

**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL  
AT:GADAG**

**MVC NO.318 & 319/2013**

**THIS IS THE 4<sup>th</sup> DAY OF FEBRUARY 2020**

**Present: RAJANNA SANKANNANAVAR,  
B.A., LL.B.,(Spl.)  
Addl. Senior Civil Judge &  
Member MACT, Gadag.**

**MVC No.318/2013**

**Petitioner:** Huchappa S/o. Fakkirappa Kuri,  
30 yrs., R/o. Kalakapur Dist. Gadag.

**MVC No.319/2013**

**Petitioner:** Malleshi @ Mallikarjun S/o. Varappa Harti,  
23 yrs., R/o. Kalasapur Dist. Gadag.

**(Sri C.R.Vadakannavar. Adv. for Petitioners)**

V/s

**Respondent/s:**1. Shihab A.B. S/o. Bava, Major,  
R/o. Arakkakudy House,  
Posjassey, West Vengalu,  
Perumbavur City,Ernakularn

2. The Divisional Manager,  
Royal Sundaram Alliance Insurance  
company Limited, Sundaram Towers  
45 & 46, Whites Road, Chennai

**(Resp.No.1 placed Ex-party, &  
Sri. D.K.D Adv for Respondent No.2)**

## **C O M M O N   J U D G M E N T**

The Petitioner-Huchchappa S/o. Fakkirappa Kuri of  
**MVC No.318/2013** and the petitioner-Malleshi @  
Mallikarjun S/o. Vasappa Harti of **MVC No.319/2013**  
have filed the present respective petitions under Section  
166 of Motor Vehicles Act against the respondents  
together for relief of compensation with interest in view  
of sustained injuries in a road traffic accident.

2. Herein both the petitions have filed by the  
respective petitioner under out of arising Haliyal Police

station under Crime No.57/2013. Therefore, this tribunal has taken up each other to passing a common Judgment.

**The facts of the petitions are as follows:**

3. On 05.03.2013 at about 9.00 p.m. the petitioner in MVC No.318/2013 was proceeding towards Karwar from Khanapur in Tata Tanker bearing Reg.No.KA-31/5158 driving on Haliyal-Yallapur road along with cleaner who is petitioner in MVC No.319/2013, when they have reached near Bhagavati village, Haliyal, at that time one lorry bearing Reg.No.KL-40/G-414 came in opposte direction in rash and negligent manner and dashed against the petitioners' vehicle, due to which, both petitioners were fell down and have sustained grievous injuries. In this regard Haliyal police have registered case under Cr.No.57/2013.

4. The petitioner in **MVC No.318/2013** sustained grievous injuries and he was hale and healthy before the accident and he was aged 30 year and was working as Driver and he was earning sum of Rs. 15,000/- p.m. and petitioner has taken treatment in various hospital and spent sum of Rs.1,00,000/- towards medical expenses, now, due to sustained permanent disability he could not able to attend his work.

4(a). 4. The petitioner in **MVC No.319/2013** sustained grievous injuries and he was hale and healthy before the accident and he was aged 23 year and was working as cleaner and he was earning sum of Rs. 10,000/- p.m. and petitioner has taken treatment in various hospital and spent sum of Rs.1,00,000/- towards medical expenses, now, due to sustained permanent disability he could not able to attend his

work. Thus, Respondent No.1 is the owner and 2<sup>nd</sup> respondent is the insurer of lorry bearing Reg. No.kL-40/G-414. Hence, both respondents are jointly and severally liable to pay the compensation. Hence, petitioners have prayed to award compensation as prayed in the petition.

5. In pursuance of notice to the respondents, in that, 1<sup>st</sup> respondent did not appear, accordingly, his placed Ex-party, as such, 2<sup>nd</sup> respondent has been appeared through his advocate and filed statement of objection

**The facts of the objection are as follows:**

6. In the objection of respondent No.2, there is no dispute regarding ownership and insurer of lorry bearing Reg.No.KL-40-G-414 and denied remaining averments made in the petition, 2<sup>nd</sup> respondent

contended that, if any liability of this respondent is subject to terms and condition of the policy, further contended that the driver of so lorry was not having valid D.L. at relevant point of time, further contended that the alleged accident was occurred due to rash and negligent driver who is petition in M.V.C.No.318 of 2013 of Tata Tanker Reg. No.KA-31/5158. Hence, 1<sup>st</sup> respondent prays to dismiss the petition against him.

