

**BEFORE THE I Addl. DISTRICT JUDGE & II Addl.
MOTOR ACCIDENT CLAIMS TRIBUNAL, MANGALURU
(DK)**

Present:

**Smt.Sharada.B., B.Sc.,LL.B.
I Addl District Judge & MACT-II. Mangaluru.**

Dated this the 1st day of July,2019

M.V.C. NO.1/2018

PETITIONER:

	Mr.Chethan Acharya S/o Sanjeeva Acharya Aged 23 years R/at 1-104, Eliyanadugodu Uppira House, Arambody, Bantwal Presently R/at Sridevi Nilaya, Alape, Kembar, Padil, Mangalore
	(By Sri A.D.Bhandary-Advocate)

V/s.

RESPONDENTS

1	Mr.Hariprasad P.M. S/o Mohan Acharya Aged 24 years R/at Pade Mane, Konaje village & Post, Putytur Taluk
2	United India Insurance Co.Ltd. Branch Office: Prabhu Building, Opp.Aruna Talkies, Main Road, Puttur D.K Reptd.by its Branch Manager.
	R1 By Exparte R2 By Sri. Kamalaksha.P advocate

JUDGMENT

This is a petition filed by U/s.166 of M.V.Act 1988 on account of injuries sustained by the petitioner in RTA dated 2.9.2017 at about 4.30p.m. at Koila on Bantwal Moodabidri Road, claiming compensation of Rs.5,00,000/- along with interest at 9%p.a. from the date of accident.

2. The brief facts of the case of the petitioner is that; On 2.9.2017 when he was proceeding from Bantwal towards Siddakatte in his motor cycle bearing Reg.No. KA.19/EV.5320 solely and cautiously by observing all traffic rules and regulations, at 4.30p.m. at Koila, Bantwal-Moodabidri road, a jeep bearing Reg.No.KA.19/M.1606 came with high speed in rash and negligent manner from the opposite direction in the wrong side of the road and hit his motor cycle. Due to the impact of the accident, he fell on the road along with motor cycle and sustained grievous injuries on the right side of the face, fracture of 1st metacarpal bone, fracture of distal radius and simple injuries to other parts of the body. The petitioner claims that immediately after the accident he was shifted to Fr.Muller Hospital Tumbe and he was treated as an inpatient from 2.9.2017 to 6.9.2017. The x-ray and C.T.Scan films confirmed the fracture injury. Hence he underwent surgery on 4.9.2017. During the period of hospitalization he was unable to move from bed. Hence he appointed an attendant

to attend him in the hospital by paying Rs. 500/- per day. Thereafter he was discharged from the hospital with an advise for bed rest and follow-up treatment for 6 months. The petitioner claims that he spent Rs.40,000/- towards medical expenses, nutritious food and other incidental expenses. He is in need of Rs.30,000/- for future medical expenses. Prior to the accident he was hale and healthy, working as photographer at Samruddi Studio and Video Siddakatte Bantwal under one Santhosh and earning remuneration of Rs.30,000/- to Rs.40,000/-p.m. His entire family was depending upon his income. Due to the injuries suffered in the accident he become disabled and he is not in a position to attend to his work as he was attending prior to the accident. Because of the accident he was not able to work for a period of 6 months. Hence he lost his income during treatment period. Still he is experiencing severe pain in the fractured part of the body. The accident was solely due to the negligence of the driver of the jeep bearing Reg.No.KA.13/M.1606. The R1 being the R.C. owner and R2 being the insurer of the said jeep are jointly and severally liable to pay compensation to the petitioner. Hence this petition.

3. The respondent No.1 failed to appear before the court even after service of notice and hence he was placed exparte.

4. The respondent No.2 appeared before the court through their counsel after receiving the notice and filed written statement denying the averments made in the petition as false, frivolous and not sustainable. The R2 denied their liability to pay compensation to the petitioner. The R2 also contended that the driver of the jeep was not having valid D.L. as on the date of the accident. Hence claims that they are not liable to indemnify the R.C. owner for making compensation to the petitioner. R2 admits the issuance of policy in favour of the jeep bearing Reg.No.KA.13/M.1606 and claims that their liability if any is subject to the terms and conditions of the policy. Hence on all these amongst other grounds sought for dismissal of the petition.

