KAHV710009702022

IN THE COURT OF THE SENIOR CIVIL JUDGE AND ADDL.MACT, AT SHIGGAON SITTING AT SAVANUR.

Present: Sri. Sunil S. Talawar
B.A.LLB., (Spl.)

Senior Civil Judge & Member
Addl. MACT, Shiggaon Sitting
at Savanur

DATED THIS THE 25th DAY OF JULY 2026

M.V.C.601/2022

Petitioner : Shivappa @ Shivaputrappa
S/o Virupakshappa
Tirakannanavar, Age: 50 years,
R/o Devagiri, Tq: and Dist: Haveri.

(By Sri NBU., Advocate)

V/s

Respondents: 1. Gadigeppa S/o Yallappa
Tippannanavar, Age: 48 years,
Occ: Tallihalli, Tq:Savanur,
Dist: Haveri.

(Owner of Bajai Passenger
Vehicle bearing its Reg.
No. KA-27/C-1743)

2. The Branch Manager,
Cholamandalam M. S. General
Insurance C. Ltd, 1st Floor,
Kalaburgi Square, Desai Cross,

Deshpande Nagar,
Hubballi- 580029.

(Insurer of Bajaj Passenger
Vehicle bearing its Reg.
KA-27/C-1743)

Policy No: 3368/01312176/00/00,
Period from 08.04.2020 to 07.04.2021.

**(By Sri.MBN., Advocate
for R-1)**
**(By Sri.VSA., Advocate
for R-2)**

Date of Institute of petition	:	13.06.2022
Nature of petition	:	Grant of compensation
Date of commencement of recording the evidence	:	25.11.2023
Date on which judgment was pronounced	:	25.07.2026

Total Duration	:Yr/s	Month/s	Day/s
	04	01	11

**(Sunil S. Talawar)
Senior Civil Judge & Member
Addl.MACT, Shiggaon Sitting
at Savanur.**

: **JUDGMENT** :

This is a petition filed **U/Sec.166 of Motor Vehicles Act 1989** for awarding compensation to the petitioner who had sustained injuries in road traffic accident **on 07.08.2020 at about 15-00 hours on Varda River bridge in between Devagiri - Mellagatti Village** at the tune of compensation of **Rs.16,00,000/**- with interest @ 18% P.A. from respondents.

2. Brief facts of petitioner case is discussed as here under: On 07.08.2020, at about 15-00 hours, the petitioner was returning from Mellagatti village towards Devagiri village on TVS motorcycle bearing No. KA-27/J-6985 along with his wife and grand son, in moderate speed, by observing traffic rules and regulations, on left side of the road, when petitioner came on varda river bridge, in between Devagiri-Mellagatti villages, at that time driver of one Bajaji Passenger vehicle bearing No. KA27/C-1743 coming from Devagiri Village in high speed, with rash and negligent manner, without following any traffic rules and regulation, endangering to human life; zig- zag in nature and dashed to the petitioner's motorcycle, hence accident taken place, thereby the petitioner sustained grievous injuries i.e., compound type IIIB right distal femur fracture with ipsilateral right compound type II communited proximal tibia fracture and to all over the body as shown in the wound certificate and discharge card of the petitioner. The petitioner was taken to District Government Hospital, Haveri took first aid treatment and then referred to further treatment at S. S. institute of Medical Science, Davanagere, wherein the petitioner admitted as an indoor patient for about more than 2 months, at the time of treatment the petitioner undergone several surgeries to the right leg, thereby the petitioner spent more than Rs.5,50,000/- towards his treatment, medicine, diet, food and nourishment, travelling and attending expenses etc., still the petitioner is under follow up treatment in private hospital.

3. Prior to the accident, the petitioner was hale and healthy and doing **agriculture work** and earning **monthly income of Rs.45,000/-** and he was contributing the same income to his family. The petitioner was aged about **50 years** at the time of accident. The accident report was reported to Savanur police station and the complainant was filed against the owner of the respondent No.1. The respondent No.2 is the insurer of the said vehicle. Therefore respondents are joint and severally liable to pay compensation of Rs.16,00,000/- to the petitioner along with future interest of 18% P.A. from the date of the accident till its realization.