7. On the pleadings of both the parties, this tribunal has framed issues is as follows:

**ISSUES IN MVC NO.318/2013**

1. Whether the petitioner proves that the alleged accident took place on 05.03.2013 at about 9.00 p.m. on Haliyal-Yallapur road, near Bhagavati village, Tq: Haliyal, due to rash and negligent driving of Lorry bearing its Reg. No.KL-40/G-414 by its driver, as a result of which the petitioner sustained injuries?

2. To what compensation and from whom, the petitioner is entitled to?

3. What order?

### **ISSUES IN MVC NO.319/2013**

1. Whether the petitioner proves that the alleged accident took place on 05.03.2013 at about 9.00 p.m. on Haliyal-Yallapur road, near Bhagavati village, Tq: Haliyal, due to rash and negligent driving of Lorry bearing its Reg. No.KL-40/G-414 by its driver, as a result of which the petitioner sustained injuries?

2. To what compensation and from whom, the petitioner is entitled to?

3. What order?

8. In order to proving the above said issues the respective petitioner in both petition have been examined as P.W.1 & 2 and got marked at Ex.P.1 to 28. and on behalf of the both petitioner the doctor by name Dr. Suresh Janali has been examined as P.W.3 & 4. On

the other hand 2<sup>nd</sup> respondent did not lead any kind of evidence.

9. Heard arguments of both the sides on merits of the case and perused the record.

10. Now the findings of this Tribunal on the above said issues in MVC No.318/2013 are answered in the;

Issue No.1: In the Affirmative

Issue No.2: In the Affirmative

**Rs.1,61,000/-** from the

**Resp.No.2**

Issue No.3: As per final order  
for the following

10(a). Now the findings of this Tribunal on the above issue in MVC No.319/2013 are answered in the;

Issue No.1: In the Affirmative

Issue No.2: In the Affirmative

**Rs.1,74,000/-** from the

**Resp.No.2**

Issue No.3: As per final order  
for the following



## **REASONS**

### **11. ISSUE No.1 in MVC No.318 & 319/2013:**

The Petitioner-Huchchappa S/o. Fakkirappa Kuri of **MVC No.318/2013** and the petitioner-Malleshi @ Mallikarjun S/o. Vasappa Harti of **MVC No.319/2013** have filed the present respective petitions under Section 166 of Motor Vehicles Act against the respondents together for relief of compensation with interest in view of sustained injuries in a road traffic accident which occurred on 05.03.2013 at about 9.00 p.m. on Haliyal-Yallapur road, near Bhagavati village, Tq: Haliyal. Herein there is no dispute with respect of insurer and ownership of Lorry bearing Reg.No.KL-40/G-414, further of the insurance was in order at the time of accident., such as P.W.1 & P.W.2 have deposed that, said accident was occurred due to rash and negligent

driven by the driver of Lorry bearing Reg.No.KL-40/G-414. Contrary to 2<sup>nd</sup> respondent has denied the same and contended that the alleged accident was occurred due to rash and negligent driven by the driver who is petitioner in MVC No.318 of 2013 of Tata Tanker bearing Reg.No.KA-31/5158. On looking to both the pleadings, the question is arises for consideration as whether the said accident was due to rash and negligent driven by the driver of Lorry bearing Reg. No.KL-40/G-414 or not. In order to establish the same, P.W.1 & 2 have relied on the certified copy of FIR at Ex.P.1, copy of complaint at Ex.P.2, copy of Panchanama at Ex.P.3, copy of MVA report at Ex.P.4 and copy of charge sheet at Ex.P.6. On perusal of these documents, in that, Ex.P.1 and 2 discloses that, the Haliyal PS have registered a case under Cri.No.57/2013 on basis of first

information submit by one Mallesh @ Mallappa S/o. Vasappa Harti with respect of accident for the investigation of matter. Afterward the Haliyal PS have conducted investigation and filed the final report against driver of Lorry bearing Reg.No.KL-40/G-414 for the offence Punishable under sec. 279 337 and 338 of IPC. On Examine Ex.P.1 to 4 & 6, it's reveals that the accident was occurred due to on actionable negligent driven by the driver of lorry bearing Reg. No.Lorry bearing Reg.No.KL-40/G-414. No doubt, such Ex.P.1 to 4 & 6 are the police record, but such documents are unchallenged and undisputed documents, further there is no questioned about sanctity of those documents, as such there is no contrary evidence to such documents, further there is no rebuttal evidence to withdrawal genuine of such documents. Per contra, 2<sup>nd</sup> respondent

did not step into witness box to establish his defence as stated in the statement of objection. Under these circumstance, this tribunal has been accepted the Oral evidence of P.W.1 and 2 as well as Ex.P.1 to 4 & 6 and come to conclusion that accident was occurred on the part of actionable negligence of driven by the driver of Lorry bearing Reg.No.KL-40/G-414. Accordingly Issue No.1 answered of MVC No.318/2013 and 319/2013 **in the Affirmative.**