5. On the basis of the above pleadings, the following issues were framed by this Tribunal.

I S S U E S

1. Whether the petitioner proves that on 2.9.2017 at about 4.30p.m., while he was proceeding by riding a motor cycle bearing Reg.No.KA.19/EV-5320, from Bantwal side towards Siddakatte side, a jeep bearing Reg.No.KA.13/M.1606, came from opposite direction at a high speed in a rash and negligent manner and dashed against the petitioner's motor cycle and caused accident, due to the impact, the petitioner sustained

grievous injuries due to the actionable negligence of the rider of the said jeep?

2. Whether the respondents prove that they are not liable to pay compensation?
3. Whether the petitioner is entitled for compensation? If so, what quantum and from whom?
- 4., What order or award?

6. The petitioner got examined himself as PW.1 and also got examined one Santhosh K. as PW.2 and got marked Ex.P1 to Ex.P12 and closed their side of evidence. The copy of the policy was marked as Ex.R1 with consent. In view of the consent marking of Ex.R1, respondent No.2 closed their side of evidence.

7. Heard the arguments of learned counsel for the petitioner and respondent No.2 and perused the records.

8. After hearing the arguments and perusing the records, my findings on the above Issues are as under:

Issue No.1: In the Affirmative

Issue No.2: In the negative

Issue No.3: Partly in the affirmative

Issue No.4: As per the final Order for following

REASONS

9. ISSUE No.1: It is the case of the petitioner that, on 2.9.2017 when he was proceeding from Bantwal towards Siddakatte in his motor cycle bearing Reg.No.

KA.19/EV.5320 solely and cautiously by observing all traffic rules and regulations, at 4.30p.m. at Koila, Bantwal-Moodabidri road, a jeep bearing Reg.No. KA.19/M.1606 came with high speed in a rash and negligent manner from the opposite direction in the wrong side of the road and hit his motor cycle. Due to the impact of the accident, he fell on the road along with motor cycle and sustained grievous injuries on the rights side of the face, fracture of 1st metacarpal bone, fracture of distal radius and simple injuries to other parts of the body.

10. In this regard the petitioner got examined himself as PW.1 and got marked Ex.P1 to Ex.P12. Among them Ex.P1 to Ex.P9 are the police investigation papers. The Ex.P2 is the complaint and Ex.P1 is the FIR. As per Ex.P2 the petitioner lodged the complaint on 4.9.2017 at 4.15p.m. regarding the accident that occurred on 2.9.2017 at 4.30p.m. There is a delay of two days in lodging the complaint. The petitioner in the complaint itself pleaded that the driver of the jeep hospitalized him and agreed to bear his medical expenses and the repair charges of the motor cycle. Thereafter the driver of the offending vehicle failed to turn up and also failed to keep up his words. Hence he proceeded to lodge the complaint belatedly after holding discussions with his family members.

11.The PW.1 in his cross examination admitted that he lodged the complaint regarding the accident after the lapse

of 3 days from the date of accident. PW.1 also admits that he lodged the complaint for claiming compensation. Even though the PW.1 has been subjected to cross examination regarding the delay in lodging the complaint, nothing has been elicited to disbelieve his evidence regarding the accident and involvement of the vehicle. The R2 in the W.S. completely denied the petition averments as false, and frivolous. Even during the cross examination of the PW.1 the R2 has not seriously disputed the accident and involvement of the vehicles. PW.1 in his cross examination at para-14 reiterated the fact that the R1 has agreed to bear his medical expenses. Hence he has not opted to lodge complaint immediately after the accident. The I.O. also on investigation came to the conclusion that the accident has occurred between the motor cycle bearing Reg.No.KA.19/EV.5320 and jeep bearing Reg.No.KA.13/M.1606. Hence I find no reason to disbelieve the evidence of the petitioner regarding the accident and involvement of the vehicles.

12.The petitioner claims that the accident took place due to the negligence of the driver of the jeep bearing Reg.No.KA.13/M.1606. The petitioner also contended that the driver of the jeep came with high speed in a rash and negligent manner from his opposite direction in the wrong side and caused accident by hitting his motor cycle. Ex.P6 is the spot mahazar and Ex.P7 is the rough sketch of the place of accident. The case of the petitioner corroborates with the investigation papers regarding the direction in

which the motor cycle and the jeep was plying just prior to the accident. The petitioner claims that on that day he was proceeding from Siddakatte towards Bantwal and the offending vehicle came from Bantwal side in wrong side. As per Ex.P7, Bantwal is situated towards the southern side and Moodabidri is situated towards northern side and the road between Bantwal and Moodabidri is running between north and south. As per Ex.P7 the width of the road at the place of the accident was about 18 feet. The accident has occurred at a distance of 3 feet from the eastern side edge of the tar road. The place of accident becomes wrong side for the vehicle plying from south to north i.e. from Bantwal towards Moodabidri. The case of the petitioner that the offending vehicle came from his opposite direction in the wrong side corroborates with the police investigation papers, especially Ex.P6 and Ex.P7. The R1 remained exparte. Hence there is no satisfactory explanation as to why offending vehicle was plying in the wrong side at the time of accident. In the absence of any satisfactory explanation for plying the vehicle in the wrong side, I find no reason to disbelieve the case of the petitioner regarding the rash and negligent driving of the offending vehicle just prior to the accident.

