



IN THE COURT OF III-ADDL. SENIOR CIVIL JUDGE & JMFC,
RAICHUR.
: PRESENT:

Smt. Krupaa C.L., B.Sc. L.L.M.,
III-Addl. Senior Civil Judge & JMFC.,
Raichur.

Dated this the 4th day of January, 2025

MVC NO. 544/2022

Petitioner: Babu S/o. Late Lalsab, Age: 69 years,
Occ: Milk Vendor(Now Nil), R/o.
H.No.1-11-1128/486, Kulsumbi
colony, Rampur road, Raichur.
(By Sri. R.K.M., Adv.)

-Vs.-

Respondents:

1. Mohamma Abdul Razak S/o MD. Sameer Ahmad, age: 21 years, Occ: Driver of car brg Regn No.KA-36/N-5680, R/o. H. No.12-12-83/1 Lucky colony, Arab Mohalla, Raichur.
2. Mohammad Sameer Ahmed S/o. Abdul Razak, age: Major, Occ: Owner of Car brg Regn No.KA-36/N-5680, R/o. H. No.12-12-83/1 Lucky colony, Arab Mohalla, Raichur.

3. The Branch Manager, IFFCO TOKIO General Insurance Co.Ltd., situated at Timmapuri Railway, 3rd floor, above Kanva Mart, near S.V.P Circle Station road, Shambhognlli, Kalaburagi.

(R-1 & 2 by Sri. A.M.P., Adv.)

(R-3 by Sri. S.B.H., Adv.)

J U D G M E N T

This is a petition filed by the petitioner against the respondent U/Sec. 166 of Motor Vehicle Act 1988 seeking a compensation for the grievous injuries sustained by him in a road traffic accident.

2. The respondent No.1 is the driver of the car, respondent No.2 is the owner of the car and the respondent No.3 is insurance company, which issued a insurance policy in respect of the said vehicle.

3. **The brief facts of the case of the petitioner is as under:-**

On 24.07.2022 by 1.30 PM when petitioner came in front of the Raghavendra filling statin, Railway Station road, Raichru in order to fill petrol to his TVS Moped bearing regn No.KA-36/S-3631, then the respondent No.1 came by driving his car bearing regn No.KA-36/N-5680 in a great speed, rash and negligent manner, without following traffic rules, endangering to human life from Raichur railway station side and hit the petitioner vehicle. Impact of which, petitioner fell

down on the road and sustained grievous injuries. Later, petitioner was taken to the Navodaya hospital. After giving first aid, doctors of the Navodaya hospital referred the petitioner to Suraksha hospital for higher treatment. Later, petitioner was taken to the Suraksha hospital, Raichur, their petitioner underwent a major surgery and steel rod, K wires, nails were implanted.

4. After receiving the complaint, Raichur traffic police registered a case against the respondent No.1 for the offences punishable under section 279, 337, 338 of IPC and took up further investigation.

5. For the surgeries petitioner spent around Rs.3,00,000/- and due to the said injuries petitioner is in a bed ridden condition and he also requires Rs.2,00,000/- for his further treatment. Further, petitioner was energetic person prior to the accident, he was aged about 69 years and he was doing milk vending business and he was assisting his family towards maintenance and he was earning Rs.25,000/- per month. Due to unfortunate accident petitioner is unable to attend daily routine work. Hence, the petition.

6. After the service of notice from this Hon'ble court, respondents marked their presence through their counsels. Respondent No.2 filed the written statement by denying the case of the petitioner. The said written statement has been adopted by the respondent No.1.

7. The gist of the written statement filed by the respondent No.1 and 2 is as under:-

Respondent No.1 and 2 denied the age, occupation and income of the injured and also denied the narration of the accident as stated in the petition. Respondent No.1 and 2 specifically contended that, petitioner was riding his TVS motorcycle vehicle bearing regn No.KA-36/S-3631 in a rash and negligent manner and lost the control over the same and dashed to the car of the respondent No.2. It is also contended that, petitioner does not possess valid driving license to drive the said vehicle and the alleged accident occurred due to the negligence of the petitioner.

