

**IN THE COURT OF SENIOR CIVIL JUDGE AND J.M.F.C.
& ADDL., MACT, CHANNAPATTANA.**

DATED : THIS THE 18th DAY OF MARCH 2020

: PRESENT :

SMT. YERMAL KALPANA, B.Sc., LLM,
Senior Civil Judge & JMFC,
Channapatna Taluk,
Ramanagar District.

M.V.C. No.575/2014

Petitioner : Nagaraju,
S/o.Karigowda, 51 Yrs,
R/at Minakeredoddi,
Malur Hobli,
Channpatna Taluk.

(Sri. M.K.N., Advocate)

- V/s -

Respondents : 1) Athmanantha.H.M.,
S/o. Marigowda,
R/at Hoodike Hosahalli,
Kasaba Hobli,
Channapatna Taluk.

- 2) New India Assurance
Company Ltd.,
No.2241/4, Giriyamma
Shambhugowda Complex,
Church Road,
Channapatna Town.

(R1 – Ex-parte)

(R2 by Sri.C.K.M., Advocate)

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JUDGMENT

1. The petitioner has filed this petition U/s.166 of the Motor Vehicles Act, 1989 for grant of compensation of Rs.30,00,000/- and on account of injuries sustained by him in a road traffic accident.

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

That on 31.07.2014 at about 2.00 p.m. when the petitioner was riding in his Hero Honda motor cycle bearing Reg. KA-01-EH-6719 to go to Minakere Village and was travelling on the B.M.Road, Chikkamalur Village, at that

time, the rider of the motor cycle bearing Reg. No.KA-42-G-4545 drove his vehicle in a rash and negligent manner and dashed against the petitioner's motor cycle due to which the petitioner sustained injuries on the right side of his head and shoulders, chest and other parts of the body. Later the petitioner was taken to Channapatna Government Hospital where he was given first aid and later shifted to NIMHANS, Rajarajeshwari Hospital, E.S.I. Hospital, Bangalore and Mandya Hospital for further treatment, wherein he was inpatient for about 60 days and had undergone surgery also. Even after discharge from the hospital, the petitioner was advised to take a follow-up treatment. The petitioner has incurred Rs.5,00,000/- for his medical treatment. The petitioner further submits that the petitioner was hale and healthy prior to the accident and was an agriculturist and earning Rs.20,000/- per month. Due to the accident, the petitioner is not able to do his work and he is still suffering from pain on his right leg and is suffering from disability, discomforts and also has suffered loss of earnings. Hence, he has prayed for awarding compensation of Rs.30,00,000/-.

3. In response to the notice issued, the respondent No.1 remained absent and was placed ex-parte. The respondent No.2 the insurance company has filed its written statement denying the petition averments and has stated that the accident as alleged by the petitioner has not taken place and the respondent in collusion with the petitioner and the insurer of the vehicle have filed this case. There is a delay in lodging the complaint. The accident has occurred due to the rash and negligent driving by the petitioner himself and hence there is contributory negligence on the part of the petitioner. This petition is bad for non-joinder of necessary parties as the insured and the insurer of the Heor Honda bearing Reg. No.KA-01-EH-6719 was not made as parties to the petition. The petitioner was under the influence of alcohol as per the records of the NIMHANS and there is no negligence on the part of the rider of the motor cycle bearing Reg. No.KA-42-J-4545. Both the riders were not holding any valid and effective driving license and the 1st respondent has knowingly and willingly given his vehicle to a person who did not hold a valid and effective driving license, as such the respondent No.2 is not liable to indemnify the insure. The

Investigating Officer has not intimated about the alleged accident to the Claims Tribunal as required U/s.158(6) of the Motor Vehicles Act and the hospital authority have also failed to intimate about the accident. Hence, this respondent is not liable to indemnify the insured and on these grounds the respondent No.2 has prayed for dismissal of the petition.

4. On the basis of the above pleadings, the Tribunal has framed the following:

ISSUES

1. Whether the petitioner proves that he met with an RTA that occurred on 31.07.2014 at about 2.00 p.m. Opp: Mutton Stall, Chikkamaluru, B.M.Road, Channapatna Town and the petitioner sustained injuries due to rash and negligent driving of Hero Honda two wheeler bearing No.KA-42-J-4545 ?

2. Whether the petitioner is entitled to compensation? If so how much and from whom?

3. What order or award?

Additional Issues

(1) Whether the 2nd respondent proves that the driver of the motor cycle bearing Reg. No.KA-42-J-4545 was not having valid driving license on the date of the accident ?