12. **ISSUE No.2 in MVC No.318/2013:-** The petitioner herein has been examined as P.W.1, he has produced the wound certificate at Ex.P.5, summary sheet at Ex.P.8, OPD slip of KUMS Hubli at Ex.P.9, Discharge card at Ex.P.12 X-ray silm at Ex.P.15 and doctor by name Viz., Dr. Suresh B. Janali has been examined as PW.3 through court commissioner. On

looking to the Ex.P-5-wound certificate, summary sheet, discharge card, X-ray and oral evidence of P.W.1 and 2 discloses that, the petitioner has sustained injuries as follows:

**\* Fracture of Neck of left fibula**

such injury is grievous in nature, with regard to said injuries petitioner under went for above knee slab immobilisation on 06.3.13. Further the oral evidence of PW.1 and 3 and documents which were relating to such injuries sustained by the petitioner are not in dispute and there is rebuttal evidence, as such further there is no reason for either disbelieves or discard the oral evidence of PW-1 and 3 as well as documentary evidence and such evidence are not in dispute.

13. Now, the petitioner has produced medical bills(5 in no's) at Ex.P.13, in all total sum of Rs. 893/-

the said medical bills contains every details of the expenses incurred by the claimant are therein. The same are not in dispute by other side and there is no any material on record about contrary to those bills, consequently the same cannot be doubted. Thus, it can be safely taken that the petitioner has spent about Rs.893/- towards medical expenses, which can be rounded to **Rs.1,000/-**.

14. Further, as per oral evidence of P.W.1 and 3 and recitals of Ex.P.4-wound certificate, Discharge summaries, its discloses that the petitioner has taken treatment as an inpatient for 4 days. As such, he was undergone pain and sufferings and spent amount for diet and conveyance during said period. Hence, the tribunal opinion that the petitioner is entitled for compensation sum of **Rs.40,000/-** towards pain and

sufferings, **Rs.10,000/-** towards diet and conveyance and he has further entitled for a compensation of **Rs.20,000/-** towards loss of amenities.

15. Further PW.3 has assessed permanent disability at 35% to 40% to the particular limb. No doubt, the PW.3 is not a treated doctor. Admittedly, the age of petitioner was 30 years, and he was doing driver work and he has sustained fracture of neck left femur. Thus, on looking to the fracture sustained by the patient, position of wound, age of petition, line of treatment and on considered the medical documentary evidence. The tribunal has assessed the disability at 8% to the whole body.

16. Whereas, so far the age of petitioner is concerned, PW.1 has deposed that, he was aged at about 30 years at the time of accident. The petitioner

has not been produced any document to show the age, however, there is a xerox copy of ration card is available in the case records, in that, he was age of 34 as on the 29.11.2012, thus, on consider the same, it would be 35 years at the time of accident and the same is also not disputed by other side, thus on looking to above, there is no reason for discard the age of petitioner as stated supra, accordingly this tribunal has accepted the same and come to conclusion that the age of petitioner was 35 years at the time of accident. Hence, as per directions in the case Sarla Verma and other V/s Delhi Transport corporation and others, the appropriate multiplier is 16.

17. Now the earning of petitioner is concerned, PW-1 has deposed that, he was working as driver, As such there is no material place before tribunal to show



his income, thus in the absence of specific evidence regarding income of the petitioner, it is necessary consider the notional income of petitioner, since the accident was occurred in the year 2013. Therefore, tribunal has come conclusion that the earning of petitioner was Rs.5,000/- p.m. at time of accident.

18. It is admitted that, petitioner was underwent for taking treatment for 4 days as an inpatient and nature of injuries sustained by the petitioner, the Tribunal opines that the petitioner was under bed rest for a period 2 months and lost his earning in the said two months. Hence, the petitioner is entitled for compensation of **Rs.5,000x2=10,000/-** towards loss of past two months earning and loss of future earning can be calculated as  $\text{Rs.5,000} \times 12 \times 16 \times 8\% \times 100 =$  **Rs.76,800/-**. Which can round of **Rs. 80,000/-**

19. Thus, petitioner is entitled for just and reasonable **compensation** as follows:

|                                              |                             |
|----------------------------------------------|-----------------------------|
| Pain and Sufferings                          | Rs. 40,000/-                |
| Loss of laid up period<br>(5,000x2=10,000/-) | Rs. 10,000/-                |
| Medical Expenditure                          | Rs. 01,000/-                |
| Loss of Future Income                        | Rs. 80,000/-                |
| Towards diet and conveyance                  | Rs. 10,000/-                |
| Loss of amenities                            | Rs. 20,000/-                |
| -----                                        |                             |
| Total:                                       | <b><u>Rs.1,61,000/-</u></b> |

with interest at 6% p.a. from the date of petition till the date of payment.

