

KAVP020013162024



Presented on : 22-01-2024
Registered on : 03-02-2024
Decided on : 21-04-2026
Duration : 2 yrs, 2 mths, 30 ds

**IN THE COURT OF THE II ADDITIONAL SENIOR CIVIL
JUDGE AND MACT-VII, AT VIJAYAPURA**

PRESENT: **Sri. MAHAJAN RAMESH APPASAB,**
B.A.,LL.B.,(SPL)
II Addl. Senior Civil Judge and
Member, MACT-VII, Vijayapura

DATED THIS THE 21st DAY OF APRIL, 2026

M.V.C.No.173/2024

PETITIONERS:

- 1. Chand Motilal Tamboli,**
Age; 32 years, Occ; Coolie,
R/o; Savleshwar, Mohal.
Dist; Solapur.
Present residing in Jal-Nagar, Vijayapur.

(Sri.A.C.Dharwadkar, Advocate for Petitioner)

///Versus///

RESPONDENT/S

- 1. Jyotirling Enterprises,**
Jyotirling Crane Services,
Solapur Pune Highway, MIDC Chincholi,
Solapur.
- 2. The Branch Manager,**
New India Assurance Co.Ltd.,
Gurukul Road, Vijayapura.
(Respondent No.1 remained exparte)

(Sri.S.V.Hajeri, Advocate for Respondent No.2)

JUDGMENT

This is a petition U/Sec.166 of M.V.Act seeking compensation on account of injuries sustained by the petitioner in Road Traffic Accident.

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

It is the case of the petitioner that on 17.05.2023 at around 1.30 p.m when the petitioner was working as Supervisor in Bharat Gas Company at Omkrishna Enterprises the Manager of the said Firm Chatursingh secured MH13/DB.8507/the Crane mounted vehicle for the purpose of work in GAS Company. The petitioner was taking delivery of cylinders from carriage in Bharat Gas company. At that time the driver of the Vehicle bearing Reg.No.MH.13/DT.8507 carelessly drove the Hydra Vehicle forward and ran over the front wheel of the vehicle on the left foot of the petitioner. Due to the same the petitioner suffered fracture of his left leg and received other injuries.

3. It is averred that the petitioner was taken Ravut Hospital, Solapur by Chatursingh his Manager, wherein

he took treatment for 10 to 15 days. It is averred that the Manager of Gas Company Chatur Singh and Rahul Jadhav gave him Rs.40,000/- towards Hospital Expenses and Rs.60,000/- as arrears of the Salary. It is averred that the Manager of the Gas Company assured payment of future Hospital Expenses and requested him not to file complaint with regard to the incident. Thereafter the petitioner incurred expenses of Rs.2,40,000/-, but the Manager of Bharat Gas Company did not pay the same. Hence the petitioner filed complaint about the accident on 22.12.2023.

4. It is averred that the Petitioner was aged 32 years as on the date of accident and was earning Rs.30,000/- per month. Due to accidental injuries the petitioner unable to do any kind of work, more particularly weighting heavy objects/cylinders etc., and he suffered permanent disablement. Accordingly the petitioner sought for compensation of Rs.21,00,000/- with interest at 18% per annum from the Respondents the owner and Insurers of Crane Mounted Vehicle bearing Reg.No.MH13/DT-8507.

5. Despite service of notice Respondent No.1 remained absent and he has been placed exparte.

Respondent No.2 filed written statement denying the petition averments. This Respondent has denied the accident and rash and negligent driving on the part of driver of the Vehicle bearing Reg.No.MH13/DT.8507. It is contended that there is delay of more than 5 months in filing the complaint and the petitioner colluding with Respondent No.1 and police authorities have falsely implicated the Insurance Vehicle in order to get wrongful compensation. It is contended that, Respondent No.1 has also violated the policy conditions and the driver of the vehicle was not holding effective Driving License. Hence the Company is not liable to pay compensation. Accordingly, this Respondent has prayed for dismissing the petition.

6. Based on the rival pleadings, this Tribunal has framed the following:

ISSUES

1. Whether the petitioner proves that he has sustained grievous injuries due to actionable negligent driving on the part of driver of the Hydra i.e., Crane

Mounted Vehicle bearing
Reg.No.MH13/DT.8507?

2. Whether the Respondent No.2 proves the violation of policy conditions by the Respondent No.2?
3. Whether the Respondent No.2 proves that the petition is barred by limitation?
4. Whether the Petitioner is entitled for the compensation? If so, who is liable and at what rate?
5. What Order or Award?

7. In order to prove his case the petitioner adduced his evidence as P.W.1 and placed on record Ex.P.1 to Ex.P.10. He also also adduced evidence of Doctor as P.W.2 and got marked Ex.P.11 and Ex.P.12. Respondent No.2 adduced evidence of its claim Officer as R.W.1 and placed Police at Ex.R.1.