13. The PW.1 in his cross examination at para-12 clearly stated that for the first time he has seen the offending vehicle coming from his opposite direction at a distance of 4 feet. The rough sketch Ex.P7 makes it clear that the road at the place of accident is a slightly curved

road and one can look at the vehicle coming from his opposite direction from sufficiently long distance. The evidence of the PW.1 that he has seen the offending vehicle from a distance of 4 feet for the first time just prior to the accident leads to the inference that the offending vehicle came across the motor cycle suddenly. Even the investigation papers also shows that the offending vehicle was plying at its wrong side at the time of the accident. Hence I proceed to hold that the petitioner by examining himself and also by placing police investigation papers proved and established that the accident was solely due to the rash and negligent driving of the driver of the jeep bearing Reg.No.KA.13/M.1606.

14. The petitioner claims that due to the impact of the accident he suffered grievous injuries and relied upon Ex.P4 copy of the wound certificate, discharge summary marked as Ex.P10 to substantiate his contention. As per Ex.P4, the petitioner suffered abrasion of 3x2cm over the rt.side of the face, abrasion of 2x2cms on the dorsal aspect of the left hand and swelling of the wrist and hand with pain and tenderness. The discharge summary Ex.P10 as well as the x-ray report referred in Ex.P4 shows that the petitioner suffered fracture of right distal radius and fracture base of first metacarpal, right lateral orbital wall fracture and right lateral wall of maxillary sinus fracture. The medical records placed before the court as well as the evidence of the PW.1 that he suffered the said injuries in the accident remain

undisputed during the cross examination of PW.1. Hence I proceed to hold that the petitioner by examining himself and also by producing the police investigation papers and medical records proved and established that he sustained injuries due to the actionable negligence of the driver of the offending jeep bearing Reg.No.KA.13/M.1606. Hence I proceed to answer issue No.1 in the affirmative.

15. **Issue No.2 & 3:** The petitioner claims that due to the impact of the accident he suffered abrasion of 3x2cm over the rt.side of the face, abrasion of 2x2cms on the dorsal aspect of the left hand and swelling of the wrist and hand with pain and tenderness. The discharge summary Ex.P10 as well as the x-ray report referred in Ex.P4 shows that the petitioner suffered fracture of right distal radius and fracture base of first metacarpal, right lateral orbital wall fracture and right lateral wall of maxillary sinus fracture. The petitioner also claims that he was treated as an inpatient at Fr.Muller Hospital Tumbe from 2.9.2017 to 6.9.2017 and he underwent CR+K wiring for right distal radius and base of first metacarpal under BB on 4.9.2017. Thereafter on 6.9.2017 he was discharged from the hospital with an advise for bedrest and follow-up treatment for 6 months. The petitioner also claims that he spent Rs.40,000/- towards the medical and other incidental expenses. The petitioner in support of his contention relied upon 17 medical bills collectively marked as Ex.P12, amounting to Rs.18,922.50/-. The wound certificate Ex.P4,

discharge summary Ex.P10 shows that the petitioner suffered fracture of right distal radius and fracture base of first metacarpal, right lateral orbital wall fracture and right lateral wall of maxillary sinus fracture and he was treated as an inpatient for a period of 5 days from 2.9.2017 to 6.9.2017. During the said treatment period the petitioner underwent CR+K wiring for the fracture injury suffered in his right palm. Except Ex.P12, the petitioner has not produced any other documents to prove his medical expenses. The petitioner claims that he engaged an attendant by paying Rs. 500/- per day and he spent more than Rs.40,000/- towards medical and other incidental expenses including nutritious food and conveyance.

16. The petitioner relied upon Ex.P12 medical bills to prove his medical expenses. In Ex.P12 the petitioner produced 17 number of medical bills and they do not bear the signature of the doctor who prescribed such medicine and they are also not accompanied by the prescriptions. The medical bills marked as Ex.P12 has not been seriously disputed by the respondents during the cross examination of PW.1 and they appear to be genuine. Hence Rs. **18,923/-** is awarded as compensation towards medical expenses.

