

**IN THE COURT OF THE II ADDL. SENIOR CIVIL JUDGE AND
CFEC, Chitradurga**

: P R E S E N T :

Sri Selva Kumar, B.A., LL.B.
II Addl. Senior Civil Judge &
CFEC, Chitradurga

ECA.No.57/2017
(Connected with ECA.No.1/2018, 2/2018)

Dated this 19th day of September 2018

Petitioner/s
In ECA. No. 57/17 : Shankarnag S/o Kuberappa,
Aged about 21 years,
Coolie work,
R/o Bacchaboranahatti village,
Chitradurga Taluk,
and District.

Petitioner/s
In ECA. No. 1/18 : Papanna S/o Murthappa,
Aged about 20 years,
Coolie work,
R/o Bacchaboranahatti village,
Chitradurga Taluk,
and District.

Petitioner/s
In ECA. No. 2/18 : G.S. Boraiah S/o Guddepu Suraiah,
Aged about 28 years,
Coolie work,
R/o Bacchaboranahatti village,
Chitradurga Taluk,
and District.

(Reptd by Sri A.D.R., Adv.)

V/s

Respondent/s
in all the cases:

1. Raghunath R. S/o T. Rajappa,
Aged about 28 years,
RC Owner in lorry
bearing No.KA-12-8031,
R/o Hale Kallahalli village,
Chitradurga Taluk.

2. Sri. Rama General
Insurance Company Limited,
E-8, R-Co Industrial Area,
Sithapura, Jaipur,
Rajasthan - 302022.

(R-1 placed ex parte and
R-2 Reptd by Sri K.E.M., Adv.,)

-: COMMON JUDGMENT :-

The petitioner has filed this petition U/s.22 of W.C. (Amendment) Act seeking compensation from the respondents with interest at the rate of 12% per annum from the date of petition till the date of realization and also for costs of the proceedings for the injuries sustained by him in the incident during the course of his employment under respondent No.1.

Since these three petitions have arisen out of the same accident and the respondents are common, they are clubbed together and common evidence has been recorded in MVC.No.57/2017. Accordingly, proceed to pass a common judgment in this petition.

2. Brief facts of the petition averments are as under :-

On 08/02/2017 at about 9.30 p.m., while the Petitioner along with Boraiah, Papanna, Manjunath, Channaboraiah and driver Ravi traveling from their village to Chitradurga in the lorry bearing No.KA-12-8031 to load boulders, when the said lorry came near Muttaiahna hatti cross, the driver of the said lorry drove it in a rash and negligent manner and took cross and get down the same into a ditch situated by of the road and caused the accident, due to which with accident petitioners sustained fracture injuries. Immediately after the accident they are shifted to Government Hospital, Chitradurga for treatment by spending Rs.50,000/- each amount towards medical expenses.

3. The petitioners in **ECA No.57/2017, ECA No. 1/2018 and 2/2018** are all hale and healthy prior to the date of accident, they were aged about 21, 20 and 28 years

respectively, they were doing coolie work under the employment of respondent No.1 i.e. owner of the offending lorry No.KA-12-8031 and they have earned Rs.500/- to 600/- per day. Due to impact of accidental injuries and fractures the petitioners are unable do their work and unable to do any kind of work independently and lost their earning capacity.

4. Further they pleaded that, the respondent No.1 and 2 are the owner and insurer of lorry bearing Reg.No.KA-12-8031, accident was occurred due to negligence of the driver of the respondent No.1, as such, both the respondents are jointly and severally liable to pay compensation as prayed in the petition.

5. In response to the service of notices, the respondent No.1/owner placed exparte. The respondent No.2 appeared through his counsel and denied the petition averments so far as accident, injuries sustained by the petitioner during the course of his employment, salary, relationship of petitioners with the respondent No. 1 as employee and employer, there is no nexus between alleged accident and injuries sustained by the petitioners, age of the petitioners, expenditure, the respondent No.1 has not paid any wages to the Petitioners at any material point of time, the petitioners are not sustained

any injuries and fractures during their employment, the offending vehicle used for hires and reward at the time of accident, hence there is violation of terms and conditions of policy. Further contended that, at the accident time there were six persons travelled in the said vehicle it exceeds the seating capacity of the vehicle and hence amounts to violation of policy terms and conditions, the driver of the offending vehicle does not possess valid driving license as on the date of accident. The compensation claimed by the Petitioners are highly excessive, abnormal, exorbitant and not in accordance with law and has no basis. Liability if any of this respondent is subject to terms and conditions of the policy, RC, FC, and driving license of the driver of the lorry, hence prays to dismiss the petitions.

