

KAUP310008722023



TITLE SHEET

IN THE COURT OF SENIOR CIVIL JUDGE & ADDITIONAL MACT AT KUNDAPURA

***PRESENT : SRI KUMARA G. B.COM. LL.B.
SENIOR CIVIL JUDGE &
ADDITIONAL MACT, KUNDAPURA.***

***MVC NO.946 OF 2023
DATED ON THIS 15TH DAY OF JULY, 2026***

***PETITIONER : SRI VISHAL M. SHETTY,
S/O SRI MANJUNATH SHETTY,
AGED ABOUT 18 YEARS,
R/O RAILWAY QUARTERS,
MOODLAKATTE POST AND KANDAVARA
VILLAGE, KUNDAPURA TALUK,
UDUPI DISTRICT.***

***REPRESENTED BY HIS MOTHER
SMT HEMALATHA SHETTY,
W/O SRI MANJUNATH SHETTY,
AGED ABOUT 49 YEARS,
R/O RAILWAY QUARTERS,
MOODLAKATTE POST AND
KANDAVARA VILLAGE,
KUNDAPURA TALUK, UDUPI DISTRICT.***

***ACTING AS NATURAL GUARDIAN & NEXT
FRIEND AS HE IS BED RIDDEN & SUFFERED
HEAD INJURIES.***

***GUARDIANSHIP IS DISCHARGED AS PER THE
ORDER DATED: 29-06-2025.***

(REPRESENTED BY SRI HRS, ADVOCATE)

VERSUS

- RESPONDENTS : 01. SRI BHASKAR NAYAK,
S/O ANNAPPA NAYAK,
AGED ABOUT 67 YEARS,
DOOR NO.75A, NERALAKATTE,
KARKUNJE VILLAGE AND POST,
KUNDAPURA TALUK, UDUPI DISTRICT.**
- 02. THE NEW INDIA ASSURANCE
COMPANY LIMITED,
BRANCH OFFICE: KUNDAPURA,
REPRESENTED BY ITS BRANCH MANAGER,
FIRST FLOOR, PUSHPA BUILDING,
OPPOSITE PARIJATHA HOTEL, MAIN ROAD,
KUNDAPURA KASBA VILLAGE AND POST,
KUNDAPURA TALUK, UDUPI DISTRICT.**

**(R-1 IS PLACED EX-PARTE & R-2 IS REPRESENTED
BY SRI KSA, ADVOCATE)**

JUDGMENT IN MVC NO.946 OF 2023

This judgment arises out of claim petition filed by the petitioner against the respondents under section 166 of ***Motor Vehicles Act, 1988 (hereinafter referred as "Act")*** for awarding compensation stating that he had suffered injuries and disability in the road traffic accident occurred on 16-05-2023 at about 12-30 AM near Bobbaryanakatte. Voderhobli Village, Kundapura Taluk, Udupi District on National Highway No.66.

02. The case of the petitioner in nutshell is that on 16-05-2023 he was travelling as pillion rider on Motor Cycle bearing registration No.KA-20/V-7471 from Koteshwara side towards Kundapura direction and the same was ridden by Sri Manish in slow and careful manner by observing traffic rules. At about 00-30 AM, when they were proceeding near Bobbaryanakatte. Voderhobli Village, Kundapura Taluk, Udupi District on Udupi-Kundapura National Highway No.66, the driver of Lorry bearing registration No.KA-20/AA-9649 owned by respondent No.1 drove it from the same direction i.e. from Koteshwara side towards Kundapura direction in rash and negligent manner and came to the extreme left side and dashed to the petitioner's Motor Cycle and the accident occurred. Due to the said accident, the petitioner fell on the road along with his Motor Cycle and suffered grievous injuries all over his body. Immediately, he was shifted to Government Hospital, Kundapura and thereafter he was shifted to Kasturba Hospital, Manipal and treated as in-patient from 16-05-2023 to 30-05-2023 for 14 days. He had spent huge amount for medical expenses and other incidental expenses.

03. At the time of the accident, the petitioner was aged about 18 years, he was hale and healthy person and he was student and studying I year B.Sc., at Bhandarkar's Arts and Science College, Kundapura. The petitioner was paper and milk delivery boy during free time in the morning and evening time and

also on holidays and earning Rs.15,000/- per month. Due to the accident, the petitioner has suffered grievous injuries and permanent disability and hence he could not able to attend his academic and he could not able to do the work as he was doing earlier to the accident. The petitioner has lost his entire income and the injurie and permanent disability adversely affected his future, the accident was occurred solely due to rash and negligent driving on the part driver of the Lorry owned by the respondent No.1; he insured it with respondent No.2-Insurance Company and the Insurance Policy was in force as on the date of accident. Hence, the respondent No.1 being the owner and respondent No.2 being the insurer, both are jointly and severally liable to pay the compensation. For the aforesaid reasons the petitioner has prayed for awarding compensation of Rs.50,60,000/- under various heads.

