

KAMS080026252023



**IN THE COURT OF PRINCIPAL SMALL CAUSES &
SENIOR CIVIL JUDGE & M.A.C.T. AT MYSURU.**

Presided Over by SRI AFTHAB.K

Dated on this the 1st day of June, 2026

M.V.C./1504/2023

Petitioner :

Smt. Puttamma W/o. Late Maniyaiah,
Age: 55 years, R/at Mulluru village,
Nanjanagudu taluk, Mysuru district.

(By – Sri. Shivaramu A.S, Advocate)

Vs.

Respondents:

1. Sri. Nandankumar S/o. Sri. Nagaiah,
R/at Channagowdanahalli village,
Mullur post, Saraguru taluk, Mysuru district.
Owner of the motorcycle bearing No.KA-45/ED-1053

2. TATA AIG General Insurance Co. Ltd.,
1st floor, Sunny Center, No.374,
New Kalidasa road, Vijayanagara 1st stage,
Mysuru-570017.
Insurer of the motorcycle bearing No.KA-45/ED-1053

Policy No.064001/ABIL/3205216598/000000/00

valid from 05.04.2022 to 04.04.2023

(R1 – Exparte)

(R2 – Sri. Jagannath Suresh Kumar, Advocate)

* * * *

J U D G M E N T

The petitioner has filed this petition under section 166 of Motor Vehicles Act 1989, seeking compensation of ₹.53,80,000/- along with interest at the rate of 12% per annum from the date of petition till the date of realization of the amount for the injuries sustained by her in the road traffic accident which occurred on 01.02.2023.

2. The brief fact of the petitioner case is as follows :

On 01.02.2023, at around 12.40 p.m., near site belonging to one Sri. Puttaswamy, Hallare village, Nanjanagudu taluk, Mysuru, when the petitioner was proceeding as a pedestrian from her house to the temple on the left side of the road for the purpose of attending Yetthina Ammana Jathre, the rider of the motorcycle bearing No.KA-45/ED-1053 went there by riding his vehicle at a high speed and in a rash or negligent manner and dashed against the petitioner.

2.1. Further in the said accident, the petitioner fell down sustained grievous injuries. Further immediately after the accident, the petitioner was admitted to Government Hospital, Hura, where she obtained primary treatment on 01.02.2023. Further the petitioner was admitted to

Spandana Hospital, Mysuru, where it was diagnosed that the petitioner had sustained fractures on her left leg and back of the head, apart from the other injuries, for which the petitioner underwent treatment as an inpatient from 04.02.2023 to 11.02.2023, during which she even underwent surgery. Further even after being discharged from the hospital, the petitioner is taking follow up treatment on OPD basis.

2.2. Further prior to the accident, the petitioner was hale and healthy and was doing a coolie work, from which she was earning ₹.30,000/- per month and was maintaining her family. Further now due to injuries sustained in the accident the petitioner is unable to do any work as due to injuries sustained by her left leg, she is unable to walk, fold her leg, cannot stand, lift her leg, walk, sit cross legged, climb up and down the stairs. Further the petitioner is experiencing recurring headache, loss of memory and dizziness due to injuries sustained by her on her head, as such, due to injuries sustained by the petitioner in the accident, the petitioner is unable to do even her basic day to day activities without assistance of others. Further the petitioner has incurred huge expenses towards her medication. Further due to injuries sustained in the accident, the petitioner has not only suffered physically but also mentally, psychologically and economically.

2.3. Furthermore, the accident occurred due to rash and negligent riding of the motorcycle bearing No.KA-45/ED-1053 by its rider, as such, Nanjanagudu Traffic police have registered a Crime No.11/2023 against the rider of the motorcycle. Further the respondent No.1 being the owner of the motorcycle and respondent No.2 being the insurer are

jointly and severally liable to pay compensation to the petitioners. On these, amongst other grounds, it is prayed that the petition be allowed as prayed for.

3. In response to the notice issued by this tribunal, the respondent No.2 appeared through its counsel and filed detailed objections to main petition, whereas the respondent No.1 has preferred to remain *exparte*.

4. The gist of the objection raised by respondent No. 2 is as follows:

The petition is neither maintainable under law nor facts and hence is liable to be dismissed *in limine*. Further, the petition averments are denied *in toto*, more particularly the averments regarding the age, income and occupation of the petitioner. Further though it is admitted that as on the date of accident, motorcycle bearing engine No.CK2AN1902180 and Chassis NO. MD625AK29N1A02230 registered in the name of respondent No.1 was insured with respondent No.2 company under the insurance policy No.3205216598 which was in force from 05.04.2022 to 04.04.2027 but the policy was issued subject to terms and conditions.

4.1. Further the jurisdictional Police have registered a Crime No.11/2023 against the rider of the motorcycle and has concluded that the rider of the motorcycle i.e., Sri. Sundara S/o. Nagaiah who is the brother of the respondent No.1 did not possess a valid driving license on the date of the accident and thereby charge sheet is filed against the rider of the vehicle by invoking Section 181 of M.V. Act. Further the respondent No.1 has violated the policy terms and conditions as well as

provisions of M.V. Act, and for this reason respondent No.2 cannot be directed to indemnify the respondent No.1 in paying compensation to the petitioner and hence the petition as against respondent No.2 is liable to be dismissed. Further the petitioner was responsible to the alleged accident as she suddenly tried to cross the road without observing the movement of the vehicles. Further the compensation and interest claimed are high and exorbitant. On these grounds, it is prayed that the petition as against respondent No.2 be dismissed.

