

KADW050048632024



Presented on : 15-10-2024
Registered on : 15-10-2024
Decided on : 10-04-2026
Duration : 01 Years, 05 Months, 25 Days

**IN THE COURT OF I ADDL. SENIOR CIVIL JUDGE
& ADDL. M.A.C.T., DHARWAD.**

**Present : SMT. VIJAYALAXMI GHANAPUR
L.L.M,
I Addl. Senior Civil Judge,
& Addl. M.A.C.T., Dharwad.**

ECA No.22/2024

Dated this the 10th day of April 2026

**Petitioner : Gadigeshwar Swamy S/o. Manohar
Swamy Hiremath, Age : 34 Years,
Occ : Service Engineer,
R/o. Yallakki Shettar colony,
2nd cross, Shankarpur, 2nd cross,
Dharwad-580004.**

(By Sri. L. D. Kulkarni., Adv)

V/s.

Respondent : M/s N H Motors,
Sattur colony, Vidyagiri,
Near BRTS Bus stand,
Dharwad-580004.

(By Sri. C. B. Hegade., Adv)

J U D G M E N T

This claim petition is filed by the petitioner against the respondents U/Sec.22 of the Employee Compensation Act seeking compensation of Rs.50,00,000/- with interest at 12% from the date of the petition till its realization.

2. **The substance of the petition are as under:**

The petitioner pleaded that on 24.12.2022 at about 3.45 p.m. as per the instructions of respondent Sri. Wahid S/o. Khajasab was on test driver driving the two wheeler bearing No.KA-25/HE-3631 and the petitioner was pillion rider, said vehicle came for servicing to the show room was repaired and the said vehicle was under the testing. Near toll naka, the

rider of the two wheeler turned the vehicle towards Hubli and going through BRTS lane to Vidyagiri, at that time due to rash and negligent driving the vehicle by the driver met with an accident by hitting BRTS bus bearing No.KA-25/F-3445, near modern hall, due to the said accident, petitioner suffered severe injuries to his head, legs, hands and all over the body.

3. Soon after the accident, the petitioner was admitted to SDM Hospital on 24.12.2022 at 7.00 p.m. for the treatment to the forehead right side above the right eyebrow, parallel to and just the right eyebrow, left front temporal area, injuries to nostrils and both the eyes, injuries to the right knee superolateral aspect of patella, left great toe mid part medial border and injuries to the dorsum of right foot. He was admitted as inpatient in critical care unit and discharged on 27.1.2023. the petitioner's right leg was amputated and also right eye is not visible due to the said accident. During the said period he was underwent operation to and has spent nearly more than Rs.5,00,000/- towards medicines and related expenses.

4. As the alleged accident occurred during the course of his employment with the respondent, hence petitioner filed this petition against the respondent seeking compensation.

5. Pursuant to the service of notice, respondent appeared before the Court through his counsel and filed objections.

6. **The substance of the objections of respondent, in brief, is as under:**

Respondent is employer of petitioner. He specifically denied the age, income and injuries sustained to the petitioner during the course of his employment with respondent. It is submitted that this is the prima facie case of clear negligence on the part of the petitioner and is purely a motor accident case and accident occurred in the public place. The petitioner filed a claim petition seeking compensation for the injuries of petitioner under the employees compensation act is absurd and illogical. The

complaint lodged by the driver of the bus itself stating that the petitioner was the pillion rider proceeding with the deceased in his motor cycle bearing Reg No. KA-25/HE-3631 in a rash and negligent manner, without following traffic rules and regulations and collided to his bus bearing No.KA-25/F-3445,. It reveals that the said accident happened due to the negligence of the deceased and accident occurred in the middle of road. It is also noticed that said accident had not happened in a regular public/vehicle moving road instead it is a BRTS Lande and the said bus mentioned is BRTS bus and the said road allows strictly only the BRTS buses, emergency vehicles like ambulance/fire fighting vehicle and special Government vehicles by restricting any movement of the private and public vehicle to any extent, thus proving that the deceased had chosen to ride the bike into the said lane ignoring all the Government rules and regulations set for the said bus route which in turn is also enclosed with steel fencing throughout the entire route with only openings at the median intersections hence petitioner were reluctant to claim

compensation against the said bus. Therefore, the petitioner filed the present claim petition against the present respondent only to grab the money. Further contended that compensation and interest claimed by the petitioner is highly exaggerated, speculative and not supported proper documentation or legal entitlement. Further contended that the petitioner failed to issue a notice of an accident to the respondent if he is the employer of the deceased, according to Sec.10 of the Employees Compensation Act, 1923, a “notice of accident” to the employer must be given by an injured employee within a reasonable time after the accident, detailing the date, cause of the injury and the nature of the injury and should be served on the employer or a designated representative, usually be delivering it in person or sending it via registered post; this notice is crucial to initiate a claim for compensation under the act. Hence, prayed to dismiss the claim petition filed by petitioner with cost.

