KADW050010752022

Presented on : 07-03-2022
Registered on : 07-03-2022
Decided on : 30-07-2026
Duration : 4 years, 4 months, 23 days

IN THE COURT OF II ADDL SENIOR CIVIL JUDGE & M.A.C.T. AT DHARWAD

: PRESENT :

Shri. Sushant Mahaveer Chougale
B.A, LL.B.(Spl)

II Addl. Sr. Civil Judge & MACT, Dharwad.

MVC. No.145/2022 C/w MVC. No.146/2022 to MVC. No.148/2022

DATED THIS, THE 30TH DAY OF JULY 2026.

BETWEEN :

Petitioner in MVC. No.145/2022

Nagaraj s/o Krishanarao Patil
Age: 47 years: Occu: Private Job
R/o Kalyana Nagar, Dharwad
Tq & Dt: Dharawad.

Petitioner in MVC. No.146/2022

Vinayak s/o Annappa Shet
Age: 38 years: Occu: Private Job
R/o KCC bank colony Dharwad
Tq & Dt: Dharawad

Petitioner in MVC. No.147/2022

Govindaraj s/o Chandrappa Tadakod
Age: 38 years: Occu: Private Job
R/o KCC Bank Colony, Dharwad,
Ta: Dharawad.

Petitioner in
MVC. No.148/2022

Rajakumar s/o Channabasappa Karur
Age: 48 years. Occu: Private Job
R/o Hukkerikar Nagar,
Yalakkishettar Colony Dharwad,

(Represented by Shri. S.S.K., Advocate)

AND :

Common Respondents

1. Mr. Gunasekar K V. S/o Velayutham K S
Occ: owner of the Lorry(Tipper)
bearing No TN-36-AQ-2557
R/o 61 Mariyammankovil S T Karattur
Ariyappampalayam Rangasamudram.
SATHYAMANGALAM-638457
Tamila Nadu State-(TN)

2. Reliance General Insurance Co LTD
V A Kalburgi Square, Desai cross
Despande Nagara HUBLI-29

3. Vishwanath R r/o Mannagi A/p Guttal
Age: 49 years Occu Owner of the vehicle
Tq & Dt Haveri

(Policy No 773721823350000359
Valid from 28/08/2018 to 27/08/2019)

(Resp.No.1 is placed as exparte)

(Resp.No.2 is represented by Shri.S.G.P. Advocate)

(Resp.No.3 is represented by Shri.A.V.B. Advocate)

Date of Institution of the suit	26.02.2022		
Nature of the suit.	U/Sec. 166 of Motor Vehicle Act		
Date of commencement of the recording the evidence.	30.10.2024		
Date of pronouncement of the Judgment.	30.07.2026		
Total Duration.	Year/s	Month/s	Day/s
	04	**05**	**04**

: J U D G M E N T :

1. The petitioner No.1 to 4 have filed petition U/Sec.166 of M.V. Act 1988 seeking compensation of Rs.1,00,000/- (Rupees one Lakh only), Rs.1,00,000/- (Rupees one Lakh only), Rs.1,00,000/- (Rupees one Lakh only) and Rs.10,00,000/- (Rupees ten Lakh only), with 12% interest per annum from the date of petition till realization on account of injuries sustained by them in the road traffic accident occurred on 23.02.2018 and for other equitable relief.

2. THE PETITIONERS' CASE IN BRIEF IS AS UNDER:

It is the case of the petitioners that, on 23.02.2018 at about 01-15 PM , the petitioners were proceeding towards Goa from Dharwad in car bearing Reg.No.KA-25/Z-1315 via Kittur Bidi road, when they came near Mukhal cross of Basarkhod village, at that time, Lorry bearing Reg.No.TN-36/AQ-2557 came from opposite direction driven by its driver in rash & negligent manner endangering to human life and safety of others, suddenly lost control over his vehicle and dashed to the petitioner's car and caused the accident as a result, petitioners sustained grievous injuries.

2.1. Immediately after the accident, the petitioners shifted to CHC Kittur and they have taken first aid treatment and later shifted to SDM Hospital Dharwad for higher treatment. The petitioners No.1 to 4 spent more than Rs.1,50,000/- each towards their medical and other expenses. After discharge petitioners advised to take strict bed rest and also under follow-up treatment till as outdoor patient.