5. On the basis of pleadings, documents and other materials available on record, this tribunal framed the following issues :

1. *Whether the petitioner proves that she had sustained grievous bodily injuries in road traffic accident which occurred on 01.02.2023 at around 12.40 p.m., near site belonging to one Sri. Puttaswamy, Hallare village, Nanjangud taluk, Mysuru, when the petitioner was proceeding as a pedestrian, due to rash or negligent riding of the Passion Pro motorcycle bearing No.KA-45/ED-1053 by its rider?*
2. *Whether the respondent No.2 proves that the respondent No.1 has violated the policy conditions as contended at para.3 of the objections of the respondent No.2?*
3. *Whether the petitioner is entitled for the compensation? If so, from whom; and what is the*

quantum ?

4. What order or award ?

6. In order to discharge the burden cast on her, the petitioner examined herself as PW.1 through whom Ex.P1 to P11 documents got exhibited and also examined the treating doctor Dr. Sri. Ravindranath K. as PW.2 through whom Ex.P12 and Ex.P13 documents got exhibited and petitioner's evidence stage was closed. Further the respondent No.2 company examined its Legal Associate as RW.1 through whom Ex.R1 to R3 documents got exhibited and closed its side.

7. Heard arguments canvassed by learned counsel for the petitioner and respondent No.2 on main. The learned counsel for the petitioner has relied upon several decisions in support his contentions.

8. After giving its anxious consideration to arguments canvassed and after meticulously going through the oral and documentary evidence adduced by the petitioner, the aforesaid issues are answered as under;

(a) Issue No.(i) : In the Affirmative.

(b) Issue No.(ii) : In the Affirmative.

(c) Issue No.(iii) : Partly affirmative and regarding the amount of compensation and from whom

*the same needs to be recovered,
the same is detailed in final
order.*

(d) Issue No.(iv) : As per the final order
for the following:

REASONS

9. ISSUE No.I:

At the very outset it is necessary to set out the facts leading to the present case, according to the petitioner, as can be seen from the petition averments are that on 01.02.2023, at around 12.40 p.m., near site belonging to one Sri. Puttaswamy, Hallare village, Nanjanagudu taluk, Mysuru, when the petitioner was proceeding as a pedestrian from her house to the temple for the purpose of attending Yetthina Ammana Jathre, the rider of the motorcycle bearing No.KA-45/ED-1053 went there by riding his vehicle at a high speed and in a rash or negligent manner and dashed against the petitioner resulting in the petitioner sustaining fractures on her left leg and back of the head, apart from the other injuries; and immediately after the accident, the petitioner was taken to Government Hospital, Hura, where she obtained primary treatment on 01.02.2023 and thereafter she was admitted to Spandana Hospital, Mysuru, where the petitioner underwent treatment as an inpatient from 04.02.2023 to 11.02.2023, during which she even underwent surgery and even after being discharged from the hospital, the petitioner is taking follow up treatment on OPD basis.

10. In order to discharge the burden cast on her, regarding the proof of the accident, the petitioner examined herself as PW.1 and has

reiterated the petition averments thereby standing in support of the petition averments that the accident occurred due to rash or negligent riding of the motorcycle bearing No.KA-45/ED-1053 by its rider, resulting in the petitioner sustaining the injuries. To substantiate these aspects, the petitioner has relied on the Ex.P1 and 2, which are the true copies of the FIR and FIS pertaining to Crime No.11/2023 registered at Nanjangud Traffic Police station; and FIS was lodged by one Sri. H.L. Ramesh, who is the son-in-law of the petitioner. Further the petitioner has produced Ex.P3 and P7 which are the chargesheet filed by Nanjangud Traffic Police in Crime No.11/2023 against the rider of the motorcycle bearing No.KA-45/ED-1053; and the wound certificate pertaining to the petitioner, respectively. Perusal of the chargesheet reveals that the police after investigation *prima facie* found that the rider of the motorcycle bearing No.KA-45/ED-1053 was at fault, thereby opining that it was due to rash or negligent riding of the motorcycle bearing No.KA-45/ED-1053 by its rider that the accident leading to the present case occurred. Hence the police documents make it amply clear that the said accident indeed occurred due to rash or negligent riding of the motorcycle bearing No.KA-45/ED-1053 by its rider resulting in petitioner sustaining injuries narrated at Ex.P7.

11. It is necessary to state, even at the cost of repetition that the Nanjangud Traffic who registered the FIR on the basis of FIS lodged by Sri. H.L. Ramesh have charge sheeted the rider of the motorcycle bearing No.KA-45/ED-1053, thereby *prima facie* opining that the said accident occurred due to rash or negligent riding of the motorcycle

bearing No.KA-45/ED-1053 by its rider i.e., Sri. Sundar. The respondent No.2 company has come up with two fold defense:

Firstly, the motorcycle bearing No.KA-45/ED-1053 was not at all involved in the accident.

Secondly, the accident occurred due to negligence on the part of petitioner herself as she tried to cross the road without observing the movement of vehicles.

12. As regards the first contention that motorcycle bearing No.KA-45/ED-1053 is falsely implicated, it is relevant to note that the best person to deny the involvement of the motorcycle bearing No.KA-45/ED-1053 is the respondent No.1 as he was the owner of the motorcycle bearing No.KA-45/ED-1053 but let alone filing his objections and leading evidence, the respondent No.1 did not prefer to appear before this tribunal despite due service of notice.