8. I have heard the learned counsel for petitioner and Respondent No.2.

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

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|-------------|--|
| Issue No.1: | In the Affirmative, |
| Issue No.2: | In the Negative, |
| Issue No.3: | In the Negative, |
| Issue No.4: | partly in the Affirmative, |
| Issue No.5: | As per final order, for the following; |

R E A S O N S

10. ISSUE NO.1 : The facts of the case are narrated supra. It is the case of the petitioner that due to rash and negligent driving on the part of driver of the Vehicle bearing Reg.No.MH13/DT.8507 he suffered fracture injuries. The said fact has been denied by the Insurance Company. It is the specific contention of Respondent No.2 that petitioner colluding with Police and respondent No.1 filed false belated complaint implicating the insured vehicle.

11. In this background, in order to prove his case petitioner adduced his evidence as P.W.1. He has reiterated the entire petition averments in his examination. He has been cross-examined by learned counsel for Respondent No.2. It is not in dispute that the accident took place on 17.05.2023 whereas Ex.P.2 the complaint came to be registered on 22.12.2023.

12. P.W.1 has deposed about reason for delayed complaint. He has deposed that the Manager of Bharat Gas Company failed to bear Medical Expenses. Hence he filed complaint belatedly. This evidence of P.W.1 needs

appreciation in the light of Ex.P.3/MLC, Ex.P.6/MLC Intimation Letter. In both these documents there is clear reference of sustaining of fracture injuries by the Petitioner due to running over wheel of Crane on the leg of the petitioner on 17.05.2023.

13. The MLC was registered at 03.30 p.m on 17.05.2023 as can be gathered from Ex.P.4 and Ex.P.6 referred supra. These documents support the case of the petitioner about suffering accidental injuries by him. On going through the evidence of P.W.1 it can be discern that except denial nothing worth came to be elicited from the mouth of P.W.1 with regard to reason for delay in filling Ex.P.2/Complaint and Registration of Ex.P.1 First Information Statement. Further, in Ex.P.2 the Petitioner has clearly stated the reason for delayed complaint. Resultantly, the grievance of P.W.1 in the light of above referred documentary evidence appears to be plausible and it cannot be readily brushed aside. So delay alone cannot be made base to deny the case of petitioner in entirety.

14. The petitioner in order to prove the rash and negligent act on the part of driver of the offending vehicle has placed on record Ex.P.1 to Ex.P.6 Police records. The recitals of Ex.P.1 and 2 the FIR and FIS clearly reveal the negligent driving on the part of driver/Operator of Hyndra Crane Mounted vehicle and running over the wheel of the said vehicle on the leg of the petitioner. Ex.P.5 Charge-sheet also makes it clear that the IO after holding thorough investigation concluded about sole rash and negligent driving on the part of driver of the offending vehicle and causing of accident. Suffering of injuries in the accident can be gathered from Ex.P.4 Wound Certificate, Ex.P.6 MLC Intimation Letter and Ex.P.7 Discharge Summary. Accordingly, the petitioner has proved the negligent driving on the part of driver of the offending vehicle and causing of accident wherein he suffered grievous injuries. Hence, I answer Issue No.1 in the Affirmative.

15. **ISSUE NO.3:** It is the contention of the Respondent No.2 that the Petition is barred by limitation. Respondent No.2 has also filed the I.A.No.II

Under Order 7 Rule 11 of CPC R/w 166(3) of M.V.Act which came to be heard and decided on merits by this Court on 16.01.2025. The application seeking the rejection of the Petition filed by the Respondent No.2 was rejected and application filed Under Sec.5 of Limitation Act came to be allowed as per Order on I.A.No.I and II dated: 16.01.2025. In view of the matter, I answered this Issue No.3 in the Negative.

16. ISSUE NO.2 AND 4: Since the petitioner has sustained injuries in the Road Traffic Accident, he is entitled to compensation. In order to quantify the compensation, ascertaining age, occupation and income of the petitioner and sustaining of Disability etc., needs appreciation. In this regard, the petitioner has placed on record copy of his Aadhar Card wherein the date of birth of petitioner is shown as 19.05.1991. Hence on calculation the completed age of the petitioner comes to 32 years. Hence age of the petitioner is taken as 32 years as on the date of accident. The petitioner has not produced any material to show his monthly earning of Rs.30,000/- by working as Supervisor in Bharat Gas

Company. Accordingly, based on the Notional Income Chart of KSLSA, the income of the petitioner is taken at Rs.15,250/- per month.

17. Further, the completed age of the petitioner being 32 years, he is entitled to 40% of his notional income towards future prospects as per the Dictum of Hon'ble Supreme Court in Pranaya Sethi Case. $\text{Rs.15,250} \times 40\% / 100 = \text{Rs.6,100/-}$. Hence the monthly income of the petitioner comes to $\text{Rs.15,250} (+) \text{Rs.6,100/-} = \text{Rs.21,350/-}$ per month.

