

KAMD710009072021



IN THE COURT OF ADDITIONAL SENIOR CIVIL JUDGE
MACT, SRIRANGAPATNA.

PRESENT

Sri. Krishna Murthy N., B.A., L.L.B.
I Addl. Senior Civil Judge
Srirangapatna.

Dated: This the 30th day of April- 2026.

MVC.No.906/2021 AND 907/2021

Petitioner/s : 1. Murthy B.
MVC.906/2021 S/o Bheema
Aged about 25 years,
R/o Belagola Village,
Srirangapatna Taluk,
Mandya District.

Petitioner/s : 1. Sri. Mayakannan
MVC.907/2021 @ Kannan R
S/o Rajamgam
Aged about 30 years,
R/o K.R.Sagara Village,
Srirangapatna Taluk,
Mandya.

(By Sri.A.P.N. Adv.,)

/VS/

Respondent/s : 1. Sri. Avinash M.M
S/o Manjunatha M.G,
R/of #614, Block, 3rd cross,
3rd stage, Dattagalli,
Mysore City.

2. The Manager**Iffco Tokio General Insurance Co. Ltd.,**

Near Akshay Bandar

Mysore.

(Policy holder of TATA Indika Car
bearing No.K.A-09-C-1235)

Policy No.M.B.588478

Valid from 25.11.2019 to 24.11.2020

(R1 Exparte)**R2 by H.L.S. Adv.,)****In MVC. NO.906/2021 and 907/2021**

Nature of petition	For Compensation award.
Date of institution	25.08.2021
Date of commencement of Recording of evidence	16.02.2023
Date of Judgment	30.04.2026
Total duration	<u>Years Months Days</u> 04 08 05

**COMMON JUDGMENT IN MVC. NO.906/2021 AND
907/2021**

The both claim petitioners have filed these petitions U/s.166 of M.V.Act 1988, the petitioner in MVC 906/2021 is seeking compensation amount of Rs.13,00,000/- with interest for the injuries sustained in the accident, the petitioner in MVC 907/2021 is seeking compensation amount of Rs.26,00,000/- with interest for the injuries sustained in the accident.

2. Since these both claim petitions arose out of the same cause of action against the same respondents. Hence

both petitions are clubbed and taken together and common evidence was recorded.

3. The brief averments as made out in the petitioners' case are as under:

That on 14.06.2020 at about 8.00 pm on petitioners were traveling from Hunasuru towards Belagola. Sri. Mayakannan @ Kannan was driving Omini car bearing regn.no.KA-12-Z-0133 in which Sri. Murthy was traveling along with him. At that time near Puttan Kere, Yemmekoppalu Village Gate on Hunasuru-Mysore main road, a TATA Indica Car bearing regn. no.KA-09-C-1235 which came from opposite direction with high speed with rash and negligent manner, so as to endangering to human life, hit and Omini Car Turtled to the foot-bath consequent to which petitioners got sustained several injuries. Immediately, petitioners shifted to the Hunasuru Government Hospital and then shifted to Brindavana Hospital at Mysore and later they have been treated in Nagarajegowda Memorial Hospital in subsequent discharge from the hospital. Due to the injury sustained in the accident, the petitioners are recovered, unable to do daily work and injuries are permanent in nature. At the time of accident, petitioner No.1 was aged about 25 years, and working as a seller of snacks and he was earning Rs.30,000/- per month. At the time of accident petitioner No.2 aged about 30 years and doing snacks selling business and earning Rs.30,000/- per month. petitioner are the sole

earnings of their family. The jurisdictional police registered a case against driver of offending vehicle and submitted charge sheet and hence this petition.

4. After service of notice, respondent N2.2 appeared through counsel filed objection, respondent No.1 remained absent and placed *exparte*.

5. The 2nd respondent in its written statement has disputed the age, occupation, income and the amount spent by the petitioners for their treatment and other expenses and also disputed the alleged permanent disability sustained by the petitioners. it is stated that the driver of the Indica car was not having valid and effective D.L to drive the said vehicle as on the date of the accident. The 2nd respondent also seeks protection U/Sec.158(6) of M.V.Act. The respondent No.2 denied nature of accident. The petition is bad for non joinder of necessary parties since petitioner has not made driver of TATA Indica car bearing No.KA-09-C-1235. It is further stated that head on collision occurred due to rash and negligent driving of vehicles involved in the accident while over taking another car and charge-sheet was submitted against driver of Omini Car bearing No.KA-12-Z-1033 ie., petitioner No.2 Mayankannan @ Kannan and driver of TATA Car bearing No.KA-09-C-1235. Hence insurance company is not liable to pay any compensation.

