

KAMD710014292024



**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 24<sup>th</sup> day of June- 2026**

**M.V.C.No.1542/2024**

**Petitioner/s : 1. Sri. Somashekara**  
S/o Puttabasavachari  
Aged about 27 years,  
R/o Panchalara beedi,  
Ganjam,  
Srirangapatna Town,  
Mandy District.  
**(By Sri.DPK. Adv.,)**

**/VS/**

**Respondent/s : 1. Sri.Mohamed Basheer**  
S/o Mohemed Kutty  
Aged about 50 years,  
R/o No.3/876A,  
Kuttimuchi Cherumully Post,  
Sri. Madhugiri,  
The Nilgiris  
Tamilnadu.  
(RC Owner of Lorry  
bearing No.TN-41-AL-5461)

**2. The Manager,**  
EFCO Tokiyo General Insurance  
Co., Ltd.,  
No.846, New Kantharaj Aras Road,

Akshay Bandara,  
Kuvempunagara

(Insurer of Lorry  
bearing No.TN-41-AL-5461)

Policy Certificate No.MX082578

Valid from 06.11.2023 to  
05.11.2024

- 3.** Vijayakumar K.K  
S/o Karishetty  
Aged about 45 years.  
R/o Kurahatti Village,  
Mandya Taluk  
and District.  
(RC Owner of Lorry  
bearing No.KA-01-MA-5356 )  
**(R1 Exparte)**  
**(R2 by SB. Adv.,)**  
**(R2 by SV. Adv.,)**

|                                                  |                                             |
|--------------------------------------------------|---------------------------------------------|
| Nature of petition                               | For Compensation award.                     |
| Date of institution                              | 04.11.2024                                  |
| Date of commencement of<br>Recording of evidence | 03.03.2026                                  |
| Date of Judgment                                 | 24.06.2026                                  |
| Total duration                                   | <b><u>Years Months Days</u></b><br>01 07 20 |

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

The petitioner has filed the present petition u/s 166 of Motor Vehicles Act 1988 seeking compensation of Rs.54,50,000/- with interest for the injuries sustained by the him raising out of Motor Vehicle accident.

**2. The brief facts of the petitioner case are as follows,**

That on 16.10.2024 at about 06.15 p.m., while petitioner was driving along with his friend Sri.Abhishek as pillion rider in scooter bearing Reg.No.KA-11-EX-1734 on Mysore – Nagamangala main Road, near Sampradaya Convention Hall, Kennala Gate, by that point of time, driver of the lorry bearing registration No.TN-41-AL-5461 drove the same in rash and negligent manner and dashed behind the scooter, as a result of which both petitioners and pillion rider of scooter fell down and sustained injuries. The petitioner was shifted to Manipal Hospital, Mysore, then to Nagarajegowda Memorial Hospital, Mysore where he was admitted as an inpatient about 15 days and subsequently discharged from the Hospital. Due to injuries sustained in the accident, petitioners is not recovered, unable to do any work and injuries are permanent in nature. Surgery was done to the right leg and he is advise to undergo further surgery for removal of implant. At the time of accident, the petitioner was 27 years of age and doing agriculture as well as Carpenter and was earning Rs.30,000/- per month. He is the only earning member of the family and due to the accidental injuries, petitioner sustained functional disability which causing financial hardship. The jurisdictional Police registered FIR against the driver of offending lorry for the offence punishable U/Sec.281, 125(A) of BNS, hence this petition.

**3.** After institution of the petition, in response to notice, respondent No.2 and 3 appeared through counsel and have filed their respective objections. Though notice served, respondent No.1 remained absent and placed *exparte*.

**4.** In the objection statement filed by 2<sup>nd</sup> respondent has contended that lorry bearing registration No.TN-41-AL-5461 was not holding effective driving license as on the date accident. This respondent seeks protection U/Sec.134(C), 147 and 150 of MV Act. The respondent denied nature of accident rash and negligent driving of offending lorry, age, occupation, income and Avocation. This respondent also denied, medical expenses incurred by the petitioner, functional disability, quantum of compensation, claimed in the petition. By denying other material averments of the petition, the respondent prays to dismiss the petition as against it with cost.

