

**BEFORE THE MOTOR ACCIDENTS CLAIMS TRIBUNAL AT  
MYSURU.**

**[ IN THE COURT OF PRL., JUDGE, SMALL CAUSES AND  
SENIOR CIVIL JUDGE, AT MYSURU ]**

Present : **Sri. C.D. KAROSHI**, B.A., LL.M.  
Principal Judge, Court of Small Causes.  
As a Presiding Officer,  
Motor Accidents Claims Tribunal, Mysuru.

Dated this the 23<sup>rd</sup> day of January 2018.

**M.V.C. 47 / 2014**

**BETWEEN**

Anantharamu. B.S.  
S/o Late Subbarao,  
Aged about 60 years,  
No.87, 4<sup>th</sup> Cross, 2<sup>nd</sup> Stage,  
J.P. Nagar,  
Mysuru.

**Petitioner**

( By Sri. R. Shekar, Adv., )

**AND**

- 1) Prakash,  
S/o Nagegowda,  
Aged 24 years,  
Kadanahalli village,  
Jayapura hobli,  
Mysuru taluk and district.  
( Driver of the vehicle )
- 2) Mr. Shivakumar. B.  
S/o Boralingegowda,  
No.189, 5<sup>th</sup> Street,  
Gujjegowdanapura village & post,  
Jayapura hobli,  
Mysuru taluk and district.  
( Owner of the vehicle )

- 3) The Manager,  
Royal Sundaram Allianz Ins. Co. Ltd.,  
No.133, 3<sup>rd</sup> Floor, Shikha Towers,  
Ramvilas road,  
Mysuru-570 003.  
( Insurer of vehicle )

**Respondents**

- ( Respondent No.1 & 2 – Exparte )  
( Respondent No.2 by Sri. JSK., Adv.,)

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

This is a petition filed by the petitioner U/s 166 of Motor Vehicles Act against the respondents claiming compensation of **Rs.10,00,000/-** in all with cost and interest towards injuries sustained by him in a road traffic accident.

**2. The brief facts of the case are as under :**

That, on 15/10/2013 at about 3.00 p.m., near Rajarajeswari temple, J.P. Nagar link road, Mysuru when the petitioner was proceeding on bicycle carefully by observing traffic rules, at that time driver of Mahindra Bolero goods vehicle bearing registration No.KA-09 B-7978 came in a high speed with rash and negligent manner and dashed, due to that he fell down and sustained injuries. Immediately, he was taken to Penacia hospital and then shifted to Kamakshi hospital, Mysuru wherein, he took treatment as an inpatient for about 26 days and having spent huge amount towards medical expenses. Prior to the accident, the petitioner was hale and healthy, he being a Purohith was earning a sum of Rs.10,000/- but due to impact of accidental injuries he is not in a position to do his work and thereby suffered physically, mentally and financially. The accident took place due to rash and negligent act on the part of

driver of vehicle in question only. The respondents are jointly and severally liable to pay the compensation. On these grounds prayed for allowing the petition.

**3.** Records reveal that, despite receipt of notice Respondent No.1 & 2 / driver and owner remained exparte. It is contended in the objections filed by the respondent No.3 company that, the petition is not maintainable either in law or on facts and liable to be dismissed. The respondent company denies the age, occupation, income, injury and amount spent towards medical expenses by the petitioner. The 1<sup>st</sup> respondent had no valid and effective driving licence as on the date of accident. The accident was not occurred due to rash and negligent driving of 1<sup>st</sup> respondent, but the same was due to negligent act on the part of petitioner himself. The compensation and interest claimed by the petitioner is highly excessive and exorbitant. On these grounds prayed for dismissal of the petition.

**4.** Basing on the above narrated pleadings, my learned predecessor in office has framed the following issues.

- [1] Whether the petitioner proves that he sustained injuries in a road traffic accident arising out of use of vehicle bearing No.KA-09 B-7978 on 15/10/2013 at about 3.00 p.m., due to the actionable negligent driving of its driver ?
- [2] Whether the petitioner is entitled for any compensation? If so, at what extent and from whom ?
- [3] What Order or relief ?

**5.** In order to prove his case, petitioner examined himself as PW.1 and got marked the documents at Ex.P1 to 11. On the

other hand, the respondent company got examined its officer as RW.1 & 2 and got marked the documents at Ex.R1 to 7.

6. Heard and perused the material on record.

7. My findings on the above issues are as under.

Issue No.1 → In the affirmative.

Issue No.2 → Partly in the affirmative.