8. Further, respondent No.1 and 2 has stated that, respondent No.1 is having a valid and effective DL and respondent No.2 being owner of the car bearing regn No.KA-36/N-5680 insured the said vehicle with respondent No.3 bearing policy No.12617235 and the same is valid from 31.01.2021 to 30.07.2022, as such the said policy was in force, on the material date of accident. They also stated that, there is no violation of policy conditions. With these contentions respondent No.1 and 2 prayed to dismiss the petition.

9. The gist of the written statement filed by the respondent No.3 is as under:-

Respondent No.3 denied the occupation, age, medical expenses, the narration of the accident stated in the petition.

10. Further respondent No.3 specifically contended that, petitioner was aged about 69 years as on the date of accident and he is a retired employee from the postal department hence there is no question of non earning situation and disability as stated by the petitioner. It is also contended that, petition without observing the movements of the vehicle, took his vehicle to the western side and hit the respondent No.2 car. Thereby, respondent No.1 is nowhere concerned the accident. It is also contended that, petitioner does not possess an effective DL at the time of accident and his vehicle was not at all insured, only with an intention to get the compensation from this respondent, by colluding with respondent No.1 and 2 a false case has been lodged. With all these contentions respondent No.3 prayed to dismiss the petition.

11. Based on the pleadings of respective parties, this court has framed the following:-

ISSUES

1. Whether petitioner proves that on 24.07.2022 at about 1.30 PM in front of Raghavendra, Filling Station, Railway Station Road, Raichur when he was proceeding on his TVS Moped bearing No.KA-36/S-3631, the respondent No.1 came driving his car bearing No.KA-36/N-5680 in rash and negligent manner so as to endanger human life and

dashed to the Motor Cycle of the petitioner and thereby caused accident wherein he sustained grievous injuries?

2. Whether the respondent No.3 proves that claimant was not having DL and accident was due to sole negligent riding on the part of claimant?

3. Whether the respondent No.3 proves that respondent No.1 was not holding effective driving license, hence company is not liable to pay compensation?

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

5. What order or award?

12. Petitioner in order to substantiate his case, examined himself as PW.1 by filing the duly sworn affidavit in lieu of examination-in-chief and got marked Ex.P.1 to Ex.P.11. Petitioner examined the doctor as PW-2. Per contra, though oral evidence has not been led by the respondent No.1 to 3, with consent got marked Ex.R.1.

13. Heard arguments of learned counsels for both sides.

14. My answer to the above issues is as follows:-

- Issue No.1:- In the Affirmative.
- Issue No.2:- In the Negative.
- Issue No.3:- In the Negative.
- Issue No.4:- Partly in affirmative, holding that petitioner is entitled for compensation of Rs.3,69,209/- payable by respondent No.2 and 3 jointly and severally.
- Issue No.5: As per final order, for the following:-

//REASONS//

15. **ISSUE No.1:-** At the inception of the judgment facts of the case has been narrated. Hence, I opined that, there is no need to recapitulate the same here.

16. Petitioner in order to prove his case, examined himself as PW-1 by filing the duly sworn affidavit in lieu of examination-in-chief, by reiterating the petition averments and got marked Ex.P-1 to 11. Ex.P.1 which is a certified copy of FIR, Ex.P.2 which is a certified copy of Complaint, Ex.P.3 which is a certified copy of Spot panchanama, Ex.P.4 which is a certified copy of IMV Report, Ex.P.5 which is a certified copy of Wound certificate, Ex.P.6 which is a certified copy of Charge sheet, Ex.P.7 total 26 medical bills, Ex.P.8 total 09 medical prescriptions, Ex.P.9 Disability certificate, Ex.P.9(a) Signature of PW-2, Ex.P.10 X-ray film, Ex.P.11 Discharge summary.

17. It is a definite case of the petitioner that, the alleged accident occurred due to the rash and negligent drive of the respondent No.1. In Ex.P-2 which is certified copy of the first information statement, there it has been clearly stated that, on 24.7.2022 by around 1.30 PM petitioner was proceeding to Raghavendra filling station in order to fill a petrol to his vehicle bearing regn No.KA-36/S-3631, when he was about to cross the divider then the driver of the car bearing regn No:KA-36/N-5680 came by driving the said car in a rash and negligent manner and hit the petitioner's vehicle, impact of which petitioner fell down and sustained grievous injuries and latter he was shifted to the hospital for the treatment.