**5.** The 3<sup>rd</sup> respondent has stated that he has been made as party to this proceeding unnecessary, as the jurisdictional police did not file charge-sheet against driver of car and hence he is not liable to pay any compensation claimed in the petition and hence seek to dismiss the petition as against him.

**6.** On the basis of the above pleadings my predecessor has framed the following issues :

### **ISSUES**

1. Whether the petitioner prove that on 16.10.2024 at about 06.15 p.m., while he was driving scooter bearing Reg.No.KA-11-EX-1734 on Mysore – Nagamangala main Road, near Sampradaya Convention Hall Kennala Gate, by that point of time, driver of the lorry bearing registration No.TN-41-AL-5461 drove the same in rash and negligent manner and dashed behind the scooter of the petitioner, as a result of which both petitioner and pillion rider of scooter fell down and sustained injuries?
2. Whether the petitioner is entitled for compensation? If so, from whom and what amount?
3. What order or award?

**7.** In support of the case, petitioner No.1 himself examined as PW-1 and PW2 and marked 15 documents as Ex.P1 to Ex.P15. On the other hand, respondents No.2 and 3 did not adduced evidence on their behalf.

**8.** Heard argument of the learned counsel for the petitioner. Respondent No.3 filed written argument.

**9.** My findings on the above issues are as under:-

|                   |          |                                                     |
|-------------------|----------|-----------------------------------------------------|
| <b>Issue No.1</b> | <b>:</b> | <b>In the Affirmative</b>                           |
| <b>Issue No.2</b> | <b>:</b> | <b>Partly Affirmative</b>                           |
| <b>Issue No.3</b> | <b>:</b> | <b>As per the final order<br/>for the following</b> |

### **REASONS**

**10. Issue No.1** : 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.

. In order to prove the contentions taken in the petition, PW-1 filed his examination in chief by reiterating same set of fact as that of petition. He has produced documentary evidence marked at Ex.P1 to Ex.P15. 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 certified copy of IMV reports, Ex.P5 is certified copy of wound certificate, Ex.P6 is certified copy of Charge-sheet, Ex.P7 and Ex.P8 are discharge summaries, Ex.P9 is medical bills, Ex.P10 is notarized copy of Adhar cards, Ex.P11 is certified copy of RC, Ex.P12 is certified copy of PAN card, Ex.P13 is Case sheet, Ex.P14 is X-ray, Ex.P15 is Out patient slip.

**11.** In the cross-examination of PW-1 conducted by the respondent No.2 and 3 states that he was driving scooter bearing reg.No.KA-11-EX-1734 without having valid driving license as on the date of accident and denied the suggestion put to him by the respondents that alleged accident was occurred on account of his rash and negligent driving dashing against Indica car bearing Reg.No.KA-01-MA-5356 which coming from

opposite direction while over taking the lorry bearing Reg.No.TN-41-AL-5461.

**12.** On the other hand, respondent No.3 insurance company has cross-examined the PW-1 at length. Except denial nothing credible evidences have been elicited from him, during cross-examination. All such questions put to PW-1 by the respondent company were answered in negative. Hence, there is no reasons to disbelieve the testimony of PW-1.

**13.** According to charge-sheet marked at Ex.P6 which would reflect that driver of the offending lorry charge-sheeted for the offence punishable U/Sec.281, 125(a), 125(b) of BNS. Oral evidence coupled with documentary evidence had clearly established that on 16.10.2024 at about 6.30 p.m., the offending lorry had caused an accident due to rash and negligent driving, resulting in injury sustained by petitioner over multiple parts of the body.

**14.** The materials produced by petitioner, it is sufficient to hold that petitioner has proved the alleged accident. At this juncture, it is relevant to cite the decision reported in **AIR 2009 SC 2819 between Bimla Devi and others Vs. Himachal Road 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.