2.2. It is further contended that, prior to the accident the petitioner No.1 was hale & healthy aged about 47 years and he was working in private institute. Prior to the accident the petitioner No.2 was hale & healthy aged about 48 years and he was working in private institute as clerk and thereby getting salary of Rs.26,000/- PM. Prior to the accident the petitioner No.3 was hale & healthy aged about 38 years and he was working in private institute. Prior to the accident the petitioner No.4 was hale & healthy aged about 42 years and he was working in private institute. The petitioners are the only bread earning member in their family. They spent their income for their family welfare. Due to this accident, the petitioners are unable to do day today work. The petitioners are suffering from mentally, economically and physically as result of this accident. It is further averred in the petition that, aforesaid accident was occurred due to rash & negligent driving of driver of Lorry bearing Reg.No.TN-36/AQ-2557. The respondents are liable to pay compensation. With this, the petitioner prayed to allow the petition.

3. In pursuance of notice, the respondent No.1 & 2 have appeared before the tribunal through their respective counsels and the respondent No.2 has filed objection.

4. GIST OF THE OBJECTION FILED BY RESPONDENT NO.2 IS AS FOLLOWS :

The respondent No.2 filed objections denying the occurrence of accident, injuries sustained by the petitioner, admitting them, in the hospital and medical expenses, taking treatment in the hospital as inpatient. It is specifically contended that, the cheque bearing No.330220 dated 28-08-2018 for Rs.16,040/- drawn on Karur Vysya bank issued by respondent No.1 to respondent No.2 towards payment of insurance premium for Lorry bearing Reg.No.TN-36/AQ-2557 was dishonoured by the bank for insufficient funds. The insurance policy of the Lorry bearing Reg.No.TN-36/AQ-2557 covering the date of accident with policy No.773721823350333359 was got cancelled by the respondent No.2 by issuing written notice to the respondent No.1 as well as to the concerned RTO. The respondent No.2 further contended that, the premium cheque issued by the respondent No.1 to the respondent No.2 brought to the notice of respondent No.1 and got cancelled with written notice. The petitioners are not entitled to the payment of any interest whatsoever for the period of delay caused by petitioners. Therefore, petition is not maintainable and liabel to be dismissed.

4.1. The respondent No.2 further contended that, the statutory conditions U/s 134(C) and U/s 158(6) of M.V.Act have not been complied and respondent No.2 seeks protection U/s Sec.147, 149 & 170 of M.V Act. The respondent No.2 also seeks protection under Sec.194(3) (ix) & (ix) (a) of Income Tax Act, 1961. The award of interest has to be not more than 6% p.a. as per the judgment passed by the Hon'ble Supreme Court of India in Civil Appeal No.6092/21 dated 16.11.2021 in Kurvan Ansari & Shyam Kishore Murmur & another (reportable judgment). Further no interest should be granted on the award under the head of future prospects and future medical expenses in view of the judgment dated 01.10.2019 in MAC App. 378/2017 High Court of Gauhathi. The owner of the offending vehicle has violated the terms and conditions of the policy as such the respondent No.2 is not liable to pay any compensation to the petitioner. Hence, prayed to dismissal of the petition with cost.

5. On the basis of the petition & objections, learned predecessor in the office had framed the following :

ISSUES

.1. Whether the petitioner proves that he sustained injuries in the accident that took place on 23.02.2019 at about 13.15 hour on Kittur -Bidi road near Basarkhod village, near Savalamukha cross, due to rash and negligent driving of the lorry bearing Reg No.TN-36/AQ-2557 by its driver ?

.2. Whether the respondent No.2 proves any violation of policy conditions?

.3. Whether the petitioner proves that he is entitled to compensation? If so to what quantum and from whom?

4. What order or award ?

6. In order to prove the case, the petitioner in MVC No.145/2022 is examined as PW-1 and got marked documents at Ex.P.1 to 7, petitioner in MVC No.146/2022 is examined as PW-2 and got marked document at Ex.P.8, petitioner in MVC No.147/2022 is examined as PW-3 and got marked document at Ex.P.9 and petitioner in MVC No.148/2022 is examined as PW-4 and got marked documents at Ex.P.10 to 15. On the other hand, Manager legal of the respondents Santosh S/o Mahabaleshwar Wali got examined as R.W.1 and got marked document as Ex.R.1 to 9.