4. After institute of this petition, notice have been issued to the respondents, reported as served. Respondents appeared through their counsel and have filed objections to the main petition.

5. The respondents No.2 has denied the age and monthly income of the petitioner as stated from the agriculture and called for strict proof of the same. It is specifically contended by the respondent No.2 that, there was no rash and negligent driving of the Bajaj Passenger vehicle by its driver and there is no accident as mentioned in the petition. It is specifically contended in the objections that, the alleged accident was caused solely due to the rash and negligent driving of the motorcycle bearing its Reg. No. KA-27/J-6985 by the petitioner himself. Therefore, the petitioner himself is the wrong door and contributes for the said accident. He is the self tort feasure. Therefore, the claim of the petitioner is not within the parameters of Section 166 of MV Act. It is also contended that, there was no rash and negligent driving of the driver of Bajaj Passenger vehicle reg No. KA-27/C-1743. It is also contended that, the driver of said Bajaj Passenger vehicle was not possessed the driving license on the date of accident to drive the said Bajaj Passenger vehicle or any class of vehicles. Therefore, the respondent No.1 has violated the terms and conditions of the insurance policy.

Therefore, among these grounds of contentions and the relevant factor to be brought before the court the respondent No.2 has sought for dismissal of the petition with cost.

6. Based on the above pleadings, following Issues were framed;

1) ***Whether the petitioner proves that on 07.08.2020 at about 03-00 pm, on Devagiri Mellagatti road on Varada river bridge while he was going on TVS motorcycle bearing No. KA-27/J-6985 along with his wife and grand, he sustained injuries in the accident caused due to the actionable negligence of the driver of Bajaj passenger vehicle bearing Reg. No. KA-27/C-1743?***

2) ***Whether the respondent No.2 proves that the alleged accident was due to sole negligence of the petitioner?***

3) ***Whether the respondent No.2 proves that the respondent No.1 has violated the terms and conditions of the insurance policy?***

4) Whether the Petitioner is entitled for the compensation? If yes, to what quantum and from whom?

5) What Order or award?

7. In order to prove his case the petitioner himself has stepped into witness box and examined as PW.1. He has got marked 22 documents as Ex.P.1 to P.22. Dr. Gaya Kushal B. T is examined as PW 2. On the other hand the representative of respondent No.2 insurance company has also stepped into witness box and examined as RW1 and he has got marked Ex.R1 to R7 documents.

8. I have heard the arguments on both sides and perused entire records.

9. My answers to the above Issues are as herein under;

Issue No.1 : In the Affirmative
Issue No.2 : In the Negative
Issue No.3 : In the Affirmative
Issue No.4 : Yes. Petitioner is entitled for compensation of ***Rs.6,46,450 /-*** *with simple interest at the rate of* ***6%*** *P.A. from the date of petition till the realization, from respondent No. 1.*

Issue No.5 : As per final order
for the following:

: **REASONS** :

10. **ISSUES No.1 to 3 :-** This petition is filed under **Section 166 of Motor Vehicles Act 1989** seeking compensation for the reason of injuries sustained by the petitioner in alleged road accident. The petitioner in this petition has stated that, on 07.08.2020 at about 15-00 hours on varda river bridge he was riding his motor cycle bearing Reg No. KA-27/J-6985 in moderate speed, in between Devagiri – Mellagatti villages, at that time driver of Bajaj passenger vehicle bearing Reg No. KA-27/C-1743 has driven the same in a high speed, rash and negligent manner endangering to human life and dashed to the petitioner vehicle. Therefore, the petitioner has sustained injuries towards his body such as ‘compound type IIIB right distal femur fracture with ipsilateral right compound type II communited proximal tibia fracture and to all over the body. The petitioner was shifted to District Government Hospital, Haveri took first aid and referred to S. S. Institute of Medical Science, Davanageri and other private hospital as indoor patient for about 2 months and 3-4 bed rest at home and he has spent Rs.5,50,000/- for his treatment. He has stated all these facts in his affidavit by examining himself as PW1. It is pertinent to note that, the road traffic accident and the injuries sustained by the petitioner is not in dispute. Therefore, it can be said that, there is admission pertaining to road accident and the involvement of two vehicles. But the disputed aspect is in respect of rash and negligent driving on the incident date and time.