18. On the basis of Ex.P-2, Ex.P-1 i.e., FIR has been registered by the traffic police, Raichur for the offences punishable under section 279, 338 of IPC against the respondent No.1. On perusal of the Ex.P.3 which is a crime detail form it appears that, the spot of accident narrated by the petitioner corroborates with the spot showed in the spot panchanam drawn by the police. From Ex.P.4 which is motor vehicle accident report it appears that, vehicle bearing regn No.KA-36/N-5680 i.e., Maruti shift dizer car and vehicle regn No.KA-36/S-3631 TVS XL HD two wheeler are involved in the said accident and both the vehicles got damaged.

19. From Ex.P-1 which is a certified copy of the MLC, it appears that, petitioner went to the Navodaya collage and

hospital and research center, Raichur on 24.07.2022 by 2.20 PM with a history of a road traffic accident. In the said Ex.P-5 it is clearly stated that, the said accident occurred between the car and a bike at about 1.30 PM at Raghavendra petrol bunk, station road, Raichur. Further, I emphasis on the point that, the said Ex.P-2 i.e., first information statement has been recorded by the police in the Navodaya hospital on 24.07.2022 by 4.30 PM.

20. From Ex.P-11 i.e., discharge summary, it appears that, petitioner took treatment in the Suraksha hospital Raichur as in-patient, There he underwent surgery.

21. From Ex.P-6 which is a certified copy of the charge sheet it appears that, police after due investigation filed the charge sheet against the respondent No.1 for offences punishable under section 279, 338 of IPC by stating that, the alleged accident occurred due to the rash and negligent drive of the respondent No.1.

22. I emphasis on the point that, though respondent No.1 to 3 filed written statement, they did not opted to lead the evidence in order to prove their contentions. At this instance, I would like to rely upon the decision of the Hon'ble Apex Court in ***Vidyadhar vs. Manik Rao, AIR 1999 SC 1441***, wherein the Hon'ble Apex Court by relying on catena of precedents observed at paragraph No. 16 that:

“Where the party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by other side a presumption would arise that the case setup by him is not correct and Court shall draw a presumption u/s 114 of Evidence Act against a party who did not enter into witness box”

23. In the instance case also, as stated above respondent No.1 to 3 did not lead oral evidence in support of their contention. Hence, it appears that, the case set up by respondent No.1 to 3 is not correct. Hence, considering the oral and documentary evidence available on record I opined answer **issue No.1 in affirmative.**

24. **Issue No.2 and 3:-** It is a definite contention of the respondent No.3 that, as on the date of the accident petitioner was not having an effective DL, respondent No.1 was not having an effective DL to drive his vehicle and alleged accident occurred due to sole negligence on the part of the petitioner. As stated above, respondent No.3 has not adduced any oral or documentary evidence in support of its contention. Moreover, from Ex.P.6 which is certified copy of charge sheet it appears that, police neither registered a case against the petitioner nor against the respondent No.1 for driving their respective vehicles without having valid DL. Further, respondent No.1 and 2 got marked the copy of the DL with consent as Ex.R-1. From Ex.R-1 it appears that, as on the date of the accident respondent No.1 was having a effective DL to drive the

offending vehicle. Hence, on considering the facts and circumstances I opined answer **issue No.2 and 3 in negative.**

25. **Issue No.4:-** This issue is related to entitlement of compensation by the petitioner and liability to pay the said compensation. While answering issue No.1, this tribunal has concluded that, the accident in question took place due to rash and negligent drive on the part of respondent No.1. Thereby petitioner being a victim of the said accident, he is entitled for the compensation under the following heads:-

26. It is worth while to state that, to ascertain the quantum of compensation, it is necessary to ascertain exact age and income of the petitioner at the time of accident. Wherein the petitioner alleges that, he was aged about 69 years as on the date of accident. But, no documents are produced by the petitioner to show that, he was aged about 69 years at the time of accident. Wherein, in Ex.P-5 MLC, the age of petitioner is showed as 69 years. Hence, the age of petitioner at the time of accident is considered as 69 years.

27. As per the case of the petitioner at the time of accident, he was doing milk vending business and he was earning Rs.25,000/- per month. Though, petitioner stated the same, petitioner has not adduced any documentary evidence to prove the same. Since there is no material before court to show that,

petitioner was earning Rs.25,000/- per month, notional income is taken into consideration.

