



**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE &
MEMBER MACT-IV., HOSAPETE.**

**PRESENT : Smt.Hullur Hemalata Basappa.
B.A. LL.B.,(Spl.)**

PRINCIPAL SENIOR CIVIL JUDGE & JMFC.,
HOSAPETE.

DATED THIS THE 27TH DAY OF NOVEMBER 2023,

M.V.C No.300 OF 2018

PETITIONER:

G.Hanumanthappa S/o Narayanappa, 40 years,
Hindu, Banana Vendor, R/o Byalakundi village in
Hosapete taluka and Ballari district.

(By Sri. B.H., Advocate)

- V E R S U S -

RESPONDENT/S:

1. Umesh Parihar S/o Ramattar Parihar,
aged about 35 years, Driver of Lorry bearing
Reg. No.MP-07/HB-2430, R/o Gosapura,
No.1 Mutavali Galli Ajmir, Gwalior, Madhya
Pradesh State.
2. Aravind Sharma S/o Shivasharana
Sharma, aged about 40 years, Super-wiser
M/s Swastik Road Lines Pvt. Ltd., Owner of
the Lorry bearing Reg. No.MP-07/HB-2430,
R/o A-19/415, Parking No.6, T.P.Nagara,
Godapura, Gwalior, Madhy Pradesh State.

3. The Divisional Manager, United Insurance Company Ltd., Policy issued at Gwalior, nearest Branch office at Station Road, Hosapete, (Policy No.1908003114P104601826, Valid from 20.09.2014 to 19.09.2015).

(R-1 & 2 – Exparte and & Sri. P.V.S.,/D.V.R., Advocates for R-3)

Date of institution of petition	07.03.2018
Nature of claim petition	Compensation for Grievous Injury
Date of commencement of recording evidence	10.08.2022
Date of Judgment	27.11.2023
Duration	Year/s Month/s Day/s 05 08 20

J U D G M E N T

This petition is filed by the petitioner u/S.166 of the M.V.Act claiming compensation of Rs.3,10,000/- with interest from the respondents in respect of bodily injuries sustained by him in the Motor Vehicle Accident that occurred on 14.10.2014.

2. **The brief facts of petitioner's case is that,** on 14.10.2014 at about 3-15 p.m. while the petitioner along with his friend Y.Mallesh was traveling in the motorcycle bearing Reg. No.KA-36/K-2175 to go to Bandri village to see the banana crop for their daily business purpose. The petitioner was riding his motorcycle with careful and cautious manner. When they reached near Thimmalapura village, at the same time the respondent No.1 drove the said lorry bearing Reg. No.MP-07/HB-2430 with rash and negligent manner from opposite side and dashed to the motorcycle and caused accident. Due to the said accident the petitioner and his friend were sustained grievous injuries and the petitioner sustained grievous injuries I.e fracture of 1st metatarsal and injuries all over the body. Immediately after the said accident the petitioner has been admitted to the Puttur hospital, wherein he has taken treatment for a period of one week. The petitioner incurred Rs.50,000/- towards his medical expenses.

2i. Further, prior to the accident the petitioner was hale and healthy and he was doing Banana vending business. The petitioner earning Rs.15,000/- per month and used to contribute his entire earnings to maintain his family, as he was only the earning member of the family, but due to the injuries sustained by him in the above said accident he is unable to do work as early to the said accident and lost his entire earnings.

2ii. The Mariyammanahalli Police have registered case against the respondent No.1 in Crime No.122/2014 and submitted charge sheet for the offences punishable Under Sections 279, 337 & 338 of I.P.C R/w Sec.187 of I.M.V Act against the driver of offending vehicle.

2iii. It is further contended that the respondent No.1 is the driver of the lorry bearing Reg. No.MP-07/HB-2430, respondent No.2 is the owner of the above said vehicle and

same is insured with the 3rd respondent company. The policy of said vehicle was current and in force as on the date of accident. Due to the rash and negligent act of the respondent No.1, the accident was occurred. Hence the respondents are jointly and severally liable to pay the compensation. Therefore prays for awarding compensation of Rs.3,10,000/- with interest from respondents.

3. After issuance of notices, respondent No.1 & 2 not appeared before this court hence, placed exparte and respondent No.3 appeared through his counsel and filed written statement.