7. Heard and perused the documents available on record.

8. My answers to the above issues are as under:

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

R E A S O N S

9. **ISSUE NO.1:-** The case of the petitioner is that on 23.02.2018 at about 01-15 PM , the petitioners were proceeding towards Goa from Dharwad in car bearing Reg.No.KA-25/Z-1315 via Kittur Bidi road, when they came near Mukhal cross of Basarkhod village, at that time, Lorry bearing Reg.No.TN-36/AQ-2557 came from opposite direction driven by its driver in rash & negligent manner endangering to human life and safety of others, suddenly lost control over his vehicle and dashed to the petitioner's car and caused the accident as a result, petitioners sustained grievous injuries.

10. In order to prove the accident, the petitioners No.1 to 4 filed affidavit in lieu of chief examination by reiterating petition averments and examined themselves as PW-1 to 4. The PW.1 to 4 produced the documents at Ex.P-1 to 15 to prove the accident. Ex.P-1 & 2 are the certified copies of FIR & complaint. Ex.P.3 is certified copy of crime details form, Ex.P.4 is certified copy of hand sketch map of spot mahazar, Ex.P.5 is the certified copy MVA report, Ex.P.6 is certified copy of wound certificate, Ex.P7 is the certified copy of charge sheet. Ex.P.8

to 10 are certified copies of wound certificates of petitioners, Ex.P.11 and 12 are certified copy of discharge summaries, Ex.P.13 is medical bills, Ex.P.14 is medical prescriptions and Ex.P.15 is X-Ray. The counsel for respondent No.2 though cross examined Pw.1 to 4 in length, but nothing worthwhile elicited.

11. The respondent No.2 / Santosh S/o Mahabaleshwar Wali Manager legal filed affidavit in lieu of chief examination by reiterating objections averments and got examined as RW.1. He has produced authorization letter as Ex.R.1, cheque bearing No.000220 dated 28-08-2018 as Ex.R.2, bank memo as Ex.R.3, copy of Reliance cheque bounce RTO list dated 27-10-2018 as Ex.R.4, insurance policy of offending vehicle as Ex.R.5, the policy cancellation notice issued to respondent No.1 as Ex.R.6 & 7 and copy of Reliance cheque bounce RTO list dated 27-10-2018 as Ex.R.8 and 9. The petitioners counsel cross examined RW.1 and elicited that, they did not issue any notice to Balakrishnan B who has issued Ex.R.2 cheque in favour of respondent No.2 company. RW.1 further admits that the insurance policy of offending lorry was in force from 28-08-

2018 to 27-08-2019. RW.1 further admits that Balakrishna who issued Ex.R.2 is authorized agent of respondent No.2 company. RW.1 further deposed that the insurance policy was issued through agent. RW.1 clearly admitted that they did not intimate about dishonour of Ex.R.2.

12. A careful perusal of Ex.P2 complaint filed by the Vinayk Shet establishes that, the petitioners met with an accident on 23.02.2019 and the petitioners were admitted in hospital. Based on the same, the Kittur Police has registered F.I.R in Cr.No.27/2019 against the driver of offending Tipper Lorry bearing Reg.No.TN-36/AQ-2557 for the offences punishable under section 279, 337 & 338 of IPC. After due investigation the I.O has filed charge sheet against driver of offending Tipper Lorry bearing Reg.No.TN-36/AQ-2557 for the offences punishable under section 279, 337 & 338 of IPC as accused. Therefore, these material documents clearly establishes the accident occurred due to rash and negligent driving of driver of Tipper Lorry bearing Reg.No.TN-36/AQ-2557.

13. The respondent No.2 has produced the copy of insurance policy as Ex.R.5. In the absence of reliable evidence from the respondent No.2 this court accepted the charge sheet filed by the Investigation Officer as cogent document to consider that, the accident occurred due to rash and negligent driving of driver of Tipper Lorry bearing Reg.No.TN-36/AQ-2557. Therefore, I am of the considered opinion that, the petitioner has proved that the accident was occurred due to rash and negligent act of driving of driver of Tipper Lorry bearing Reg.No.TN-36/AQ-2557. Hence, I answered the Issue No.1 in the Affirmative.

