

KABC0B0004142023



BEFORE THE MACT & XV ADDL., JUDGE,
COURT OF SMALL CAUSES (SCCH-19) ,
MAYO HALL UNIT, BENGALURU.

Dated this the 19th day of January 2024

Present: **Smt. Rajeshwari-J-Puranik,**
B.A.LL.B. (Spl.)
XV Addl. Small Causes Judge
& XXIII ACMM, Bengaluru

MVC.No.1682/2023

Petitioner: Mr. Surya .M.
S/o R. Manjunath,
Aged 19 years,
R/at No.518, 1st A Block,
2nd Main Road, D group layout,
Near Karnataka Bank,
Andrahalli Main road,
Bangalore – 560091.
(By Pleader Sri. B.S.Devaraju)

-V/s-

Respondent: Mr. Vinod .K.N.
S/o Konari Gowda,
aged 36 years,
R/at No.85, 3rd Main road,
3rd Cross, Mallathahalli,
Nagarabhavi,
Bangalore– 560056.
(RC Owner of the Car bearing
Reg.No.KA-01/MQ-6097)

(Pleader by Sri.N.Shivakumar)

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JUDGMENT

The Petitioner filed this petition under Sec.166 of Motor Vehicles Act 1989 claiming compensation from the respondents due to injuries sustained in a road traffic accident.

2. Brief facts of Petitioner's case, are as under:

On 16-02-2023 at about 04.00 p.m, the Petitioner was proceeding as a Pillion rider in a Motor cycle bearing Reg.No.KA-02/JD-6669 along with his friend Harsha .D. The rider of the said motor cycle rode the same slowly and cautiously. On Archarya College road, Ahdrahalli, Bangalore proceeding towards D.GrouOp layout when they reached near Lingadeeranahalli circle, Opp. Ganesh fruits and chats, at that time, driver of one Mahindra XUV 500 Car bearing Reg.No. KA-01/MQ-6097 drove the same in a rash and negligent manner so as to endangering to human life, came at a high speed and dashed against the Petitioner's motor cycle. As a result of forced impact, the Petitioner fell down and sustained grievous injuries.

3. Immediately after the accident, the Petitioner was shifted to Unity Lifeline Hospital Bangalore for first aid, then he was shifted to Gurushree Hi – Tech Multi Speciality hospital, Bangalore wherein, he took treatment as an inpatient and spent Rs.2,00,000/- towards medical expenses, transportation, conveyance, food and other charges. He has to incur future medical expenses.

4. It is contended that, this accident occurred due to rash and negligent driving of the driver of the Mahindra XUV 500 Car bearing Reg.No. KA-01/MQ-6097, hence, the Kamakshi Palya Traffic Police registered a case against driver of said vehicle in crime No.47/2023.

5. It is contended that, due to accidental injuries he is not able to lead his normal life as earlier and also not able to do physical and manual work as earlier. The Petitioner had lost his academic year.

6. Respondent is the RC owner of the offending vehicle is liable to pay compensation

to the Petitioner. Hence, prays to grant compensation.

7. In pursuance to the notice, Respondent appeared through his Counsel. But, inspite of granting sufficient time, the Respondent had not filed written statement.

8. The Points that arise for my consideration are as under:

POINTS

1. Whether the Petitioner proves that, on 16-02-2023 at about 04.00 p.m, he was proceeding as a Pillion rider in a Motor cycle bearing Reg.No.KA-02/JD-6669 along with his friend Harsha .D. The rider of the said motor cycle rode the same slowly and cautiously on Acharya College road, Andrahalli, Bangalore proceeding towards D.Group layout when they reached near Lingadeeranahalli circle, Opp. Ganesh fruits and chats, at that time, driver of one Mahindra XUV 500 Car bearing Reg.No. KA-01/MQ-6097 drove the same in a rash and negligent manner so as to endangering to human life, came at a high speed and dashed against the Petitioner's motor cycle. As a result of forced impact, the Petitioner fell down and sustained grievous injuries?