Issue No.3 → As per final orders for the following,

**:- REASONS :-**

8. **Issue No.1** :- The petitioner examined himself as PW.1 stating that, on 15/10/2013 at about 3.00 p.m., near Rajarajeswari temple, J.P. Nagar link road, Mysuru when he was proceeding on bicycle carefully by observing traffic rules, at that time driver of Mahindra Bolero goods vehicle bearing registration No.KA-09 B-7978 came in a high speed with rash and negligent manner and dashed, due to that he fell down and sustained injuries.

9. In order to support his oral testimony PW.1 got marked the documents at Ex.P1 to 11. In his cross-examination denied the suggestion that, accident occurred due to his negligence only. To substantiate their contention the respondent company examined its officer as RW.1 stating that the accident was not due negligence of the driver of the vehicle in question, but it was due to negligence of petitioner only. In his cross-examination nothing worth has been elicited. In such circumstances this tribunal has to appreciate the oral and documentary evidence available on the record.

10. On perusal of Ex.P1 & 2 F.I.R., and complaint go to show that, the concerned police have registered a criminal case against the driver of Mahindra Bolero goods vehicle in question for

the offences punishable U/s 279, 338 of IPC. Ex.P3 and Ex.P4 spot mahazar and scene of offence Map reveals that, width of the road near the spot is about 7 meters and accident has taken place in a road junction. So it appears that, if the driver of Mahindra Bolero goods vehicle in question had been slow, would have taken proper care, then he could have avoided the accident. Moreover the driver and owner of the vehicle in question remained exparte. It is evident from the perusal of Ex.P5 that the driver of Mahindra Bolero goods vehicle pleaded guilty and paid fine before III JMFC., Mysuru. Ex.P8 M.V., report reveals that, cause of the accident was not due to any mechanical defects of the vehicle. Ex.P7 two Wound certificates indicate that, petitioner has sustained simple / grievous injuries. The concerned I.O has filed Ex.P6 charge sheet for the offences punishable U/s 279, 338 of IPC R/w section 180, 181, 3(1) and 5(1) of M.V. Act. So on careful scrutiny of the entire material on record reveals that, the accident in question has taken place due to the negligent act on the part of the driver of Mahindra Bolero goods vehicle in question only. Hence, I answer Issue No.1 is in the affirmative.

**11. Issue No.2 :-** It is worth to note that, the petitioner has claimed compensation of Rs.10,00,000/- under all heads. Since issue No.1 has been decided in favour of petitioner that, he sustained simple/grievous injuries with the offending vehicle, accordingly he is entitled for compensation under the M.V Act, which has to be assessed on the basis of age, occupation, income of the injured, nature of injuries, treatment taken by the petitioner, if any.

**12.** PW.1 has stated before the tribunal about the alleged accident and treatment said to have been taken as inpatient at Kamakshi Hospital, Mysuru and having spent huge amount towards medical expenses. In order to support his oral testimony PW.1 got marked the documents at Ex.P10 & 11 discharge summary and medical bills for having taken treatment in the said hospital for about 30 days and having spent an amount of Rs.2,86,353/- towards medical expenses. In his cross-examination though it has been elicited that he has produced advance bills also, but if we calculate all the medical bills by excluding advance receipts we can find that petitioner has spent an amount of Rs.2,86,353/-. Therefore, considering the nature of injuries and treatment taken by the petitioner as inpatient if the above said medical expenses of Rs.2,86,353/- rounded off to **Rs.3,00,000/-** and awarded towards medical expenses and nourishment, it can meet the ends of justice.

**13.** PW.1 states that prior to the accident he was hale and healthy doing Purohith work & business and thereby getting Rs.10,000/- p.m., but due to impact of accidental injuries he is unable to do his routine work and became disabled. In his cross-examination admits that he has no document with regard to his occupation and income except Ex.P9. In such circumstances, if daily income of Rs.300/- is taken into consideration, it can meet the ends of justice.

**14.** PW.1 has stated in his evidence that due to impact of accidental injuries he is not in a position to lift any weight, raise right shoulder, suffering from pain and thereby permanently disabled. So in the instant case there is no dispute that as per Ex.P7 Wound

Certificates, petitioner has sustained simple / grievous / fracture injuries, accordingly the medical officer has opined that injury No.1 is simple in nature and injury No.2 to 4 are grievous in nature. In the case on hand though the petitioner has neither produced disability certificate nor examined the author of the wound certificate, but Ex.P7 reflects fracture of right upper limb and right humerus / temporal. In such circumstances, considering the age, occupation, income, nature of the injuries, treatment taken by the petitioner as an inpatient for about 30 days, injury pain and sufferings, and amount spent towards medical expenses if a global compensation of **Rs.4,00,000/-** [including medical expenses] is awarded, it can meet the ends of justice.