13. It appears that the contention regarding non-involvement and false implication of motorcycle bearing No.KA-45/ED-1053 is primarily based on the fact that there is delay in lodging the FIS. With this aspect in mind, when the records are perused, it becomes abundantly clear that even according to the petitioner the accident occurred on 01.02.2023, whereas the FIS was lodged on 10.02.2023 and there is an inordinate delay of 10 days in lodging the FIS. However, in this regard, it is relevant to note that it was not the petitioner who lodged the FIS, instead the FIS was lodged by one Sri. H.L. Ramesh who is the son-in-law of the petitioner. Perhaps the Hon'ble Supreme Court

in the case of ***Ravi v. Badrinarayan and others*** reported in ***AIR 2011 SC 1226***, wherein observed thus:

“The purpose of lodging the FIR in motor accident cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquillity of mind and are composed to lodge it, even if there is delay, the same deserve to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons.

If the court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground.”

Hence the delay of 10 days cannot be considered as inordinate, atleast in the context of this case and in view of the fact that the petitioner is not the one who lodged the FIS and the nature of injuries sustained

by the petitioner showed that the family members of the petitioner were focusing on treatment of the petitioner. Perhaps, the reason assigned for delay in lodging FIS as forthcoming from the FIS is that the informant had financial contingency and was occupied with accumulating money for the purpose of the treatment of the petitioner. Though the said ground cannot be accepted on the face of it, but considering the fact that despite the delay there is no change in the history of RTA as mentioned before the doctors at Spandana Hospital to that of the facts narrated in the FIS the delay cannot be considered inordinate and the reason assigned appears to be probable and acceptable.

14. To put it differently, where the delay when unaccounted is coupled with an attempt to twist the facts by colorizing the same, it is in such a scenario that the court would consider the delay as fatal. But, in the facts of this case, the respondent No.2 was unable to prove that the delay in lodging the FIS has resulted in colorization or false implication. Perhaps, the respondent No.2 could have summoned the medical records from the Government Hospital, Hura which the respondent No.2 did not choose to do for the reasons best known to it. It must be borne in mind that any contention no matter how convincing if not supported by cogent and reliable evidence the same would be of no avail especially when the said contention is disputed by the other side. In fact, with the evidence available before the court what can be ascertained is though the FIS was lodged after 10 days there is no inconsistency in the history which was narrated before the

doctors and the history which is mentioned in the FIS, as such, this tribunal finds no hesitation in holding that the delay is not fatal in the facts of the present case. It must be borne in mind that not in all cases where there is delay, the case of the petitioner should be viewed in suspicion especially in facts such as this where despite the delay there is nothing which could move this court to view the delay in lodging the FIS as inordinate or view the same with suspicion is forthcoming from the documents produced by them.

15. Moving on to the next contention, it is necessary to reassert that the contention of the respondent No.2, is that the accident occurred due to actionable negligence on the part of the petitioner herself who tried to cross the road without observing the movement of vehicles. Perhaps, the PW.1 was cross-examined by learned counsel for the respondent No.2, but nothing which could support of the contention of the respondent No.2 that it was due to the fault of the petitioner that the accident occurred could be elicited from the mouth of PW.1 and there is nothing before the court to hold that there was contributory negligence on the part of the petitioner.

16. Even otherwise when the Ex.P5 which is the rough sketch of the spot is analyzed, it is clear that the point of impact is situated at a distance of about 1 feet from left edge of the 12 feet road when a person is proceeding from Ambale village to Malkundihura village. When this fact is analyzed in the light of the fact that the offending vehicle went from the opposite direction and hit the petitioner, it is

crystal clear that the negligence was entirely on the part of rider of the motorcycle who while coming from Malkundi towards Hallare side instead of staying on the left lane had transgressed into right lane and driven his vehicle to the extreme right side of the road and had caused the accident. Perhaps the fact that the rider of the motorcycle had ridden on the right lane, he could have avoided the mishap which makes it clear that the rider of the motorcycle bearing No.KA-45/ED-1053 was riding the same at a high speed and was not concentrating on the road.

17. The decision of the Hon'ble High Court of Karnataka in a similar set of facts would serve as a guiding lamp as the Hon'ble High Court of Karnataka in *The Managing Director vs Smt. Padmavathi @ Paddamma rendered in M.F.A.No.6346 of 2017 on 14 February, 2020* held thus :

11. No doubt, a pedestrian is not expected to cross the road suddenly, especially in a high way. However, a pedestrian committing an infraction of a rule cannot by itself lead to the conclusion that he had contributed to the actual accident. The KSRTC driver is a trained driver and is expected to drive defensively and being a professional driver would have the knack of preventing accidents. The evidence of the driver, that the petitioner crossed the divider in a fraction of second and therefore he could not prevent the accident cannot be accepted. Therefore, the finding of the tribunal regarding contributory negligence cannot be find fault with. The reliance placed upon by the learned

counsel of the Division Bench in MFA.No.4701/2005, in which this Court has held as follows:

"9. Indeed, it is the duty of the driver of a vehicle to keep a good look out. He must look out for other traffic which may be expected to be on the road in front of him, behind him or along side of him especially at cross roads junctions and bends. The driver of the vehicle is required to be more prudent and circumspect while driving. But however, we are of the view that it cannot be lost sight of the fact that a duty is also cast on a pedestrian and other users and they should exercise due care and caution in going upon and crossing the road and it is his duty to look out for the on coming traffic.

