

**BEFORE THE MOTOR ACCIDENTS CLAIMS TRIBUNAL AT MYSURU.
(IN THE COURT OF THE JUDGE, ADDL. SMALL CAUSES AND SENIOR
CIVIL JUDGE, MYSURU).**

PRESENT

Sri. N. Subramanya, B.Com., LL.B.

Judge, Addl. Court of Small Causes, Mysuru.

As a Presiding Officer, Motor Accidents Claims Tribunal, Mysuru.

DATED THIS THE 14th DAY OF DECEMBER 2018

M.V.C.No. 81 /2015

BETWEEN

PETITIONER

**1. Shiva Kumar Swamy S/o late
Sannappa, 28 years, R/at H.No.
22, Erappana Koppalu, Yelavala
Post, Mysuru Taluk and District
(Represented by Sri. MKS., Advocate)
AND**

RESPONDENT/S

**1. Anup Krishna Jorapur S/o
Krishna Jorapur, No. 2457,
Chandra roopa Nilaya, 11th A
Main, J.Block, Kanakadas Nagar,
Dhattagalli, Mysuru, Karnataka
State,
2. Krishna V. Jorapur, S/o late
Venkatesh, No. 338,
Hosalingapura village, Munirabad
Railway Station, Koppala Taluk &
District
(Represented by Sri RR., advocate)**

JUDGMENT

This is the petition filed by the petitioner/injured under Sec.166 of Motor Vehicles' Act against the respondents claiming total compensation amount of Rs. 10,00,000/- along with interest at the rate of 18% per annum from the date of petition till realisation, towards the

injuries sustained by him in a road traffic accident that occurred on 30.11.2014 at about 8.30 P.M. due to rash and negligent driving of the vehicle bearing registration No. KA-25-EH-8441 by the respondent No. 1.

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

That on 30.11.2014 at about 8.30 P.m. the petitioner was going on his motor bike bearing registration No. KA09-EM-125 on the left side of the Chandrakala hospital junction road, when he was proceeding in front of spots club, at that time, the rider of the motor cycle bearing registration No. KA-25-EH-8441 riding in a rash and negligent manner and also in a high speed and dashed to the vehicle of the petitioner. Due to the impact of the accident, the petitioner was fell down and sustained injuries. Immediately, after the accident the petitioner was shifted to Chandra Kala Hospital and then shifted to St.Joseph's hospital, Mysuru, wherein he took treatment as an inpatient and has undergone operation and thereby the petitioner has spent huge amount towards medical expenses. Now due to the accidental injuries, the petitioner is suffering from heavy pain and is under treatment as an out patient also.

3. It is also the case of the petitioner that prior to the accident he was hale and healthy and was working as technician and thereby earning a sum of Rs. 12,000/- per month and he was only earning member of his family. Due to the accidental injuries, he cannot stand long time and cannot do his avocation of technician work.

4. It is also the case of the petitioner that the respondent No. 1 was the driver and respondent No. 2 was the owner of the offending vehicle at the time of the accident and hence, they are jointly and

severally liable to pay the compensation to the petitioner. On these grounds the petitioner has prayed to allow the petition.

5. After service of notice of the petition, the respondents No. 1 and 2 have appeared through their counsel and filed objections. The respondent No. 1 and 2 in thier objections have denied the entire averments of the petition in toto. The age, occupation and the income of the petitioner is denied. The very fact of accident and that the accident is due to the rash and negligent driving of the offending vehicle is denied and disputed. The injuries said to be sustained by the petitioner, medical treatment availed by him and the medical expenses is denied and disputed. The claim of compensation and interest upon the same is also denied and disputed. The respondent No. 1 had valid driving licence and the respondent No. 2 suffering from heart ailments and hence, could not renew his insurance. It is submitted that the petitioner came in a high speed and rash and negligent manner and hit the respondent No. 1 and causing an accident and due to which the respondent No. 1 sustained grievous injuries and admitted to BGS Apollo hospital. Both the parties did not possess valid insurance. Hence, on these grounds, the respondent No. 1 has prayed to dismiss the petition.

6. The respondents have filed counter claim contending that due to the rash and negligent riding of the petitioner the respondent No. 1 sustained grievous injuries and admitted to BGS Apollo hospital and spent huge amount for medical expenses. The respondents submits that the petitioner is liable to pay a sum of Rs. 10,43,776/- towards medical expenses and damages etc.,

7. On the basis of pleadings of the respective parties the following issues have been framed as under:

1. Whether the Petitioner proves that on 30.11.2014 at about 8.30 P.M. in front of sports club, Vidya Vardhaka college road, Vijayanagara 2nd stage, Mysuru when he was proceeding on his Honda (Shine) motor cycle bearing registration No. KA-09-EM-125, at that time the rider of the motor cycle bearing registration No. KA-25-EH-8441 came in a high speed with rash and negligent manner and dashed to the petitioner, as a result of which, he sustained grievous injuries?
2. Whether the respondents prove that they are not liable to pay any compensation to the petitioner?
3. Whether the Petitioner is entitled for compensation? If so, at what rate and from whom?
4. What Order or award?

Addl. Issues:-

1. Whether the respondent No. 1 proves that the alleged accident is due to rash and negligent driving of the petitioner himself and due to the said accident the respondent No. 1 has sustained grievous injuries?
 2. Whether the respondent No. 1 is entitled for counter claim?
8. In order to prove his case, the Petitioner is examined himself as Pw.1 and one witness as PW- 2 and got marked the documentary evidence at Ex P.1 to 12. The respondent No.1 has been examined as RW- 1 and got marked documentary evidence, which are at Ex.R- 1 and 2.
9. Heard the arguments and perused the entire materials on record.
10. My findings on the above issues are as under.
- Issue No.1 : In the Affirmative.
Issue No.2 : In the Negative.
Addl. Issue No.1 : In the Affirmative.