2. Whether the Petitioners are entitled for compensation? If so, to what amount and from whom?

3. Whether order or award?

9. In order to substantiate the case, Petitioner got examined himself as PW.1 and examined two witness as PW.2 and PW.3. They got marked 23 documents as Ex.P1 to Ex.P23. The Respondent had not adduced the evidence.

10. Heard the arguments and Perused the materials available on record.

11. For the following reasons, I answer the above Points as under:-

Point No.1: In the Affirmative,
Point No.2: Partly in the Affirmative
Point No.3: As per final order
for the following:

REASONS

12. **Point No.1:-** It is specific case of the Petitioner that, Petitioner filed this petition against Respondent for claiming compensation due to injuries sustained in a road traffic accident.

13. The Petitioner Sri.Surya R.M. got examined himself as Pw.1 and filed affidavit in lieu of chief examination and in his chief affidavit of examination in chief he had

reiterated the averments of petition and got marked **15** documents as Ex.P1 to Ex.P15.

14. Ex.P1 is the Copy of F.I.R., Ex.P2 & 3 are the Copy of Statements, Ex.P4 is the Copy of Sketch, Ex.P5 is the Copy of Spot Mahazar, Ex.P6 is the Copy of Police intimation, Ex.P7 is the Copy of Wound Certificate, Ex.P8 is the Copy of notice U/sec.133 of IMV Act, Ex.P9 is the Copy of reply to the notice U/sec.133 of IMV Act, Ex.P10 is the Copy of Charge sheet, Ex.P11 is notarized copy of Aadhaar card, Ex.P12 is notarized copy of College ID card, Ex.P13 is the Medical bills, Ex.P14 is the Prescriptions and Ex.P15 is the X-rays.

15. Kum. Asha .C. working as Medical Records Officer at Gurushree Hi-Tech Multi Specialty Hospital, Bangalore is examined as Pw.2 and got marked 6 documents as Ex.P16 to P21. Ex.P16 is the Authorization letter, Ex.P17 is Inpatient record, Ex.P18 is the Copy of Police intimation, Ex.P19 is the Copy of MLC extract, Ex.P20 is the Discharge summary and Ex.P21 is the X-rays.

16. Dr.S.A.Somashekar the Orthopaedic Surgeon at Bowring and Lady Curzon Hospital, Bangalore got examined as Pw.3 and got marked two documents as Ex.P22 and 23. Ex.P22 is the OP Card with examination report and Ex.P23 is the X-ray.

17. On perusal of spot sketch and Charge sheet which appears that, near Lingadeeranahalli Circle, Opp.Ganesh fruits and chats, when the Petitioner was proceeding as Pillion rider in a motor cycle from Acharya College side towards D.Group layout, at that time driver of Mahindra XUV 500 Car bearing No.KA-01/MQ-6097 came from Andrahalli Main road, and took right side and dashed the Petitioner's motor cycle and caused the accident. In this regard the Kamakshipalya Police issued Notice to the Owner of offending vehicle, as per Ex.P8 and the Owner also replied the said notice as per Ex.P9. Hence, Kamakshipalya Traffic Police filed Charge sheet against driver of the offending vehicle.

18. In the petition for compensation U/Sec.166 of Motor Vehicles Act.1988 the

claimant has to prove the incident only on the preponderance of the probabilities and standard of proof beyond all reasonable doubt is not required as held by the Hon'ble APEX Court in the decision reported in 2011 SAR(Civil) 319 **Kausum and others V/s Satbir and others.**

The so-called reason that as the name of Dheeraj Kumar was not mentioned in the FIR, so it was not possible for Dheeraj Kumar to see the incident, is not a proper assessment of the fact-situation in this case. It is well known that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind.

10. Reference in this connection may be made to the decision of this Court in *Bimla Devi and others V/s Himachal Road Transport Corporation and others* (2009) 13 SCC 530, in which the relevant observation on this point has been made and which is very pertinent and is quoted below:-

"In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touch stone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."