10. Insofar as the duty cast on the pedestrian is concerned, it is needless to say that he has to give the driver plenty of time to see and slow down and start before he attempts to cross or put one foot on the crossing.

11. It is the duty of the persons, who are driving over a crossing for foot-passengers, which is at the entrance of a street, to drive slowly, cautiously, and carefully. But it is also the duty of a foot- passenger to use due care and caution in going upon a crossing at the entrance of a street, so as not to get among the carriages, and thus receive injury.

12. A finding of contributory negligence turns on a factual

investigation whether the user contributed to his or her own loss by failing to take reasonable care of his or her person or property. What is reasonable care depends on the circumstances of the case. In many cases it may be proper for the claimants to rely on the respondents to perform its duty. But there is no absolute rule. The duties and responsibilities of the respondents are variable factor in determining whether contributory negligence exists and if so, to what degree, in some cases, the nature of the duty owed may exculpate the claimant from a claim of contributory negligence, in other cases, the nature of the duty may reduce the claimant's share of responsibility for the damage suffered and in yet other cases the nature of the duty may not prevent a finding that the claimant failed to take reasonable care for the safety of his or her person or property."

It is for this reason that the contention of respondent No.2 company that since the petitioner was a pedestrian and she was trying to cross the road where there was no zebra crossing, as such contributory negligence needs to be attributed to the petitioner cannot be accepted. Moreover the rough sketch reveals that had the rider of the motorcycle been vigilant and had he ridden the motorcycle cautiously in anticipation of movement of vehicles and persons on the road, he could have easily averted the accident. Further even in *Smt. Venkatarathna and another vs The Managing Director, APSRTC* rendered in *MFA No. 6560/2017 c/w MFA No. 3951/2019* rendered on

25.10.2024 in a similar set of facts, the Hon'ble High Court of Karnataka refused to attribute contributory negligence on the pedestrian.

18. To add to this, as already observed, IO has charge-sheeted the rider of the motorcycle bearing No.KA-45/ED-1053 i.e., Sri. Sundar, thereby making it clear that the accident occurred due to negligence on the part of the rider of the motorcycle bearing No.KA-45/ED-1053 and there is absolutely nothing in the form of evidence before this tribunal which could move this tribunal to hold that the opinion of the IO expressed in the charge-sheet is incorrect or improper.

19. The view taken by this Court that the police records are *prima facie* proof in support of the case of the petitioner, is supported by the decision rendered in *Kishan Gopal and another Vs. Lala and others* reported in 2013 (4) T.A.C 5 (S.C.), wherein the Hon'ble Apex Court has categorically held thus:

16. In view of the aforesaid facts, the Tribunal should have considered both oral and documentary evidence referred to supra and appreciated the same in the proper perspective and recorded the finding on the contentious issue No. 1 & 2 in the affirmative. But it has recorded the finding in the negative on the above issues by adverting to certain statements of evidence of AW-1 and referring to certain alleged discrepancies in the FIR without appreciating entire evidence of AW-1 and AW-2 on record properly and also not assigned valid reasons in not accepting their testimony. The Tribunal should have taken into

consideration the pleadings of the parties and legal evidence on record in its entirety and held that the accident took place on 19.07.1992, due to which Tikaram sustained grievous injuries and succumbed to the same and the case was registered by the Uniara Police Station under Sections 279 and 304-A, IPC read with Sections 133 and 181 of the M.V. Act against the first and second respondents. The registration of FIR and filing of the charge-sheet against respondent Nos.1 & 2 are not in dispute, therefore, the Tribunal should have no option but to accept the entire evidence on record and recorded the finding on the contentious issue Nos.1 and 2 in favour of the appellants.

(Emphasis supplied by me)

It is necessary to reassert that in a claim for compensation filed under Section 166 of Motor Vehicles Act, 1988, the claimant is expected to prove the incident on the basis of principle of *preponderance of probabilities* and the view taken by this Court is fortified by the decision rendered by the Hon'ble Supreme Court in ***Kusum and others V/s Satbir and others*** which is reported in **2011 SAR (CIVIL) 319**. Further the Hon'ble Supreme Court in case of ***Bimla Devi and others v. Himachal Road Transport Corporation and others*** reported in **(2009) 13 SCC 530** has observed that, *it is necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants are merely required to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.* Further the Hon'ble High Court of Karnataka in ***National Insurance Co. Ltd. Vs. Krishnappa***

and another reported in **2001 ACJ 1105**, where the Hon'ble High Court of Karnataka by considering the fact that the driver of the offending vehicle was not examined to prove any contributory negligence on the part of scooterist held that the accident had occurred due to rash or negligent driving by the driver of the offending van. Even here the respondent No.2 has not examined the rider of the offending motorcycle bearing No.KA-45/ED-1053 or any other eye witness to prove its contention that there was contributory negligence on the part of the petitioner and even otherwise, the IO, as already observed, has clearly opined that the accident occurred only due to the fault of the rider of motorcycle bearing No.KA-45/ED-1053 and Sri. Sundar was charge sheeted.