6. On the basis of the above pleadings, my predecessor in office has framed the following Issues :

ISSUES IN MVC.906/2021

1. Whether the petitioner proves that on 14.06.2020 at about 8.00 p.m. on Hunsur Mysore Main Road, near Eemme Koppalu Gate and Puttana Kere, Hunsur Town, when petitioner was traveling on Omini Car bearing Registration No.KA-12-2-1033, by that time the driver of TATA Indica Car bearing Registration No. KA 09-C-1235. drove the same in rash and negligent manner and dashed result of which the petitioner sustained grievous injuries as mentioned in the Wound certificate?
2. Whether the respondent No.2 proves that the driver of TATA Indica Car bearing Registration No. KA-09-C-1235 was not having valid and effective driving license and the owner of the vehicle had not FC and permit to drive said vehicle at the time the accident?
3. Whether the respondent No.2 proves that the petition is bad for non-joinder of necessary parties?
4. Whether the petitioner is entitled for compensation? If so, from whom and what amount?
5. What order or award?

ISSUES IN MVC.907/2021

1. Whether the petitioner proves that, on 14.06.2020 at about 8.00 p.m., Hunsur Mysore main Road, Emmekoppalu Village, near Putta's Lake, when petitioner was drove on his Car bearing No.KA-12-Z-1033 along with inmates, the driver of another Car bearing No.KA-09-C-1235 drove the same in a rash and negligent

manner at high speed and dashed to petitioner's car and as a result of which the petitioner has sustained grievous injuries as mentioned in the wound certificate?

2. Whether the respondent No.2 proves that, the petition is bad for non-joinder of necessary parties as contended in para No.2 of the written statement?
3. Whether the 2nd respondent proves that, the driver of the Car bearing No.KA-09-C-1235 not having valid Driving license as on the date of accident?
4. Whether the petitioner is entitled for compensation ? If so, from whom and what amount?
5. What order or award ?

7. Parties have entered into trial. The petitioner in MVC No.906/2021 got himself examined as PW.1, and got marked Ex.P13 to 15 petitioner in MVC No.907/2017 got himself examined as PW.1 and got marked Ex.P1 to 12. On the other hand, respondent No.2 insurance company examined his manager as RW-1 and documentary evidence got marked Ex.R1 and 2.

8. Heard argument of both counsel for the petitioner is in both petition and 2nd Respondent and perused the materials available on record.

9. My findings on the above issues in both petitions are as under : -

ISSUE IN MVC NO.906/2021

- Issue No.1 : Partly in the Affirmative
Issue No.2 : In the Negative
Issue No.3 : In the Negative
Issue No.4 : In the Negative
Issue No.5 : Partly in the Affirmative
Issue No.6 : As per the final order

ISSUES IN MVC NO.907/2021

- Issue No.1 : Partly in the Affirmative
Issue No.2 : In the Negative
Issue No.3 : In the Negative
Issue No.4 : Partly in the Affirmative
Issue No.5 : As per the final order

for the following ;

REASONS

10. ISSUE No.1 IN MVC No.906/2021 and 907/2021: The case of the petitioner is already stated at the inception of judgment, hence the court will proceed appreciate only the material evidence on record.

11. In order to prove the contentions taken in the petitions PW-1 and 2 were examined by filing examination in chief by reiterating the same set of fact as that of petition. They have produced documentary evidence marked at Ex.P1 to Ex.P15 on their behalf. Ex.P1 is certified copy of FIR, Ex.P2 is certified copy of complaint, Ex.P3 is certified copy of spot Mahazar, Ex.P4

is sketch, Ex.P5 is IMV report, Ex.P6 is true copy of wound certificate, Ex.P7 is certified copy of Charge-sheet, Ex.P8 is discharge summary, Ex.P9 is Medical prescriptions, Ex.P10 is Medical Bills, Ex.P11 is X-ray films, Ex.P12 is MIR films, Ex.P13 is wound certificate, Ex.P14 is discharge summary, Ex.P15 is medical bills.