3i. **The brief contents of written statement of respondent No.3 are as follows;**

The respondent No.3 denying the contents of petition averments, contended that same are false, vexatious and not maintainable either in law or on facts. Further submitted that the petition is bad for mis-joinder and non-

joinder of parties. The owner, driver and insurance company of opposite vehicle motorcycle bearing Reg.No.KA-36/K-2175 are also proper and necessary party in the proceedings and petitioner's negligence is also to be considered. They denied that the lorry bearing Reg. No. MP-07/HB-2430 is insured with this respondent company and the 2nd respondent is the insured owner of the vehicle. The petitioner has mentioned the policy number and was not tallied with this respondent company. This respondent came to know that, on the date of accident the Driver of the Lorry bearing Reg. No.MP-07/HB-2430 was not having valid and effective driving license to drive the category of the vehicle and respondent No.2 knowing fully well that the first respondent was not holding any valid and effective driving license to drive the said vehicle allowed him to drive the said vehicle and thereby willfully violated the terms and conditions of the policy and more particularly at driver's clause and the R.C., F.C and permit were also not in force

hence this respondent is not liable to pay any compensation. It is further submitted that, on the date of accident the rider of the motorcycle bearing Reg.No.KA-36/K-2175 was not having valid and effective driving license to drive the category of the vehicle. The owner of the vehicle has violated the policy conditions. Hence, the petition may be dismissed against this respondent and fix the liability against the opposite vehicle.

It is denied the petitioner was aged about 35 years and he was doing Banana vending business and he was earning Rs.15,000/- per month. It is submitted that, the petitioner has not submitted any documents to show that, he was aged about 35 years and his earnings. It is also denied that, due to the said accident the petitioner was sustained grievous injuries i.e., fracture of first metatarsal and sustained injuries all over the body, after the accident the petitioner took treatment at Puttur Hospital, and he

spent Rs.50,000/- towards medical expenses. As per the wound certificate the injuries are simple in nature.

3ii. It is further submitted that, due to the negligence of the petitioner and rider of the motorcycle the accident had occurred, but there was no negligence on the part of the respondent No.1. Hence the respondent No.3 company not to be held liable to pay the compensation. Further alleged that the petitioner has filed the present petition for wrongful gain seeking exorbitant compensation of Rs.3,10,000/- creating and concocting the story of a false and imaginary accident. Therefore the present petition is liable to be dismissed as against this respondent company. On these grounds prays for dismissal of the petition with costs.

4. On the basis of the pleadings, following issues have been framed as under;

ISSUES

1. Whether petitioner proves that, on 14.10.2014 at about 3-15 p.m, while he and his friend Y.Mallesh were proceeding on a Motorcycle bearing No.KA-36/K-2175 to go to Bandri village, and when they reached near Thimmalapura village, 1st respondent being the driver of Lorry bearing Regn. No.MP-07/HB-2430 drove it in rash and negligent manner with high speed and dashed to their motorcycle, as a result petitioner fell down and sustained injuries due to actionable negligence on part of respondent No.1 as alleged in the petition ?
2. Whether respondent No.3 proves that petition is bad for non-joinder of parties as alleged in para-1 of its written statement?
3. Whether respondent No.3 proves respondent No.1 driver of lorry had no valid and effective driving licence on the date of accident ?

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

5. What order or award ?

5. In order to prove his case, the petitioner himself examined as P.W.1 and got marked 7 documents at Ex.P.1 to P.7 and also one witness Dr. Mahanthappa as PW.2. On the other hand, Senior Assistant of Respondent No.3 company examined as R.W.1 and got marked 5 documents at Ex.R.1 to R.5.

6. Heard arguments of both sides. Perused the records.

7. My findings to the above Issues are as under:-

Issue No.1: In the Affirmative

Issue No.2: In the Negative

Issue No.3: In the Affirmative

Issue No.4: In the partly affirmative

Issue No.5: As per final order,
for the following ;

REASONS

8. **Issue No.1:-** The case of petitioner is that on 14.10.2014 at about 3-15 p.m. while the petitioner along with his friend Y.Mallesh were traveling in their motorcycle bearing Reg. No.KA-36/K-2175 to go to Bandri village to see the banana crop for their daily business purpose. The petitioner riding his motorcycle with careful and cautious manner and when they reached near Thimmalapura village, at the same time the respondent No.1 driven the said lorry bearing Reg. No.MP-07/HB-2430 with rash and negligent manner from opposite side and dashed to the motorcycle and caused accident. Due to the said accident the petitioner and his friend were sustained grievous injuries and due to the said accident the petitioner sustained grievous injuries i.e., fracture of first metatarsal and sustained injuries all over the body.

