

KAUP020038962024



***BEFORE THE ADDITIONAL MOTOR ACCIDENTS
CLAIMS TRIBUNAL & PRINCIPAL SENIOR CIVIL JUDGE
AND CJM., UDUPI.***

Present: Sri. Nitin Yeshwanth Rao,
B.Com. LL.B.

Prl. Senior Civil Judge & CJM.,
Udupi.

Dated this the 15th day of June, 2026

M.V.C.No. 720/2024

Petitioner : Raghavendra Acharya,
Aged about 42 years,
S/o. Laxman Acharya,
R/o H.No.7-42(e),
Kalpavruksha,
Paddam Padubhaga,
VTC. Bommarabettu,
P.O Hiriadka,
Udupi District.
[Rep.By Sri. S.A., Advocate]

V/s

Respondents: 1. Sudharshan Naik,
Aged about 32 years,
S/o. Shankara Naik,
R/o Armane Jeddu, Nalkur,
Kajke, Udupi.

2. The Divisional Manager,
United India Ins. Co.Ltd.
Udupi,
Divisional Office, Jewel Plaza,
Maruthi Vithika,
Opp.Shrinidhi Medical,
Near Chittaranjan Circle
Udupi – 576 101.

**(Rep. by Sri. A.S.H., Advocate for R2)
(R1 - Exparte)**

J U D G M E N T

This petition is filed by the petitioner under Section 166 of Motor Vehicles Act, 1988 claiming compensation of Rs.11,47,750/- from the respondents with interest at the rate of 12% p.a. from the date of petition till the date of realisation.

2. Petition averments in brief are as follows:

That on 21-03-2024 at about 7.25 p.m, when the petitioner being the rider of the motor cycle bearing registration No. KA-20-EH-9580 was proceeding towards Hiriadka from Onthibettu on the NH 169A, a tipper vehicle bearing registration No.KA-19-AD-7616 coming from the opposite direction came at high speed & in a rash and negligent manner on a down gradient road, due to which it's driver lost control over the vehicle, came to the wrong side of the road and dashed against the right side of the petitioner's vehicle and then dashed against the ongoing

stage carriage vehicle bearing registration No KA-20-AC-1286 moving behind the petitioner's vehicle, in front of Manjushree complex at Anjaru village, Onthibettu. Due to the said impact, petitioner sustained grievous injuries. Immediately after the accident, petitioner was shifted to KMC hospital, Manipal, where he availed treatment as an inpatient and was referred for x-ray, which revealed fracture of right distal femur, proximal tibia fracture and calcaneal fracture. He also underwent wound debridement and external fixation application was also done. To rule out right tibia fracture internal fixation was also done. The petitioner remained in the hospital till 28-03-2024 and discharged with an advise for follow up treatment and to walk with non weight bearing. Thereafter, he visited the hospital regularly for follow up treatment as per the schedule.

3. Petitioner was again admitted to the hospital on 10-04-2024 for physiotherapy treatment and discharged on 12-04-2024. The petitioner is still undergoing follow up treatment. The fracture sustained by the petitioner in the accident would result in permanent partial disability to the right lower limb. He spent Rs.3,00,000/- towards medical expenses and requires more amount for removal of the implants in future. He spent Rs.550/- per day towards attendant charges and Rs.175/- per day towards food expenses of the attendant. In total Rs.87,000/-

was spent towards attendant charges and food expenses of the attendant for 4 months. He spent Rs.1,800/- towards food and nourishment. He also spent a total of Rs.2,000/- towards ambulance charges and spent Rs.3,950/- i.e. Rs.650/- per day. for 3 times towards taxi charges at the time of visiting the hospital for follow up treatment. The petitioner was aged about 43 years at the time of the accident and he was a goldsmith and design maker in gold ornaments earning Rs.55,000/- p.m. He is an income tax assessee. Due to the accidental injuries, he is under treatment till date and his shop remained closed which affected his earning capacity permanently, as he being a goldsmith, has to sit on floor and on chair for his work. Due to the disability, the movement of right lower limb of the petitioner is affected. Under such circumstances, he has to depend on others to discharge the nature of work that he carried out prior to the accident all throughout his life. The accident has taken place due to rash and negligent driving of the tipper vehicle bearing registration No.KA-19-AD-7616. Respondent No.1 being the owner and respondent No.2 being the insurer of the said vehicle bearing registration No.KA-19-AD-7616, are jointly and severally liable to compensate the petitioner. Accordingly, it is prayed to allow the petition.