12. Respondent No.2 insurance company has cross-examined the PW-1 and 2 at length. During the course of cross-examination of PW-1 and 2 suggestion put to them with regard to rash and negligent driving of the driver of the Omini Car bearing No.KA-12-Z-1033 has been denied. At this juncture, it is relevant to cite the decision reported in **AIR 2009 SC 2819 between Bimla Devi and others Vs. Himachal Raod Transport Corporation** wherein the Hon'ble Apex court held that in a road accident claim, the strict principles of proof in a criminal case are not attracted. The Hon'ble Apex court further held that petitioner is required only to establish his case on the touch stone of preponderance of probabilities and standard of proof beyond reasonable doubt cannot be applied in a road accident claim case. Though strict proof of proving beyond reasonable doubts, whether accident was caused solely on account of rash and negligent driving of the driver of Omini Car or on account of negligent driving on the part of offending TATA Indica Car needs to be ascertained.

13. According to charge-sheet, marked at Ex.P7, both driver of vehicle Indica car bearing No.KA-09.C1235 and Omini Car bearing No.KA-12-Z-1033 were driven in a rash and negligent manner thereby caused an accident. Accordingly the police have filed a charge-sheet against both driver of the vehicles involved in the accident. In this case, petitioner/PW-1 Mayakannan @ Kannan who was the driver of Omini Car bearing No.KA-12-Z-1033 in which petitioner /PW2 Murthy was traveling as on the date of accident. After completion of investigation, recovering vehicle drawing spot mahazer and obtained materials documents Investigation officer submitted charge-sheet against PW-1 who is accused No.1 for the offence punishable U/s 279, 337 whereas against driver of Indica car for the aforesaid offences including section 185 of IMV Act. Apparently accused No.2 who was the driver of Indica car was under influence of Alcohol while driving as per the charge-sheet. It appears that head on collision between the 2 vehicles involved in the accident was occurred in the middle of the road, which can evident from rough sketch prepared and produced marked at Ex.P4. So from the material available record and oral evidence of petitioners it is not in disputed that an accident was occurred between 2 vehicles, petitioners were traveling in Omini car which driven by PW-1 as on that date. Documentary evidence particular Ex.P7 charge-sheet would clearly indicate to show that an accident was occurred due to

rash and negligent driving of the vehicles by both drivers. Even if it is assumed that respondent is able to prove contributory negligence will not be a ground to disentitlement for petitioners in seeking compensation under Motor Vehicles Act.

14. In motor accident compensation claims, courts may evaluate and even infer contributory negligence from evidence on record even no specific issue on contributory negligence was framed. As already observed above, head on collision occurred between 2 vehicles and same has been occurred due to the rash and negligent driving of drivers from both vehicles. The rough sketch produced which marked at Ex.P4, clearly established that accident was occurred in middle of the road. Therefore, contributory negligence attributed to the driver of Omini car i.e., PW-1. Therefore, for the aforesaid reasons and discussion and having considering the facts and circumstances of the present case on hand and considering the contributory negligence, the court assess the contributory negligence and apply 50:50 towards contributory negligence of PW-1, hence **issue No.1 is answered Partly in the Affirmative.**

15. Issue No.2 in MVC 906/2021 Issue No.3 in MVC 907/2021 : The charge-sheet submitted by the IO, dose not reveal that driver of the offending vehicles bearing No.KA-09-C1235 was driving the vehicles without valid, effective DL and no case has been

registered against owner of the offending vehicle for violation of FC. Hence, it is held that driver of the offending vehicle was holding effective DL as on the date of alleged accident. Hence, Issue No.2 in MVC 906/2021 and Issue No.3 in MVC 907/2021 **held negatively**.

16. Issue No.5 in MVC 906/2021 : PW-2 and during examination in chief deposed that he sustained several injuries to his body and he was treated in the hospital as inpatient and outpatient. Except denial nothing credible evidences have been elicited from him, during cross-examination. PW-2 has specifically denied the suggestion put to him during cross-examination rendered by respondent insurance company that accident was caused solely on account of rash and negligent driving of the Omini car driver.

17. In this case, respondent No.2 insurance company conducted examination of PW-1 at lengthy and disputes age, occupation and his earnings as well as manner in which accident was occurred. Except a plain denial in the cross-examination, it has not produced any material. In so far as policy is concerned, respondent insurance company has not specifically denied that offending vehicle was not duly insured and has not effected as on the date of accident. Therefore, it can be held that insurance of offending vehicle involved in the accident was in force as on the date.

