

medical bills, Ex.P.8 are the prescriptions, Ex.P.9 is the the scan photo, Ex.P.10 is the discharge summary and Ex.P.11 are the X-ray films.

12. In the instant case though the notice has been served to the respondent No.1 to 3 they have not appeared before the court and they have been placed as an exparte. Hence, the evidence of PW.1 on record is unchallenged by the respondents. The petitioner in order to prove an accident and also the injuries sustained by him in the alleged accident he relied on oral and documentary evidence. On perusal of documentary evidence marked at Ex.P.1 to Ex.P.5 i.e., certified copies of FIR, Complaint, sketch, Spot Mahazar and Charge sheet they would reveal that the case has been registered against the driver of the offending vehicle. Likewise Ex.P.6 Certified copy of the wound certificate, Ex.P.7 Medical bills, Ex.P.8 Prescriptions, Ex.P.9 scan photos, Ex.P.10 discharge summary and

Ex.P.11 3 X-ray films would reveal sustaining of grievous injury by the petitioner and also amount incurred towards treatment. Thus on going through the oral and documentary evidence that has been put-forth by the petitioner, it is found that the petitioner has proved the alleged accident and also proved that he has sustained grievous injury in the alleged accident. Hence, I answered point No.1 in the **Affirmative**.

13. **POINT NO. 2** : In support of the petitioner's case, the petitioner himself has been examined as PW.1 who deposed with regard to the injuries sustained by him. Further in this regard he relied on wound certificate which is marked at Ex.P.6 and it reveals that he has sustained one injury which is grievous in nature. Apart from that the petitioner has produced Ex.P.7 medical bills amounting to Rs.23,738/- for which he is entitled for the said amount towards medical bills. Further the petitioner has produced Ex.P.10 discharge summary

which reveals that he was admitted on 11.03.2021 and discharged on 13.03.2021. Hence, from Ex.P.10 it is clear that the petitioner was admitted as an inpatient for 3 days. Further as per Ex.P.6 wound certificate as the petitioner has suffered one grievous injury, he is awarded Rs.40,000/- including special diet and attendant charges as global compensation. Hence, the petitioner is entitled for total sum of Rs.63,738/- (Rs.40,000/- + Rs.23,738/-). Hence, as per above discussion the petitioner is entitled for global compensation of Rs.63,738/- and it is rounded off to **Rs.63,800/-**.

14. In the instant case, no doubt an accident has taken place by the offending vehicle on the above said date, time and place which is not in dispute. The respondent No.1 being the driver, the respondent No.2 being the owner and respondent No.3 being the insurer of the Scarpio Car bearing Registration No.KA.21/M-

5046 they have not appeared before the court and they have been placed as an *exparte*.

15. In the instant case the learned counsel for the petitioner has filed memo on 20.10.2023 with the copy of insurance policy of the offending vehicle. On perusal of said copy of insurance policy, it reveals that the owner of the offending vehicle is the respondent No.2 and the insurance of the offending vehicle was valid and inforce from 30.12.2020 to 29.12.2021 midnight. In the instant case an accident has taken place on 11.03.2021. Hence, as on the date of accident the offending vehicle was insured with the respondent No.3 and it was valid and inforce. Hence, the respondent No.3 being the insurer of the offending vehicle is liable to pay compensation to the petitioner. Hence, under such circumstances, I answered Point No.2 Partly in the Affirmative.

16. POINT NO.3 : In view of above said findings and discussion, I proceed to pass the following;

:: ORDER ::

The petition filed by the petitioner is hereby partly allowed with costs, directing the respondent No.3 to deposit the global compensation of Rs.63,800/-(Rupees Sixty three thousand, Eight hundred only) by deducting interim compensation paid if any with interest at the rate of 06% per annum from the date of petition till its payment.

The respondent No.3 shall deposit the global compensation amount within 02 months from the date of this order.

The compensation amount awarded being meager amount, the entire award amount shall be

***released to the petitioner after
deposit on his proper
identification.***

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

Draw award accordingly.

(Dictated to the Stenographer, transcribed by her on the computer, corrected, signed and then pronounced by me in the Open Court on this 4th day of November 2023.)

(PRABHAVATHI. G)
V Addl. District & Sessions Judge &
Addl. MACT Shivamogga, sitting at Sagar.

:: ANNEXURE ::

**1) List of the witnesses examined on behalf of
petitioner :**

P.W.1 : Swaroop

**2) List of the documents exhibited on behalf of
petitioner :**

Ex. P.1 : Certified copy of F.I.R.
Ex. P.2 : Certified copy of complaint
Ex. P.3 : Certified copy of sketch
Ex. P.4 : Certified copy of spot mahazar

Ex. P.5	: Certified copy of Charge sheet
Ex. P.6	: Certified copy of Wound Certificate
Ex. P.7	: Medical bills
Ex. P.8	: Prescriptions
Ex. P.9	: Scan photo
Ex. P.10	: Discharge summary
Ex. P.11	: 03 X-ray films

3) List of the witnesses examined on behalf of respondents :

NIL

4) List of the documents exhibited on behalf of the respondents :

NIL

(PRABHAVATHI. G)

V Addl. District & Sessions Judge &
Addl. MACT Shivamogga, sitting at Sagar.