18. In order to substantiate the accidental injuries and sustaining of Disability the petitioner has placed on record Ex.P.4 MLC. Ex.P.7 (4) Discharge Summaries and Ex.P.11 Disability Certificate and X-Ray Films. The above referred documents needs appreciation in the light of oral evidence of P.W.1 and 2. P.W.1 has deposed about sustaining fracture of left foot and fracture of 2 to 5 metatarsal bones. Ex.P.7 Discharge Summaries also disclose fracture dislocation of left foot with fracture neck of 2 to 5 metatarsal bones.

19. Accordingly, in order to establish sustaining of disability due to accidental injuries, the petitioner has adduced evidence of P.W.2 Doctor who has issued Disability certificate as per Ex.P.11. P.W.2 has deposed about examination of petitioner and issuing Disability Certificate. He deposed about noticing left foot fracture and malunited fracture of 2 to 5 metatarsal bone. He has deposed about restriction of range of movements of Left ankle, left foot and difficulty of the petitioner in fast walking, running, squatting, kneeling etc., Accordingly, he opined 33% to 35% left lower limb Disability.

20. P.W.2 has assessed the disability to the particular Limb and not to the whole body. In the decision of Hon'ble High Court of Karnataka in **MFA No.202275/2023 (Jayashree V/s Mahaningappa)** it is held that in the absence of assessment of whole body disability, 1/3rd of Disability assessed to particular part of the body is to be considered as whole body disability.

21. Further, the evidence of Doctor and Ex.P.11 Disability Certificate disclose assessment of Physical Disability. Considering the nature of fracture injury

even the physical disability assessed by P.W.2 appears to be at higher side. That apart the physical disability cannot be equated with occupational disability. The petitioner has deposed that he used to work as Supervisor in Bharat Gas Agency. Accordingly, the petitioner may feel difficulty in lifting heavy objects, walking and standing on the affected limb.

22. Accordingly, considering the age and avocation of petitioner in the light of evidence of Doctor and observation of their Lordships in the above referred decision taking 6% Disability as Functional Disability to the whole body would meet the ends of justice.

23. As observed above the monthly income of the petitioner was Rs.21,350/-. Since, the petitioner is aged 32 years the relevant multiplier applicable to the petitioner is "16". Accordingly, the calculation of the loss of future prospects of the petitioner is as under; $\text{Rs.21,350/-} \times 16 \times 12 = \text{Rs.40,99,200/-}$, the 6% of the said income comes to Rs.2,45,952/-. Hence, on the head of permanent functional disablement and loss of future prospects claimant is entitled to Rs.2,45,952/-.

24. TOWARDS MEDICAL EXPENSES; The claimant has sought for Rs.6,00,000/- towards medical expenses and Rs.4,00,000/- towards Future Medical Expenses. To support his claim the claimant has produced (72) Medical Bills at Ex.P.9 worth Rs.1,61,668/-. He has also produced (10) X-Ray Films at Ex.P.10, Scanning Report Ex.P.8 and (4) Discharge Summaries at Ex.P.7. Accordingly, in the light of above Medical Records the Medical Bills produced by the petitioner cannot be doubted. Hence, the petitioner is entitled to compensation of Rs.1,61,668/-, towards medical expenses. The Petitioner has not produced any document to show taking follow up treatment and incurring expenses. Hence, he is not entitled to Future Medical Expenses.

25. TOWARDS PAIN, SUFFERING AND LOSS OF AMENITIES ETC; The petitioner has deposed about taking treatment at Raut Hospital, Solapur. In this regard he has placed on record Ex.P.7 Discharge Summaries. These documents reveal that petitioner was admitted on 17.05.2023 and Discharged on 26.05.2023.

Further, he again admitted on 16.06.2023 and got discharged on 19.06.2023. on 23.06.2023 he was again admitted and came to be discharged on 23.06.2023. Lastly, he was admitted on 28.10.2023 and Discharged on 29.10.2023. The Discharge Summaries would reveal that petitioner was admitted to the said Hospital and taken treatment for a prolonged period. Hence, considering the nature of injury sustained, suffering of pain, mental shock physical discomfort due to accidental injuries by the petitioner can be inferred. In view of the same, he is entitled to compensation of *Rs.40,000/- under the head of pain and suffering, loss of amenities.*

26. LOSS OF INCOME DURING LAID UP PERIOD; As noted above the petitioner admitted to Hospital for 4 times as can be gathered from Ex.P.7. He was hospitalized for a total period of 20 days. The healing of injuries and resuming of regular duties by the petitioner might have taken at least 6 months time in the light of prolonged treatment taken by the petitioner. In view of the same, he was not expected to undertake his regular

work for about 6 months. Hence, he is entitled to loss of income during the said period. As such, claimant is entitled to **Rs.21,350/- X 06 = Rs.1,28,100/-** under this head.