**ISSUE WITH REGARD TO ENTITLEMENT OF
COMPENSATION UNDER DIFFERENT HEADS**

A. towards pain and suffering, loss of comfort, amenities and happy ;

18. PW-2 in his oral evidence has reiterated that he was sustained injuries as mentioned in the wound certificate. From the contents of Ex.P13 wound certificate, it appears that petitioner sustained certain injuries. Doctor Who treated petitioner has opined that injury No.1 and 2 are simple and injury No.3 is in grievous nature. The petitioner claimed compensation of Rs.2,00,000/- towards pain and suffering. Considering the oral evidence of PW-2 and Ex.P13 wound, the petitioner sustained several injuries and having regard to the sustained injury by petitioner and treatment undergone and I am of the opinion that it is fit case to award Rs.35,000/- towards pain and suffering loss of comfort, amenities and happy.

B. Towards medical expenses, attending conveyance food and deity, nourishment and other incidental expenses ;

19. petitioner has stated that in his petition, as well as examination in chief that he has spent more than Rs.3,00,000/- towards medical expenses, in this regard has produced Ex.P15. Petitioner has spent sum of Rs.8,000/- towards medical expenses thereby

considering such aspect, petitioner is entitled Rs.8,000/- in the head of medical expenses.

20. petitioner has stated in the petition that he has spent Rs.50,000/- attendant, food, diet charges. Immediately after accident, petitioner was taken in to the Government Hospital, Hunasuru for treatment, then to Brindavana Hospital, Mysore. Later, he was admitted for treatment from the 18.06.2020 to 20.06.2020 in Nagarajegowda Memorial Hospital, Mysore in total 2 days but petitioner has not produced any iota of evidence regarding amount spent for food, diet, attendant, and convenience and by considering nature of injury sustained by petitioner, age of petitioner and 2 days as inpatient in the hospital for treatment, if this assumed that petitioner has spent Rs.1,000/- per day, then he has entitled Rs.2,000/-. Therefore having regard to the facts and circumstances of the case, court is of the opinion that it is fit case to award Rs.2,000/- towards head of attendance, food, diet and other convenience charges.

C. Loss of income during laid up/ treatment period ;

21. The petitioner has stated that prior to accident, he was hale and healthy and was working as snack selling business and earning sum of Rs.30,000/- per month. The petitioner has not at all produced any relevant document regarding occupation as well as

income derived from his avocation. Considering the facts that accident has taken place in the year 2020 and injured was working as worker, age about 25 years and in absence of documentary evidence in proof of alleged monthly income of the petitioner, the notional income of the injured at the rate of Rs.16,500/- per month can be taken into consideration as per monthly national incomes endorsed by KASLA chart. The petitioner was taken treatment in the hospital for 2 days as per discharge summary. By considering the nature of injury, therefore petitioner is entitled for compensation of Rs.16,500 X 2 days = 1,100 under this head.

D. Towards loss of future income/ earning on account of permanent disability :

22. with regard to permanent disability. The petitioner examined the Doctor Karunakara, the consultant orthopedic surgeon at Nagarajegowda Memorial Hospital, Mysuru as CW-3, who treated the petitioner has stated that petitioner was treated at Nagarajegowda Memorial Hospital, Mysuru. On his examination, he found swelling and pain at right knee and on 20.06.2020 petitioner was discharged from hospital with advice to take further follow up treatment and accordingly petitioner was take further follow up treatment around 8 to 10 times in the hospital as outpatient. Further stated that when he has examined the petitioner on 04.11.2024, he found that petitioner

has difficulty while walking, standing and sitting. he has conducted x-ray and found complain of pain in right knee movement up to 40% and according to him, petitioner has disability up to 24% towards right leg that is lower limb, as per guidelines of central government. Such disability of petitioner to extent of 24% to the particular portion of the body. Though the PW-2 has been examined nothing material were elicited by respondent No.2 insurance company to disprove the evidence with regard to nature and percentage of permanent functional disability sustained by petitioner. The petitioner sustained injuries to the lower limb and disability to extend 24% as per doctor's evidence. Even assume that petitioner was working as worker then it is difficulty for petitioner even at the age of 25 years to continues his avocation. Even though no documentary evidence are produced before court regarding avocations and profession of the petitioner, by considering these aspects the accidental injuries will affect his normal working and earning capacity.

23. On the basis of clinical evidence and evidence of doctor, petitioner is having permanent disability of 24% towards lower limb but petitioner and PW-2 who examined before court has not spoken regarding permanent disability towards whole body. So only 1/3 disability towards particular portion of the body has to be taken into consideration as permanent disability

towards whole body is 8%. Having regard to the age of petitioner and as per decision between **Sarala Varma and others Vs Delhi transport corporation and another AIR 2009 SC 3104** the multiplier is 18 has taken, hence the loss of earning capacity due to permanent functional disability is $16,500 \times 12 \times 18 \times 8 = \text{Rs.}2,85,120/-$.