28. It is pertinent to state that, the Karnataka State Legal Service Authorities, has framed the chart of notional income and directed the tribunals to follow the same. At this juncture it is necessary to refer judgment of **Hon'ble High Court Karnataka reported in 2017 ACJ 2436 between Krishna Bai & Ors., Vs Fedex Express Transportation and Supply Cain Service (Indra) Pvt. Ltd., & Anr.** Wherein in held that,

“Para No.6: Repeatedly it has come to the notice of this court that while this court has framed a chart for taking the notional income of the injured/deceased, the said chart has not been followed by the learned Tribunal.

As mentioned in the case of Iqbal Ahmed Vice Chairman M/S Patel Integrated Legislated Ltd., in (MFA 101018/2-15 decided on 06.01.2017) the consequence of not following the charge by the learned Tribunal is that invariably the claimants approached this court with a plea that the income of the injured/deceased has not been assessed properly by the learned Tribunal”.

29. In this case also there is no material on record to show the actual income of petitioner at the time of accident. As such the chart formulated by the Karnataka State Legal Service

Authorities is to be followed to fix the notional income of the injured at the time of accident. In the instant case, the accident took place in the year 2022 and the notional income fixed by the Karnataka State Legal Service Authorities for the year 2022 is Rs.14,750/- per month. Thus, the income of the petitioner is to be considered as Rs.14,750/- per month.

1. LOSS OF FUTURE INCOME:-

From the above discussion it is clear that, petitioner sustained grievous injuries in the accident. Further, in the disability certificate issued by the doctor, it is stated that, petitioner is suffering from 20% of total disability. When we look into the cross-examination of PW-2 i.e., the doctor, who issued the disability certificate has stated that, he has not mentioned the disability how it affects the occupation of earning capacity of the petitioner. He further stated that, without mentioning the formal he gave the percentage of disability. He also deposed that, as per the X-ray reports that, the fractured bones are united.

It is pertinent to note that, in the disability certificate PW-2 has mentioned that, petitioner is a auto driver. But, in the petition, petitioner has stated that, he was doing milk vending business. That means, there is no corroboration between the occupation of petitioner stated in petition and disability certificate. This creates a doubt in the minds of the tribunal about the occupation stated by the petitioner. Moreover, counsel for the insurance company vehemently

argued that, petitioner is a retired employee and he is getting pension, thereby, petitioner is not entitle for the compensation under this head. Towards the same counsel for the respondent No.3 cross-examined the PW-1. PW-1 denied the suggestion of the respondent No.3 about receiving of monthly pension.

I emphasis on the point that, merely because he is a retired employee, it does not mean that, he should not work to eke for his living.

Considering all these aspects, the percentage of disability given by the PW-2 appears to be on higher side. Hence, this tribunal consider the percentage of disability as 5% to the whole body.

From the above discussion, this tribunal has already considered the age of petitioner at the time of accident as 69 years and income of petitioner as Rs.14,750/- per month.

Considering the nature of the injuries sustained by him i.e., fracture shaft of left femur and percentage of disability, it appears that petitioner is entitled for a compensation towards future prospects.

In **Pappan Deo Yadev V/s. Nareshkumar and others reported in 2020 SC online 722**, the Hon'ble Apex court held that, even in case of partial disability, amount towards future prospects can be awarded. The proposition of law has been reiterated by the Hon'ble High Court of Karnataka in a decision reported in **2020 SC online Kar 1446 between**

Alameli Bai V/s Managing director, KSRTC, wherein para 10, it is held that, even in case of functional disability cases future prospect can be awarded.

In **Md. Sabeer @ Shabir Hussain vs Regional Manager U.P. State road Transport Corporation reported in 2022 Live Law (SC) 1017**, the Hon'ble Apex court held that, "18. It is a well settled position of law that in cases of permanent disablement caused by a motor accident, the claimant is entitled to not just future loss of income, but also future prospects. It has been reiterated by this court in multiple instance that "just compensation" must be interpreted in such a manner as to place the claimant in the same position as he was before the accident took place".