11. In evidence, the petitioner as to substantiate his oral evidence, has produced FIR and complaint in Savanur P.S Crime No.130/2020 those have been marked as Ex.P.1 and 2. Ex.P3 is the spot panchanama, Ex.P4 is the vehicle seizure panchanama, Ex.P5 is the Motor vehicle accident report, Ex.P6 to 8 are the discharge summaries, Ex.P9 and 10 are the wound certificates, Ex.P11 is the charge sheet, Ex.P12 is the Aadhaar card of PW1, Ex.P13 is the Form of certificate of registration, Ex.P14 is the RC, Ex.P15 is the notarized copy of insurance policy, Ex.P16 is the discharge summary, Ex.P17 are the medicine prescriptions, Ex.P18 are the medicals bills, Ex.P19 is the out patient medicine prescription, Ex.P20 is the disability certificate, Ex.P21 is the X-ray report and Ex.P22 is the RTC extract. On perusal of all these police paper it appears that, there was a road traffic accident on 07.08.2020 at about 15-00 hours on a given date, time and place due to it the petitioner has sustained injuries. As the road traffic accident on the given date, time and place is concerned there is no dispute between the parties. Ex.P.1 and 2 are the FIR and complaint in Savanur PS Crime No.130/2020 and upon going through the said documents it appears that the driver of Bajaj Passenger vehicle bearing Registration No.KA-27/C-1743 by name Gadigeppa S/o Yallappa Tippannanavar shown to be as accused and against him there is substance of accusation that on given date, time, place he alleged to have been driven the vehicle on public road at high speed, rash, negligence manner and dashed to the petitioner vehicle due to which caused grievous injuries. Therefore, the charge sheet submitted by the Investigation Officer reveals that, the driver of passenger vehicle has driven the vehicle in a high speed, rash and negligent manner. Therefore, when the petitioner is relying Ex.P.1 and 2 FIR and complaint in order to substantiate the road accident it is burden on the petitioner to prove that, on the alleged date of accident the driver of said vehicle was possessed valid and effective driving license to drive it. The petitioner by his oral evidence and documentary evidence as stated above has established that there was road accident and the driver of the said vehicle has driven the vehicle in rash and negligent manner.

12. The prime contention taken by the respondent No.2 that, there is no negligence on part of Bajaj Passenger vehicle but it is a negligent driving of the petitioner himself. In this regard, the respondent No.2 has extensively cross examined the PW1 wherein, it is suggested that, at the time of accident the PW1 was not possessed valid driving license. However, the PW1 has denied the same but it appears that, the PW1 has not holding driving license at the time of accident. It is suggested to the PW1 that, there was head conclusion in between Bajaj Passenger vehicle and the petitioner vehicle. The PW1 has given admission in this regard. But the PW1 has denied that, the accident was occurred due to actionable negligence of himself. Therefore, in the cross examination of PW1 there is no such fruitful evidence elicited as per the prime contention of respondent No.1 in relation to the rash and negligent driving of the petitioner.