Addl. Issue No.2 : In the Negative.

Issue No.3 : In the Negative

Issue No.4 : As per final order for the following:

REASONS

11. **Issue No.1 and additional issue No. 1:-** Since both these issues require common discussion, they will be taken up together for discussion in order to avoid repetition of facts.

12. The petitioner in order to substantiate his claim has got examined himself as PW-1 and one witness as PW- 2 and got marked the documentary evidence which are at Ex.P-1 to 12. PW-1 in his evidence has reiterated the averments of the petition. Ex.P- 1 is the copy of FIR which was registered on 1.12.2014 and the date of accident is mentioned as 30.11.2014. Ex.P-2 is the copy of the complaint. Ex.P- 3 is the spot mahazar and Ex.P- 4 is the sketch drawn at the time of mahazar. Ex.P- 5 is Motor vehicle accident report and the motor vehicle's inspector has opined that the accident was not due to any mechanical defect of the vehicle. Ex.P- 6 is the wound certificate. Ex.P- 7 is the charge sheet filed by the police against the driver for the offences punishable under section 279, and 338 of I.P.C. and r/w section 146, 196 of Motor Vehicle's Act. Ex.P- 8 is the medical bills, Ex.P- 9 is the salary certificate. Ex.P- 10 is the inpatient record and Ex.P- 11 is the out patient record. Ex.P- 12 is the C.T. scan and X-ray.

13. The respondent No. 1 has been examined as RW- 1 and got marked documentary evidence, which are at Ex.R- 1 and 2. Ex.R- 1 is the medical bills and Ex.R- 2 is the discharge summary.

14. The petitioner in order to prove his case as PW- 1 and has deposed the contents of petition. In the cross examination of PW- 1 it is specifically admitted that he was not holding driving licence at the time

of accident, but he cannot say whether the respondent No. 1 sustained injuries and incurred medical expenses of Rs. 43,776/- at BGS Apollo hospital.

15. RW- 1 in his chief examination as contents in the written statement and he has also marked Ex.R- 1 medical bills and Ex.R- 2 discharge summary. Unfortunately, the petitioner and his counsel remained absent on that day. Again RW- 1 present on 30.7.2018 but petitioner remained absent. Hence, cross of RW- 1 has taken as nil and posted for arguments. Thereafter, the petitioner has not taken any steps to recall RW- 1 and not cross examined. Hence, evidence of respondent remained unchallenged. Even on looking to the FIR, sketch and spot mahazer, particularly from the contents of Ex.P- 4 sketch it reveals that both the petitioner and respondent No. 1 were coming on the opposite side in the middle of the road and accident occurred in the middle of the road and where the respondent No. 1 has taken turn towards left in the middle of the road. Hence, from the available materials on record, it can be said that the accident is not mainly due to the rash and negligent of respondent No. 1. Further PW- 1 specifically admits that he do not having driving licence. Further, petitioner failed to cross examine RW- 1 and hence, the contention of respondent No. 1 is also to be accepted and ultimately it is to be held that both the petitioner and respondent No. 1 contributed equally for the accident and hence, both are responsible for accident equally. Hence, I answered **issue No. 1 and additional issue No. 1 in the affirmative.**

16. **Issue No. 2 and 3 and addl. issue No. 2:-** In view of the above discussions, both the petitioner and respondent No. 1 contributed equally for the accident and hence, both are responsible for accident equally. Both are sustained injuries and spent towards medical

expenses. The petitioner has claimed compensation from the respondents and respondents have filed counter claim and prays that petitioner is liable to compensation. The respondent No. 1 has examined as RW- 1, but petitioner has not cross examined RW- 1. Hence, both petitioner and respondents are not entitled for any compensation. Hence, I answered above issues in the negative.

17. **Issue No.4**: For the foregoing reasons, I proceed to pass the following: -

ORDER

The petition is hereby dismissed as well as the counter claim of respondents is dismissed.

No order as to cost.

Draw Award accordingly.

(Dictated to the Stenographer directly on computer, corrected by me and then pronounced in the Open Court on 14th **day of December 2018**).

(N. Subramanya)

Judge, Addl. Court of Small Causes,
Motor Accidents Claims Tribunal,
Mysuru.

ANNEXURE

List of witnesses examined marked on behalf of the Petitioner:

P.W.1	SHIVAKUMAR SWAMY
P.W.2	DR. GIRISH CHANDRA

List of documents marked on behalf of the Petitioner:

Ex.P.1	FIR
Ex.P.2	COMPLAINT
Ex.P- 3	SPOT MAHAZER
Ex.P.4	SKETCH
Ex.P.5	MOTOR VEHICLE'S ACT REPORT

Ex.P.6	WOUND CERTIFICATE
Ex.P.7	CHARGE SHEET
Ex.P.8	INPATIENT BILL
Ex.P.9	SALARY CERTIFICATE
Ex.P- 10	INPATIENT RECORD
Ex.P- 11	OUT PATIENT RECORD
Ex.P- 12	C.T.SCAN & X-RAY

List of witnesses examined on behalf of the Respondents:

RW- 1	ANUP KRISHNA JORAPUR
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List of documents marked on behalf of the Respondents:

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Ex.R- 1	Medical bills
Ex.R- 2	Discharge summary

(N. Subramanya)

Judge, Addl. Court of Small Causes,
Motor Accidents Claims Tribunal,
Mysuru.