5. In support of petitioner's case, petitioner has got examined himself as PW.1. The petitioner has also examined PW2- C.Ramachandra the Medical Record's Officer of Rajarajeshwari Hospital; PW3- Srinivas an official of Sapthagiri Hospital and PW4- Dr.Sunil Malagi Senior Resident of NIMHANS Hospital and got marked Ex.P1 to Ex.P13 documents. The Respondent No.2 has not lead either oral or documentary evidence.

6. Heard the arguments and perused the materials on record.

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

Issue No.1 : In the Negative
Addl. Issue No.1 : In the Affirmative
Issue No.2 : Does not arise for consideration
Issue No.3 : As per final order
for the following:

REASONS

8. ISSUE No.1 & Addl. ISSUE No.1 : These issues are inter-related, hence they are taken up together for discussion. The petitioner is examined as PW1 and he has deposed that on 31.07.2014 at about 2.00 p.m. when the petitioner was riding in his Hero Honda motor cycle bearing Reg. KA-01-EH-6719 to go to Minakere Village and was travelling on the B.M.Road, Chikkamalur Village, at that time, the rider of the motor cycle bearing Reg. No.KA-42-J-4545 drove his vehicle in a rash and negligent manner and dashed against the petitioner's motor cycle due to which the petitioner sustained injuries on the right side of his head and shoulders, chest and other parts of the body. Later the petitioner was taken to Channapatna Government Hospital where he was given first aid and later shifted to NIMHANS, Rajarajeshwari Hospital, E.S.I. Hospital, Bangalore and Mandya Hospital for further treatment, wherein he was inpatient for about 60 days and had undergone surgery also. Even after discharge from the hospital, the petitioner was advised to take a follow-up treatment. The petitioner has incurred Rs.5,00,000/- for his medical treatment. The

petitioner further submits that the petitioner was hale and healthy prior to the accident and was an agriculturist and earning Rs.20,000/- per month. Due to the accident, the petitioner is not able to do his work and he is still suffering from pain on his right leg and he is suffering from disability, discomforts and also has suffered loss of earnings.

9. In support of his contention PW1 has exhibited the following documents ; Ex.P1 is the F.I.R., Ex.P2 is the Charge Sheet, Ex.P3 is the IMV Report, Ex.P4 is the copy of Wound Certificate, Ex.P5 is the copy of Spot Mahazar, Ex.P6 -59 medical bills, Ex.P7 is the Prescriptions, Ex.P7(a) is the Authorization Letter issued to PW2, Ex.P8 is the Inpatient Report, Ex.P9 is the Authorization Letter issued to PW3, Ex.P10 is the Case Sheet, Ex.P11 – 4 CT Scan copies, Ex.P12 is the Case Sheet and Ex.P13 is the Neuro Physiological Assessment Report. [The Ex.P7 was marked twice, hence the Authorization letter to PW2 is considered as Ex.P7(a)].

10. The petitioner has also examined PW2- C.Ramachandra Medical Keeper of Rajarajeshwari Hospital, Bangalore who has produced Ex.P7- Authorization Letter and Ex.P8-

Inpatient Record. The petitioner has also examined PW3-Srinivan an FDA of Sapthagiri Hospital, who has produced the Authorization Letter – Ex.P9, case file – Ex.P10 and 4 CT Scan as per Ex.P11.

11. The plaintiff has examined as PW4- Dr.Sunil Malagi the Senior Resident of the Department of Neurosurgery, NIMHANS who has treated the petitioner. He has deposed about the injuries caused to the petitioner and has stated that the petitioner was discharged on 02.08.2014 at 8.30 a.m. as his condition was improved. He has also stated that he has produced the case sheet- Ex.P12. PW4 has admitted that he has not treated the injured and the petitioner has not undergone surgery.

12. The petitioner has produced Ex.P1 & Ex.P2 i.e., the copies of the FIR & Charge Sheet respectively. As per these documents, the petitioner is alleged to have sustained injuries on 31.07.2014 at about 2.00 p.m. But, the complaint was lodged by the complainant on 01.08.2014 at 5.00 p.m. The spot mahazar was prepared on 01.08.2014. Though the registration of the motor cycle bearing Reg.No.KA-42-J-4545

has been mentioned in the spot mahazar, the vehicle which was alleged to have been driven by the petitioner i.e., motor cycle bearing Reg. No.KA-01-EH-6719 does not find any mention in the spot mahazar. The details of the motor cycle of the respondent No.1 was not been mentioned in the spot mahazar- Ex.P5. The IMV Report was conducted on 06.08.2014. The wound certificate- Ex.P4 shows that the accused was first seen by the doctor of Channapatna Government Hospital on 31.07.2014 at about 2.11 p.m.

