

KABC020001362021



**BEFORE MOTOR VEHICLES ACCIDENT CLAIMS
TRIBUNAL, BENGALURU CITY
SCCH-4**

PRESENT: RAJU.M.., M.A., LL.B.,
Member, MACT
XVIII ADDL. JUDGE,
Court of Small Causes,
BENGALURU.

Dated this the 05th day of August-2023

MVC No.55/2021

PETITIONER:

Sri.Shivakumara,
S/o Late Chowdaiah,
Aged about 37 years,
R/o Chowdanayakanahalli
village,
Huthridurga Hobli,
Kunigal Taluk,
Tumkur District.

(By Sri. G.P. Shivaprasad,Adv.,)

V/s

RESPONDENTS:

1. Bhavya.B.R.
W/o Chandregowda,
R/o Bittagowdanahalli,
Mavanoor Post,

Holenarasipura Taluk,
Hassan District.

(By Sri.H.J.Ananda, Adv.,)

2. The Oriental Insurance
Company Ltd.,
No.663, 1st Floor, 1st Main,
Defence Colony, 100 Ft road,
Indiranagar 1st Stage,
Bengaluru-560 038.

(By Sri.Udayakrishna, Adv.,)

JUDGMENT

The petitioner has filed this petition U/Sec.166 of the Motor Vehicles Act claiming compensation for the injuries sustained by him in a road traffic accident that occurred on 21.07.2014

2. The petition averments in brief are as under:

On 21.07.2014 at about 5.00 p.m., the petitioner was riding his bike bearing Reg.No.KA-02-EF-7140 along with one pillion rider by name Jagadish from Anchepalya towards Yaliyur side, while so riding his bike near

Honnadevi Temple, Kallanayakanahalli, at that point of time one Lorry bearing Reg.No.KA-06-B-8011 was driven by its driver in a rash and negligent manner from Yaliyur side towards Anchepalya side and took his lorry to the extreme right of said road for to over take another fore going vehicle and dashed against the bike in which petitioner was riding and caused this accident. Due to the impact petitioner has sustained grievous injuries.

Immediately after the accident, the petitioner was shifted to nearby CHC Kunigal where in he was taken first aid and thereafter he was shifted to NIMHANS Hospital, Bengaluru wherein he was referred to KIMS Hospital, Bengaluru wherein he was admitted as an inpatient and he has spent a sum of Rs.2,00,000/- towards hospital charges, medicines, conveyance and nourishing food and attendants charges etc.,

Prior to the accident, petitioner was very hale and healthy and he was doing Electrical and Plumbing work and he was earning more than Rs.5,00/- per day. Due to the accidental injuries petitioner is not able to continue his work and is under complete bed rest and he is suffering from permanent disability.

The respondent No.1 and 2 are the owner and insurer of the lorry bearing Reg.No.KA-06-B-8011, they are jointly severally liable to pay the compensation to the petitioner. Hence, prays to award compensation of Rs.15,00,000/- with interest.

3. After service of notices the respondent No.1 and 2 have entered appearance through their advocates and filed their separate objection statement.

The respondent No.1, in the written statement has admitted that he was the RC owner of the lorry bearing Reg. No.KA-06-B-8011 and he has sold the above stated

vehicle long back. This respondent has entrusted the above vehicle to the driver by name Keshave Gowda S.P. and the driver was having valid driving license to drive the LMV-Non transport, LMV transport, PSV bus and was also having the Hazardus license to drive the tanker lorry. Further contended that, the lorry was entrusted to the driver holding the valid driving license. Further contended that, the permit was in force till 19.05.2019. Further contended that, the insurance policy was in force as on the date of the accident.

The respondent No.2 in its written statement contended that, there is negligence on the part of the petitioner himself to ride the bike bearing Reg.No.KA-02-EF-7140 along with pillion rider. Further contended that, the rider of the bike and driver of the lorry were not holding valid and effective driving license at the time of the accident.

Further both respondents have denied the age, avocation and income of the petitioner. The compensation has claimed by the petitioner is highly excessive and exorbitant. Hence, the respondent No.1 and 2 have prays to dismiss the petition with cost.