6. Basing on the above said contentions of the parties, this Tribunal framed the common issues:

-. COMMON ISSUES :-

- 1 Whether the petitioners prove that, they have sustained injuries in the RTA occurred on 08/02/2017 at about 9.30 p.m. near Muthaiahnahatti village Tank cross, during the course of their employment with respondent No.1 as coolie in Lorry No.KA-12-8031?

2 Whether the petitioner is entitled for compensation, If so, how much and from whom?

3 What order or award?

7. In order to prove their respective claims, the petitioners' in all the petitions examined as P.W.1 to 3, and petitioner of ECA No.1/2018 has examined witness i.e. doctor as PW.4 and marked Ex.P.1 to 27. On the other hand, the respondent No.2 has filed policy copy and the same was marked as Ex.R1 with consent.

8. On examination of pleadings evidence available on record, after hearing arguments on respondents' side the issues answered as under :

Issue No.1 in all : In the affirmative
the petitions

Issue No.2 in ECA : Partly in the affirmative
No.57/2017 **Rs.20,000/-** from respondent No.2

Issue No.2 in ECA : Partly in the affirmative
No.1/2018 **Rs.35,000/-** from respondent No.2

Issue No.2 in ECA : Partly in the affirmative
No.2/2018 **Rs.15,000/-** from respondent No.1

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

:- REASONS :-

9. Issue No.1 in all the petitions:- In order to prove the allegations, the injuries sustained by the petitioners in the accident which was occurred during the course of his employment under respondent No.1 as a coolie, they themselves examined as P.W-1 to 3. On perusal of their affidavits evidence reveals that, they reiterated all the petition averments so far as incident, which was occurred during the course of their employment under respondent No.1 as a coolies and injuries sustained by them and treatment also obtained. In support of their oral evidence, they have produced copy of FIR, complaint, spot mahazar, IMV report, wound certificate, charge sheet, case sheet, disability certificate, medical bills, prescriptions, X-rays and discharge card as per Ex.P.1 to 27. The learned counsel for the respondent No.2 cross examined the PW.1 to 3 and tried to elicit that, the petitioners were not the employee under respondent No.1 and they have not sustained any injuries during the course of employment under respondent No.1 and all medical documents created by the Petitioners, but except denial nothing elicited to disbelieve their oral testimony.

Ex.P.1 is complaint lodged by one Boriah S/o Gudep Suriah on the same day at Rural Police Station, Chitradurga. The Investigating Officer basing on the said compliant investigated the matter and submitted charge sheet as per Ex.P.6 against the driver of the offending lorry KA-12-8031. Ex.P.3 is spot mahazar, on its perusal reveals that, the location of the accident place. Ex.P.5, 8 and 9 are the wound certificates of petitioners, on perusal of wound certificates reveals that, the petitioners have sustained injuries in the said accident and took treatment at District Hospital, Chitradurga. Ex.P.4 is IMV report reveals that, the damages caused to the lorry. On examination of these police records reveals that, the accident was taken place during the course of employment of petitioners under respondent No.1 and they have sustained injuries. The evidence of PW.1 to 3 corroborates with the police records. As such, the evidence of petitioners clearly reveals that, they have sustained injuries in the incident.

10. Though the respondent No.2 has taken contention that, the accident was not occurred during the course of their employment with respondent No.1 as a coolie, but nothing produced, except the cross examine the PW.1 to 3. However,

the police records clearly reveal that, the accident was occurred during the course of employment with respondent No.1 and they have sustained injuries. Under such circumstances, this Tribunal comes to conclusion that, the petitioners have succeeded to prove that, they have sustained injuries in the accident which was occurred during the course of their employment under respondent No.1. **Thus, Issue No.1 in all the petitions answered in the affirmative.**

11. Issue No.2 in all the petitions:- When the petitioners have succeeded to prove that, they have sustained injuries in the said accident during the course of their employment as coolie under respondent No.1 who is the owner of the lorry No.KA-12-8031, they have entitled for reasonable compensation.