**15.** With regard to liability is concern, it was urged on behalf of the respondent company that driver of the vehicle in question had no valid and effective driving licence as on the date of accident, as such company is not liable not pay compensation. In order to support their contention the respondent company examined its officer as RW.1 and got marked the documents at Ex.R1 to 7. A suggestion was put to RW.1 that no notice was served on the driver or owner, he denied as false. So also the ARTO, Mysuru West examined himself as RW.2 stating that there is no endorsement in the registers maintained by the office for having issued driving licence to the driver of the vehicle in question. In his cross-examination admits that a driver can get an endorsement over the driving licence in another District RTO office.

**16.** In this regard if we go through the material on record we can find that despite receipt of notice / summons the respondent

No.1 & 2 being the driver and owner of the vehicle in question remained exparte. Ex.R5 copy of policy indicates that the vehicle in question was insured with respondent company as on the date of accident. In the cross-examination of RW.1 a suggestion was put to the effect that notice was not served upon the owner of the vehicle, he denied as false. As could be seen from perusal of Ex.R3, 4, 6 and 7 that the notice got issued by the respondent company to the respondent No.2 insured calling upon him to produce the copy of driving licence, R.C., policy, F.C., and permit pertaining to the driver / vehicle in question was duly served, but it appears that the respondent No.2 being the owner of vehicle in question has not turned up. Further RW.2 ARTO, Mysuru states that there is no endorsement in the register for having issued driving licence to the 1<sup>st</sup> respondent. Though it has been elicited in the cross-examination that a person can get driving licence in another district, but in order to support his contention no bit of document is forth coming before this tribunal. This being the fact an adverse inference can validly be drawn against the driver and owner of the vehicle in question. Therefore, respondent No.1 and 2 cannot shirk from their liability to pay compensation to the petitioner.

**17.** So considering the facts and circumstances of the case and in view of my findings on Issue No.1, the petitioner is also entitled for interest at the rate of 9% p.a. from the date of petition till its realisation. The respondent No.1 and 2 are jointly and severally liable to pay compensation to the petitioner along with cost and interest as held supra. Consequently the claim against respondent No.3 company is liable to be dismissed. Considering the facts and

circumstances of the case, petition is deserves to be partly allowed with cost. Hence, I answer Issue No.2 is partly in the affirmative.

**18. Issue No.3 :-** For the foregoing reasons, I proceed to pass the following,

**ORDER**

The petition is partly allowed with cost.

The petitioner is entitled for a Global Compensation of **Rs.4,00,000/-** along with interest at the rate of 9% p.a., from the date of petition till its realisation.

The respondent No.1 & 2 are jointly and severally liable to pay the above said compensation to the petitioner, accordingly directed to deposit the award amount within 30 days from the date of award.

Considering the age of the petitioner and huge amount spent towards medical expenses, there shall be no order for investment, accordingly on deposit being made, office is directed to release the entire amount to the petitioner on proper identification.

The claim against respondent No.3 company stands dismissed.

The Advocate's fee is fixed at Rs.500/-.

Draw award accordingly.

[ Dictated to the Stenographer directly on computer, corrected by me and then pronounced in the Open Court on 23<sup>rd</sup> day of January 2018 ].

**Sd/-**  
**[ C.D. KAROSHI ]**  
Prl., Judge,  
Court of Small Causes & MACT.,  
MYSURU.

**ANNEXURE**

**List of witnesses examined on behalf of Petitioner**

PW.1 Anantharaju. B.S.

**List of witnesses examined on behalf of Respondents**

RW.1 Sri. S.K. Sandeep.

RW.2 Sri. Rajappa. R.

**List of documents marked on behalf of Petitioner**

Ex.P1 FIR  
Ex.P2 Complaint.  
Ex.P3 Spot mahazar.  
Ex.P4 Sketch.  
Ex.P5 Certified copy of order sheet.  
Ex.P6 Charge sheet.  
Ex.P7 Two wound certificates.  
Ex.P8 M.V.A. report.  
Ex.P9 Copy of licence notification.  
Ex.P10 Discharge summary.  
Ex.P11 Medical bills.

**List of documents marked on behalf of Respondents**

Ex.R1 Aadhaar card.  
Ex.R2 Authorisation letter.  
Ex.R3 Notice copy.  
Ex.R4 Acknowledgement.  
Ex.R5 Insurance policy.  
Ex.R6 Notice.  
Ex.R6(a) Postal receipt.  
Ex.R7 Acknowledgement.

**Sd/-**  
**[ C.D. KAROSHI ]**  
Pri., Judge,  
Court of Small Causes & MACT.,  
MYSURU.