4. On the basis of the rival contention, the following issues arise for my consideration:

1. Whether the petitioner proves that, he has sustained grievous injuries due to the actionable negligent driving of Lorry bearing Reg.No.KA-06-B-8011 by its driver, in RTA took place on 21.07.2014 at 5.00 p.m., on Anchepalya-Yaliyur Road, Kallanayakanahalli?

2. Whether the respondent No.1 prove that the petitioner has filed another claim petition in MVC No.353/2015 before MACT Kunigal and received compensation in that petition?

3. Whether respondent No.2 prove that, petition is bad for non joinder of necessary parties?

4. Whether the respondent No.2 prove that, the driver of the lorry did not posses the valid driving license on the date of alleged accident?

5. Whether the petitioner is entitled for compensation? If so, what amount and from whom?

6. What Order or Award?

5. In order to prove the claim petition, the petitioner is examined as P.W.1 and got marked the documents at Ex.P.1 to 10. The advocate for respondent No.2 has submitted no evidence on their behalf but with consent of advocate for petitioner insurance policy is marked at Ex.R.1.

6. I have heard the arguments of both sides and perused the material evidence that are available on record.

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

Issue No.1	:	In the affirmative;
Issue No.2	:	In the negative,

Issue No.3 : In the negative
Issue No.4 : In the negative
Issue No.5 : Partly in the affirmative,
Issue No.6 : As per the final orders
for the following:-

: REASONS:

ISSUE NO.1 :

8. That by reiterating all the averments made in the petition, the petitioner has filed his affidavit in lieu of chief-examination which is considered as P.W.1. In support of his case, he has produced certified copies of FIR, complaint, 2 spot mahazar, IMV report, wound certificate and charge sheet. All these documents are marked under Ex.P.1 to P.6. As per these documents, H.G.Shivaramaiah S/o Gangaih has lodged a complaint with Kunigal Police on 22.07.2014 alleging that on the same day at about 5.00 p.m., the complainant was proceeding on his motor cycle when, he reached near Honnadevi temple Kallanayakanahalli village, the driver

of the lorry bearing Reg.No.KA-06-B-8011 came in rash and negligent manner and hit the motor cycle bearing Reg.No.KA-02-EF-7140. In the said accident, the rider and pillion of the motor cycle sustained injury, then the complainant came to know that rider name is Jagadish and pillion rider name is Shivakauamara and they were shifted to Kunigal Government Hospital.

9. Upon receiving the complaint the police have registered FIR against the driver of the lorry. Thereafter, the police have visited the place of the accident and drawn spot mahazar on 22.07.2014 and seized the alleged offending lorry. The damages caused to both the vehicles are also noted in the IMV report. As per the wound certificate produced by the petitioner, the petitioner took treatment on the next date of the accident. The injuries caused to him is also noted in the wound certificate.

10. The jurisdictional police after completion of investigation have filed charge sheet against Keshava Gowda S.K. @ Murthy, for offences punishable under Sec. 279 & 338 (A) of IPC. The allegation made in the charge sheet is also as in the line of complaint lodged to the police.

11. The respondent No.1 is not contesting the claim petition. Though the respondent No.2 has filed statement of objection to the main petition and denied the claim of the petitioner but this respondent also did not entered the witness box to adduce evidence. The documents as well as oral evidence of petitioner reflects that, the accident was occurred on 21.07.2014 at 5.00 p.m., the complaint is lodged on the next day of the accident. In the complaint itself the vehicle number which has caused the accident is mentioned specifically. On the date of the registration of FIR itself the police

conducted spot mahazar and also seized the vehicles involved in the accident. Moreover, the damages caused to both the vehicles are also mentioned in the IMV report. All these aspect have not impeached on behalf of the respondents. Of course the petitioner has filed the claim petition after lapse nearly seven years but there was no limitation under law to file the claim petition in the year 2021.

12. In the claim petition like the present one strict proof is not necessary but preponderance of probabilities is sufficient. The documentary as well as oral evidence of petitioner is not impeached .All the materials available on record leading to show that, petitioner has sustained injuries in the accident took place on 21.07.2014. There no reasons to discard the evidence of petitioner.

Accordingly, I answer issue No.1 in the affirmative.