13. But here, there is also a prime contention that, the offending vehicle driver of Bajaj Passenger was not possessed the driving license on the date of the accident to drive the vehicle or any class of vehicle. Therefore, though the Bajaj Passenger vehicle is insured with the respondent No.2 insurance company but the respondent No.1 has violated the terms and conditions of the said policy. The petitioner knowing very well of this contention of respondent No 1 has not at all produced driving license of the driver of Bajaj Passenger vehicle in his evidence. The petitioner has kept silence by stating nothing pertaining to the driving license of driver of offending vehicle. But here, the respondent No.2 insurance company has made an attempt calling upon the respondent No.1 to produce the driving license by filing application to summon but the respondent No.1 has not complied with the same. Therefore, the adverse inference can be drawn as against respondent No.1 that, at the time of accident the driver of offending vehicle was not possessed valid driving license. As to substantiate the prime contention of respondent No.2 in this aspect, the representative of insurance company has stepped into witness box and examined as RW1. He has got marked Ex.R1 to R7 documents. In evidence, the RW2 has produced Ex.R2 the notice issued to the owner of offending vehicle Sri. Gadigeppa S/o Yallappa Tippanavar calling upon him to produce his driving license. Ex.R3 is the postal acknowledgment which show that, the Ex.R2 is the postal acknowledgment is duly served upon the respondent No.1. Ex.R4 and R5 are also the legal notice issued to the driver of offending vehicle in this regard. It is pertinent to note that, the respondent insurance company has also made a better attempt to call for the driving license by issuing notice to the regional transport officer by as per Ex.R6. But here, the driver or owner of offending vehicle or the RTO, Haveri has not at all issued driving license. Therefore, it is the bounden duty of respondent No.1 to produce driving license but he has not at all produced any driving license. Hence, though the insurance to the offending vehicle was in force at the time of accident but the Ex.R1 the insurance policy reveals that, the terms and conditions of the insurance are subjected to the holding of valid license by the driver of offending vehicle. Therefore, there is a clear violation of the terms and conditions of insurance policy as rightly contended by the respondent No.2. The oral evidence of PW1 pertaining to the aspect of holding the valid license by the driver of respondent No.1 vehicle having no legal sanctity in lieu of the observations made in the order sheet dated 07.02.2026 issuing summons to produce the driving license of offending vehicle to the respondent No.1 and the order sheet dated 04.04.2026 in relation to the fact respondent No.1 having not complied with the order of this court. Further, Ex.P2 to P7 are also relevant documents when they all are considered by comparative evaluation with the act of respondent No.1 and driving licence. Therefore, this court having no hesitation to hold that, the respondent No.1 has violated the terms and conditions of insurance policy.

Therefore, considering all these material aspects I am having no hesitation to answer **Issue No.1 is in the Affirmative, Issue No.2 is in the Negative and Issue No.3 is in the Affirmative.**

14. ISSUE No.4: Now it is proved by the petitioner that, he has sustained injuries in the road accident caused due to the actionable negligence of the driver of Bajaj Passenger vehicle No. KA-27/J-6985. On the other hand, it is clearly established by the respondent No.2 that, the respondent No.1 has violated the terms and conditions of the insurance policy. Now the question before this court is whether the petitioner is entitled for the compensation if **Yes** to what quantum and from whom either from respondent No.1 the owner of offending vehicle or the respondent No.2 insurance company. In this regard before fixing into the liability it is necessary here to discuss the quantum of compensation in which the petitioner is entitled for. The petitioner herein has claimed compensation of Rs.16,00,000/- with interest at the rate of 18% P.A. from the respondents who are all jointly and severally liable to pay the same. The petitioner has disclosed his age in the petition that, he was aged about 50 years in the year 2022. Further he has also disclosed that, he was getting Rs.45,000/- per month from agricultural work. It is also stated by the petitioner that, he was sustained grievous injuries to all over the body as shown in the x-ray report, discharge card and disability certificate. The petitioner has produced x-ray which is marked as Ex.P.21 which disclose the injuries such as 1) E/o non union of right distal femur with sclerosis of margins and implaint in situ and 2) Sclerosis with sequestrum, sclerotic lesion with a radiolucent rim suggestive of chronic osteomyelitis at right promixal tibia with malunion of fibula with implant in situ. The petitioner however stated that, he became disable to work and his whole body suffered by disability. In this regard the petitioner has also produced **disability certificate** which is marked as Ex.P.20 which is based on the discharge card marked at Ex.P16. But here, the petitioner has adduced evidence of doctor as to substantiate the disability. Upon going through the disability certificate at Ex.P.20 it was issued by Shree Sai Hospital, Haveri and the doctor who examined the petitioner has given opinion that, the petitioner is having permanent physical disability at about **63% loss of physical function.** As per Manual prescribed by society for based on guidelines and gazette notification Reg. no DL 33004/99 (extraordinary) part II, sec.1, JUNE 13, 2001 issued by Ministry of social justice and empowerment, GOI. No doubt that, the medical officer has been examined but the Ex.P.20