20. In view of the ratio laid down in the authorities referred to above and applying the settled principle of law to the case at hand, which is further supported by the oral and documentary evidence adduced by PW.1, this Tribunal is of the considered opinion that the accident leading to this case indeed occurred due to the actionable negligence on the part of the rider of the motorcycle bearing No.KA-45/ED-1053 resulting in petitioner sustaining injuries. This would infer to mean that the respondent No.2 has failed to prove that the accident occurred due to the contributory negligence on the part of the petitioner. *Wherefore Issue No.I is answered held in the Affirmative.*

21. **ISSUE No.III:**

Though it may turn out that the issues were not dealt with in order, but for the sake of convenience and since this Court has

already held Issue No.I in the affirmative, which makes it more than obvious that the petitioner is entitled for compensation, this court has ventured to consider issue No.III ahead of issue No.II. Needless to state the quantum of compensation which is awarded has to be proportionate to the nature of the injuries and the compensation has to be awarded by keeping in mind the pecuniary damages and non-pecuniary damages suffered by the injured-claimant. By pecuniary damages this Court is referring to the actual loss sustained by the petitioner, which can be determined in terms of money, by taking into account the oral or documentary evidence whereas by non-pecuniary damages this Court is referring to the losses that the claimant has though suffered, but will not be able to prove for the reason that it can neither be calculated in terms of the money nor can it be proved leading documentary evidence. Perhaps the non-pecuniary damages can be figured out by looking into the facts of each case by taking into account the nature of injuries and the aftermath. It is required to be reminded to oneself that compensation in a case arising out of injury can never be granted on mathematical precision and invariably a good amount of guesswork is involved while determining the compensation in such cases. Perhaps unlike in a fatal case, in a case involving bodily injury the victim is left to suffer throughout his life; and hence it becomes the bounden duty of the tribunal to award compensation to a victim of permanent disability so as to bring in sustainability and also to ensure that victim is not pushed to poverty.

22. In order to demonstrate the pecuniary loss suffered by her due to the injuries, the petitioner has led oral and documentary evidence. The PW.1 in her oral evidence has asserted on oath that immediately after the accident, she was admitted to Government Hospital, Hura where she underwent preliminary treatment and thereafter she was admitted to Spandana Hospital, Mysuru where she underwent treatment as an inpatient from 04.02.2023 to 11.02.2023. Further the petitioner has supported the said contention by producing Ex.P7 to P10, P12 and P13 which make it clear that indeed the petitioner underwent treatment at Government Hospital, Hura where she underwent preliminary treatment and thereafter she was admitted to Spandana Hospital, Mysuru where he underwent treatment as an inpatient from 04.02.2023 to 11.02.2023. Further she has asserted that she has spent huge amount towards her treatment and has sought to prove the same by producing Ex.P9 which are the medical bills along with prescriptions which are further supported by Ex.P7, P8 and P12 which are the wound certificate, discharge summary and case sheet. As regards the nature of injuries and the disability suffered, the petitioner has produced Ex.P7 which is the wound certificate which is supported by oral evidence of the doctor i.e., PW.2. It is keeping these facts in mind that the compensation has to be determined.

23. While determining the compensation this court has to look into the pain the sufferings, medical expenses, diet food, nourishment, attendant and conveyance charges and loss of amenities and enjoyment of life, which are discussed herein below:

(A) TOWARDS PAIN AND SUFFERINGS:

The petitioner has relied upon Ex.P7 to P10, P12 and P13 which are the wound certificate, discharge summary, X-ray films, case sheet and medical bills which reveal that the injuries sustained by her are in the nature of fracture of 2nd, 3rd, 4th and 5th metatarsal of the left foot with displacement which are grievous in nature apart from other injuries. According to the petitioner she has obtained treatment at Government Hospital, Hura where she underwent preliminary treatment and thereafter she was admitted to Spandana Hospital, Mysuru as an inpatient from 04.02.2023 to 11.02.2023 and is under follow-up treatment even to this day. The petitioner has relied upon wound certificate, discharge summary, case sheet, x-ray film and medical bills in order to show that she had sustained injuries and underwent pain and sufferings. As already observed, the petitioner had sustained grievous injuries which required her to undergo treatment at Government Hospital, Hura where she underwent preliminary treatment and thereafter she was admitted to Spandana Hospital, Mysuru as an inpatient from 04.02.2023 to 11.02.2023. Considering the nature of the injuries mentioned in wound certificate, it can be said that the petitioner must have undergone some amount of physical pain and sufferings, *for which, an amount of ₹.5,000/- can be held to be just and proper compensation under this head.*

(B) TOWARDS MEDICAL EXPENSES:

The petitioner has contended that she has spent huge amount towards medical expenses and treatment; and has produced medical bills along with prescriptions for having spent money towards medical expenses which are exhibited as Ex.P9 which are supported by Ex.P7, P8 and P12 wound certificate, discharge summary and case sheet. The sum total of the medical bills is ₹.84,808/- and there is no serious dispute regarding the bills got exhibited by the petitioner and even otherwise, the said bills are supported by Ex.P7 wound certificate, Ex.P8 discharge summary and Ex.P12 case sheet. Hence the sum total of medical bills is ₹.84,808/- which is rounded off to ₹.84,800/-. *Accordingly, the petitioner is entitled for an amount of ₹.84,800/- towards medical expenses.*

(C) TOWARDS DIET, FOOD, NOURISHMENT, ATTENDANT AND CONVEYANCE CHARGES:

As already observed the Ex.P7, P8 and P12 which are the wound certificate, discharge summary and case sheet respectively make it amply clear that the petitioner underwent treatment at Government Hospital, Hura where she underwent preliminary treatment and thereafter she was admitted to Spandana Hospital, Mysuru as an inpatient from 04.02.2023 to 11.02.2023. Further during the said period the petitioner might have taken assistance from others and taken diet food. Having observed so, this tribunal is mindful of the fact that the petitioner had suffered fractures and grievous injuries on his

head. Hence, *this Tribunal is of the opinion that it is just and proper to award an amount of ₹.5,000/- under this head.*