17. The petitioner claims that due to the injuries suffered in the accident he became disabled and he lost his functional capacity. He is not in a position to attend to his work as he was attending prior to the accident. But the

petitioner has failed to substantiate his contention in this regard. Hence absolutely there is no evidence regarding the quantum of disability suffered by the petitioner due to the impact of the accident. Considering the age of the petitioner nature and gravity of injury suffered by him, length of treatment, Rs. **40,000/-** is awarded as compensation under the head pain and sufferings and Rs. **15,000/-** is awarded as compensation under the head loss of comfort and amenities in future life.

18. The petitioner claims that he was working as Photographer in M/s Samruddi Studio and Video, Siddakatte, Bantwal Taluk under Sri.Santhosh.K. The petitioner also claims that he was earning remuneration of Rs. 30,000/- to Rs. 40,000/-p.m. and his entire family is depending upon his income for their livelihood. The petitioner got examined Sri.Santhosh as PW.2 to prove his avocation and income. The PW.2 filed his affidavit evidence stating that the petitioner was drawing salary of Rs.30,000/- to Rs.40,000/-p.m. PW.2 identified Ex.P11 as the salary certificate issued by him and Ex.P11(a) as his signature. PW.2 in his cross examination claims that he is carrying on the said business from 7 to 8 years and he is having 3 workers. PW.2 further claims that, he is having an income of Rs.60,000/- to Rs.70,000/-p.m. and he used to pay salary of Rs.30,000/- to Rs.40,000/- to the petitioner. PW.2 denied the suggestion that he was not paying such a huge salary to the petitioner. PW.2 in his cross examination

admits that, except Ex.P11 he has got no other documents to show that he was paying salary of Rs.30,000/- to Rs.40,000/- to the petitioner. The evidence of the petitioner regarding his total income during season as Rs.60,000/- to Rs. 70,000/-p.m. and he is having 3 employees in his studio leads to the suspicion regarding the quantum of salary that was being paid to the petitioner.

19. Further the PW.2 in his cross examination denied the suggestion that he affixed his signature to the spot mahazar, assisting the I.O. in investigation. But the Ex.P6 spot mahazar and Ex.P7 rough sketch of the place of accident shows that the PW.2 has affixed his signature to the Ex.P6 and Ex.P7 for having witnessed the mahazar conducted by the police regarding the accident. The particulars of PW.2 in the chargesheet, spot mahazar & rough sketch i.e. his name, father's name and address fully corroborates with the name, father's name and address of PW.2 referred in his affidavit evidence. Hence the contents of Ex.P6 and Ex.P7 leads to the inference that the PW.2 and the spot mahazar witness Sri.Santosh S/o Devappa Suvarna referred in the chargesheet, spot mahazar & rough sketch are one and the same. In the Ex.P6 spot mahazar and in the chargesheet marked as Ex.P9 the avocation of the PW.2 is shown as driver. Hence the evidence of the PW.2 that he is the proprietor of M/s Samruddi Digital Studio and Video Siddakatte cannot be believed. Hence I proceed to hold that, the petitioner has failed to prove his income and avocation

as on the date of accident. In Ex.P2, the petitioner referred his avocation as photographer. Hence considering the evidence of PW.1 as well as contents of Ex.P2 regarding the avocation of the petitioner along with the present minimum wages, cost of living and age of the petitioner, I proceed to hold that the petitioner was earning Rs. 8,000/-p.m. Hence same is considered as income of the petitioner for the purpose of assessing compensation.

20. The petitioner claim that due to the injuries sustained in the accident he became disabled and he is not in a position to attend to his work as she was attending prior to the accident. He lost his functional ability. The petitioner in his petition pleaded that due to the injuries suffered in the accident, he lost his avocation for a period of 6 months. Considering the age of petitioner, gravity of the injury suffered by him, nature of treatment undergone by him, and his responsibility at that age, 3 months is considered as laid up period.

21. The petitioner has not produced any documents to show his expenses towards attendant's charges, nutritious food and conveyance charges. Considering the nature and gravity of the injuries suffered by the petitioner, his age as on the date of accident, length of treatment, 3 month is considered as laid up period for the purpose of assessing compensation. Considering the present minimum wages, cost of living in the city, at the rate of Rs.3000/-p.m. for a

period of 3 months, Rs.**9,000/-** is awarded under the head attendants charges, at the rate of Rs.3000/- p.m. for a period of 3 months Rs.**9,000/-** is awarded under the head nutritious food. Considering the place of accident, place of treatment, place of residence, follow-up treatment, Rs.**5,000/-** is awarded as compensation under the head conveyance charges. Totally Rs.**23,000/-** is awarded as compensation under these heads.