pertains to the Manual prescribed by society for based on guidelines and gazette notification Reg. no DL 33004/99 (extraordinary) part II, sec.1, JUNE 13, 2001 issued by Ministry of social justice and empowerment, GOI. Hence Ex.P.20 is reliable document as on the point of disability of the petitioner. This view of mine is supported by the evidence on record that, the respondents are admitting the road accident and also the injuries sustained by the petitioner. However, the disability of petitioner can be determined at the point of **1/3rd** in given disability. Therefore, when it is calculated then the disability of petitioner is **21% only** and which is sufficient for the determination of compensation in the matter.

15. Thus, on the date of accident the age of the petitioner was **50 years.** As per Ex.P.20 disability certificate the petitioner was aged about 50 years. **The Karnataka State Legal Services Authority** has given the slab of monthly notional income to be considered in claim petitions and as per the said slab, the income for the year **2020** is **Rs.13,750/-**. Therefore, income of petitioner would be **Rs.13,750/-**. The petitioner is doing agricultural work as it taken into consideration then while doing this work he has to seat long time bent, his body, use wait on his hands in order to do the work. The doctor has assessed the total permanent physical disability of **63%** which is remained unchallenged. However, upon verifying the accident injuries and the documents produced thereon in the considered opinion of this court this case is fit to consider permanent disability of **21%** which is sufficient. Hence, considering the nature of injury and functional disability of the petitioner considered as **21%** to the whole body.

16. As per law declared by **Hon'ble Apex court in 2017 ACJ 2700 National Insurance Comapany Vs. Pranay Sethi.** As per ***Sarala Varma case report in 2009 ACJ 1298 SC*** the multiplier applicable to the Age group of **46 to 50** is **'13'**.

17. As already discussed above, the monthly income of petitioner is considered as **Rs.13,750**/-. Hence, towards loss of future income, an amount of **(Rs.13,750 x 12 x 13 x 21%)=4,50,450/-** is awarded to the petitioner and which is sufficient looking to the nature of injury and disability of the petitioner.

18. Considering the fact that as per Ex.P.21 the x-ray the petitioner had sustained 1) E/o non union of right distal femur with sclerosis of margins and implaint in situ and 2) Sclerosis with sequestrum, sclerotic lesion with a radiolucent rim suggestive of chronic osteomyelitis at right promixal tibia with malunion of fibula with implant in situ which was supported by the medical treatment taken by the petitioner and spending money for medical advise of doctor. Therefore, I am of the opinion that an amount of **Rs.15,000/-** is enhanced compensation awarded under the head of pain and sufferings.

19. As per the Discharge card marked at Ex.P.7, the petitioner has taken treatment at KIMS Hospital Hubballi being an in-patient from **2 months.** During that period, the petitioner required an attendant and nourished food, as per the advice of the doctors for his care and recovery. Hence an amount of (**Rs.200X60=12,000/-)** is awarded towards attendant, food and nourishment charges.

20. Considering the nature of injuries sustained by the petitioner and considering the fact that the petitioner has taken treatment being an in-patient at Hospital in total for a period of **2 months,** the laid up period is taken as **4 months**. Hence an amount of **Rs.14,750 X 4=59,000/-** is awarded as compensation towards laid up period.

21. Due to the injuries sustained in the accident, the petitioner has lost his happiness and comfort of the life for some period. Hence an amount of

Rs.10,000/-is enhanced compensation awarded under the head of loss of happiness and amenities.