**15.** in a reported case, between **Mallamma vs Balaji and others ILR 2003 Karnataka 493** wherein the Hon'ble court has held that there is no need to apply the provision of Evidence Act to prove rash and negligent act. In the present case, material produced by petitioner is sufficient to hold that driver of offending vehicle has caused the accident by driving the same in rash and negligent manner. Accordingly, **issue No.1 answered in the affirmatively.**

**16. Issue No.2 :** In this case, respondent No.3 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 plaint denial in the cross-examination, it has not produced any material. The respondent insurance company has taken the contention that driver of the offending lorry was driving the same without having valid driving license as on the date of accident. As per charge-sheet, offending lorry driver was charge-sheeted only for the offences punishable U/Sec.281 125(a) 125(b) of BNS and not charge-sheeted for contravention of any provision under MV Act. Therefore, contention of

the respondent No.2 in this regard does not hold any water.

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

**A. Towards pain and suffering ;**

**17.** PW-1 in his oral evidence has reiterated that he was sustained injuries as mentioned in the wound certificate. From the contents of Ex.P5 wound certificate, it appears that petitioner sustained open wound over right knee, pain and swelling around the right ankle joint restricted movement and sustained both simple and grievous injuries. The petitioner claimed compensation of Rs.10,00,000/- towards pain and suffering. Considering the oral evidence of PW-1 and Ex.P5 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.50,000/- towards pain and suffering.**

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

**18.** Petitioner has stated that in his petition, as well as examination in chief that he has spent more than Rs.5,00,000/- towards medical expenses. He is produced Ex.P9 medical bills which reflected that he has spent Rs.3,03,181/- By considering the above

aspect, I am of the opinion that, the petitioner is entitled Rs.3,03,181/- rounded **of Rs.3,03,181/- under the head of medical expenses.**

**19.** Petitioner has stated in the petition that he has spent Rs.90,000/- attendant, food, diet charges. Immediately after accident, petitioner was taken to Manipal Hospital, Mysore and then to Nagarajegowda Memorial Hospital, Mysore for treatment, where he was admitted for treatment from 16.10.2024 to 30.10.2024 and again 03.04.2025 to 04.04.2025 in total 15 days but petitioner has not produced any iota of evidence regarding amount spent for food, diet, attendant. According to petitioner, Rs.500/- per day was spent towards attendance charges, in such situation, necessarily one must have attended the victim during the recovery period. Hence considering the injuries sustained and recovery period under taken to discharge, this court holds that injured is entitled to compensation **Rs.7,500/- towards head of attendance, food, diet and other convenience charges.**

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

**20.** The petitioner has stated that prior to accident, he was hale and healthy and was working as an agriculturist as well as Carpenter 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 2024 and injured was working as agriculturist, age about 27 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 15 days as per discharge summaries. By considering the nature of injury, he requires immediate rest for another one month, therefore petitioner is entitled for compensation of Rs.16,500 X 1 month + 15 days = **Rs.24,750/-** under this head.

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

**21.** With regard to permanent disability, the petitioner examined the Doctor Karunakaran, the Orthopedic surgeon at Nagarajegowda Memorial Hospital, Mysuru as PW-2, who treated the petitioner has stated that on 16.10.2024 petitioner got admitted to the hospital with history of RTA, he has been suffering from open wound over the right limb, pain and swelling around right ankle with restricted movement and that on 17.10.2024 surgery was conducted implanting ORIF + IMK NAILING and again on 03.04.2024 one more

surgery was conducted for screw removal. According to him, petitioner has disability up to 36% disability to the right leg. On the basis of clinical evidence and evidence of doctor, petitioner is having permanent disability of 36% towards lower limb but 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 12%.

**22.** The loss of income proportionate to 12% disability would be Rs.1,980/-. 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 17 has taken, hence the loss of earning capacity due to permanent functional disability is  $1,980 \times 12 \times 17 \times 12 = \text{Rs.4,03,920/-}$ .

**E. Loss of future prospects.**

**23.** 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  $4,03,920 \times 40\% = \text{Rs.1,61,568/-}$ .

#### **F. Future medical expenses**

**24.** 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. PW-2 in his examination in chief stated that on 03.04.2025 screw removal surgery was conducted to the injured and got discharged from Hospital. The injured was discharged with advice to take rest and conservative care. Further stated that the injured required to be undergo another surgery for removal of implants incurring cost would be Rs.30,000/- to Rs.35,000/-. Therefore, petitioner is entitled for **future treatment cost of Rs.35,000/-**.