04. In spite of service notice of the claim petition, the respondent No.1 not appeared before this court on the day fixed for his appearance. Hence, the respondent No.1 has been placed ex-parte. The respondent No.1 remained absent throughout and not participated in the trial.

05. In pursuance of service of notice of the claim petition, the respondent No.2-Insurer appeared through advocate and filed written statement by denying the claim petition averments. However, the respondent

No.2-Insurer has admitted that the respondent No.1 was the owner of the Lorry, he had insured the vehicle with it and the Insurance Policy was in force as on the date of alleged accident. It is specifically contended that the accident was not occurred due to rash or negligent driving on the part of driver of Lorry and the accident was occurred solely due to rash and negligent driving on the part of the petitioner. It is further contended that the petitioner was riding the Motor Cycle without wearing the helmet and suffered injuries including the head injury. It is further contended that the petitioner was not holding Driving License and the Motor Cycle was not insured and hence, they have managed to register the case against the lorry. It is further contended that the respondent No.1 had violated material terms and conditions of the Insurance Policy and also provisions of Motor Vehicles Act, 1988 and therefore, respondent No.2-Insurer is not liable to pay compensation to the petitioners. It is also contended that the petitioners are claiming excessive and exorbitant compensation without any basis. For the aforesaid reasons, respondent No.2-Insurance Company has prayed for rejection of claim petition with exemplary costs.

06. Basing on the pleadings of the parties, the following issues have been framed for determination:

ISSUES

01. Whether the guardian of the petitioner proves that, when petitioner was traveling as a pillion rider in a motor cycle bearing Reg.No.KA-20-V-7471 on 16-05-2023 at about 0.30 a.m. when he reached at a place near Bobbaryanakatte, Vaderhobli Village within the limits of Kundapura Traffic Police Station, at the same time, the driver of lorry bearing Reg.No.KA-20-AA-9649 drove the same in a rash and negligent manner so as to endanger human life and dashed to said motor cycle and as a result he sustained injuries ?

02. Whether the petitioner is entitled for compensation? If so, at what quantum and from whom?

03. What Order or Award?

07. In order to substantiate the claim petition averments, the petitioner himself examined as PW-1 and he got marked 16 documents as per Exhibit P-1 to P-16. Doctor Rajesh Nair is examined as PW-2 and he produced and got marked one document as per Exhibit P-17. The Insurance Policy of the Eicher Lorry has been marked with consent of both sides as Exhibit R-1. The respondents have not adduced oral evidence.

08. After closure of evidence from both sides, heard the arguments advanced by Sri HRS, the learned counsel for petitioner and Sri KSA, the learned counsel for respondent No.2-Insurance Company.

09. Perused the oral and documentary evidence placed on records.

10. Upon hearing the arguments and on perusal of oral and documentary evidence let in before this tribunal, my answers to the above issues are as follows:

<i>Issue No.1</i>	<i>:- In the affirmative,</i>
<i>Issue No.2</i>	<i>:- In the affirmative and</i>
<i>Issue No.4</i>	<i>:- As per the final order for the following:</i>

REASONS

11. ISSUE NO.1:- In order to substantiate the claim petition averments, the petitioner himself examined as PW-1 in the form of affidavit and reiterated all the petition averments once again in the affidavit filed in lieu of chief-examination. Hence, I am not going to discuss the contents of affidavit as it is nothing but re-iteration of contents of claim petition. During the course of chief-examination, he has tendered 16 documents and they have been admitted as per Exhibit P-1 to P-16.

12. Exhibit P-1 is the First Information given by one Manish who is stated to be the rider of the Motor Cycle to Kundapura Traffic Police on 16-05-2023 relating to the accident in question alleging that when he and the petitioner were proceeding on the Motor Cycle from Koteshwara side towards Kundapura, the driver of Lorry owned by the respondent No.1 drove it in the same from same direction; drove it to his extreme side and dashed