22. Due to accident injuries, the petitioner has suffered much more by spending money at the time of the treatment. The petitioner has produced Ex.P18 in all 237 medical bills. However, the respondent No.2 disputed the said medical bills on ground that, they do not bear the payment of amount to the medical outlet. Therefore, upon perusal of the Ex.P18 and having regard to the injuries sustained by the petitioner an amount of Rs.1,00,000/- being awarded under the head of medical expenses.

23. In view of the above discussions, the petitioner is entitled for the compensation as discussed supra under the following heads:

Sl. No.	Heads	Compensation
1.	Laid up period	Rs. 59,000 -00
2.	Pain and sufferings	Rs. 15,000 -00
3.	Attendant, food and nourishment charges	Rs. 12,000-00
4.	Loss of future income	Rs. 4,50,450-00
5.	Loss of happiness and amenities	Rs. 10,000-00
6.	Medical Expenses	Rs. 1,00,000-00

	Total	**Rs. 6,46,450-00**

24. In view of the above discussion, it is proved that the accident was taken place due to the negligence of driving of the vehicle bearing its registration No.KA-27/C-1743. It is also proved by the respondent No.2 that, the respondent No.1 has violated the terms and conditions of the insurance policy.

25. Now it is the time to discuss the fixing liability on respondents on the basis of factual matrix and the Law declared by Honble Apex court and Honble High courts. By relying evidence on record, the learned Advocate for respondent No.2 Sri. V. S. Aralikatti would argue the matter that, the pay and recovery principle cannot be made applicable to the present case on hand for the simple reason that, the insurance company disputed its liability on the ground that, the driver of offending vehicle did not possess a valid license on the date of accident and the claimant can take recourse of principle of pay and recover only in the absence of owner cum driver . Therefore, the reference of willfully breach of terms of the policy can be drawn against the owner of the offending vehicle and insurance company is entitle to avoid its liability but for statutory liability under Section 149 (4) of the Motor Vehicles Act. It is submitted by the learned

Advocate for respondent that, the respondent No.2 has successfully established the fact that, the offending vehicle driver was not possessed driving license at the time of alleged accident. As to support his arguments the learned Advocate for respondent No.2 relied upon the decision report in **2012 ACJ 1754** in between **Oriental Insurance Co. Ltd V/s Usha and Others** wherein it is held that, *'Motor Vehicle Act, 1988, Section 149 (a)(ii) and 149 (4) – Motor insurance – Driving license – Liability of insurance company – Insurance company disputes its liability on the ground that driver of offending vehicle did not possess a valid license on the date of accident – Owner and driver failed to contest the claim despite service of notice and were proceeded exparte – Owner and driver were challaned under sections 5 and 3 respectively read with section 181 for driving of vehicle without driving licence – Owner failed to produce driving licence of his driver despite service of notice which would lead to an inference that driver did not possess licence at the time of accident – Whether inference of wilful breach of terms of policy can be drawn against owner and insurance company is entitled to avoid its liability but for statutory liability under section 149 (4)'*. Further, learned Advocate for respondent No.2 has made reliance on the judgment report in **2014 ACJ 523** in between **Divisional Manager New India Assurance Co. Ltd V/s Manjamma and Others** wherein, our own High Court has held that, *'Workmen's Compensation Act, 1923, section 22 and Motor Vehicles Act,* *1988, section 3 and 149 (2)(a) (ii) – Motor Insurance – Driving licence – Liability of insurance company – Coolie engaged on truck sustained fatal injuries in the course of his employment when the vehicle met with accident – Driver was also charge-sheeted for driving the vehicle without a valid driving licence – Insurance company sent two registered notices to owner and driver calling upon them to produce copy of driving licence of the driver but despite notice being duly served, they neither responded nor produced any evidence before the Commissioner that driver was having valid licence – Whether the Commissioner was justified in presuming that driver was possessing a valid licence and saddling liability on insurance company – Held: on; insurance company absolved of its liability to pay compensation ; claimants are at liberty to proceed against the owner'.* With due respect to the submission of learned Advocate for respondent No.2 and the law declared by Hon'ble High Court it is well settled law that, if the driver of offending vehicle did not possess a valid license at the time of accident then there is willfully breach of terms of policy and the insurance company can entitle to avoid its liability to pay compensation. In this regard the arguments of learned Advocate for respondent No.2 holds good based on the facts of this case.