14. **ISSUE NO.2** : This issue is framed with regard to entitlement of compensation and the liability of respondents No.1 & 2 jointly & severally liable to pay the compensation to the petitioners. The petitioners have claimed compensation of Rs.1,00,000/- (Rupees one Lakh only), Rs.10,00,000/- (Rupees ten Lakh only), Rs.1,00,000/- (Rupees one Lakh only), Rs.1,00,000/- (Rupees one Lakh only). As discussed above it is proved that the accident has been caused due to rash and negligent driving of driver of Tipper Lorry bearing Reg.No.TN-

36/AQ-2557. Thus the petitioners are entitled for the compensation for the injuries sustained by them under the following heads.

15. **TOWARDS PAIN AND SUFFERING :-** As per Ex.P6, 8 to 10 wound certificates, the petitioners have sustained simple and grievous injuries. Looking to all the medical documents available on record, it shows that the petitioners sustained simple and grievous injuries. The said injuries may come in the way of their future life. So it is clear that petitioners have suffered lot of pain and suffering due to the above said injuries. Hence in my opinion it is feasible to award Rs.50,000/- each towards pain and suffering.

16. **TOWARDS LOSS OF FUTURE INCOME** : The petitioners in their examination in chief as well as in the petition have contended that they were working in private institute and thereby earning. But in order to show the exact income, the petitioners have not produced any documents. On perusal of Ex.P.6, 8 to 10, it appears that the petitioners No.1 to 4 not sustained permanent physical disability. Hence, the petitioners are not entitled for compensation under this head.

17.<u>**TOWARDS ATTENDANT CHARGES, FOOD AND CONVEYANCE CHARGES :**</u> Immediately after the accident petitioners No.1, 3 and 4 were taken treatment at SDM hospital and petitioner No.2 was admitted to SDM Hospital, Dharwad as per Ex.P11 to 15 for a period of 6 days from 23-02-2019 to 28-02-2019. During the admission, the petitioner was undergone extraction of 31-32T done with arch bar fixation for 11-14 under LA with suturing on 24-02-2019. Ex.P.11 and 12 are discharge card of petitioner No.2 show that, he was admitted in hospital from 23.02.2019 and discharged on 28.02.2019. During the said period necessarily one person might have attended the petitioner No.2. So the petitioner No.2 is entitled for attendant charges, food and conveyance during his stay at the hospital. Therefore, in my opinion it is feasible to award Rs.6,000/- under this head. The petitioner No.1, 3 and 4 are not entitled compensation under this head.

18.**TOWARDS MEDICAL EXPENDITURE** : The petitioners have contended that, they have spent more than Rs.1,50,000/- each towards hospital and medical expenditure. In order to establish the medical expenses, the petitioner No.1, 3 and 4 have not produced any documents hence, they are not entitled compensation under this head. The petitioner No.2 has produced medical bills and prescriptions at Ex.P.13 and 14. Ex.P.9 and 11 are discharge cards of petitioner No.2 shows that, he was admitted in hospital from 23.02.2019 and discharged on 28.02.2019. On calculating all the medical bills at Ex.P.13 which amounts to Rs.40,000/-. Looking to the grievous nature of injury and teeth surgery this much of medical expenses is not higher side. Therefore, the petitioner No.2 is entitled for Rs.40,000/- under this head.

19. **TOWARDS LOSS OF INCOME DURING TREATMENT PERIOD :** Immediately after the accident petitioner No.2 was admitted in SDM hospital Dharwad. Ex.P.9 and 10 are discharge cards of petitioner No.2 shows that, he was admitted in hospital from 23.02.2019 and discharged on 28.02.2019. Due to grievous injuries the petitioner No.2 had taken rest for at least one month. Therefore, the petitioner No.2 is entitled for Rs.16,000/- under this head as per the notional income considered for the loss of future prospectus of the petitioner .