to the back side of the Motor Cycle near Bobbarya Temple, Vaderhobli, Kundapura Taluk on National Highway No.66 and caused the accident. Exhibit P-2 is the First Information Report registered by Kundapura Traffic Police in their Crime No.64/2023 relating to the accident in question against the driver of Lorry for the offences punishable under section 279 and 337 of Indian Penal Code, 1860. Exhibit P-3 is the Accident Spot Panchanama and Exhibit P-4 is Accident Spot Sketch and they show that the accident was occurred near Bobbarya Temple, Voderhobli Village, Kundapura Taluk on the left side of National Highway No.66 while travelling from Koteshwara side towards Kundapura side. Exhibit P-5 is the Wound Certificate of the petitioner issued by Kasturba Hospital, Manipal and it shows that petitioner had suffered injuries in the accident. Exhibit P-6 is the Motor Vehicles Inspection Report and it shows that the Motor Cycle and Lorry have suffered damages in the accident and the accident was not occurred due to any mechanical defects of the vehicle. Exhibit P-7 is the Accident Information Report Register. Exhibit P-8 is the Charge Sheet filed by Kundapura Traffic Police in their Crime No.64/2023 against the driver of Lorry for the offences punishable under section 279 and 338 of Indian Penal Code, 1860. Exhibit P-9 is the Discharge Summary issued by Kasturba Hospital, Manipal and they shows

that the petitioner had treated as in-patient to the injuries suffered by him in the accident from 16-05-2023 to 30-05-2023 for 15 days.

13. Exhibit P-1 to P-9 prima facie shows that on 16-05-2023 at about 12-30 AM, an accident was taken place near Bobbarya Temple, Voderhobli Village, Kundapura Taluk on the left side of National Highway No.66. They also shows that the petitioner was travelling as pillion rider on the Motor Cycle from Koteshwara side towards Kundapura side and the Lorry was also moving in the same direction. They also shows that the front portion of the lorry and back side of the Motor Cycle have suffered damaged. They also shows that the driver of the Lorry drove it from Koteshwara side towards Kundapura side and dashed to the back side of petitioner's Motor Cycle. They also shows that the accident was occurred due to rash and negligent driving on the part the driver of Lorry and the petitioner who was travelling as pillion rider in the Motor Cycle had suffered grievous injuries in the accident. They further disclosed that the petitioner was admitted to Kasturba Hospital, Manipal and treated as in-patient from 16-05-2023 to 30-05-2023 for 15 days pertaining to the injuries suffered by him in the road traffic accident. They further disclosed that accident was not occurred due to any mechanical defects of the vehicles involved in the accident. They also disclosed that criminal case was registered and charge sheet was filed against the Lorry for

the offenses punishable under section 279 and 338 of Indian Penal Code, 1860.

14. The petitioner who examined before this tribunal as PW-1 has specifically deposed that the accident was occurred solely due to rash and negligent driving on the part of driver of Lorry and he has suffered injuries in the said accident. PW-1 has relied upon the contents of documents placed on record as per Exhibit P-1 to P-9. Though PW-1 has been cross-examined from respondent No.2 side and put so many suggestions to the effect that he was riding the Motor Cycle at the time of accident and the accident was occurred due to his rash and negligent riding of the Motor Cycle, nothing has been elicited either to disbelieve or discard the oral evidence of PW-1 and also contents of documents placed on record as per Exhibit P-1 to P-9. That apart the authorized officer or any other responsible officers have not entered the witness box or not produced any contrary materials as against the documents placed on record from petitioner's side and also to substantiate the contentions took-up in the objection statement. Therefore, I found no reasons or grounds to discard or disbelieve the oral evidence of PW-1 and contents of documents placed on records as per Exhibit P-1 to P-9. The evidence let in by petitioner as to rash and negligent driving of the Lorry by its driver and sustainment of injuries by the petitioner in the accident has

remained un-impeached. Therefore, basing on the oral evidence of PW-1 and documentary evidence placed on record from the petitioner side and in the light of undisputed facts, I am of the firm opinion that on the above said date; place and time an accident was occurred in the above alleged manner due to rash and negligent driving on the part of driver of Lorry and due to the accident the petitioner has suffered injuries and obtained treatment as in-patient at Kasturba Hospital, Kundapura from 16-05-2023 to 30-05-2023 for 15 days. Hence, I am answering to ***Issue No.1 in the affirmative.***

15. ISSUE NO.2:- PW-1 has stated in the claim petition and also in the affidavit filed in lieu of chief-examination that at the time of accident he was aged about 18 years; prior to the accident he was hale and healthy person and he was studying in I year B.Sc. at Bhandarkar's Arts and Science College, Kundapura and he was also working part time paper and milk delivery boy and earning Rs.15,000/- per month. In order to show the age, the petitioner has produced his Adhar Card as per Exhibit P-14 and it shows that he is born on 06-03-2005. The accident was occurred on 16-05-2023. Therefore, the age of the petitioner is determined as 18 years as on the date of accident.