Hence, in view of the dictum of Hon'ble courts, this tribunal opines that, petitioner is entitle for future prospects.

As per the dictum of Apex court in, **National Insurance company limited V/S Pranaya Sethi reported in (2017) 16 SCC 180**, no future prospect is to be added to the annual income of the petitioner, since, as on the date of the accident, petitioner is of 69 years, as stated above.

As per the Law laid down by **Hon'ble Apex Court in Sarla Verma V/s Delhi transport corporation reported in 2009 (6) SCC 121**, which is approved by another decision of constitutional bench reported in **(2017) 16 SCC 680 between**

National Insurance Co. Ltd. V/s Pranaya Sethi, the multiplier applicable to the age of the injured is “5”.

Taking notional income has Rs.14,750/- pm, applying appropriate multiplier “5” and taking the permanent physical disability as 5%, the loss of future earnings because of permanent physical disability, is calculated as under:-

Description	Amount In Rs.
Notional Income per month	14,750/-
Annual Income (14,750 X 12)	1,77,000/-
Applying appropriate multiplier ‘5’	8,85,000/-
5% being permanent physical disability loss of earnings	44,250/-

Thereby, petitioner is entitled for compensation of Rs.44,250/- under this head.

2. TOWARDS PAIN AND SUFFERINGS:-

On perusal of wound certificate, discharge summary, disability certificate, evidence of doctor it appears that, it is just and proper to award compensation under this head to the petitioner for the injuries sustained by him.

From the documentary evidence it appears that petitioner took treatment as in-patient, he underwent surgery and the trauma. On considering all these aspects it would be just and

reasonable to award an amount of Rs.50,000/- towards pain and suffering.

3. LOSS OF INCOME DURING LAID-UP PERIOD:-

It is a definite case of the petitioner that, he was doing agricultural work and was earning an amount of Rs.25,000/- pm. As mentioned above, this tribunal considers that, petitioner was earning Rs.14,750/- per month. In Ex.P-7 final bill it has been mentioned that, he took treatment in Suraksha hospital, Raichur as in-patient for 6 days. Further, looking into the treatment taken by the petitioner it appears that, he might be under rest for 3 months. Thereby, he is entitle for Rs.47,200/- towards loss of income during laid-up period.

4. TOWARDS ATTENDANT CHARGES, TRANSPORTATION AND MISCELLANEOUS EXPENSES :-

From the above discussion it is found that, petitioner took treatment as in-patient for 6 days. While he was in hospital an attendant is required to take care of the petitioner. Considering the present day cost of living for a 3 meals and 2 times beverages for a day it requires around Rs.600/- per day. In the instant case petitioner was in hospital for a period of 6 days. Hence, petitioner is entitled for a sum of Rs.3,600/- towards attendant charges.

Further, attendant has to travel to the hospital regularly when petitioner was in-patient, petitioner may required to visit

the hospital for the follow up check up and there may be other misc expenses. On considering all these aspects it would be just and reasonable to award an amount of Rs.50,000/- towards transportation, Miscellaneous expenses.

Thereby in total petitioner is entitled for Rs.53,600/- under this head.

5. LOSS OF AMENITIES AND NUTRITIOUS FOOD:-

Due to the injuries sustained by the petitioner, petitioner might have loss amenities and enjoyment of life due to the disability suffered by him, he might have suffered discomfort in his life. By considering the age, nature of injuries, percentage of disability, petitioner is entitled for Rs.30,000/- towards loss of amenities. Further, on considering the injuries sustained by the petitioner it appears that, he took nourished food and he may need further nourishment. Thereby, on considering the nature of injuries, percentage of disability petitioner is entitled for Rs.20,000/- towards nutritious food.

Thereby, petitioner is in total entitled for Rs.50,000/- under the head of loss of amenities and nutritious food.

6. MEDICAL EXPENSES AND FUTURE MEDICAL EXPENSES:-

In the instant case petitioner stated that he incurred Rs.3,00,000/- towards medical treatment. In support of the same, he produced medical bills which are marked at Ex.P-7, medial prescriptions mark at Ex.P-8, X-rays marked at Ex.P-

10. From Ex.P-7 it is clear that, petitioner spent Rs.94,159/- for medical treatment.

Further, in the disability certificate i.e., Ex.P-9 doctor has opined that petitioner needs further surgery for implant removal, for which petitioner may incur Rs.30,000/-. It is pertinent to note that, no evidence has been placed to show that, petitioner underwent the above said surgery.