(D) TOWARDS LOSS OF FUTURE EARNING CAPACITY ON ACCOUNT OF PERMANENT DISABILITY:

(i) The PW.1 has alleged that due to injuries sustained in the accident, the petitioner has become permanently disabled. In order to establish that the petitioner has suffered intellectual disability, the petitioner has got examined Dr. Sri. Ravindranath K., Orthopedic Surgeon as PW.2 who has deposed in his evidence that the petitioner underwent treatment at Government Hospital, Hura where she underwent preliminary treatment and thereafter she was admitted to Spandana Hospital, Mysuru as an inpatient from 04.02.2023 to 11.02.2023. Further the PW.2 has specified injuries sustained by the petitioner. Further the PW.2 has deposed that he has examined the petitioner for the purpose of assessing the disability. Further, after considering all the infirmities and difficulties expressed and observed by the doctor in the petitioner, the PW.2 doctor has opined that the petitioner has 26% disability on the left lower limb. However, as rightly pointed by learned counsel for respondent No.2, the PW.2 has assessed 6% disability for moderate pain on the left foot and 10% each for difficulty in standing and climbing stairs which, keeping in mind the nature of injuries sustained, in the opinion of this tribunal is on the higher side and hence

considering the materials available, this court is of the opinion that it would be proper to hold that the disability sustained by the petitioner is 9% to the left lower limb and when the same is considered to the whole body the same can be assessed at 3%.

(ii) The PW.1 has produced Ex.P11 which is the notarized copy of adhaar card of the petitioner which reveals that the date of birth of the petitioner is 01.01.1961; and there is nothing before this tribunal to disbelieve the same. Since the accident occurred on 01.02.2023, hence it is held that the petitioner was aged more than 62 years, precisely 62 years and 1 month at the time of accident. Accordingly, the age of the PW.1 has to be considered as more than 62 years; and since the age of the petitioner at the time of accident is determined as 62 years, as per table given in *Sarla Varma Vs. Delhi Transport Corporation and another* (2009 ACJ SC 1298), the multiplier would be 7.

(iii) The petitioner has contended in her petition that, prior to the accident, she was working as a coolie from which she was earning ₹.30,000/- per month. But she has not produced any document before this Tribunal to show her avocation and earnings and has even admitted the same in her cross examination. Under such circumstances, this Tribunal is of the opinion that the notional income of the petitioner has to be determined. Perhaps, the court will now have to consider the

notional income of the injured and considering the avocation of the deceased and the year of accident. In this regard it is relevant to note that the Principal Bench of the Hon'ble High Court of Karnataka, at Bengaluru while holding Lok-Adalath is determining the notional income at ₹.16,000/- if the accident had occurred in the year 2023, in cases where the actual income of the deceased or injured, as the case may be, is not proved; and the same had been circulated by the Hon'ble Karnataka State Legal Services Authority, Bengaluru directing the courts, dealing with the motor vehicle compensation cases, to determine the notional income as determined therein, while holding lok-adalaths at District Courts. Hence, this Tribunal is of the opinion that it is just and proper to fix the notional income of deceased at ₹.16,000/- per month, in the absence of proof of income of the petitioner. Hence the income of petitioner can be notionally considered at the rate of ₹.16,000/- per month.

(iv) If the age of the petitioner is between 61 years and 65 years as on the date of accident, as per the table given in Sarla Verma case, the relevant multiplier would be 7. The annual income of the petitioner would be ₹.1,92,000/- (16,000 × 12). *Hence, the petitioner is entitled for a sum of ₹.40,320/- (1,92,000 × 7 × 3/100) towards loss of future income.*

(E) TOWARDS LOSS OF INCOME DURING LAID UP

PERIOD:

According to the petitioner, prior to accident, she was hale and healthy and was working as a coolie and was earning ₹.30,000/- per month. But she has not produced any document before this Tribunal to show her avocation and earnings and has even admitted the same in her cross examination. As such, the notional income of the petitioner is to be determined as ₹.16,000/- per month. In view of the injuries sustained by the petitioner and the treatment taken by her, the petitioner might not have attended her regular work atleast for a period of 1 months. For the said period, the petitioner is entitled for compensation under the head of loss of income during laid up period. *Therefore, it is just and reasonable to award ₹.16,000/- towards loss of income during laid up period.*

(F) TOWARDS LOSS OF AMENITIES AND ENJOYMENT OF LIFE:

The petitioner had sustained grievous injuries on her left lower limb which might certainly have deprived her of the basic comforts and enjoyment. *Therefore, it is just and proper to award her a reasonable sum of ₹.5,000/- under this head.*

Thus, the petitioner is entitled for compensation under the following heads:-

Towards pain and sufferings	-	₹.	5,000.00
Towards Medical expenses	-	₹.	84,800.00

Towards diet, food, nourishment, attendant and conveyance charges	-	₹.	5,000.00
Towards loss of future earning capacity	-	₹.	40,320.00
Loss of income during laid up period	-	₹.	16,000.00
Towards loss of amenities	-	₹.	5,000.00
Total	-	₹.	1,56,120.00

Totally, the petitioner is entitled compensation of ₹. 1,56,120/-.