4. As the respondent No.1 remained absent, despite being duly served with the notice, he was placed ex-parte. Respondent

No.2 appeared before the Court through its counsel and filed written statement denying the petition averments. The respondent No.2 submits that the petitioner has intentionally and deliberately suppressed certain material and relevant facts required for the proper adjudication of the matter in dispute in the above case so as to make unlawful gain at the cost of the respondent if possible, by abuse of process of law. At the time of the accident, the driver of the tipper vehicle was not having valid and effective driving license, valid permit and fitness certificate to drive the same. As such, this respondent is not liable to indemnify the respondent No.1. This respondent seeks protection under Section 149 and 147 of IMV Act. Neither the Police officer who investigated the case nor the insured has complied with Section 158(6) of the M.V. Act, 1988 as they failed to intimate the fact of the alleged accident to the insurer as envisaged in the said section. These among other grounds, it is prayed to dismiss the petition.

5. Based on the above pleadings the following issues have been framed by my predecessor-in-office:

ISSUES

1. Whether the petitioner proves that on 21.03.2024 at about 07.25 p.m. when he was riding his motor Bike bearing Reg.No.KA-

20-EH-9580 proceeding towards Hiriadka side from Onthibettu on NH 169A, when the said Motor Bike reached in front of Manjushree complex of Onthibettu, Anjaru village, one Tipper bearing Reg.No.KA-19-AD-7616 coming from the opposite direction in rash and negligent manner with high speed, came to the wrong side of the said road and dashed to the right side of the Motor bike, due to which he sustained injuries?

2. Whether the Respondent No.2 proves that at the time of accident Tipper bearing Reg.No.KA-19-AD-7616 belongs to respondent No.1 was not having valid permit?

3. Whether the petitioner is entitled for compensation? If so, how much and from whom?

4. What order or award?

6. The petitioner got himself examined as P.W.1 and Dr. Amrath Raj, who issued disability certificate as PW2 and also produced 26 documents which came to be marked as Ex.P1 to

Ex.P26. On the other hand, respondents did not adduce any evidence on their behalf.

7. Heard arguments on both sides. Perused the entire materials available on record.

8. My findings to the above issues are as follows:

Issue No.1 : In the Affirmative

Issue No.2 : In the Negative

Issue No.3 : Partly in the Affirmative

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

REASONS

9. Issue No.1:- The claim of the petitioner is that on 21-03-2024 when he was riding a motor cycle bearing registration No.KA-20-EH-9580 from Onthibettu side towards Hiriadka side on NH 169A, at about 7.25 p.m, one tipper vehicle bearing registration No. KA-19-AD-7616 came from the opposite direction at high speed & negligent manner on a down gradient road, due to which its driver lost control over the vehicle, came to the wrong side of the road and dashed to the right side of the petitioner's vehicle and then dashed against the ongoing stage carriage vehicle bearing registration No. KA-20-AC-1286,

which was moving behind the petitioner's vehicle, in front of Manjushree complex, Anjaru village, Onthibettu and due to the said impact, the petitioner sustained grievous injuries.

10. The respondent No.2 denied the rash and negligent driving of the tipper vehicle bearing registration No. KA-19-AD-7616 by its driver. Hence, the burden is on the petitioner to prove the rash and negligent driving of the tipper vehicle bearing registration No.KA-19-AD-7616 by its driver and the resultant injuries caused to him in the said accident.

11. The petitioner got himself examined as PW1 by filing affidavit in lieu of examination-in-chief and Dr. Amruth Raj, who issued disability certificate as PW2 and got marked 26 documents as Ex.P1 to Ex.P26. Ex.P1 is the FIR, Ex.P2 is the certified copy of first information statement, Ex.P3 is the spot mahazar, Ex.P4 is the sketch, Ex.P5 is the IMV report, Ex.P6 is the discharge summary, Ex.P7 are the medical bills, Ex.P8 & 9 are the inpatient bills, Ex.P10 and 11 are the discharge summaries, Ex.P12 is the prescription, Ex.P13 is the treatment certificate, Ex.P14 is the disability certificate, Ex.P15 is the report issued by hospital, Ex.P16 are the advance receipts, Ex.P17 is the license issued for business, Ex.P18 is the income tax returns, Ex.P18A is the 63-certificate, Ex.P19 is the bank statement, Ex.P20 is the Copy of Adhar card, Ex.P21 are

medical bills, Ex.P22 is the inpatient bill, Ex.P23 is the discharge summary, Ex.P24 is the prescription, Ex.P25 is the MLC record and Ex.P25 is the x-ray.