19. After careful scrutiny of Ex.P1 - F.I.R., Ex.P2 & 3 Statements, Ex.P4 - Spot Sketch, Ex.P5 - Spot Mahazar, Ex.P6 - Police Intimation, Ex.P7 - Wound Certificate, Ex.P8 - Notice U/sec.133 of IMV Act and Ex.P9 - Reply to the notice U/sec.133 of IMV Act & Ex.P10 - Charge sheet it appears that, the accident occurred due to rash and negligent driving of the driver of Mahindra XUV 500 Car bearing No.KA-01/MQ-6097. Accordingly, I answer the Issue No.1 in the Affirmative.

20. **Issue No.2:-** The Petitioner claimed the compensation amount of Rs.20,00,000/-. Ex.P7 is the Wound certificate the Petitioner sustained following injury:

Abrasion over left ankle lateral malleolus and left shoulder.

X-ray – Comminuted left tibia fracture.

The doctor opined that, above said injuries are grievous in nature. Hence, by considering the nature of injuries sustained by the Petitioner, I am of the opinion that, the Petitioner is entitled for amount of **Rs.50,000/-** as reasonable compensation under the head of pain and suffering.

21. The Petitioner produced medical bills and hospital bills which are marked as Ex.P13. The name of Petitioner is not in Sl.No.5, hence said bill is not taken into consideration. There is no any contradictions to disbelieve the other bills produced by the Petitioner. The Petitioner not got marked the discharge summary. However by considering the documents produced by the Petitioner and medical bills, this tribunal awarded reasonable compensation of **Rs.25,000/-** under the head **Medical** expenses, Transportation, food, Nourishment and conveyance charges.

22. To prove the assessment of disability, the Petitioner got examined one Doctor Somashekar .S.A. as Pw-3. In the chief examination affidavit the doctor deposed that, the Petitioner underwent surgery in the form of ORIF with IMIL nail done under SAB on 17-02-2023. On examination he walks with pain and limping, Wasting of left lower limb is seen and Surgical scars are seen over left knee and leg. The doctor assessed the total disability of lower limb at 32% and that of to the whole body of the Petitioner at **16%**. However by considering

the nature of the injury and evidence of the doctor, this Tribunal had taken the disability of the Petitioner at **10%** to the whole body.

23. It is contended that prior to the accident, the petitioner was student and also working as milk delivery boy by profession and was earning rs.20,000/- per month. The Petitioner had not produced any document to prove his income and avocation. In present days a Coolie worker get Rs.500/- to 600/- per day. However by considering the age and occupation of petitioner this Tribunal has taken the monthly income of the Petitioner at **Rs.14,000/-**.

24. As per Ex.P11 Notarized Copy of Aadhaar card, date of birth of the Petitioner is shown as 24-01-2004. Therefore, age of the Petitioner is taken as **19** years at the time of accident. Then the proper multiplier applicable is **18** which comes as follows:

$$Rs.14,000 \times 12 \times 18 \times 10\% = Rs.3,02,400 \text{ /-}$$

Hence, I award **Rs.3,02,400/-** under the head loss of future earning capacity on account of disability.

25. Towards future medication, the Doctor deposed in chief examination affidavit that, the Petitioner needs surgery for removal of implant, which would cost around Rs.30,000/- in private set up. Neither the Petitioner nor the doctor had produced estimation for future medication. However, by considering the nature of injury and evidence of doctor this tribunal awarded **Rs.20,000/-** under the head future medical expenses. (which does not carry any interest).

26. The Petitioner was a Student and also doing Milk delivery boy work and due to accidental injuries his routine work was hampered for some days. Therefore, by considering this aspect and the nature of injuries sustained by the Petitioner, this tribunal awarded the amount of **Rs.20,000/-** as reasonable compensation under the head of loss of amenities.

27. Considering oral evidence coupled with documentary evidence, it is just and proper to grant compensation as follows:

Under the Heads	Amount	
Pain and sufferings	Rs.	50,000-00
Towards Medical expenses, Transportation, food, Nourishment, Conveyance and attendant charges.	Rs.	25,000-00
Towards future loss of income on account of permanent disability	Rs.	3,02,400-00
Towards future medical expenses	Rs.	20,000-00
Towards loss of amenities of life	Rs.	20,000-00
Total	Rs.	4,17,400-00

The Petitioner is entitled for total compensation of **Rs.4,17,400/-**.