20. **ISSUE No.2 in MVC No.319/2013:-** The petitioner herein has been examined as P.W.2, he has produced the wound certificate at Ex.P.19, disability certificate at Ex.P.21, discharge summary at Ex.P.22, OPD at Ex.P.25, Lab report at Ex.P.26, case sheet at

Ex.P.27, X-ray at Ex.P.28 and doctor by name Viz., Dr. Suresh B. Janali has been examined as PW.4 through court commissioner. On looking to the Ex.P-19-wound certificate, discharge summary, case sheet, X-ray and oral evidence of P.W.2 and 4 discloses that, the petitioner has sustained injuries as follows:

**\* Fracture of left patella**

such injury is grievous in nature, with regard to said injuries petitioner under went for above knee slab immobilization on 06.03.13. Further the oral evidence of PW.2 and 4 and documents which were relating to such injuries sustained by the petitioner are not in dispute and there is rebuttal evidence, as such further there is no reason for either disbelieves or discard the oral evidence of PW-2 and 4 as well as documentary evidence and such evidence are not in dispute.

21. Now, the petitioner has produced medical bills(13 in no's) at Ex.P.23, in all total sum of Rs.7,007/-the said medical bills contains every details of the expenses incurred by the claimant are therein. The same are not in dispute by other side and there is no any material on record about contrary to those bills, consequently the same cannot be doubted. Thus, it can be safely taken that the petitioner has spent about Rs.7,007/- towards medical expenses, which can be rounded to **Rs.7,000/-**.

22. Further, as per oral evidence of P.W.2 and 4 and recitals of Ex.P.19-wound certificate, Discharge summaries, its discloses that the petitioner has taken treatment as an inpatient for 12 days. As such, he was undergone pain and sufferings and spent amount for diet and conveyance during said period. Hence, the

tribunal opinion that the petitioner is entitled for compensation sum of **Rs.40,000/-** towards pain and sufferings, **Rs.10,000/-** towards diet and conveyance and he has further entitled for a compensation of **Rs.20,000/-** towards loss of amenities.

23. Further PW.2 has assessed permanent disability at 30% to 35% to the particular limb. No doubt, the PW.4 is not a treated doctor. Admittedly, the age of petitioner was 30 years, and he was doing cleaner work and he has sustained fracture of left patella. Thus, on looking to the fracture sustained by the patient, position of wound, age of petition, line of treatment and on considered the medical documentary evidence. The tribunal has assessed the disability at 8% to the whole body.

24. Whereas, so far the age of petitioner is concerned, PW.1 has deposed that, he was aged at about 23 years at the time of accident. The petitioner has not been produced any document to show the age, however, there is a xerox copy of ration card is available in the case records, in that, he was age of 24 as on the 2013, thus, on consider the same, it would be 24 years at the time of accident and the same is also not disputed by other side, thus on looking to above, there is no reason for discard the age of petitioner as stated supra, accordingly this tribunal has accepted the same and come to conclusion that the age of petitioner was 24 years at the time of accident. Hence, as per directions in the case Sarla Verma and other V/s Delhi Transport corporation and others, the appropriate multiplier is 18.

25. Now the earning of petitioner is concerned, PW-2 has deposed that, he was working as cleaner, As such there is no material place before tribunal to show his income, thus in the absence of specific evidence regarding income of the petitioner, it is necessary consider the notional income of petitioner, since the accident was occurred in the year 2013. Therefore, tribunal has come conclusion that the earning of petitioner was Rs.5,000/- p.m. at time of accident.

26. It is admitted that, petitioner was underwent for taking treatment for 12 days as an inpatient and nature of injuries sustained by the petitioner, the Tribunal opines that the petitioner was under bed rest for a period 2 months and lost his earning in the said two months. Hence, the petitioner is entitled for compensation of Rs.**5,000x2=10,000/-** towards loss of

past two months earning and loss of future earning can be calculated as  $\text{Rs. } 5,000 \times 12 \times 18 \times 8\% \times 100 =$   
**Rs.86,400/- . Which can round of Rs. 87,000/-**

27. Thus, petitioner is entitled for just and reasonable **compensation** as follows:

|                                              |                             |
|----------------------------------------------|-----------------------------|
| Pain and Sufferings                          | Rs. 40,000/-                |
| Loss of laid up period<br>(5,000x2=10,000/-) | Rs. 10,000/-                |
| Medical Expenditure                          | Rs. 07,000/-                |
| Loss of Future Income                        | Rs. 87,000/-                |
| Towards diet and conveyance                  | Rs. 10,000/-                |
| Loss of amenities                            | Rs. 20,000/-                |
| -----                                        |                             |
| Total:                                       | <b><u>Rs.1,74,000/-</u></b> |

with interest at 6% p.a. from the date of petition till the date of payment.