26. On the other hand also, the learned Advocate for respondent No.2 has also placed judgment of our own High Court in **MFA No.31414/2011** dated

18.09.2014 in between **Branch Manager National Insurance Co. Ltd Bijapur V/s Iranna Mallanagouda Biradar** wherein, it is held that, '*In the absence of driving licence, there is a violation of terms of the policy and the insurer cannot be held liable to satisfy the award. In the instant case substantial effort has been made by the insurer to obtain the driving licence. That even an order has been passed to produce the driving licence, even then the same is not done. Therefore, the Tribunal awarding the compensation to the claimant and the insurer being held liable to satisfy the award is erroneous'*. Further, the learned Advocate for respondent No.2 has also relied upon decision of our own High Court in **MFA No. 4339/2023** dated 03.03.2025 in between **Mudlappa S/o Sannerappa V.s Sunil R S/o Angaswamy and Others** wherein it is held that, '***para no18.*** *Coming to the aspect of fixing the liability, apparently, it is seen that owner-cum-rider of the offending vehicle was not possessing a valid and effective Driving Licence as on the date of occurrence of accident. The FIR and chargesheet are filed against him. Therefore, despite policy being in force, in view of violation of terms and conditions of the policy, the liability is fixed as against the owner-cum-rider of the offending vehicle in its entirety*'. ***Para no 19.*** *In the present case on hand, the owner-cum- rider of the offending vehicle has participated in the proceedings before the tribunal. The principle of pay and recovery enunciated by the Hon'ble Apex Court by way of precedent is to see that the benefit is given to the claimant in the absence* *of the owner-cum-rider of the offending vehicle and it is not for the benefit of the owner of the offending vehicle to take advantage of his own wrong, when he is represented and present before the Court. Under the circumstance, since the owner-cum-rider of the offending is before this Court in an appeal, he is saddled with the entire liability and he shall pay the compensation'.*

27. . With due respect to the submission of learned Advocate for respondent No.2 the law declared by our own High Court is very clear on the aspect of what is the legal position when the driver of offending vehicle is not possessing a valid and effective driving license on the date of occurrence of accident and to invoke the principle of pay and recover.

28. Now, the Advocate for petitioner would argue the matter countering to the arguments canvased by the learned Advocate for respondent No.2 and submitted that, still the pay and recover principle can be adopted to the present case on hand. Keeping in mind of the factual matrix of the present case and also the arguments canvased by the both the parties this court do find that, as on the date of accident that is on 07.08.2020, the driver of offending vehicle was not possessed valid and effective driving license. It also appears that, the substantial efforts has been made out by the respondent No.2 in order to bring home the fact of driving license by the respondent No.2. It is admitted fact that, the petitioner himself is a rider of motorcycle bearing its Reg No. KA-27/J-6985. Now it is also admitted fact that, the respondent No.1 is owner cum driver of offending vehicle bearing Reg No. KA-27/C-1743. He has enstructed the said vehicle to one Sri. Sachin S/o Gadigeppa Tippanavar who is the driver of offending vehicle and there is a charge sheet against him that, on a given date, time and place he has driven the vehicle without having valid or effective driving license. When this admitted aspect taken into consideration then the principle of pay and recover as per law declared by Hon'ble Apex Court the benefit is given to the claimant in the absence of the owner cum rider of the offending vehicle and it is not for the benefit of the owner of the offending vehicle to take advantage of his own wrong. Therefore, since the owner of the offending vehicle the respondent No.2 is before court and it is established that, the driver of offending vehicle did not possess the valid or effective driving license then and then the pay and recover principle cannot be made applicable to the present case on hand for the simple reason that, the respondent No.1 has participated in the present matter and he has to bring all the relevant aspect including the valid and effective driving license of his driver before the court. But he has kept mum without saying anything. Therefore, for all such reasons in the considered opinion of this court, the principle of pay and recover not made applicable to the present case on hand, though the accident has occurred on 07.08.2020 before the amendment to the Motor Vehicles Act. Meaning thereby there is no liability on the insurance company to indemnify the respondent No.1 and also to adopt the principle of pay and recover. Therefore, the respondent No.1 who has to indemnify the petitioner by paying the determined compensation to the petitioner. Meaning thereby, in the considered opinion of this court the petition as against the respondent No.2 is not maintainable. The respondent No 1 vehicle is insured with respondent No. 2. Hence, liability can not be shifted to the insurance company only.