ISSUE NO.2:

13. The respondent has taken up contention that, the petitioner has filed one more claim petition in MVC No.355/2015 before the MACT Kunigal. The counsel for petitioner has filed certified copies of the claim petition and order sheet of that case which disclose that, the petitioner counsel got dismissed the petition in MVC No.355/2015. Hence, the contention of respondent No.1 is not accepted. **Accordingly, I answer issue No.2 in the Negative.**

ISSUE NO.3 and 4:

14. Though the respondent No.2 has taken up defence that, petition is bad for non joinder of necessary parties and the driver of lorry did not possess the valid driving license but the respondent No.2 did not adduced any evidence. Without any material evidence on record the contention of the respondent No.2 about issue No.3

and 4 is also not accepted. **Accordingly, I answer issue No.3 and 4 in the Negative.**

ISSUE NO.5:

15. As already held herein above, the petitioner has proved that he has sustained injuries in RTA which is caused by the vehicle of respondent No.1. Hence, the petitioner is entitle for compensation. Now the quantum of compensation is to be ascertained on different heads.

16. According to the petitioner he has sustained head injury left hand left knee injuries abrasion right ear bleed.

17. The petitioner, to prove that he sustained abrasion present over nose and upper lip, tenderness present over frontal region of head and tenderness and swelling present over left side of chest, right frontal small contusion, left temporal linear fracture and fracture left posterior 2nd 3rd 4th 5th and 6th ribs. The petitioner is not

examined the treated doctor or any other doctor and disability certificate is also not produced. Without the evidence of doctor it is not possible to believe that, the petitioner has sustained any grievous injuries. Hence, the petitioner is not entitle for future loss of income.

18. In the petition the petitioner has stated that, he has spent Rs.2,00,000/- towards medical and other expenses.

19. The petitioner has also produced discharge summaries marked at Ex.P.8 wherein he was admitted as an inpatient for a period of 8 day. Further the petitioner has also produced medical bills marked at Ex.P.10 for Rs.41,028/-.

20. Looking to the injuries sustained, duration of treatment taken by the petitioner and medical expenses, it is just and proper to award Global compensation of

Rs.1,50,000/-. Hence issue No.5 **is answered partly in the affirmative.**

21. Admittedly the respondent No.1 and 2 are the owner and insurer of the offending vehicle. Hence, the respondent No.1 and 2 are jointly and severally liable to pay the compensation to the petitioner and the respondent No.2 insurance company shall indemnify the compensation on behalf of the respondent No.1 with interest at the rate of 6% p.a., **Accordingly, I answer this issue partly in the affirmative.**

ISSUE NO.6:

22. For the foregoing reasons, I proceed to pass the following:

ORDER

The petition filed by the petitioner U/s 166 of the Motor Vehicles Act is hereby partly allowed with cost.

The petitioner is entitled for total compensation amount of **Rs.1,50,000/- (Rupees One Lakhs Fifty Thousand Only)** with interest at the rate of **6% p.a.**, from the date of petition till the realization from respondents.

The respondent No.2 shall deposit the compensation amount within 60 days from the date of this order.

Considering the quantum of amount awarded to the petitioner it is order to release the entire amount.

Advocate fee is fixed at 1,500/-.

Draw up award accordingly.

(Dictated to the Stenographer, transcribed by her, the transcript corrected and then pronounced by me in the open court on this the 5th day of August, 2023)

(RAJU.M)

XVIII ADDL.JUDGE

*Court of Small Causes & MACT.,
Bengaluru.*

ANNEXURE

List of witnesses examined for petitioners:

PW.1 Sri.Shivakumar @ Kumar

List of documents marked on behalf of the petitioners:

Ex.P1	True copy of FIR
Ex.P2	True copy of Complaint

Ex.P3	True copy of 2 Spot Mahazar
Ex.P4	True copy of IMV Report
Ex.P5	True copy of Wound Certificate
Ex.P6	True copy of Charge Sheet
Ex.P7	Notarized copy of my Aadhar Card
Ex.P8	2 Discharge Summaries
Ex.P9	Medical prescriptions 8 in nos and lab reports
Ex.P10	33 Medical bills

List of witnesses examined for Respondents:

-NIL-

List of documents marked on behalf of the Respondents:

Ex.R.1 Insurance Policy

*XVIII ADDL.JUDGE
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