28. Further, so far liability concern, there is no dispute about the respondent No.1 is owner and the



respondent No.2 is insurer of Lorry bearing Reg. No.KL-40/G-414. As such, the accident has occurred and the respective Petitioner have sustained grievous injuries due to rash and negligent driving of the driver of said vehicle. Such a situation 1<sup>st</sup> respondent has vicariously and respondent No.2 contractually liable to pay the compensation to the respective petitioner as calculated in the above table with interest @ 6% p.a. from the date of petition till realization. Further interest is not payable on future medical expenses. Therefore, I answer point No.2 in MVC No.318 and 319/2013 **in the affirmative.**

**29. Issue No.3 in MVC No.318 & 319/2013** From the above discussions, this Tribunal proceeds to pass the following order.

**ORDER**

The Petitions are MVC. No.318/2013 and MVC No.319/2013 under Section 166 of MV Act filed by respective petitioners against the Respondents is hereby allowed in part with costs.

The respondent No.2 is liable to pay sum **Rs.1,61,000/-** to the petitioner in MVC.No.318/2013 with interest @ 6% p.a., from the date of petition till realization.

Sum of **Rs.1,74,000/-** to the petitioner in MVC 319/2013 with interest @ 6% p.a., from the date of petition till realization.

Hereby, directed the Respondent No.2 deposit the compensation amount before the court within two months from the date of Award.

Advocate's fee is fixed at Rs. 1,000/- each case;

Draw award accordingly.

Office is directed to keep the original copy of the Judgment in MVC.318/2013 and the copy thereof keep in MVC No.319/2013.

*(I have personally typed on the my Lap-top, corrected by me and then pronounced by me in open court of this 4<sup>th</sup> **day of February 2020**)*

Sd/- 04.02.2020

**(RAJANNA SANKANNANAVAR)**

**Addl. Senior Civil Judge &  
Member MACT, Gadag.**

**ANNEXURE**

**LIST OF WITNESSES EXAMINED ON BEHALF OF PETITIONER:**

PW-1: Huchchappa Fakkirappa Kuri  
PW-2: Malleshi Harti  
PW-3: Dr. Suresh B. Janali  
PW-4: Dr. Suresh B. Janali

**LIST OF WITNESSES EXAMINED ON BEHALF OF RESPONDENTS:**

Nil

**LIST OF DOCUMENTS EXHIBITED ON BEHALF OF PETITIONER:**

Ex.P.1 : Copy of FIR  
Ex.P.2 : Copy of complaint  
Ex.P.3 : Copy of Panchanam  
Ex.P.4 : Copy of MVA reporte  
Ex.P.5 : Copy of Wound certificate  
Ex.P.6 : Copy of Charge sheet  
Ex.P.7 : Redioloty slip-cum-medical  
Ex.P.8 : Summary sheet

- Ex.P.9 : OPD slip
- E.P.10 : Xerxo copy of X-ray
- Ex.P.11 : disability certificate
- Ex.p.12 : Discharge Card
- Ex.P.13 : Medical bills
- Ex.P.14 : prescription
- Ex.P.15 : X-ray
- Ex.P.16 : Copy of FIR
- Ex.P.16(a): Copy of complaint
- Ex.P.17 : copy of Panchanma
- Ex.P.18 : copy of IMV reporte
- Ex.P.19 : copy of wound certificate
- Ex.P.20 : copy of final report
- Ex.P.21 : disability certificate
- Ex.P.22 : Discharge summary
- Ex.P.23 : Medical bills
- Ex.P.24 : prescriptions
- Ex.P.25 : OPD
- Ex.P.26 : Lab report
- Ex.P.27 : case sheet
- Ex.P.28 : X-ray

**LIST OF DOCUMENTS EXHIBITED ON BEHALF OF RESPONDENTS:**

Nil

**Sd/- 04.02.2020**  
**(RAJANNA SANKANNANAVAR)**  
**Addl. Senior civil Judge &**  
**Member of MACT, Gadag.**