12. On perusal of Ex.P1, the Police attached to Hiriadka PS registered FIR in Cr.No.0027/2024 on 21-03-2024 based on the first information given by the petitioner on 21-03-2024 at 22.10 hours. The alleged accident occurred on 21-03-2024 and soon after the accident, petitioner was admitted to the hospital i.e. on the same day. Hence, the involvement of the vehicles and the injuries caused to the petitioner in the accident cannot be doubted.

13. The I.O. filed charge sheet against the driver of the tipper vehicle for the offence punishable u/s.279, 337 and 338 of IPC. There is no evidence before the Tribunal that the IO filed false charge sheet against the driver of the tipper vehicle. The said charge sheet is not challenged either by the first respondent or by the 2nd respondent. The respondent No.2 neither examined anyone to disprove the contentions taken by the petitioner. The respondent No.1 knowing fully well that the petitioner made allegations against the driver of the tipper vehicle kept silent without refuting the say of the petitioner. Hence, an adverse inference is drawn against the driver of the tipper vehicle that he drove his vehicle in a rash and negligent manner and dashed

against the petitioner as narrated in this petition. Though the charge sheet is not a substantive piece of evidence, the non examination of the driver of the offending vehicle and the allegations made by the petitioner against the driver of the offending vehicle if not refuted, it is incumbent upon the Tribunal to believe the charge sheet. Apart from this, though PW-1 was thoroughly cross examined at length by the respondent No.2, nothing contrary was elicited from the mouth of PW1.

14. Besides, the spot mahazar and sketch marked as Ex.P3 and P4 clearly go to show that the driver of the offending vehicle came to the wrong side of the road and dashed against the petitioner and thereafter dashed against the ongoing stage carrier. Hence, this Tribunal is of the considered opinion that the accident occurred due to rash and negligent driving of the offending Tipper lorry by its' driver. **Accordingly, issue No.1 is answered in the Affirmative.**

15. Issue No.2: The respondent No.2 has raised a specific contention in its written statement that the driver of the offending tipper lorry did not possess valid and effective driving license and also there was no valid permit for the said vehicle which resulted in violation of the terms and conditions

of the policy and therefore it is not liable to indemnify the respondent No.1. Though the respondent No.2 raised the afore cited contentions, it did not adduce any evidence either oral or documentary to prove the same. There is absolutely nothing on record that proves the non holding of valid and effective driving license by the driver of the offending vehicle and also the offending vehicle having no valid permit. Therefore this Tribunal has come to the conclusion that the respondent No.2 miserably failed to prove that there was no valid permit for the offending vehicle. **Hence, Issue No.2 is answered in the Negative.**

16. Issue No.3: The petitioner has claimed total compensation of Rs.11,47,750/-. The petitioner sustained injuries in a road traffic accident which is evident from Ex.P1 to P26. Hence, the petitioner is entitled for compensation under various heads.

17. Pain and Sufferings: On perusal of Ex.P13 treatment certificate, it is revealed that the petitioner has sustained the following fractures:

1. Open right distal femur fracture
2. Right open patella fracture
3. Right proximal tibia fracture
4. Right calcaneum fracture

It is stated in the petition that immediately after the accident i.e. on 21-03-2024, he was admitted to the KM,C hospital at Manipal for treatment and thereafter he was discharged on 28-03-2024 with an advise for follow up treatment and to walk with non weight bearing. Thereafter, he visited the hospital regularly for follow up treatment as per the schedule. Once again the petitioner was admitted to the hospital on 10-04-2024 and discharged on 12-04-2024 and during that period he underwent physiotherapy treatment. Still he is taking follow up treatment. The fracture sustained by the petitioner in the accident has resulted in permanent partial disability to the right lower limb. The petitioner was aged about 42 years at the time of the accident. Hence,by considering the nature of injuries and inpatient period in the hospital and the age, the **petitioner is entitled for Rs.80,000/- under the head of pain and sufferings.**

18. Medical expenses: The petitioner has stated in the petition that he spent Rs.3,00,000/- towards hospital and medical expenses. The petitioner has produced Ex.P7 medical bills, Ex.P8, 9, Ex.P21 and Ex.P22 inpatient bills. The sum of Ex.P7 is **Rs.1,15,641/-**. The sum of Ex.P8 is Rs.3,47,307/-,out of which concession of Rs.1,21,557/- is availed. Hence, the amount paid by the petitioner is **Rs.2,25,750/-**. The sum of