24. The petitioner has claimed the interest at the rate of 12% per annum. In this regard the Hon'ble High Court of Karnataka in the decision reported in *Shriram General Insurance Co. Ltd v. Smt. Laxmi and others* rendered in MFA No.103557/2016 rendered on 20.03.2018 serves as a guiding lamp and in the said decision, the Hon'ble High Court of Karnataka awarded interest at the rate of 6% per annum by considering the relevant provisions. Considering the aforesaid decision and also prevailing Bank rate of interest, this tribunal also deems it proper to award interest at the rate of 6% per annum. According it is held that the petitioner is entitled total compensation of ₹.1,56,120/- (*Rupees One Lakh Fifty Six Thousand One Hundred and Twenty only*) with interest at the rate of 6% p.a. from the date of petition till the realization including the interim compensation if any awarded; and accordingly the Issue No.III is answered in the affirmative.

ISSUE No.II:

25. It would be incumbent upon this tribunal to clarify that the

necessity to frame this issue arose in view of the specific contention taken by the respondent No.2 that the respondent No.1 has violated the policy conditions. Perhaps the answer to this issue will determine whether the respondent No.1 must be made personally liable to pay compensation or whether it is the respondent No.2 who is liable to compensate the petitioner by indemnifying the respondent No.1 in paying compensation to the petitioner.

26. Now that this court has ascertained the compensation amount, the last aspect of the matter is regarding fixation of liability i.e., *who should be made liable to pay the compensation to the petitioner?*. In this regard, the respondent No.2 has though admitted that the offending vehicle i.e., motorcycle bearing No.KA-45/ED-1053 was insured with it at the time of accident and the same is clear from the deposition of RW.1 through whom policy is got exhibited as Ex.R2, the respondent No.2 company has qualified the said admission regarding the issuance of policy with a specific contention that the policy conditions have been violated as the rider of the motorcycle bearing No.KA-45/ED-1053 by name Sri. Sundar did not possess a driving license at the time of accident.

27. In order to substantiate its contention that the said Sri. Sundar who was the rider of the motorcycle belonging to respondent No.1 did not possess a valid driving license to ride a motorcycle at the time of accident, the respondent No.2 company has relied on Ex.P3 charge sheet which reveals that the I.O, has invoked section 181 read with

section 3 of M.V. Act and section 180 read with section 5 of M.V. Act against the said Sri. Sundar and the respondent No.1 herein respectively who were the rider and owner of the offending motorcycle bearing No.KA-45/ED-1053.

28. It is relevant to note that respondent No.2 has examined RW.1 who is the Branch Manager of the respondent No.2 company in support of its contention; and that apart the respondent No.2 company has got exhibited Ex.R3 which is the certified copy of the entire ordersheet pertaining to CC No.629/2023 on the file of learned JMFC, Nanjanagudu, which reveals that the said Sri. Sundar and the respondent No.1 had pleaded guilty before the jurisdictional JMFC and had even paid the fine imposed by the learned JMFC. This apart though it was suggested to RW.1 that it is falsely contended that the said Sri.Sundar did not possess a driving license at the time of accident, the witness has emphatically denied the said suggestions. It is relevant to note that the respondent No.1 could have produced the driving license of Sri.Sundar which authorized him to ride the motorcycle as on the date of accident, if he indeed possessed it. Perhaps the very fact that the respondent No.1 or the said Sri.Sundar did not produce it before this tribunal goes to show that the said Sri.Sundar did not possess a driving license as on the date of accident. The above facts make it clear that the said Sri.Sundar so also the respondent No.1 had more than one opportunities to produce the DL of said Sri.Sundar which authorized him to ride a motorcycle, but they did not bother to produce the same, which makes it obvious that

the said Sri.Sundar does not possess a driving license which authorized him to ride the motorcycle.

29. Furthermore, perusal of *Section 109 of Bharatiya Sakshya Adhiniyama, 2023* (Section 106 of old Indian Evidence Act) makes it clear that any particular fact which is within the knowledge of a party, he has the burden of proving the same. The said provision reads as under :

106. Burden of proving fact especially within knowledge.—When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

The essence of the said provision is that the respondent No.1 and the said Sri.Sundar have the burden of proving any fact which is specially within their knowledge. In fact the illustration (b) appended to the *Section 109 of Bharatiya Sakshya Adhiniyama, 2023* (Section 106 of old Indian Evidence Act) ,

A is charged with traveling on a railway without a ticket. The burden of proving that he had a ticket is on him.

Applying the said provision to the facts at hand, the burden of proving that the said Sri.Sundar possessed a driving license which authorized him to ride a motorcycle was on him, but the respondent No.1 has failed to discharge the onus cast on him. On the other hand the respondent No.2 has discharged the burden cast on it.

30. Now the question is what is the effect of the respondent No.1 allowing the vehicle to be ridden by a person who did not possess a

driving license which authorized him to ride a motorcycle, in the context of fixation of liability, in this regard, the learned counsel for the petitioner has relied on decision of the Hon'ble High Court of Karnataka in *The Branch Manager, ICICI Lombard General Insurance Company Vs. Smt. Pooja and others* rendered on **19.09.2024** in **MFA No.202104/2024 (MV-D)**. It appears that the said decision is cited by the learned counsel for the petitioner to convince this tribunal on the point that, if the rider of the offending motorcycle did not possess a driving license, the respondent No.2 cannot be exonerated, instead the principle of pay and recover must be applied, thereby the respondent No.2 must be directed to satisfy the award with liberty to recover the same from the respondent No.1. Further when the judgment is perused, it is clear that the Hon'ble High Court of Karnataka in a similar set of facts held thus:

15. So far as liability is concerned, the learned counsel for the appellant though submits that, there was sole negligence on the part of the rider of the motorcycle as he was not possessing the driving license, the Hon'ble Apex Court in the case of Sudhir Kumar Rana (supra), has categorically held in paragraph No.9 of the said judgment as follows:

"9. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it

was the driver of the mini truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence.