12. Regarding Quantum In ECA No.57/2017(Shankarnag): In order to prove the nature of injuries sustained and treatment obtained by the petitioner, in support of his oral evidence, he had produced copy of the wound certificate, case sheet. As per Ex.P.5 is wound

certificate on its perusal reveals that, the petitioner had sustained the following injuries :

- 1. Swelling and deformity of 4th toe on left hand.**
- 2. Pain in left hip.**
- 3. Abrasion of right hypochondrium.**

13. As per wound certificate **Swelling and deformity of 4th toe on left hand. Pain in left hip. Abrasion of right hypochondrium.** As per the opinion of the doctor who issued the said wound certificate, the above said injuries are simple in nature, further the petitioner has produced case sheet which is marked at Ex.P7 it shows that, he was admitted on 08/02/2017 and discharged on 11/02/2018, he was took treatment 4 days as inpatient in District Govt. Hospital, Chitradurga. Considering the nature of injuries and its gravity and its affects, the petitioner has suffered pain and agony on account of injuries. In support of his oral evidence he has not produced any documentary evidence to prove the same. The petitioner got severe nature of injury due to the accident, but so far as not produced any documents to show the same and he has not suffering from any disability. **Therefore, this tribunal awarded an compensation of Rs.20,000/- as global.**

14. Regarding Quantum In ECA No.2/2018(G.S. Boraiah): In order to prove the nature of injuries sustained

and treatment obtained by the petitioner, in support of their oral evidence, he had produced copy of the wound certificate. As per Ex.P.8 is wound certificate on its perusal reveals that, the petitioner had sustained the following injuries :

- 1. Pain in right hip.**
- 2. Pain in left knee.**
- 3. Pain back of neck**
- 4. Pain in chest.**
- 5. Abrasion over the vertex.**

15. As per wound certificate **Pain in right hip, Pain in left knee, Pain neck of neck, Pain in chest, Abrasion over the vertex.** As per the opinion of the doctor who issued the said wound certificate, the above said injuries are simple in nature. In his chief affidavit he has stated that, he has taken treatment 15 days as inpatient in Govt. Hospital, Chitradurga, for that he has not produced any reliable documents. Considering the nature of injuries and its gravity and its affects, the petitioner has suffered pain and agony on account of injuries. In support of his oral evidence he has not produced any documentary evidence to prove the same. The petitioner got severe nature of injury due to the accident, but so far as not produced any documents to show the same and he has not suffering from any disability. **Therefore, this**

tribunal awarded an compensation of Rs.15,000/- as global.

16. Regarding Quantum In ECA No.1/2018(Papanna): In order to prove the nature of injuries sustained and treatment obtained by the petitioner, in support of his oral evidence, he has produced copy of the wound certificate, disability certificate, medical bills, x-ray and discharge card as per Ex.P.9, 10 to 27. Ex.P.9 is wound certificate on its perusal reveals that, the petitioner had sustained the following injuries :

- 1. Loss of upper two incisor teeth**
- 2. Cut lacerated wound over the inside and outside of lower lip.**

17. As per opinion of the doctor, **complete loss of upper right and left central incisor. More than 1/3rd of fracture of lower right central and lateral incisor and lower left central incisor teeth. Clicking sound present in TMJ on opening of the mouth and partial tissues present,** who issued the said wound certificate the above injury is grievous in nature and injury No.2 is simple in nature. Further the petitioner has produced case sheet which is marked at Ex.P27 it shows that, he was admitted on 08/02/2017 and

discharged on 13/02/2018, he was taken treatment 6 days as inpatient in District Govt. Hospital, Chitradurga. As per disability certificate at Ex.P.10 the petitioner is suffering from disability of 35% with respect to mouth. The petitioner has examined concerned doctor who issued the said disability certificate. The disability certificate reveals that, the disability of 35% with respect to mouth. The Petitioner has sustained injury to **complete loss of upper right and left central incisor. More than 1/3rd of fracture of lower right central and lateral incisor and lower left central incisor teeth. Clicking sound present in TMJ on opening of the mouth and partial tissues present.** Accordingly, the petitioner is suffering from physical disability has been evaluated as per guidelines and is total disability of 35% with respect to mouth. Though the learned counsel for the respondent No.2 cross examined the doctor and denied the validity of the disability certificate which is got marked at Ex.P10. Admittedly this petitioner lost the upper incisor teeth in the month. In the W.C. Act, towards loss of teeth the disability is not taken into consideration for his work and loss of teeth would not cause any functional disability. Hence, the disability is not taken into consideration to this petitioner.

Therefore, this tribunal awarded an compensation of Rs.25,000/- as global for the injuries.