16. In order to show his studies and also loss of studies, the petitioner has not produced any documents. During the course of cross-examination,

the petitioner admitted that he had not lost any academic year due to injuries suffered in the accident. However, as per the Discharge Summary placed on record as per Exhibit P-9, the petitioner obtained treatment as in-patient from 16-05-2023 to 30-05-2023 for 15 days at Kasturba Hospital, Manipal. It is clear that the petitioner was absent to the college from date of accident till discharge and also subsequent to discharge for taking rest. Therefore, by looking to the period of treatment as inpatient and also the period in which the petitioner was under bed-rest, I am of the opinion that the petitioner is entitled for Rs.12,000/- for loss of education during the laid-off period.

17. Though the petitioner stated in the petition that besides studies, he was working as paper and milk delivery boy and earning Rs.15,000/-, he has not produced any documents to show that he was earning money by working as paper and milk delivery boy. But also considering the age of the petitioner, his studies and also his assertion as to earning of money during holidays and also in the morning and evening on the college days, I am of the opinion that the petitioner might have earning money by doing some work along with studies. Hence, by considering the facts and circumstances of the case and also the age and nature of work, the notional income of the petitioner is determined as Rs.6,000/- assuming that he might have earning Rs.200/- per month.

18. In order to prove the nature of injuries and disability, the petitioner has relied upon the contents of Exhibit P-5/Wound certificate and Exhibit P-15/Disability certificate and the evidence of PW-2. Exhibit P-5 and P-15 shows that the petitioner has suffered 1) T-12 vertebra fracture, 2) Marshal grade-II and 3) tentorial sub-dural hemorrhage along with other injuries which are grievous and simple in nature. PW-2 stated that on 07-06-2024, he has examined the petitioner and found that he has suffered 18 percent permanent cognitive disability. PW-2 has denied the suggestions put in the cross-examination that he has falsely given the certificate. Though PW-2 has been cross-examined from respondents' side, nothing has been elicited from his mouth to dis-believe or discard his version. As per the reported decision of Hon'ble Supreme Court reported in ***AIR 2009 Supreme Court 3104 in between SARALA VERMA & OTHERS VERSUS DELHI TRANSPORT CORPORATION & ANOTHER***, the proper multiplier would be 18. Thus, the petitioner is entitle for Rs.6,000/- (notional income per month) X 12 (months) X 18 % (dis-ability) X 18 (multiplier) = Rs.2,33,280/- and the same is rounded-off as Rs.2,33,000/-. Therefore, the petitioner is entitle for Rs.2,33,000/- under the head of loss of future income.

19. The petitioner has produced the Bills and Receipts pertaining to payment towards hospital final bill, purchase of medicines and payment towards medical tests as per Exhibit P-10 to P-12. Exhibit P-10 to P-12 are retail bills and they shows that the petitioner has spent Rs.1,024/- towards Medical Expenses. Hence the petitioner is entitle for Rs.1,000/- (rounded-off amount of Rs.1,024/-) under the head of Medical Expenses. The petitioner has suffered fracture of T12 anterior wedge fracture along with other simple injuries and hence the petitioner is also entitle for Rs.50,000/- under the head of pain, agony and sufferings suffered due to injuries suffered in the road traffic accident. The petitioner is also entitle for Rs.10,000/- towards loss of amenities and happiness in the life; Rs.10,000/- towards nutrition and extra nourishment; Rs.10,000/- towards food, conveyance and attendant charges. Thus, the petitioner in all entitled for just compensation under the following heads:

SL. NO	NATURE OF THE HEADS	COMPENSATION
1.	Loss of Future Income (Rs.6,000/- (notional income PM) X 12 (months) X 18 % (dis-ability) X 18 (multiplier) = Rs.2,33,280/- and the same is rounded-off as Rs.2,33,000/-.	Rs.02,33,000=00
2	Medical Expenses (rounded-off amount of Rs.1,024/-)	Rs.00,01,000=00
3	Pain, agony and suffering	Rs.00,50,000=00
4	Loss of amenities and happiness in life	Rs.00,10,000=00
5	Loss of Education during laid-off period	Rs.00,15,000=00
6	Extra nourishment and nutrition	Rs.00,10,000=00

7	Food, conveyance and attendant's charges during treatment	Rs.00,10,000=00
	<i>TOTAL</i>	<i>Rs.03,29,000=00</i>

20. I am already given finding to Issue No.1 in the affirmative holding that on 16-05-2023 at about 12-30 AM an accident was taken place Bobbarya Temple, Voderhobli Village, Kundapura Taluk on the left side of National Highway No.66 due to rash and negligent driving on part of driver of the Lorry and out of the accident, the petitioner has suffered injuries in the accident.