9. On the other hand, respondent No.3 contended that on the date of accident, due to the negligence of the petitioner and rider of the motorcycle the accident had occurred.

10. In support of his case, the petitioner got examined himself as P.W.1 by filing evidence affidavit wherein he reiterated the petition averments and got marked 7 documents as per Ex.P.1 to 7. Ex.P.1 is certified copy of FIR & complaint, which is registered against driver of Lorry bearing Reg.No.MP-07/HB-2430 for the offences punishable u/S.279, 337 & 338 of IPC and Sec.187 of IMV Act. Ex.P.2 is certified copy of charge sheet, wherein the driver of the Lorry has been charge sheeted for the offences punishable under Sec.279, 338 of IPC. And 187 of IMV Act Ex.P.3 is certified copy of spot panchanama, Ex.P.4 is certified copy of IMV Report.Ex.P.5 is Wound certificate. Ex.P.6 is the certified copy of order sheet in CC No.474/2014. Ex.P.7 is the police imitation.

11. In the cross examination PW-1 denied the suggestion that on the date of accident he was not possessing D.L. and that due to his negligence the accident had occurred. Apart from that, the respondent has not disputed the EX-P.1 to 7. All these documents sufficiently disclose that in respect of the accident claimed by the petitioner, the Marriyammanahalli Police, have registered the case and filed a charge sheet against the 1st respondent only. Therefore, I hold that petitioner proved that the accident is occurred due to the rash and negligent act of 1st respondent in driving of aforesaid Lorry . **Accordingly Issue No.1 is answered in the “Affirmative”.**

12. **Issue No.2** : The respondent No.3 contended that the two vehicles are involved in the accident but the owner and the insurer of other vehicle involved in the accident are not made as parties in the petition. Hence, the petition is bad for non-joinder of necessary parties. It is to be noted that

neither FIR is lodged nor Mariyammanahalli police submitted charge-sheet against the rider of the Motor cycle and moreover, the respondent No.3 has not proved the negligence on the part of the petitioner for the accident. In the said event the owner and insurer of the said vehicle cannot be held to be necessary parties to the petition.

Accordingly Issue No.2 is answered in the Negative.

13. **Issue No.3:** The respondent No.3 contended that the driver of offending vehicle was not having valid and effective D.L. to drive the offending vehicle on the date of accident. They alleged that the respondent No.2 owner of the offending Lorry has allowed the respondent no.1 who was not possessing the driving licence to drive the Lorry. In this regard they have examined the Senior Assistant Nagabhusan as RW-1 wherein he reiterated the said fact and also stated that they have given the notice under Order 12 Rule 11 CPC through RPAD on 22.10.2022 and same

was received by the respondent No.2/ the owner of Lorry on 11.11.2022 but he failed to produce the same. In this regard he has produced the notice copy as per Ex.R.3 and acknowledgment as per Ex.R.4 and track consignment as per Ex.R.5. Though RW-1 was cross examined by counsel for the petitioner nothing worth has been elicited to disprove the contention of the respondent No.3. So from the evidence of respondent no.3 it is clear that, the respondent No.2 despite of receipt of notice has not produced the D.L. of the driver of the offending vehicle. So it is inferred that driver was not possessing the vehicle as on the date of accident. Hence, I **answered issue No.3 in the Affirmative.**

14. **Issue No.4:** The petitioner contended that due to the injuries sustained in the accident he has taken treatment and at Puttur hospital and Government Hospital and has spent Rs 50,000/- towards medical expenses.

a) To substantiate the same, he relied on Ex.P.5 the wound certificate wherein, it shows he sustained injuries viz, 1) Fracture I st metatarsal 2) medical malicious ankle The injuries are said to be grievous in nature. PW -1 has also produced the the disability certificate as per Ex.P-8 and x-rays as per Ex.P-9. He has also adduced the evidence of Dr Mahanthappa as PW-2 . He deposed that the petitioner approached him on 4-7-2019 for the issuance of disability certificate for the injuries sustained by him in RTA. He has examined him clinically and radiologically and after going through the wound certificate and medical records, he found medical and malicious of ankle. Due to the injuries the petitioner is not able to do his routine work and faces in difficulty as before the accident and facing difficulty in carrying out profession and considering the age and he has estimated the disability as 23% .