Ex.P9 is 6,031/-, out of which concession of Rs.2,110.81 is availed. Hence, the amount paid by the petitioner is **Rs.3,920/-**. The sum of Ex.P21 is **Rs.14,402/-**. The sum of Ex.P22 is Rs.14,240/-, out of which concession of Rs.4,983.88 is availed. Hence, the amount paid by the petitioner is **Rs.9,256/-**. **Hence, the petitioner is entitled for total amount of Rs.3,68,969/- under this head**

19. Loss of income during laid up period : According to the petitioner, he was hale and healthy prior to the accident. He was aged about 43 years at the time of the accident and worked as a goldsmith and design maker in gold ornaments and thereby earned Rs.55,000/- p.m. He was an income tax assessee. Due to the accidental injuries, he is under treatment till date and his shop remained closed and his earning capacity was affected permanently, because being a goldsmith he has to sit on floor and on chair for his work. Due to the disability, the movements of right lower limb is affected. In such an event he has to depend on others to carry out the work as he did prior to the date of accident. The petitioner has produced Ex.P17 to P20 documents to prove his income. Ex.P 17 is the License issued by the Kodibettu Grama Panchayath for the purpose of business of jewelry works named as “Rashwith Jewelry works”. Ex.P18 to P20 are the income tax returns of the petitioner for

the assessment year of 2022-2023, 2023-2024 and 2024-2025. The accident occurred on 21-03-2024. The gross income in the year of 2023-2024 is Rs.3,74,670/-. Hence the monthly income of the petitioner during the year 2023-2024 is Rs.31,222.50. The petitioner was inpatient for a period of 11 days and thereafter he took rest for another 86 days i.e. for a period of 3 months. **Hence, the petitioner is entitled for Rs.93,667.50 (Rs.31,222.50 x 3) under this head.**

20. Food, conveyance and attendant charges: Though the petitioner has stated that he spent Rs.550/- per day towards attendant charges and Rs.175/- per day towards food expenses of the attendant ie a total sum of Rs.87,000/- towards attendant charges and food expenses of the attendant for 4 months, Rs.1,800/- towards food and nourishment, Rs.2,000/- towards ambulance charges and Rs.3,950/- i.e. Rs.650/- p.d. for 3 times towards taxi charges at the time of visiting the hospital for follow up treatment, he has not placed on record any documents to prove the same. However, by considering the fact that he was inpatient for a period of 11 days in total and during that time he spent amount towards food and attendant charges and he visited the hospital for follow up treatment, the petitioner is entitled for **Rs.20,000/- under this head.**

21. Disability: Disability refers to any restriction or lack of ability to perform an activity in the near future. Permanent disability refers to the restriction in capacity or loss of use of some part of the body, found existing at the end of the period of treatment. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and functions that he could perform, though he is able to perform some of them and still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment, related activities as a result of the accident.

22. In order to award compensation under this head it is mainly depend upon the effect and impact of such permanent disability on his earning capacity. In this connection I would like to rely the ruling reported in *2011 ACJ page 1* in between **Rajkumar Vs. Ajay Kumar**, wherein the Hon'ble Supreme Court held that the tribunal is required to assess the disability on the basis of evidence and what is the effect of the permanent disability of the earning capacity of the injured.

23. PW2 is a doctor, who deposed that he examined and treated Raghavendra Acharya, who was brought to KMC hospital on 21-03-2024 with a history of road traffic accident. On examination of the injured, he found the following fractures:

1. Open right distal femur fracture
2. Right open patella fracture
3. Right proximal tibia fracture
4. Right clcaneum fracture

After treatment the injured was discharged on 28-03-2024 with an advise to continue exercise as taught. Again readmitted on 09-04-2024 for suture removal and knee mobilization and discharged on 12-04-2024 with an advise to continue exercise as taught. Petitioner has suffered 44% of permanent physical disability in his right lower limb. He needs implant removal in future, which may cost approximately Rs.50,000/-. He may develop early arthritis of the right knee which may need further surgical management in the form of knee replacement surgery which may cost approximately Rs.1,50,000/-.