7. Based on the above rival pleadings, the following issues framed by this Court they are :

ISSUES

- 1. Whether the petitioner proves the Employee and Employer relationship ?**
- 2. Whether the petitioner proves that on 24.12.2022 at about 3.45 p.m. as per the instructions of respondent Sri. Wahid S/o. Khajasab was on test driver driving the two wheeler bearing No.KA-25/HE-3631 and the petitioner was pillion rider, said vehicle came for servicing to the show room was repaired and the said vehicle was under the testing. Near toll naka, the rider of the two wheeler turned the vehicle towards Hubli and going through BRTS lane to Vidyagiri, at that time due to rash and negligent driving the vehicle by the driver met with an accident by hitting BRTS bus bearing No.KA-25/F-3445, near modern hall, due to the said accident, petitioner suffered severe injuries to his head, legs, hands and all over the body ?**
- 3. Whether the Petitioner is entitle for compensation? If so, what is the**

quantum of compensation and from whom ?

4. What order or award ?

8. To prove the case, petitioner himself got examined as P.W.1 and Ex.P.1 to P.9 were got marked through him and Doctors examined as P.W.2 and P.W.3. On the other hand, the respondent has not stepped into witness box nor produced any documents on his behalf.

9. Heard arguments of petitioner counsel. Inspite of sufficient opportunities granted to the respondent he has not canvassed his arguments. Hence, arguments of respondent is taken as nil. Perused the oral and documentary evidence, and also entire materials on record.

10. My answer to the above Issues are as under :

Issue No.1	:	In the Affirmative
Issue No.2	:	In the Affirmative

Issue No.3	:	Partly Affirmative
Issue No.4	:	As per the final order for the following:-

REASONS

11. **ISSUE NO.1** : It is the specific case of the petitioner that, he was working under respondent and during the course of employment he sustained grievous injury.

12. Admittedly, the case is under ECA Act hence, prima-facie to be consider that employer and employee relationship, the essential element to prove this key fact and the petitioner has to prove the accident “arose out of and in the course of employment.”

The respondent i.e., owner/employer has appeared and contested the case. Though the employer i.e., respondent denied the relationship, but the line of the cross-examination clearly reveals that the petitioner is employee of the respondent’s company. Therefore, I hold that issue No.1 is

proved by the petitioner. Accordingly, I answer **issue No.1 in the Affirmative.**

13. **ISSUE NO.2** : Admittedly, the accident is not dispute. When the petitioner proved employer and employee relationship, looking to the nature of the proceedings, the fault of the employer cannot be considerable.

14. It is proved by the petitioner that the accident caused during the course of his employment under respondent and he sustained grievous injuries during the said period. The petitioner contended that he has suffered grievous injuries with permanent disability and incurred considerable medical and incidental expenses and prays to award compensation.

15. To justify verbal evidence, petitioner placed reliance on documents viz., Ex.P.1 FIR along with complaint, registered by Dharwad Traffic PS against rider of the motor cycle bearing Reg No.KA-25/HE-3631 on the basis of

complaint lodged by Srinath Ilakal, Ex.P.3 is the MVI report, wherein it is opined that accident was not occurred due to any mechanical defects of the vehicle, Ex.P.2 is the charge sheet filed by the police against the rider of the motor cycle bearing Reg No.KA-25/HE-3631.

16. On perusal of the charge sheet, the rider of the motor cycle charge sheeted for offences punishable U/Sec.279, 338, 3-4A, 188 of IPC and Sec.3 R/w 181 of M V Act. The respondent No.2 has not disputed the police records and there is no contra materials produced by him to disprove the case of the petitioner. Hence, in the absence of contrary there is no impediment to accept the version of the petitioner projected by him. Hence, the verbal and documentary evidence on record collectively demonstrates the case of the petitioner. Accordingly, I answer **issue No.2 in the Affirmative.**