E. Loss of future prospects.

24. It is settled position of law that even in case of permanent disablement due to motor accident, the claimant can seek apart from compensation for future loss of income, amounts for future prospects as well.

25. The Hon'ble Apex court in **National Insurance co, Ltd., Vs Pranayasethi and others** provided the chart for the age of income and percentage of future prospects which read as follows;

if deceased is self employed or fixed salary,
his age below 40 years, future prospect is 40%, if deceased age between 40 to 50 years future prospects is 25%, if deceased age between 51 to 60 years future prospects is 10% and if deceased more than 60 years no addition as future prospects.

In the present case considering total loss of earning, age, nature of employment, the loss under the future

prospects would be $2,85,120 \times 40\% = 1,14,048/-$ which rounded up Rs.1,14,100/-

F. Future medical expenses

26. Future medical expenses would include expenditure for future operations like correct the surgeries and for replacement of medical aids and equipment's which is needed in the case of permanent handicaps. The Petitioner has examined doctor who treated him. But no evidence regarding the future medical expenses. He has also not produced any relevant oral and documentary evidence regarding future medical expenses. No such documents produced regarding future surgery. In the absence of meticulous documentary evidence petitioner is not entitle for any future medical expenses.

27. Therefore, petitioner is entitled to compensation under following heads ;

Sl.No.	Head of Compensation	Amount
1.	Pain and suffering	35,000/-
2.	medical expenses,	8,000/-
3.	attendant conveyance food and deity, nourishment and other incidental expenses	2,000/-
4.	Loss of income during laid up period	1,100/-
5.	loss of future earning	2,85,120/-
6.	Loss of future prospects.	1,14,100/-

7.	Future medical expenses	-----
	Total Compensation	4.45.320/-

Therefore, tribunal held that petitioner is entitled Rs.**4.45.320/-** (Four Lakhs forty five thousand three hundred and twenty rupees only) as compensation under the above said heads with interest. Hence held the **Issue No.5 in partly affirmative.**

28. Issue No.4 in MVC 907/2021 : PW-1 and during examination in chief deposed that he sustained several injuries to his body and he was treated in the hospital as inpatient and outpatient. Except denial nothing credible evidences have been elicited from him, during cross-examination. PW-1 has specifically denied the suggestion put to him during cross-examination rendered by respondent insurance company that accident was caused solely on account of rash and negligent driving of the Omini car driver.

29. In this case, respondent No.2 insurance company conducted examination of PW-1 at lengthy and disputes age, occupation and his earnings as well as manner in which accident was occurred. Except a plain denial in the cross-examination, it has not produced any material. In so far as policy is concerned, respondent insurance company has not specifically denied that offending vehicle was not duly insured and has not

effected as on the date of accident. Therefore, it can be held that insurance of offending vehicle involved in the accident was in force as on the date.

**ISSUE WITH REGARD TO ENTITLEMENT OF
COMPENSATION UNDER DIFFERENT HEADS**

A. towards pain and suffering, loss of comfort, amenities and happy ;

30. PW-1 in his oral evidence has reiterated that he was sustained injuries as mentioned in the wound certificate. From the contents of Ex.P6 wound certificate, it appears that petitioner sustained certain injuries. Doctor Who treated petitioner has opined that injury No.1 to 3 are grievous in nature. The petitioner claimed compensation of Rs.2,00,000/- towards pain and suffering. Considering the oral evidence of PW-1 and Ex.P6 wound, the petitioner sustained several injuries and having regard to the sustained injury by petitioner and treatment undergone and I am of the opinion that it is fit case to award Rs.35,000/- towards pain and suffering loss of comfort, amenities and happy.