20. So the compensation to be awarded to the petitioner No.1, 3 and 4 is as under :

1	**Towards Pain and suffering**	**Rs.**	**50,000=00**
	TOTAL	**Rs.**	**50,000=00**

So the compensation to be awarded to the petitioner No.2 is as under :

1	**Towards Pain and suffering**	**Rs.**	**50,000=00**
2	**Towards Attendant, food and conveyance charges.**	**Rs.**	**6,000=00**
3	**Towards Medical expenses.**	**Rs.**	**40,000=00**
4	**Towards Loss of income during treatment period.**	**Rs.**	**16,000=00**
	TOTAL	**Rs.**	**1,12,000=00**

The petitioners counsel relied upon following decisions

1. Civil Appeal No.9845/2016 between National Insurance Co. Ltd. Vs. Suinita Deviand others.

2. (2000) AIR (SCW) 788 between New India Assurance Co. Ltd. Vs. Rula and others

3 (1998) AIR (SC) 588 between Oriental Insurance Co.Ltd Vs. Inderjeet Kaur and others.

21. <u>LIABILITY</u> :- The respondent No.2 insurance company has specifically contended that, the cheque bearing No.330220 dated 28-08-2018 for Rs.16,040/- drawn on Karur Vysya bank issued by respondent No.1 to respondent No.2 towards payment of insurance premium for Lorry bearing Reg.No.TN-36/AQ-2557 was dishonoured by the bank for insufficient funds. The insurance policy of the Lorry bearing Reg.No.TN-36/AQ-2557 covering the date of accident with policy No.773721823350333359 was got cancelled by the respondent No.2 by issuing written notice to the respondent No.1 as well as to the concerned RTO. The respondent No.2 further contended that, the premium cheque issued by the respondent No.1 to the respondent No.2 brought to the notice of respondent No.1 and got cancelled with written notice.

The petitioners counsel relied upon following decisions

1. Civil Appeal No.9845/2016 between National Insurance Co. Ltd. Vs. Suinita Deviand others. The Hon'ble Apex Court while dealing with the principle of liability of payment of compensation in case the policy of insurance was cancelled has referring several judgments has clearly held that once the bouncing of cheque for premium or non payment of premium has been intimated to the parties concerned then the insurance company absolved from its liability to pay the compensation. In the case on hand, as admitted by the RW.1 the cancellation of policy has not been intimated to the respondent No.1 by the company to the concerned party. However, the ratio of supra decision is not applicable to the case on hand.

2. (2000) AIR (SCW) 788 between New India Assurance Co. Ltd. Vs. Rula and others. 3(1998) AIR (SC) 588 between Oriental Insurance Co.Ltd Vs. Inderjeet Kaur and others. The Hon'ble Apex Court clearly held that, once the policy is issued against cheque, subsequent dishonour of said cheque is not a ground for a cancellation of insurance policy hence, the insurer is liable to compensate third party. In the

case on hand, the respondent No.2 has taken the specific defense that the cheque issued towards the payment of premium has been dishonoured hence, their liability is absolved from payment of compensation. RW.1 has clearly admitted that one Subramanya B who was agent of their company has issued the cheque towards the payment of premium and the owner of offending vehicle purchased policy through agent. Therefore, the respondent No.1 being owner of the offending vehicle cannot be denied indemnification of the policy on the ground of cheque bounce of premium amount which was issued by the respondent No.2 agent. Hence, as per the ratio laid down in the supra decision is aptly applicable to the case on hand.

22. The RW.1 during cross examination by petitioners has clearly elicited that, they did not issue any notice to Balakrishnan B who has issued Ex.R.2 cheque in favour of respondent No.2 company. RW.1 further admits that the insurance policy of offending lorry was in force from 28-08-2018 to 27-08-2019. RW.1 further admits that Balakrishna who issued Ex.R.2 is authorized agent of respondent No.2 company. RW.1 further deposed that the insurance policy was issued through agent. RW.1 clearly admitted that they did not intimate about dishonour of Ex.R.2. On careful perusal of the cross examination of RW.1 and the ratio laid down in the supra decisions it is crystal clear that the offending tipper lorry bearing reg No.TN-36/AQ-2557 was insured and insurance was in force at the time of accident. The said defense of the respondent No.2 can be seen along with Ex.P.7 charge sheet it shows that the IO has filed charge sheet against the driver of offending vehicle for the offence punishable under section 279, 337 and 338 of IPC which is evident that, even at the time fo filing charge sheet by the IO, the respondent No.2 being insurance company did not bring it to the knowledge of IO as the offending vehicle had no insurance at the time of accident.