17. **ISSUE NO.3 :** It is proved by the petitioner that the accident caused during the course of his employment

under respondent and he sustained grievous injuries during the said period. The petitioner contended that he has suffered grievous injuries with permanent disability and incurred considerable medical and incidental expenses and prays to award compensation. In this backdrop let me determine just and reasonable compensation. The petitioner has produced wound certificate as per Ex.P.4 issued by SDM Hospital Dharwad, said document depicts that petitioner was treated for the accidental injuries. The injuries sustained by the petitioner are : 1) Abrasion forehead right side $2 \times \frac{1}{2}$ cm, 2) Abrasion Forehead right side $2 \times \frac{1}{2}$ cm, 3) Split incised parallel to and just the right eyebrow $5 \times \frac{1}{2}$ cm, 4) Abrasion left fronto temporal area 2×2 cm, 5) Abrasion Left fronto temporal area adnex A-4 $\frac{1}{2} \times \frac{1}{2}$ cm, 6) Abrasion Left fronto temporal fossa 4×4 cm, 7) Nasal Cavity both nostrils, 8) Eyes both eyes, 9) Abrasion right knee superolateral aspect of patella A. 3×1 cm, B. $X-1$ cm, 10) Abrasion Left great toe mid part medial border $\frac{1}{2} \times \frac{1}{2}$ cm and 11) De gloving injury Dorsum of right foot with gross tissue defect exposed tibia

and fibula fractured component Dorsum of right foot 4X2 cm. The injury No.1 to 8 and 11 are grievous in nature. So, he might have suffered lot of pain and suffering.

18. The petitioner has produced the discharge summary as per Ex.P.8 issued by Sushurta Multispeciality Hospital and Research Centre Pvt Ltd Hubballi, which reveals that petitioner admitted in the hospital on 23.02.2023 and discharged on 02.03.2023 i.e., for a period of 9 days. During the said period he might have spent considerable amount on his conveyance, attendant charges and nutritious food.

19. Petitioner stated that he is aged about 34 years. In the wound certificate his age is mentioned as 35 years and discharge summary the age of the petitioner is mentioned as 32 Years and in other medical documents the age of the petitioner is mentioned 35 years. So as per medical records the age of the petitioner is about 35 years. Hence, the age of the petitioner is **35 years.**

20. The petitioner stated that he was earning Rs.8,500/- per month from respondent No.1, but, he has not produced any documents in this regard. So, in the absence of the proof, minimum wages shall be considered.

As per notification issued by Central Government on 31st May 2010, the monthly wages fixed with effect from 31st May 2010 is Rs.8,000/-. Again it is amended and with effect from **3rd January 2020 it is Rs.15,000/- p.m.** So, looking to the nature of the work of the deceased and applying above said notification, the court can take minimum wages at the rate of **₹15,000/- per month.**

21. As per Schedule-I, Serial No.17 to 19 if there is amputation below knee with stump not exceeding (12.70 complainant) in length measured from tip of great trenchanter is 80% and if it is not beyond middle thigh it is 70% and if it is below middle thigh to below knee it is 60%. But here in this case the Government of India has given 100% disability as the leg has been amputated. Corollary to

this, both eyes are also permanently damaged. P.W.2 and P.W.3 clearly stated that the petitioner is disabled. P.W.3 specifically stated that his right eye disabled at the rate of 40%. So, looking to the multiple injuries and disability certificate given by the Government of Karnataka, I incline to consider the disability is 100% functional disability, as the petitioner lost his lower limb.

22. The age of the petitioner is **35 years**. As per Section 4(1) (b) of E.C. Act if permanent total disablement results from the injury, then an amount equal to **60%** of the monthly wages of the injured-workman multiplied by the relevant factor shall be paid as compensation. So, as per the recent notification the minimum wages shall be computed at **Rs.15,000/-** 60% of the said Rs.15,000/- will comes to **Rs.9,000/-**. The relevant factor applicable is **197.06**. So, the petitioner is entitle for **Rs.17,73,540/-** (9,000X197.06X100%).

23. **MEDICAL EXPENSES** : As per Section 4(2)(A) of E.C. Act, the employer shall reimbursed the actual medical expenditure incurred by employee for treatment of injuries caused during the course of employment. Here in this case on hand, petitioner stated that he has spent more than Rs.5,00,000/- towards medicine and related expenses. The petitioner has produced 125 medical bills as per Ex.P.5, which reveals that he has spent Rs.7,00,927/- towards medical expenses. Hence, petitioner is entitle for **Rs.7,00,927/- which is rounded off to Rs.7,01,000/-**.