B. Towards medical expenses, attending conveyance food and deity, nourishment and other incidental expenses ;

31. petitioner has stated that in his petition, as well as examination in chief that he has spent more than Rs.10,00,000/- towards medical expenses, in this regard

has produced Ex.P10. Petitioner has spent sum of Rs.3,11,147/- towards medical expenses thereby considering such aspect, petitioner is entitled **Rs.3,11,147/- in the head of medical expenses.**

32. petitioner has stated in the petition that he has spent Rs.50,000/- attendant, food, diet charges. Immediately after accident, petitioner was taken in to the Government Hospital, Hunasuru for treatment, then to Brindavana Hospital, Mysore. Later, he was admitted for treatment from the 15.06.2020 to 25.06.2020 in Nagarajegowda Memorial Hospital, Mysore in total 10 days but petitioner has not produced any iota of evidence regarding amount spent for food, diet, attendant, and convenience and by considering nature of injury sustained by petitioner, age of petitioner and 10 days as inpatient in the hospital for treatment, if this assumed that petitioner has spent Rs.1,000/- per day, then he has entitled Rs.10,000/-. Therefore having regard to the facts and circumstances of the case, court is of the opinion that it is fit case to award **Rs.10,000/- towards head of attendance, food, diet and other convenience charges.**

C. Loss of income during laid up/ treatment period ;

33. The petitioner has stated that prior to accident, he was hale and healthy and was working as snack

selling business and earning sum of Rs.30,000/- per month. The petitioner has not at all produced any relevant document regarding occupation as well as income derived from his avocation. Considering the facts that accident has taken place in the year 2020 and injured was working as worker, age about 32 years and in absence of documentary evidence in proof of alleged monthly income of the petitioner, the notional income of the injured at the rate of Rs.16,500/- per month can be taken into consideration as per monthly national incomes endorsed by KASLA chart. The petitioner was taken treatment in the hospital for 10 days as per discharge summary. By considering the nature of injury, therefore petitioner is entitled for compensation of **Rs.16,500 X 10 days = 5,500 under this head.**

D. Towards loss of future income/ earning on account of permanent disability :

34. with regard to permanent disability. The petitioner examined the Doctor Karunakara, the consultant orthopedic surgeon and Dr. Harsha A.H, the consultant neuro surgeon at Nagarajegowda Memorial Hospital, Mysuru as CW-1 and 2 respectively, who treated the petitioner for the injuries to the leg and head. On his examination, CW-1 found swelling and pain to the legs and on 25.06.2020 petitioner was discharged from hospital with advice to take further follow up treatment and accordingly petitioner was take further

follow up treatment around 8 to 12 times in the hospital as outpatient. Further stated that when CW-1 has examined the petitioner on 04.11.2024, he found that petitioner has difficulty while walking, standing and sitting. he has conducted x-ray and found muscle weakness and movement to the legs and according to him, petitioner has disability up to 35% towards leg that is lower limb, as per guidelines of central government. Such disability of petitioner to extent of 35% to the particular portion of the body. Though the PW-1 has been examined nothing material were elicited by respondent No.2 insurance company to disprove the evidence with regard to nature and percentage of permanent functional disability sustained by petitioner. The petitioner sustained injuries to the lower limb and disability to extend 35% as per doctor's evidence. Even assume that petitioner was working as worker then it is difficulty for petitioner even at the age of 32 years to continues his avocation. Even though no documentary evidence are produced before court regarding avocations and profession of the petitioner, by considering these aspects the accidental injuries will affect his normal working and earning capacity.

35. On the basis of clinical evidence and evidence of doctor, petitioner is having permanent disability of 35% towards lower limb but petitioner and PW-1 who examined before court has not spoken regarding

permanent disability towards whole body. So only 1/3 disability towards particular portion of the body has to be taken into consideration as permanent disability towards whole body is 11.62% which rounded up 12%.

36. The petitioner also examined the Doctor Harsha, who was examined as CW-2 and who treated petitioner at Nagarajegowda Memorial Hospital, Mysuru has stated that patient has come for follow up on several times since he was discharged on 25.06.2020 and he found petitioner has neuro behavioral issues. CT brain was done on 09.12.2024 as per Ex.C6, petitioner showed minimal age related cerebral atrophy with minimal periventricular ischemic changes and according to him, petitioner has disability up to 53.08% towards secondary brain injury, as per guidelines of central government. Such disability of petitioner to extent of 53.08% to the whole body. The physiological assessment report issued by the CW-2 is marked as Ex.C5. Though the CW-2 has been examined nothing material were elicited by respondent No.2 insurance company to disbelieve the evidence with regard to nature and percentage of permanent functional disability sustained by petitioner. The petitioner sustained injuries to the secondary brain injury and disability to extend 53.08% as per doctor's evidence.

37. Evidence of Doctor reveals that assessment of behavioral disability is supported by clinical findings

such as neurological examination, CT reports and not based on merely on subjective complaints of the patient. physical disability towards particular limb comes to 12% as per disability given by CW-1 and disability of 53.08% (rounded up 53%) applies to whole body as per report of CW-2 and in total petitioner sustained total disability at 65%.