Hence, considering the medical bills and opinion of the doctor petitioner is entitled for Rs.1,24,159/- under the head of medical expenses and future medical expenses.

30. In view of the above discussion, the petitioner in total is entitle for compensation under following heads:-

Loss of future income	Rs.44,250/-
Pain and suffering	Rs.50,000/-
Loss of income during laid up period	Rs.47,200/-
Attendant charges, transportation and miss expenses	Rs.53,600/-
Loss amenities and Nutrition food	Rs.50,000/-
Medical expenses and future medical expenses	Rs.1,24,159/-
TOTAL	Rs.3,69,209/-

31. In view of the above, this tribunal is of view that, petitioner is entitled for amount of Rs.**3,69,209/-**. The said amount carries interest at the rate of 6% per annum from the date of petition till the date of actual realisation.

32. Liability:- Once it is held that, petitioner is entitled for the compensation at the quantum fixed, the liability has to be fixed. The offending vehicle bearing regn. No.KA-36/N-5680 was driven by respondent No.1 and the same owned by respondent No.2. Further, respondent No.3 insurance company issued the insurance policy in respect of the offending vehicle.

33. As stated above insurance company has not led any evidence in support of its case. Further, it is not the case of the insurance company that, it has not issued insurance policy in respect of the offending vehicle and as on the date of the accident policy was not in force. Further, from the photostat copy of insurance policy produced by the petitioner, it appears that, policy bearing No. 12617235 issued in favour of respondent No.2 was in force as on the date of accident.

34. Further, from above discussion this tribunal has already opined that, the alleged accident occurred due to the rash and negligent drive of respondent No.1.

35. Hence, respondent No.2 being the owner and respondent No.3 the insurer of the offending vehicle are jointly and severally liable to pay the compensation to the petitioners.

36. Further, respondent No.3 being the insurer of the offending vehicle is liable to pay the entire compensation amount to indemnify the respondent No.2. Hence, I answer this issue in accordingly.

37. **Issue No. 5:** In view above findings this tribunal proceed to pass the following;

ORDER

The petition filed by the petitioner U/Sec. 166 of Motor vehicle Act is hereby allowed.

The petitioner is entitled for total compensation of Rs.**3,69,209/-** along with interest at the rate of 6% per annum from the date of petition till the date of realization.

The respondent No.3 is directed to deposit the compensation amount within 2 months from the date of award, failing which the award amount shall carry further penal interest at the rate of 3% per annum(i.e., 6% + 3%=9%) from the date of award till its realization.

After deposit, the entire compensation amount shall be released in favour of petitioner by taking suitable documents for his identification.

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

Draw award accordingly.

(Dictated to the Stenographer on the computer, transcribed and computerized by him, revised, corrected and then pronounced by me in the open Court on this the 4th day of January, 2025)

Sd/-

(Smt. Krupaa C.L.)

**III Addl Sr. CJ & JMFC &
MACT, Raichur.**

A N N E X U R E

1.LIST OF WITNESSES EXAMINED FOR PETITIONERS:

PW.1 : Babu.
PW.2 : Dr. Harshmurthy.

2.LIST OF DOCUMENTS MARKED FOR PETITIONERS:-

Ex.P1 : FIR.
Ex.P.2 : Complaint.
Ex.P.3 : Spot panchanama.
Ex.P.4 : IMV Report.
Ex.P.5 : Wound certificate.
Ex.P.6 : Charge sheet.
Ex.P.7 : 26 medical bills.
Ex.P.8 : 09 medical prescriptions.
Ex.P.9 : Disability certificate.
Ex.P.9(a) : Signature of PW-2.
Ex.P.10 : X-ray film.
Ex.P.11 : Discharge summary.

3.LIST OF WITNESSES EXAMINED FOR RESPONDENTS :-

-NIL-

4.LIST OF DOCUMENTS MARKED FOR RESPONDENTS :-

Ex.R.1 : DL.

Sd/-

(Smt. Krupaa C.L.)

**III Addl Sr. CJ & JMFC &
MACT, Raichur.**