18. Medical expenses:- Ex.P.11 to 14 are medical bills, they reveals that, the petitioner has spend an amount of **Rs.10,340/-**. Though, the respondent No.2 denied the same, but nothing brought on record to disbelieve the genuineness and correctness of the said bills. Moreover, the medical bills are hand writing bills. No rebuttable evidence is placed by the respondent company regarding the genuineness and correctness of the medical bills. Hence, it is just and reasonable this Tribunal awarded **Rs.10,000/-**. **Accordingly the petitioner is entitled for Rs.35,000/. (Rs.25,000/- + Rs.10,000/- medical bills = Rs.35,000/-.)**

19.Regarding interest in all the petitions :- The petitioner has claimed current interest at the rate of 12% p.a. Since no amount deposited by the respondents and the respondent No.1 being owner of the said offending vehicle is liable to deposit the compensation, with interest at 12% p.a. after the one month from the date of incident till the date of deposit.

20. Regarding liability in all the petitions:- As per the contention of petitioners, the respondent No.1 is RC Owner of offending lorry and respondent No.2 is insurer. When the petitioners have succeeded to prove that, they have sustained injuries in the accident which was occurred 'arising out of' and 'in the course of employment' under respondent No.1. As such, the respondent No.2 being insurer is liable to pay the compensation to the petitioners. But, the respondent No.2 is liable to pay the compensation with regard to the claimants i.e. in ECA No.57/2017 and in ECA 1/2018. As per the policy terms the owner paid premium for one coolie and one cleaner, but herein in this case, there was no cleaner in the vehicle, therefore, the policy covers for two persons. Therefore, respondent No.2 is liable to satisfy the compensation amount in favour of the petitioners in ECA No.57/2017 and in ECA 1/2018. It is further ordered that, the petitioner in ECA 2/2018 (G.S.Boraiah) may recover the compensation from the owner i.e. respondent No.1. **Thus, Issue No.2 in all the petitions answered partly in the affirmative.**

21. Issue No.3 in all the petitions:- In the result, the following:-

ORDER

The petitions filed by the petitioners U/s 22 of WC (Amendment) Act are hereby partly allowed with costs.

The petitioner in **ECA No.57/2017** is entitled for recovery a sum of **Rs.20,000/-** (Rupees Twenty thousand only)

The petitioner in **ECA No.1/2018** is entitled for recovery a sum of **Rs.35,000/-** (Rupees Thirty Five thousand only)

The petitioner in **ECA No.2/2018** is entitled for recovery a sum of **Rs.15,000/-** (Rupees Fifteen thousand only)

As compensation with interest at the rate of 12% p.a. after one month from the date of petition till the date of deposit.

The respondent No.1 being RC owner is held liable to pay compensation in ECA 2/2018 and the respondent No.2 is being the insurer is held liable to pay compensation in ECA 57/2017 and ECA 1/2018 and respondents No.1 and 2 have to deposit the said compensation amount with interest within 30 days from the date of this order.

The award amounts are meager in all the cases, hence no order as to deposit.

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

Draw award accordingly.

(Dictated to the stenographer directly and computerized by her corrected, signed and then pronounced by me in the open court on this 19th day of September 2018)

(C. Selva Kumar)
II Addl. Senior Civil Judge
& Addl. CEFC, Chitradurga

ANNEXURES

1. Witnesses examined for petitioner/s :

P.W.1 : Shankarnag
P.W.2 : G.S. Boraiah
P.W.3 : Papanna
P.W.4 : Dr. Nagamani D.

2. Witnesses examined for respondent/s :

--NIL--

3. Documents got marked for petitioner/s :

Ex.P.1 : FIR
Ex.P.2 : Complaint
Ex.P.3 : Spot mahazar
Ex.P.4 : IMV report
Ex.P.5 : Wound certificate (ECA No.57/2017)

Ex.P.6 : Charge sheet
Ex.P.7 : Case sheet
Ex.P.8 : Wound certificate (ECA No.2/2018)
Ex.P.9 : Wound certificate (ECA No.1/2018)
Ex.P.10 : Disability certificate
Ex.P.11 to 14 : 4 Medical bills
Ex.P.15 to 21 : 7 prescriptions
Ex.P.22 to 26 : 5 X-rays
Ex.P.27 : Discharge card.

4. Documents got marked for respondent/s :

Ex.R.1 : Policy copy

II Addl. Senior Civil Judge
& Addl. CEFC, Chitradurga