Having regard to the age of petitioner and as per decision between **Sarala Varma and others Vs Delhi transport corporation and another AIR 2009 SC 3104** the multiplier is 16 has taken, hence the loss of earning capacity due to permanent functional disability is $16,500 \times 12 \times 16 \times 65\% = \text{Rs.}20,59,200/-$.

E. Loss of future prospects.

38. It is settled position of law that even in case of permanent disablement due to motor accident, the claimant can seek apart from compensation for future loss of income, amounts for future prospects as well.

The Hon'ble Apex court in **National Insurance co, Ltd., Vs Pranayasethi and others** provided the chart for the age of income and percentage of future prospects which read as follows;

if deceased is self employed or fixed salary,
his age below 40 years, future prospect is 40%,
if deceased age between 40 to 50 years
future prospects is 25%,
if deceased age between 51 to 60 years
future prospects is

10% and if deceased more than 60 years no addition as future prospects.

In the present case considering total loss of earning, age, nature of employment, the loss under the future prospects would be $20,59,200 \times 40\% = 8,23,680/-$.

F. Future medical expenses

39. Future medical expenses would include expenditure for future operations like correct the surgeries and for replacement of medical aids and equipment's which is needed in the case of permanent handicaps. The Petitioner has examined doctor who treated him. But no evidence regarding the future medical expenses. He has also not produced any relevant oral and documentary evidence regarding future medical expenses. No such documents produced regarding future surgery. In the absence of meticulous documentary evidence petitioner is not entitle for any future medical expenses.

40. Therefore, petitioner is entitled to compensation under following heads ;

Sl. No.	Head of Compensation	Amount
1.	Pain and suffering loss of comfort, amenities and happy	35,000/-
2.	medical expenses,	3,11,147/-
3.	attendant conveyance	10,000/-

	food and deity, nourishment and other incidental expenses	
4.	Loss of income during laid up period	5,500/-
5.	loss of future earning	20,59,200/-
6.	Loss of future prospects.	8,23,680/-
7.	Future medical expenses	-----
	Total Compensation	32,54,527/-

41. As already observed above accident was occurred on account of contributory negligence of petitioner who was the driver of Omini as on the date of accident and extent contributory negligence of petitioner amounts to 50:50. Therefore, tribunal held that petitioner is entitled Rs. **16,27,263/-** (Sixteen Lakhs twenty seven thousand two hundred sixty three rupees only) as compensation under the above said heads with interest. Hence held the **Issue No.4 in partly affirmative.**

42. Issue No.4 in MVC No.906 and Issue No.2 in MVC No.907 :

The respondent insurance company took contention that petition is bad for non-joinder of necessary parties for not ariving driver of TATA Indica car bearing No.KA-09-C-1235. In order to maintained the petition for compensation insured and insurer of the policy are necessary and proper parties to proceedings, the driver of

the offending car is not necessary party to the claim petition where insurance of the vehicle is not disputed. Hence held **Issue No.4 in MVC No.906 and Issue No.2 in MVC No.907 in negative.**

43. In so far as liability is concerned, the 2nd respondent insurance company, except denial nothing has been elicited from the mouth of PW-1 and 2. The respondent No.2 insurance company has not at all disputed that offending vehicle was duly insured as on the date of accident. Therefore, 2nd respondent company is held liable to pay compensation as ordered.

44. Grant of Interest: Regarding the interest I relied upon the citation reported in **MFA No.4103/2017, in between The Manager, Reliance General Insurance Co. Ltd., V/s Smt.Vanajakshi, dated 18.03.2020. In the above said case the Hon'ble High court of Karnataka** has clearly held that the nationalized banks are now granting interest at the rate of 6% per annum on fixed deposits. Therefore, award of interest at the rate of 6% per annum from the date of claim made by the petitioner till the date of deposit of the amount will meet the ends of justice and equity. In the said case the rate of interest to be awarded to the claimant is 6% p.a. In the instant case also the said rate of interest is to be awarded.

45. Issue No.6 in MVC 906 and Issue No.5 in MVC 906 : In view of my findings on above said issues and the

reasons assigned there on, I proceed to pass the following order :

ORDER

The Petitions filed by the petitioners in both petitions U/s 166 of Motor Vehicle Act are allowed in part with cost.