27. TOWARDS SPECIAL DIET, TRANSPORTATION AND

ATTENDANCE CHARGES:- As observed above the claimant has taken treatment as indoor patient for about 20 days. During the said period he was expected to have assistance of somebody. Hence, towards attendance charges claimant is entitled to 20 X 500 = Rs.10,000/- under this head. Further, the claimant was expected to incur expenses towards his transportation and special diet. Accordingly, an amount of Rs.6,000/- under this head would meet the ends of justice. Totally the claimant is entitled to Rs.16,000/- under these heads. The abstract of compensation payable to claimant is tabled hereunder for easy reference;

1.	Loss of income and Future prospects	Rs.2,45,952 /-
2.	Towards Medical expenses	Rs.1,61,668 /-
3.	Towards Pain, suffering and loss of amenities	Rs.40,000/-

4	Loss of income during laid up period	Rs.1,28,100 /-
5	Towards special diet, transportation and attendance charges	Rs.16,000/-
	Total	Rs.5,91,720/-

28. LIABILITY:-

As observed above, the accident was due to negligent driving on the part of driver of the Hydra Crane Mounted Vehicle bearing Reg.No.MH13/DT.8507. The said vehicle was insured with Respondent No.2 Company as can be gathered from Ex.R.1 Insurance Policy. Respondent No.2 even though contended about violation of policy conditions by Respondent No.1 but in order to substantiate the same no evidence is placed on record. On the other hand the Copy of Charge-sheet, disclose that the driver of the Charge-sheeted only for the offence punishable U/s 279,338 of IPC and Sec.184 of M.V.Act. Hence, the material infraction of the policy conditions as contended by Respondent No.2 sans merit and cannot be accepted. Hence, Respondent No.1 being the owner and Respondent NO.2 being the Insurer of the vehicle are jointly and severally liable to pay

compensation to the petitioner. With these observations, I answer Issue No.2 in the Negative and Issue No.4 Partly in the Affirmative.

29. **ISSUE NO.5:-** In view of my findings on above Issue No.1 to 4, I pass the following:-

:O R D E R:

The petition is partly allowed.

The petitioner is entitled to compensation amount of Rs.5,91,720/-(Rupees Five Lakhs Ninety One Thousand Seven Hundred and Twenty only) along with interest at the rate of 6% per annum from the date of petition till award.

Respondent No.1 and 2 are jointly and severally liable to pay compensation to the petitioner.

Respondent No.2 is directed to deposit the compensation amount within three months from the date of award, failing which the award amount shall carry further penal interest @ 3% per annum (i.e., 6 + 3 = 9%)

from the date of award till complete realization.

After deposit of compensation amount, 50% of Compensation amount shall be kept as FD in the name of petitioner in any nationalized Bank for the period of 3 years and remaining 50% of compensation amount shall released to the petitioner through K-2 bill on his proper identification .

Advocate fee is fixed at Rs.2,000/-.

Draw award accordingly.

(Dictated to the Stenographer through online, corrected, signed by me and then pronounced in the open Court on this the 21st Day of April, 2026)

(MAHAJAN RAMESH APPASAB)
II ADDITIONAL SENIOR CIVIL JUDGE
& MEMBER, MACT VII, VIJAYAPURA

A N N E X U R E

Witness examined for the petitioner:

P.W.1 Chand Motilal Tamboli,

P.W.2 Dr.Ravikumar Biradar,

Documents got marked for Petitioner:

Ex.P.1 Certified Copy of FIR,

Ex.P.1(a) Translated Copy,

Ex.P.2 Certified Copy of Complaint,
Ex.P.2(a) Translated Copy,
Ex.P.3 Certified Copy of Spot Panchanama,
Ex.P.3(a) Translated Copy,
Ex.P.4 Certified Copy of MLC Report,
Ex.P.5 Certified Copy of Charge-sheet,
Ex.P.5(a) Translated Copy,
Ex.P.6 Certified Copy of MLC Intimation letter,.
Ex.P.6(a) Translated Copy,
Ex.P.7 (4) Discharge Summaries,
Ex.P.8 (1) Scanning Report,
Ex.P.9 (72) Medical Bills,
Ex.P.10 (10) X-Ray Film,
Ex.P.11 Disability Certificate,
Ex.P.12 X-Ray Films,

Witness examined for the Respondents:

R.W.1 Sudhir S/o Narayanrao Korti,

Documents got marked for Respondents:

Ex.R.1 Copy of Insurance Policy,

II ADDITIONAL SENIOR CIVIL JUDGE
& MEMBER, MACT -VII, VIJAYAPURA