16. The principle laid down in the above case can very well apply to the present facts of the case. Therefore, the argument with regard to fastening liability on the owner of the offending lorry appears to be just and proper. So far as fastening of liability is concerned, the learned counsel for the appellant - Insurance Company has relied upon the judgment of the Hon'ble Apex Court in the case of Pappu (supra). Evidently, the rider of the motorcycle, who is the deceased was third party to the said accident. There was no negligence on the part of the rider of the motorcycle in causing the said accident. Though the claimants have made the owner as well as driver of the said offending lorry as parties to the claim petition and they have appeared, but have not filed any objections to the claim petition. When the Insurance Company has taken up a contention that, the driver of the offending lorry was not

possessing effective driving licence, the driver or owner of the offending lorry ought to have appeared before the Tribunal and produced the driving licence so as to absolve from the liability. Even the Insurance Company has not summoned the driver and it is the duty of the owner of the lorry to permit the driver, who is possessing effective driving licence. In this case, either the owner of the lorry or the driver have not entered the witness box. In the absence of the same, the version of the Insurance Company that, the driver of the said offending lorry was not possessing effective driving licence has to be accepted. In view of the judgment of the Apex Court in the case of Pappu (supra), as per the conditions of the policy, the insured vehicle must be driven by the driver of the vehicle, who is having effective driving licence. In this case, it is not so. Therefore, there is a violation of the policy conditions by the owner of the lorry. As M.V. Act is a benevolent legislation, the claimants cannot be deprived of the compensation so awarded in this case. Therefore, if the Insurance Company is directed to deposit the compensation, as the policy was in force as on the date of accident, as the Insurance Company has to indemnify the said compensation so awarded in view the principle laid down in the aforesaid judgments by the Hon'ble Apex Court, it would meet the ends of justice. However, the

Insurance Company is at liberty to recover the same from the owner of the lorry by executing the award against him.

Hence, the appeal to that extent, is to be allowed in part.

Hence in view of the recent decision of the Hon'ble High Court of Karnataka which was rendered in respect of a case where the claim petition arose out of an accident which had occurred on 21.08.2022 i.e., subsequent to coming into force of amended provision of M.V. Act, this tribunal is of the firm opinion that this court can safely rely on the said judgment and apply the principle of *pay and recover* principle. *Accordingly, Issue No. II is held in the affirmative and it is held that the petitioner is entitled for compensation of ₹.1,56,120/- (Rupees One Lakh Fifty Six Thousand One Hundred and Twenty only) alongwith interest at the rate of 6% per annum and it is also held that the respondent No.2 shall pay the compensation amount as awarded by this court to the petitioner and recover the same from respondent No.1.*

31. ISSUE No.IV:

In view of the reasons assigned in the foregoing paragraphs of this judgment and in view of the finding given on Issue No. I to III, this court finds no hesitation to pass the following:

“ORDER”

“The claim petition is allowed in part with costs.

Petitioner is entitled for compensation of ₹.1,56,120/- (Rupees One Lakh Fifty Six

Thousand One Hundred and Twenty only) with interest at the rate of 6% per annum from the date of petition till its realization including interim compensation if any awarded.

The respondents are jointly and severally liable to pay compensation to the petitioner within one month from the date of this judgment.

Further the respondent No.2 is directed to pay the compensation awarded to the petitioner and recover the same from the respondent No.1.

Considering the quantum of compensation awarded is meager, after deposit of the compensation amount, the entire compensation amount shall be released in favor of the petitioner after due identification and by following due process of law.

Advocate's fee is fixed at ₹.1,000/-.

Draw award accordingly."

(Dictated to the stenographer, computerized by her, corrected and then pronounced by me in the open court, this the 1st day of June, 2026)

(AFTHAB.K)
Prl. Judge, Court of Small Causes
& MACT, Mysuru

ANNEXURE:

Witnesses examined for the petitioner:		
PW.1	-	Smt. Puttamma
PW.1	-	Dr. Sri. Ravindranath K.

Documents marked for the petitioner :		
Ex.P1	-	FIR
Ex.P2	-	Complaint
Ex.P3	-	Charge sheet along with seizure panchanama
Ex.P4	-	Spot panchanama
Ex.P5	-	Rough sketch
Ex.P6	-	IMV report
Ex.P7	-	Wound certificate
Ex.P8	-	Discharge summary
Ex.P9	-	Medical bills
Ex.P10	-	2 X-ray films and one CT scan report
Ex.P11	-	Copy of aadhar card
Ex.P12	-	Case sheet
Ex.P13	-	X-ray film

Witnesses examined for the respondents:		
RW.1	-	Sri. Kalyan Kumar B.

Documents marked for the respondents:		
Ex.R1	-	Authorization letter

Ex.R2	-	Copy of policy
Ex.R3	-	Entire order sheet in CC.629/2023 on the file of learned Civil Judge & JMFC, Nanjangud

(AFTHAB.K)
Prl. Judge, Court of Small Causes
& MACT, Mysuru