During the cross examination, though PW-2 stated that he has given follow-up treatment to the petitioner

apart from issuing the disability certificate, but he admits that the petitioner had come before him for the disability after 8 years of accident. Most importantly, the petitioner has not placed documents viz, case sheet or discharge summary to show what nature of treatment was taken him and how many days he has taken treatment in the hospital as inpatient. In the absence of the said documents, only on the wound certificate and disability certificate, it is not possible to estimate the disability of the petitioner, The doctor/PW.2 has estimated the disability at 23%, But on what basis he is estimated the disability is not forthcoming. In the cross examination though for the question that there is no difficulty for the petitioner in carrying out his routine work but he states that he may limp, however he admits that there is no difficulty in carrying out his professional work of Banana vending business. In the said circumstances the question of disability to petitioner does not arise. Therefore, it cannot be held that the petitioner

has sustained disability for the injuries sustained in the accident. Hence looking to nature of injuries sustained and also pain and suffering undergone by the petitioner, it is held that it is just and proper to award global compensation of Rs.50,000/- for aforesaid grievous injuries to the petitioner.

b) MEDICAL EXPENSES:- The petitioner has not produced any medical bills but he has only produced the medical bill of the X-rays of Rs.450/-. On calculation of Medical bill, it is amounting to Rs.450/-. Hence, petitioner may be awarded Rs.450/- towards medical expenses as per above documents. Therefore the petitioner is awarded with total compensation of Rs.50,450/- along with interest at the rate of 6% p.a. from the date of petition till the date of deposit.

15. **As regards the liability**, the respondent No.1 is the driver, respondent No.2 is the owner, and respondent No.3 insurer of the offending vehicle. The accident had occurred

due to the negligent driving of the respondent No.1. Admittedly the driver of the offending vehicle was not having D.L. at the time of accident. Hence, the respondent No.2 being the owner is liable to pay the compensation. Accordingly, I answer the **issue No.4 partly in the affirmative.**

16. **Issue No.5:** For the foregoing reasons and the finding given on the above issues, I proceed to pass the following;

: O R D E R :

The petition filed by the petitioner u/s.166 of M.V.Act is hereby partly allowed with costs.

The petitioner is entitled for compensation of Rs.**50,450/-** (Fifty thousand four hundred and fifty only) along with interest at 6% per annum from the date of the petition till the date of deposit.

The respondent being the owner of the offending vehicle shall deposit the award amount within 30 days from the date of judgment.

The petition against respondent No.3 stands dismissed.

The entire compensation amount awarded to the petitioner shall be released to him as same is meagre.

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

Draw award accordingly.

(Dictated to the stenographer directly on computer, transcribed by her, corrected and revised, signed and then pronounced in open court by me on this **27th day of November 2023**)

(Smt. Hullur Hemalata Basappa.)
Prl. Senior Civil Judge & J.M.F.C.,
-cum Member, MACT-IV, Hosapete.

ANNEXURE**LIST OF WITNESSES EXAMINED FOR PETITIONER:**

PW.1 : G.Hanumanthappa

LIST OF DOCUMENTS MARKED FOR PETITIONER: -

Ex.P.1 : CC of FIR and complaint
Ex.P.2 : CC of Charge sheet
Ex.P.3 : CC of spot panchanama
Ex.P.4 : CC of IMV Report
Ex.P.5 : CC of wound certificate,
Ex.P.6 : CC of order sheet in C.C.No.474/2014,
Ex.P.7 : CC of police notice in Crime No.122/2014,

LIST OF WITNESSES EXAMINED FOR RESPONDENTS :-

RW.1 : S.G. Nagabhushana.

LIST OF DOCUMENTS MARKED FOR RESPONDENTS :-

Ex.R.1 : Authorization letter dated 21.07.2023
Ex.R.2 : Certified copy of the policy,
Ex.R.3 : Notice U/o 12 Rule 8 of CPC issued to
respondent No.2
Ex.R.4 : Postal receipt
Ex.R.5 : Track consignment.

**Prl.Sr. Civil Judge & JMFC,
Member, MACT-IV, Hosapete.**

Order pronounced in the open court,
vide separate Judgment.

ORDER

The petition filed by the petitioner u/s.166 of M.V.Act is hereby partly allowed with costs.

The petitioner is entitled for compensation of Rs.**50,450/-** (Fifty thousand four hundred and fifty only) along with interest at 6% per annum from the date of the petition till the date of deposit.

The respondent being the owner of the offending vehicle shall deposit the award amount within 30 days from the date of judgment.

The petition against respondent No.3 stands dismissed.

The entire compensation amount awarded to the petitioner shall be released to him as same is meagre.

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

Draw award accordingly.

**Prl.Sr. Civil Judge & JMFC,
Member, MACT-IV, Hosapete.**