23. Moreover, the RW.1 being insurance company clearly admitted that they did not issue notice to the respondent No.1 about the dishonor of Ex.R.2 cheque issued by them towards payment of insurance premium of offending vehicle.

Therefore, the insurance company at this stage after filing of the petition came up with the defense that the offending vehicle had no insurance at the time of accident is not sustainable and maintainable. Therefore, the respondent No.2 being insurer of the offending vehicle has to indemnify the respondent No.1 insured and liable to pay compensation to the petitioners.

24. Therefore, the respondent No.2 insurance company being insurer and respondent No.1 being insured are jointly and severally liable to pay compensation to the petitioners. Accordingly I answered issue No.2 partly in the affirmative.

25. **ISSUE NO.3** :- As discussed above I proceed to pass the following :

ORDER

The petitions filed by the petitioners No.1 to 4 U/S.166 of M.V. Act is hereby partly allowed with cost.

The petitioners in MVC. No.145/2022 C/w MVC.No.146/2022 & MVC No.147/2022 are entitled for the compensation of Rs.50,000/- each with future interest at the rate of 6% p.a., from the date of petition till its realization.

The petitioner MVC. No.148/2022 No.2 is entitled for the compensation of Rs.1,12,000=00/- with future interest at the rate of 6% p.a., from the date of petition till its realization.

The respondent No.1 being the owner and respondent No.2 being the insurer of the offending vehicle involved in the accident are jointly and severally liable to pay the compensation to the petitioner.

Respondent No.2 is hereby directed to deposit Rs.2,62,000=00/- the award amount with interest within 30 days from the date of petition till its realization.

As the petitioners No.1 to 4 have spent amount towards hospital and medical expenses and the case is of the year 2019, hence the petitioners No.1 to 4 are entitled for release of entire award amount in their favor on their proper identification.

Advocates fees is fixed at Rs.1000/-.

Costs of the petition is fixed at Rs.1000/-.

Draw award accordingly.

(Dictated to the stenographer directly on computer, typed by her, corrected and signed by me and then pronounced in the open Court on 30th day of July 2026)

(Shri. Sushant Mahaveer Chougale)
II Addl. Senior Civil Judge &
M.A.C.T.- at Dharwad.

: A N N E X U R E :

LIST OF WITNESSES EXAMINED FOR THE PETITIONER :

P.W.1 : Nagaraj s/o Krishanarao Patil

P.W.2 : Vinayak s/o Annappa Shet

P.W.3 : Govindaraj s/o Chandrappa Tadakod

P.W.4 : Rajakumar s/o Channabasappa Karur

LIST OF DOCUMENTS EXHIBITED FOR THE PETITIONER :

Ex.P-1 & 2 : Certified copies of FIR & complaint.

Ex.P.3 : Certified copy of crime details form,

Ex.P.4 : Certified copy of hand sketch map, Ex.P.5 : Certified copy MVA report,

Ex.P.6 : Certified copy of wound certificate,

Ex.P.7 : Certified copy of charge sheet.

Ex.P.8 to 10 : Certified copies of wound certificates

Ex.P.11 & 12 : Certified copy of discharge summaries,

Ex.P.13 : Medical bills,

Ex.P.14 : Medical prescriptions

Ex.P.15 : X-Ray.

LIST OF WITNESSES EXAMINED FOR THE RESPONDENTS :

R.W.1 : Santosh S/o Mahabaleshwar Wali

LIST OF DOCUMENTS EXHIBITED FOR THE RESPONDENTS :

Ex.R.1 : Authorization letter
Ex.R.2 : Cheque bearing No.000220
dated 28-08-2018
Ex.R.3 : Bank memo
Ex.R.4 : Copy of Reliance cheque bounce RTO list
dated 27-10-2018
Ex.R.5 : Insurance policy
Ex.R.6&7 : The policy cancellation notice
Ex.R.8&9 : Reliance cheque bounce RTO list
dated 27-10-2018.

(Shri. Sushant Mahaveer Chougale)
II Addl. Senior Civil Judge &
M.A.C.T.- at Dharwad.