28. Interest:

For awarding interest, in MFA.No.103557/2016 (between Sriram General Insurance Co. ltd., V/s Smt. Lakshmi & others, dd 20-03-2018) the Hon'ble High Court of Karnataka, held that as per Sec.34 of CPC the rate of interest can be awarded in MVC Cases, cannot be more than **6% p.a.** Hence, I am of the opinion that, the petitioner is entitled for interest @**6% p.a.**, from the date of petition till the date of payment.

29. Liability:-

The Respondent is the RC Owner of the Mahindra XUV 500 Car bearing Reg.No. KA-01/MQ-6097. On perusal of Ex.P9 reply to the notice issued by the Police U/sec.a133 of IMV Act, the owner had not mentioned the column of “ Insurance Policy number, Date of Insurance and Name of the Insurance Company. ” So, it is clear that as on the date of the accident the RC owner of the offending vehicle had not insured his vehicle in any insurance company. As already discussed in the issue No.1 it is proved that, the accident occurred due to rash and negligent driving of the offending vehicle. Hence the Respondent is solely liable to pay compensation amount with interest to the Petitioner. Accordingly, I answer Issue No.2 Partly in the Affirmative.

30. Issue No.3: for the foregoing reasons, I proceed to pass the following:-

ORDER

The claim petition filed by the Petitioner under Section 166 of the Motor Vehicles Act is hereby Partly allowed with cost.

The Petitioner is entitled for compensation amount of **Rs. 4,17,400/-** (Rupees four lakh, seventeen thousand and four hundred only) with interest @ **6% p.a.**, (excluding future medical expenses) from the date of petition till its realization.

The Respondent is liable to pay compensation to the Petitioner. Further, Respondent is directed to deposit the compensation amount together with **6%** interest within **60 days** from the date of this order.

After deposit, entire compensation amount with interest shall be released in favour of the Petitioner with proper verification and identification.

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

Draw the award accordingly.

(Dictated to the Stenographer directly on computer, then corrected by me and pronounced in open court on this the 19th day of January 2024)

(Rajeshwari-J-Puranik)
XV ASCJ & Member, MACT,
Court of Small Causes,
Mayo Hall Unit, Bengaluru.

ANNEXURE:

List of witnesses examined for Petitioner:

Pw.1	:	Sri.Surya .R.M.
Pw.2	:	Kum. Asha. C.
Pw.3	:	Dr.S.A.Somashekara.

List of documents marked for Petitioner:

Ex.P1	:	Copy of F.I.R.
Ex.P2 & 3	:	Copy of Statements,
Ex.P4	:	Copy of Sketch,
Ex.P5	:	Copy of Spot Mahazar,
Ex.P6	:	Copy of Police intimation,
Ex.P7	:	Copy of Wound Certificate,
Ex.P8	:	Copy of notice U/sec.133 of IMV Act,
Ex.P9	:	Copy of reply to the notice U/sec.133 of IMV Act,
Ex.P10	:	Copy of Charge sheet,
Ex.P11	:	Notarized copy of Aadhaar card,
Ex.P12	:	Notarized copy of College ID card,
Ex.P13	:	Medical bills,
Ex.P14	:	Prescriptions
Ex.P15	:	X-rays
Ex.P16	:	Authorization letter
Ex.P17	:	Inpatient record
Ex.P18	:	Copy of Police intimation
Ex.P19	:	Copy of MLC extract,
Ex.P20	:	Discharge summary
Ex.P21	:	X-rays
Ex.P22	:	OP Card with examination report
Ex.P23	:	X-ray

List of witness examined & list of document marked for Respondent:

- Nil -

(Rajeshwari-J-Puranik)
XV ASCJ & Member, MACT,
Court of Small Causes,
Mayo Hall Unit, Bengaluru.