24. **LIABILITY** : The respondent clearly admitted the relationship. Hence, he is liable to pay the compensation.

25. **QUANTUM AND INTEREST** : So as regards quantum of interest is concerned, **Sec.4-A(3)(a) of the Act**, it prescribes that simple interest of **12% p.a.**, is to be paid. So far as time of payment of compensation is concerned, it is payable when it falls due. Compensation falls due on the

expiry of 30th day from the date of accident (in this regard reliance is placed upon a decision of our Hon'ble High Court reported in **ILR 2009 Kar 1422-Sri Alimuddin Vs Divisional Manager, M/s. New India Assurance Co Ltd., Gulbarga**) In the case on hand, the accident/untoward incident had occurred On 24.12.2022. So the date on which the compensation fell due was on 24.01.2023. So, the respondent is liable to pay interest at the rate of **12% p.a.**

26. It is to be noted that at the time of filing of the instant petition, the petitioner was exempted from payment of the court fee for the time being. As per Rule 60 (b) (ii) of Karnataka Workmen's Compensation Rules, 1966, where the compensation is claimed in the form of a lumpsum under clause (a)(b) or (c) of sub-section (1) of section 4 of the Act, and where the sum claimed exceeds ₹500/- or fraction thereof, the fees payable is one rupee for each sum of ₹500/- or fraction thereof. Here the claim is for a sum of ₹50 lakhs. So the petitioner is liable to pay court fee in accordance with law.

27. **ENTITLEMENT** : Hence, the petitioner is entitle for Rs.17,73,540/- + Medical bills of Rs.7,01,000/-, in total petitioner is entitle for **Rs.24,74,540/-** with interest at the simple rate of 12% p.a Accordingly, I answer **issue No.3 Partly in the Affirmative.**

28. **ISSUE NO.4:** For the foregoing reasons, I proceed to pass the following:

ORDER

Claim petition filed by the petitioner U/Sec.22 of the Employee's Compensation Act 1923 is hereby allowed in part with cost.

Petitioner is entitle for compensation of **Rs.17,73,540/- + Medical Bills of Rs.7,01,000/- in total Rs.24,74,540/- (Rs. Twenty Four Lakh Seventy Four Thousand Five Hundred Forty only)** with interest @ **12% per annum** from the date of petition till its realization.

Respondent is liable to pay the said compensation to the petitioner within **30** days from the date of the award.

After deposit of the Award amount and interest by the Respondent, release the entire compensation amount in favour of petitioner through K-2 bill after proper identification.

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

Office to draw an award only after collecting the Court fee.

Compensation amount shall be released to the petitioner only after collecting necessary Court fee.

*(Dictated to the stenographer, computerized by her, script corrected and then pronounced by me in the open Court on the **10th day of April 2026**)*

(Vijayalaxmi Ghanapur)
I Addl. Senior Civil Judge,
& Addl. M.A.C.T. Dharwad.

A N N E X U R E**1. Witnesses examined on behalf of the Petitioner :**

- P.W.1 : Gadigeswar Swamy S/o. Manohar Swamy Hiremath
P.W.2 : Dr. Shrikant M Sambrani
P.W.3 : Dr. Neeta W/o. Kiran Bilgi

2. Documents marked as Exhibits for the Petitioner:-

- Ex.P.1 : Certified copy of FIR along with complaint
Ex.P.2 : Certified copy of charge sheet
Ex.P.3 : Certified copy of MVI report
Ex.P.4 : Certified copy of wound certificate
Ex.P.5 : 125 medical bills
Ex.P.6 : Statement of account of KVG bank
Ex.P.7 : Treatment details
Ex.P.8 : Discharge summary
Ex.P.9 : Disability ID card

3. Witnesses examined on behalf of the Respondents:-

NIL

4. List of documents marked on behalf of Respondents:-

NIL

(Vijayalaxmi Ghanapur)
I Addl. Senior Civil Judge,
& Addl. M.A.C.T. Dharwad.

(Judgment pronounced in the open Court vide separate Order)

ORDER

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Petitioner is entitle for compensation of **Rs.17,73,540/- + Medical Bills of Rs.7,01,000/- in total Rs.24,74,540/- (Rs. Twenty Four Lakh Seventy Four Thousand Five Hundred Forty only)** with interest @ **12% per annum** from the date of petition till its realization.

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Office to draw an award only after collecting the Court fee.

Compensation amount shall be released to the petitioner only after collecting necessary Court fee.

I Addl. Senior Civil Judge,
& Addl. MACT Dharwad.