13. The petitioner has himself has produced Ex.P12 which is the outpatient record of the petitioner of NIMHANS Hospital, Bangalore. As per Ex.P12 the date and time of admission of the petitioner to the hospital is shown as 31.07.2017 at 3.56.12 p.m. -Thursday. At page No.3 of the MLC record, the history of injury at point No.8 is shown as ***“A/H/O RTA, 2 wheeler hit by two wheeler hit from side. Under influence of alcohol”***. This document produced by the petitioner himself goes to show that he was under the influence of alcohol when the accident is taken place.

14. The petitioner himself produced Ex.P8 i.e., Inpatient record of PW1 of Rajarajeshwari Hospital though PW2 at page No.3 of the records i.e., the Doctor's Initial Assessment Form it has been mentioned as follows "Alleged RTA by a four wheeler which hit the two wheeler from the side on 01.08.2014. The Ex.P8 & Ex.P12 are produced by the petitioner himself creates a doubt regarding the involvement of the vehicle of the 1st respondent which has been insured by the 2nd respondent. On perusal of Ex.P8 & Ex.P12 along with the spot mahazar Ex.P5 which does not mention about the registration numbers of the vehicle involved gives a doubt regarding the involvement of the vehicle of respondent N.1 and the presumption can be reached that only in order to claim compensation the respondent Nos.1 & 2 have been involved in this accident.

15. The respondent is also argued that the both the riders of the motor cycles involved in the accident did not possess any valid driving license. The petitioner has stated in his evidence that his driving license has been misplaced. The respondents have also contended that the respondent No.1 was not the owner of the motor cycle which he was driving

and this fact has not been denied by the petitioner or respondent No.1. The respondent No.2 in its written statement has taken up the contention that the insured and insurer of the motor cycle which the petitioner was riding are not made as parties to the petition.

16. The FIR and Charge Sheet shows that the alleged accident has taken place on 31.07.2014 when the petitioner was riding the motor cycle bearing Reg. No.KA-01-EH-6719. The petitioner has filed this petition against the respondent No.1- Athmanantha.H.M., but the motor cycle belonging to the respondent No.1 was ridden by one Kiran Kumar against whom the charge sheet has been filed as an accused. It is not explained by the respondent No.1 as to how his motor cycle was in the possession of the said Kiran Kumar. In spite of issuance of notice the respondent No.1 he has remained absent and has not appeared before the court to clarify this issue by way of not filing his written statement. When the respondent No.2 had clearly contended in its written statement that the rider of the motor cycle bearing Reg. No.KA-42-J-4545 was not having any valid driving license as on the date and time of the accident, the respondent No.1

being the owner of the said vehicle should have produced the license in proof of the same. By failing to produced the valid driving license, the respondent No.1 has admitted to the claim of the respondent No.2 that the rider of the motor cycle bearing Reg. No.KA-42-J-4545 did not have valid driving license at the time of the accident.

17. The petitioner has produced wound certificate – Ex.P4 which mentions that the petitioner was first seen on 31.07.2014 at 2.11 p.m., in the same document it is also mentioned that the said certificate is given on the basis of the records of the NIMHANS Hospital, Bangalore. The documents produced by the petitioner i.e., Ex.P12 clearly goes to show that the petitioner was under the influence of alcohol at the time of accident. The doctor – PW4 who has treated the petitioner has not mentioned about the percentage of disability in his evidence and he has also admitted that he is not treated the injured and that only on the basis of the documents he has deposed about the injuries sustained. Further he has also stated that the petitioner has not undergone any surgery.

18. There is no dispute that the petitioner has sustained injuries but it is not as claimed by the petitioner that he has sustained injuries due to the rash and negligent act of the rider of the motor cycle bearing Reg. No.KA-42-J-4545. The admission of the petitioner and Ex.P12 goes to show that though the petitioner did not have valid driving license he under the influence of alcohol has driving the vehicle and has failed to prove that he is entitled for relief as claimed for from the respondent No.2. Hence, on total consideration of the documents produced by the petitioner himself he has failed to prove that he has met with a road traffic accident on 31.07.2014 at about 2.00 p.m. near Chikkamalur, B.M.Road, Channapatna due to the rash and negligent driving of the motor cycle bearing Reg.No.KA-42-J-4545. Accordingly, **Issue No.1 is answered in the Negative & Addl. Issue No.1 is answered in the Affirmative.**

19. ISSUE No.2 : The petitioner has failed proved that he has sustained injuries in the road traffic accident, but if he was entitled for compensation, it had to be decided how much and to what extent.