24. During the course of cross examination PW2 has denied the suggestion that there is no necessity of further treatment to the petitioner. The thigh bone of the petitioner is not yet united properly, hence there is necessity of treatment in future. To prove the same he has produced x-ray, which was taken on 25-03-2025. He has mentioned the 44% disability for the right leg only, he has not deposed disability for his whole body. Hence, this Tribunal is of the opinion that the petitioner has

sustained disability to an extent of 10% in respect of the whole body. The income of the petitioner is taken at Rs.31,222.50. The age of the petitioner at the time of the accident is 42 years. Ex.P20 Aadhar card produced by the petitioner depicts the date of birth of petitioner as 10-10-1981, which means the age of petitioner as on the date of the accident is 42 years. Hence, the proper multiplier for the age group of 41-45 is '14'. Accordingly, the petitioner is entitled for Rs.31,222.50/- x 12 x 14 x 10% = Rs.5,24,538/-. Hence, the petitioner is entitled for compensation of **Rs.7,86,807/- under the head of loss of income due to disability.**

25. Future medical expenses: The petitioner has stated that he requires money for removal of the implants in future, but he has not mentioned the amount. PW2 in the evidence deposed that the petitioner needs implant removal in future, which may cost approximately Rs.50,000/-. He may develop early arthritis of the right knee which may need further surgical management in the form of knee replacement surgery which may cost approximately Rs.1,50,000/-. Considering the same, this Tribunal is of the opinion that the petitioner is entitled for **Rs.1,00,000/-** towards future medical expenses.

26. The above summarized as follows:

Pain and sufferings	Rs. 80,000/-
Medical expenses	Rs. 3,68,969/-
Loss of income during laid up period	Rs. 93,667.50
Food, conveyance and attendant charges expenses	Rs. 20,000/-
Disability	Rs. 5,24,538/-.
Future medical expenses	Rs. 1,00,000/-
Total	Rs. 11,87,174.50 rounded off Rs.11,87,175/-

27. The petitioner has claimed interest at the rate of 12% per annum. As far as interest is concerned, the petitioner is entitled to interest at the rate of 6% per annum in view of the law laid down by the Supreme Court. **The respondent No.2 admits the policy issued in favour of the offending vehicle.** Hence, the 2nd respondent is liable to pay the interest from the said date and also liable to indemnify. Accordingly, **this issue is answered partly in the Affirmative.**

28. Issue No.4: In view of the findings on above issues, I proceed to pass the following:-

ORDER

The claim petition filed under Section 166 of Motor Vehicle Act, by petitioner against respondents is hereby allowed in part with cost.

The petitioner is entitled for total compensation of **Rs. 11,87,175/-(Rupees eleven lakhs eighty seven thousand one hundred and seventy five only)** with interest at the rate of 6% p.a. from the date of petition till date of realization.

The respondents No.1 and 2 are jointly and severally liable to pay compensation and respondent No.2 is directed to deposit the compensation within 60 days from the date of this order.

Upon deposit of the compensation amount, 50% is ordered to be deposited in any Nationalized Bank for a period of 3 years in the name of the petitioner and remaining 50% is ordered to be

payable to the petitioner by transferring the said amount to the account of the petitioner.

Office is hereby directed to transfer entire amount to the petitioner after obtaining copy of the pass book, copy of Aadhar card and PAN card if any.

Advocate fee is fixed at Rs.1,000-00.

Draw award accordingly.

(Dictated to the Stenographer, computerized by her, corrected, signed and then pronounced by me in the open court on this the 15th day of June, 2026).

(Sri.Nitin Yeshwanth Rao)

Prl. Sr. Civil Judge & ADDL.MACT,
Udupi.

ANNEXURE

List of witness examined for the petitioner:

P.W.1 : Raghavendra Acharya

P.W.2 : Dr. Amrath Raj B.K.

List of documents exhibited for the petitioner:

Ex.P1: True copy of FIR

Ex.P2 : True copy of complaint

Ex.P3 : True copy of spot and seizure mahazar

- Ex.P4 : True copy of sketch
- Ex.P5 : True copy of IMV report
- Ex.P6 : Discharge summary
- Ex.P7 : Medical bills
- Ex.P8 & 9 : Inpatient bills
- Ex.P10 & 11: Discharge summaries
- Ex.P12: IP Drugs Prescription
- Ex.P13: Treatment certificate
- Ex.P13(a) : Signature
- Ex.P14: Disability certificate
- Ex.P14(a) : Signature
- Ex.P15: Report given by Hospital authority
- Ex.P16: Advance receipts
- Ex.P17: License relating to Business
- Ex.P18: I.T. Returns
- Ex.P18(a) : 63- Certificate
- Ex.P19: Bank statement
- Ex.P20: Notarized copy of Aadhar card
- Ex.P21 : Medical bills
- Ex.P22: Inpatient bills
- Ex.P23: Discharge summary
- Ex.P24 : Drugs prescription slip
- Ex.P25 : MLC record
- Ex.P26 : X- Ray

List of witnesses examined for the respondents:-

None

List of documents exhibited for the respondents

Nil

Prl. Sr. Civil Judge & ADDL.MACT,
Udupi.