29. The petitioner has claimed the compensation with interest at the rate of 18% P.A. from the date of accident till its realization. Considering the circumstances in the present case, the petitioner is entitled for interest of 6% P.A. from the date of the petition till its realization. Therefore, for the aforesaid reasons, Issue No.4 is answered as petitioner is entitled for above determined compensation with simple interest at the rate of 6% P.A. from the date of petition till realization, from respondent No.1 .

30. **ISSUE No.5:** For the aforesaid reasons and findings on Issues No.1 to 4, I proceed to pass the following:

ORDER

*The petition filed by the petitioner for the relief of compensation under **Section 166 of Motor Vehicles Act** is partly allowed in following manner.*

The petition filed against respondent No.2 insurance company is hereby dismissed.

*The petitioner is entitled for compensation of **Rs.6,46,450/-** with simple interest at the rate of **6%** P.A. from the date of petition till realization of entire compensation amount from respondent No.1 is liable to pay compensation to the petitioner.*

The respondent No. 1 is directed to deposit the compensation amount with interest within 3 months from the date of drawing the award.

If the compensation amount is deposited, the amount awarded in *favour of petitioner entire amount shall be released and credited to the account of petitioner.*

Advocate fee is fixed at Rs.500/-.

Draw award accordingly.

(Dictated to the stenographer, directly typed and print out taken by her and then corrected, signed and then pronounced by me in the open court on this the **25th day of July 2026**).

(Sunil S Talawar)
Senior Civil Judge & Member
Addl. MACT, Shiggaon Sitting
At Savanur.

ANNEXURE

List of Witnesses examined on behalf of the petitioners:

PW.1 : Shivappa @ Shivaputrappa S/o Virupakshappa Tirakannanavar

PW.2 : Dr. Gaya Kushal B. T

List of Documents marked on behalf of the Petitioners:

Ex.P.1 : Certified copy of FIR

Ex.P.2 : Certified copy of complaint

Ex.P.3 : Spot panchanama

Ex.P.4 : Vehicle seizure panchanama

Ex.P.5 : Motor vehicle accident report

Ex.P.6 to 8: Discharge summaries

Ex.P9 & 10: Wound certificates

Ex.P11 : Charge sheet

Ex.P.12 : Aadhaar card of PW1

Ex.P13 : Form of certificate of registration

Ex.P14 : RC

Ex.P.15 : Notarized copy of insurance policy

Ex.P.16 : Discharge summary

Ex.P.17 : Medicine prescriptions

Ex.P.18 : Medicals bills

Ex.P.19 : Out patient medicine prescription

Ex.P.20 : Disability certificate

Ex.P.21 : X-ray report

Ex.P.22 : RTC extract

List of Witnesses examined on behalf of the Respondents:

RW.1 : Bahubali Kuge

List of Documents marked on behalf of the Respondents:

Ex.R.1 : Insurance Policy

Ex.R.2 : Legal notice

Ex.R.3 : Postal acknowledgment

Ex.R.4 : Legal notice

Ex.R.5 : Postal acknowledgment

Ex.R.6	: Letter dated 12.02.2026
Ex.P.7	: Postal acknowledgment

Senior Civil Judge & Member
Addl. MACT, Shiggaon Sitting
At Savanur.