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

| <b>Sl.No.</b> | <b>Head of Compensation</b> | <b>Amount</b> |
|---------------|-----------------------------|---------------|
| 1.            | Pain and suffering          | 50,000/-      |

|    |                                                                                |                   |
|----|--------------------------------------------------------------------------------|-------------------|
| 2. | medical expenses,                                                              | 3,03,181/-        |
| 3. | attendant conveyance food and deity, nourishment and other incidental expenses | 7,500/-           |
| 4. | Loss of income during laid up period                                           | 24,750/-          |
| 5. | loss of future earning                                                         | 4,03,920/-        |
| 6. | Loss of future prospects.                                                      | 1,61,568/-        |
| 7. | Future medical expenses                                                        | 35,000/-          |
|    | <b>Total Compensation</b>                                                      | <b>9,85,919/-</b> |

Therefore, tribunal held that petitioner is entitled Rs.**9,85,919** /- (Nine Lakhs eighty five thousand nine hundred and nineteen rupees only) as compensation under the above said heads with interest.

**26.** In so far as liability is concerned, the 3rd respondent insurance company, except denial nothing has been elicited from the mouth of PW-1. In order to avoid liability, the insurer has to establish violation of policy. As already observed above, the concerned police have charge-sheeted for the offense punishable U/Sec.281, 125(a), 125(b) of BNS Act against driver of offending lorry as per Ex.P6, there is no material to show before the court that police have registered a case against offending lorry driver

for not holding DL as on that date. On perusal it reveals that since respondent No.2 failed to established that offending lorry was not duly insured as on the date of accident. therefore, respondent No.1 and 2 being insured and insurer are jointly liable to pay compensation.

**27. 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. Accordingly, **I answered Issue No.2 Partly affirmative.**

**28. Issue No.3 :** In view of my findings on issues No.1 and 2 and the reasons assigned there on, I proceed to pass the following order :

### **ORDER**

The petition filed by the petitioner U/s 166 of Motor Vehicle Act is partly allowed with cost.

respondent No.1 and 2 are jointly and severally liable to pay compensation of Rs.**9,85,919/-** (Nine Lakhs eighty five thousand nine hundred and nineteen rupees only) to the petitioner.

The respondent No.2 shall pay compensation amount within 2 months along with interest at the rate of 6% per annum from the date of filing petition till the date of 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 petitioner entitled 60% along with interest and 40% shall be kept in FD.

The 2nd respondent shall transfer 60% amount to the bank account of petitioner together with interest.

Respondent No.2 shall invest 40% in FD in the name of petitioner for a period of 3 years. The petitioner is 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 respondent is received from the bank within 7 days, the insurance company shall inform the petitioner 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.

Petitioner 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.

*(Dictated to Stenographer through dictation and typed by her, corrected by me and then pronounced it in open court this the 24<sup>th</sup> day of June 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:-**

PW.1 : Sri. Somashekara P  
PW.2 : Sri. Dr.Karunakar

**2. Documents exhibited for Petitioner:-**

Ex.P.1 : Certified copy of the FIR  
Ex.P.2 : Certified copy of the Complaint  
Ex.P.3 : Certified copy of Mahazar  
Ex.P.4 : Certified copy of the IMV  
Reports  
Ex.P.5 : Certified copy of Wound  
certificate  
Ex.P.6 : Certified copy of the Charge  
Sheet

Ex.P.7 and 8 : Discharge summaries  
Ex.P.9 : Medical bills  
Ex.P.10 : Notarized copy of Adhar cards,  
Ex.P.11 : Certified copy of RC  
Ex.P.12 : Certified copy of PAN card  
Ex.P.13 : Case sheet  
Ex.P.14 : X-ray  
Ex.P.15 : Out patient slip.

**3. Witnesses examined for respondents :-**

---Nil----

**4. Documents exhibited for respondents :-**

---Nil----

**5. Witnesses examined for Court Commissioner :-**

---Nil----

**6. Documents exhibited for Court Commissioner :-**

---Nil----

**Sri. Krishna Murthy N.,  
I Addl. Senior Civil Judge & MACT.,  
Srirangapatna.**