20. PW.1- petitioner has stated that in the said accident, he sustained grievous injuries to her right thigh and all over the body and immediately he was taken to Government Hospital, Channapatna and later shifted to Rajarajeshwari Hospital, NIMHANS Hospital, Bangalore and Mandya Hospital where he took treatment as an inpatient for a period of 60 days and he was under follow up treatment. He also stated that he is suffering from disability and discomforts. In support of his said contentions, he relied upon the wound certificate at Ex.P4.

21. From the above evidence of PW-1 and the medical records, it reveals that in the said accident, petitioner has sustained injuries i.e., right ear bleeding, contusion on right head, abrasion on right knee and pain on the right clavicle which is grievous in nature for which he was treated conservatively at General Hospital, Channapatna.

22. PW1/petitioner has deposed that he was aged about 55 years, and he was an agriculturist and earning about Rs.20,000/- p.m and because of the said accident and the injuries sustained in the accident, he is unable to do his

work and he is not earning any income and he is entitled for compensation of Rs.30,00,000/- (Rupees Thirty lakhs only). The petitioner has not produced any documents in proof of his contention that he is an agriculturist. The petitioner has not produced any document regarding his avocation and income. The petitioner has produced bills amounting to about Rs.24,000/-, but due to the production of Ex.P12 it is clear that this accident has occurred purely due to the negligence on the part of the petitioner by riding the motor cycle without any valid driving license and influence of alcohol. However because of the said injury, petitioner has suffered pain, he might have also spent some amount for medicine, conveyance and other miscellaneous expenses during the period of treatment. So it is just and proper to award a compensation of Rs.50,000/- if he would have been entitled for compensation. Hence it is held that the petitioner is entitled for the compensation of **Rs.50,000/-** (Rupees Fifty thousand only), if he had proved that the accident had taken place due to the fault of the rider of the respondent No.1 whose vehicle was insured with the respondent No.2. In view of the failure by the petitioner to prove that the accident had taken place due to the fault of

the respondents, the **Issue No.2 does not arise for consideration.**

23. ISSUE No.3 : In view of my above finding on issue Nos.1 and 2, I proceed to pass the following:

ORDER

1. Petition filed by the petitioner under Sec.166 of MV Act, 1989 is here by dismissed. No order as to cost.

2. Draw award accordingly.

(Typed to my dictation through on line, corrected and then pronounced by me in open court, on this the 18th day of March 2020.)

(YERMAL KALPANA)
Senior Civil Judge & JMFC,
Addl. M. A. C. T., Channapatna.

ANNEXURE

1. List of witnesses examined for the petitioner:

PW1 : Nagaraju
PW2 : C Ramachandran

PW3 : Srinivas
PW4 : Dr. Sunil Malagi

2. List of documents marked on behalf of the petitioner:

Ex.P1 : Copy of FIR
Ex.P2 : Copy of Charge Sheet
Ex.P3 : Copy of IMV Report
Ex.P4 : Copy of Wound Certificate
Ex.P5 : Copy of Mahazar
Ex.P6 : 59 Medical Bills
Ex.P7 : 34 Medical Prescriptions
Ex.P7 : Authorization Letter
Ex.P8 : Inpatient Record
Ex.P9 : Authorization Letter
Ex.P10 : One Case File
Ex.P11 : 4 City Scan
Ex.P12 : Patient Case Sheet
Ex.P13 : Neuro Psychological Assessment Extract.

3. List of Witnesses examined for the Respondents:

- NIL -

4. List of documents marked on behalf of the Respondents:

- NIL -

(YERMAL KALPANA)
Senior Civil Judge & JMFC,
Addl., M. A. C. T., Channapatna.

Judgment passed separately and order pronounced in open court.

ORDER

1. Petition filed by the petitioner under Sec.166 of MV Act, 1989 is here by dismissed. No order as to cost.
2. Draw award accordingly.

(YERMAL KALPANA)
Senior Civil Judge & JMFC
Addl., M. A. C. T., Channapatna.