22. The petitioner claims that he is in need of Rs.30,000/-towards future medical expenses. The petitioner has not produced any documents to substantiate his contention. But the medical records placed before the court shows that the petitioner undergone CR+K wiring for right distal radius and base of first metacarpal under BB on 4.9.2017. The said implants needs to be removed on one or the other day. Considering the medical expenses incurred by the petitioner towards treatment, Rs.**5000/-** is awarded as compensation under the head future medical expenses.

23. The petitioner has contended that due to the injuries sustained in the accident even today he is suffering from pain in his right hand and problem in functional capacity. Considering the age of the petitioner, nature and gravity of the injuries suffered by him, nature and length of treatment undergone by him, 3 months is considered as laid up period for the purpose of assessing compensation and

Rs.8000 x 3= **24,000/-** is awarded as compensation under the head loss of earning during the laid up period.

24. Thus the petitioner is entitled for the following compensation under different heads.

1	Pain and suffering	Rs. 40,000-00
2	Medical expenses	18,923-00
3	Conveyance, nutritious food and attendant charges	23,000-00
4	Loss of amenities in life	15,000-00
5	Loss of income during laid up period	24,000-00
6	Future medical expenses	5,000-00
	Total	1,25,923-00

25. The petitioner claims that respondent No.1 being the R.C. owner and respondent No.2 being insurer of the offending jeep bearing Reg.No.KA.13/M.1606 are jointly and severally liable to pay compensation to him. The respondent No.2 has not disputed the insurance converge of the vehicle which met with accident in question. Ex.R1 is the copy of the policy issued in the name of respondent No.1 in respect of the offending jeep. In view of the valid insurance converge the respondent No.2 is liable to indemnify the respondent No.1 in making the payment of compensation amount.

Accordingly issue No.2 is answered in the negative and issue No.3 partly in the affirmative.

26. Issue No.4: In view of the discussions made on the above issues, I proceed to pass the following.

ORDER

The petition filed U/s.166 of M.V. Act 1988 is partly allowed with costs.

The petitioner is entitled for compensation of **Rs.1,25,923/-** (Rupees one lakh twenty five thousand nine hundred twenty three only) with costs and interest at 6%p.a. on 1,20,923/- (excluding Rs.5,000/- awarded towards future medical expenses) from the date of petition, till its deposit in the Tribunal.

The respondent No.1 & 2 are jointly and severally liable to pay the compensation to the petitioner.

The respondent No.2 is directed to act upon regarding deposit of award amount within 3 months in accordance with the provisions of Sec.168 (3) of the Act.

Further, in the event of deposit of compensation amount, 50% of the same shall be deposited in the name of petitioner in any

nationalized bank of his choice for a period of 5 years and the remaining compensation amount is ordered to be released to the petitioner with accrued interest through account payee cheque. Intimate banking authorities to credit the F.D. amount to the account of the petitioner on its maturity along with accrued interest without waiting for further intimation.

Draw Award accordingly.

(Dictated to the Judgment Writer, the transcript thereof is corrected and then pronounced by me in the Open court, this the 1st day of July, 2019)

(Smt.Sharada.B.)

I Addl. District Judge & MACT-II
Mangaluru.

ANNEXURE

1.WITNESSES EXAMINED FOR PETITIONER:

PW.1: Chetan Acharya

PW.2: Shanthosh.K.

II. DOCUMENTS MARKED FOR PETITIONER:

Ex.P.1: Copy of FIR
Ex.P.2: Complaint
Ex.P.3: 160 notice
Ex.P.4: wound certificate
Ex.P.5: Police Intimation
Ex.P.6: spot mahazar
Ex.P.7: rough sketch
Ex.P.8: MVI report
Ex.P.9: Chargesheet copy
Ex.P.10 : Discharge summary
Ex.P.11: Salary certificate

Ex.P11(a): Signature of PW.2

Ex.P12: medical bills

III. WITNESSES EXAMINED FOR RESPONDENTS:

NIL

IV.DOCUMENTS MARKED FOR RESPDTS:

Ex.R1 copy of the Policy

(Smt.Sharada.B.)

I Addl. District Judge & MACT-II
Mangaluru.