21. During the course of cross-examination, the petitioner/PW-1 has clearly admitted that he was not wearing the helmet at the time of accident. It is an admitted fact that the petitioner has suffered head injury and also the cognitive disability. If the petitioner had wear the helmet at the time of accident, he would not have suffered the severe head injury as sustained by him. Hence, I am of the opinion that the petitioner has shown negligence in wearing the helmet and hence, he has contributed negligence for suffering the head injury. Hence, 20 percent negligence has to be attributed to the petitioner.

22. Admittedly, the respondent No.1 was the owner and respondent No.2 is the Insurer of the offending vehicle. There is no dispute that

respondent No.1 had insured the offending vehicle with respondent No.2-Insurance Company and the Insurance Policy was in force as on the date of accident. Hence, respondent No.2 being the insurer of the offending vehicle, it is liable to pay 80 percent of the total compensation to the petitioner. Hence, I am answering to ***Issue No.2 in the affirmative holding that petitioner is entitle for 80 percent of total compensation of Rs.3,29,000/- from respondent No.2-Insurance Company with simple interest at the rate of Rs.6/- percent per annum from the date of petition till the date of payment or transfer.***

23. ISSUE NO.4:- In view of my findings to Issues No.1 and 2, the petitioner is entitled for the compensation at above rate from respondent No.2-Insurance Company. The petitioner is entitle for release of 50 percent with proportionate interest and remaining amount with proportionate interest has to be deposited as FD for 3 years. Accordingly, I proceed to pass the following:

ORDER

The claim petition filed by petitioner under section 166 of the Motor Vehicles Act, 1988 is allowed in part.

The petitioner is awarded with total compensation of Rs.3,29,000/- (Rupees Three lakhs and Twenty-Nine Thousands only) with simple interest at the rate of Rs.6/- percent per annum

from the date of petition till the date of deposit before this tribunal.

The respondent No.2-Insurance Company is liable to pay 80 percent of total compensation of Rs.3,29,000/- and directed to transfer 50 percent of 80 percent of total compensation with accrued interest directly to the bank account of the petitioner.

The respondent No.2/Insurer directed to deposit the remaining 50 percent of 80 percent of total compensation with accrued interest before this tribunal.

The petitioner is directed to furnish his bank account details, PAN card and Adhar card details along with other particulars which are necessary for transfer of amount forthwith.

On deposit of the remaining 50 percent of 80 percent total compensation with proportionate interest, office is directed to deposit the same in the name of petitioner in any nationalized bank of his choice for three years with liberty to withdraw the periodical interest once in three months.

No premature withdrawal of FD without the prior permission of the tribunal.

Draw the award accordingly.

Office is directed to return Exhibit P-17/In-patient Medical Case Sheet to the concerned hospital.

(Dictated to the stenographer directly on the laptop, typed by her, corrected, then signed and pronounced by me in the open court on this 15th day of July, 2026)

**(KUMARA G.)
SENIOR CIVIL JUDGE &
ADDITIONAL MACT,
KUNDAPURA**

ANNEXURES

I. LIST OF WITNESSES EXAMINED FROM PETITIONER SIDE:

PW-1 : Sri Vishal M. Shetty (petitioner)
PW-2 : Doctor Rajesh Nair

II. LIST OF DOCUMENTS EXHIBITED FROM THE PETITIONER SIDE:

Exhibit P-1 : First Information
Exhibit P-2 : First Information Report
Exhibit P-3 : Accident Spot Panchanama
Exhibit P-4 : Accident Spot Sketch
Exhibit P-5 : Wound certificate
Exhibit P-6 : Motor Vehicle Inspection Report
Exhibit P-7 : Accident Information Report Register
Exhibit P-8 : Charge sheet
Exhibit P-9 : Discharge summary
Exhibit P-10 to 12 : Medical Bills and receipts
Exhibit P-13 : Detail receipts of Inpatient Bill
Exhibit P-14 : Aadhar Card of petitioner
Exhibit P-15 : Disability certificate
Exhibit P-16 : CD and photograph of accident place
Exhibit P-17 : In-patient Medical Case Sheet

III. LIST OF WITNESSES EXAMINED FROM RESPONDENTS SIDE:

- NIL-

IV. LIST OF DOCUMENTS EXHIBITED FROM THE RESPONDENTS SIDE:

Exhibit R-1 : Insurance Policy (marked by consent)

**(KUMARA G.)
SENIOR CIVIL JUDGE &
ADDITIONAL MACT,
KUNDAPURA**