The respondents No.1 and 2 are jointly and severally liable pay compensation of Rs.4,45,320/- to the petitioner in MVC.906/2021.

The respondents No1 and 2 are jointly and severally liable pay compensation of Rs.16,27,263/- to the petitioner in MVC.907/2021.

The respondents No.2 shall pay the compensation amount within 2 months from the date of this award along with interest at the rate of 6% per annum from the date of filing petition till payment.

In the event of failure to pay the said amount within such period, then entire compensation shall carry enhanced interest at the rate 9% per annum from the date of default till its realization.

Out of the total compensation amount, petitioner in MVC No.906/2021 is entitled 75% along with interest and 25% shall be kept in FD for a period of 3 years.

Likewise, out of the total compensation amount, petitioner in MVC No.907/2021 is entitled 50% along with interest and 50% shall be kept in FD for a period of 3 years.

The 2nd respondent shall transfer 75% and 50% amount awarded in both petition to the bank account of petitioners together with interest.

Respondent No.2 shall invest 25% and 50% in FD in the name of petitioners for a period of 3 years. The petitioners are at liberty to withdraw periodical interest occurred on deposit amount from time to time.

The bank shall not permit any loan on the fixed deposit.

Prior to transfer, the insurance company shall intimate the concerned bank by E-mail, enclosing a copy of the award, and request freezing of debit operations to the extent of fixed deposit amount, until fixed deposit is

opened. If no response is revived from the bank within 7 days, the insurance company shall inform the petition's counsel for furnishing alternative bank details. The bank shall comply with the award and file a compliance report before the court along with fixed deposit receipt.

Petitioners shall submit affidavit furnishing nationalized bank details with IFSC along with canceled cheque having his name within 30 days from today and also submit bank account, pass books, Adhar cards and pass books.

Failure to furnish details aforesaid within 30 days petitioner is not entitled to interest until such compliance.

Advocate fees is fixed of Rs.1,000/-.

Office to draw award accordingly.

The original judgment is order to be kept in MVC 906/2021 and certified copy of the same in order to be kept in MVC No.907/2021.

*(Dictated to Stenographer through dictation and typed by her, corrected by me and then pronounced it in open court this the **30th day of April 2026**)*

Sri. Krishna Murthy N.,

**I Addl. Senior Civil Judge & MACT.,
Srirangapatna.**

: A N N E X U R E :

1. Witnesses Examined For Petitioner In All Petitions :-

PW-1 : Kannan @ Mayakannan
PW-2 : Murthy D

2. Documents Exhibited For Petitioner In All Petitions:

Ex.P.1 : Certified copy of the FIR
Ex.P.2 : Certified copy of the Complaint
Ex.P.3 : Certified copy spot Mahazar
Ex.P.4 : Sketch
Ex.P.5 : Certified copy of the IMV Report
Ex.P.6 : Certified copy of Wound certificate
Ex.P.7 : Certified copy of the Charge Sheet
Ex.P.8 : Certified copy of Discharge summary
Ex.P.9 : Medical prescriptions
Ex.P.10 : Medical bills
Ex.P.11 : X-ray Film
Ex.P.12 : MRI scan film
Ex.P.12 : 3 X-ray
Ex.P.13 : Certified copy of Wound certificate
Ex.P.14 : Certified copy of Discharge summary
Ex.P.15 : Medical bills

**3. Witnesses Examined For Respondents In All
Petitions :**

RW-1 : Sri. K.S. Kiran

**4. Documents exhibited for respondent in all
petitions :**

Ex.R.1 : Authorization letter

Ex.R2 Policy

**5. Witnesses examined for Court Commissioner
(In MVC 907/2021):-**

CW-1 : Dr. Karunakar
CW-2 : Dr. Harsha A.H

**6. Documents exhibited for Court Commissioner
(In MVC 907/2021) :-**

Ex.C-1 : Inpatient case record
Ex.C-2 : X-ray
Ex.C-3 Out patient case record
Ex.C-4 : Out patient case record
Ex.C-5 : Neruropsychological assessment
Ex.C-6 : MRI latest report
Ex.C-7 : 3 MRI film

**7. Witnesses examined for Court Commissioner
(In MVC 906/2021):-**

CW-3 : Dr. Karunakar

**8. Documents exhibited for Court Commissioner
(In MVC 960/2021) :-**

Ex.C-8 : Inpatient case record
Ex.C-9 : X-ray
Ex.C-10 : Out patient case record

**Addl., Senior Civil Judge & MACT
Srirangapatna.**

