

**BEFORE THE II Addl. DISTRICT JUDGE &
III Addl. MOTOR ACCIDENT CLAIMS TRIBUNAL,
MANGALURU (D.K.)**

Present:

Sri ABHAY DHANPAL CHOUGALA

B.Com., LL.B. (Spl.)

Member MACT-III & II Addl. District & Sessions Judge,
Dakshina Kannada, Mangaluru

Dated this the 12th day of April 2022

M.V.C. No.1078 of 2017

Petitioner:

T. Govinda Naik

Aged about 60 years

S/o. Kunha Naik,

R/at #2-248/4-A6,

Gokula Sonalike, Jalligudde,

Bajal, Mangaluru-575007

(By Sri M.S. Maniyani, Advocate)

Versus

Respondents:

1. Aravinda M.S.,

Aged about 42 years

S/o. Shankaraiah M.

R/at near Om Shree School MV EXTN,

Hosakote Town, Bengaluru Rural-562114

2. The Divisional Manager

Reliance General Insurance Co. Ltd.,

Maximus Commercial Complex,

4th floor, Light house hill road,

Opp. KMC college, Mangaluru -575 001

(R1: exparte,

R2: by Smt. A. Prathiba Rao, Advocate)

JUDGMENT

The petitioner has filed this claim petition under Section 163-A of Motor Vehicle Act (hereinafter in short "**the Act**") for an award of compensation of ₹.2,50,000/-, in view of the injuries sustained by him in road traffic accident dated: 01.05.2017.

2. In brief, the contents of the petition may be stated as under:

On 01.05.2017 the petitioner was traveling in his Swift Car bearing Reg.No. KA-19-MG-5798 from Sakleshpura towards Mangaluru. One Lokesh Naik was driving the said car. At about 6.00 p.m. when the said car reached Shambhavi Hotel at N.H.75, B.M. Road, Shiradi ghat, within the limits of Maranahally village, there was an accident between his car and another car bearing Reg.No. KA-03-AC-6634. In the said accident, he sustained severe injuries, therefore, he was shifted to Tejasvini hospital, Mangaluru, where he has taken treatment as inpatient. He has spent more than ₹.50,000/- towards medical expenses and he requires another ₹.25,000/- towards future medical expenses. At the time of the accident, he was just 60 years old and had monthly income of ₹.3,300/-. With other contentions, it is prayed for allowing the petition.

3. After service of notice, only 2nd respondent – Insurance company appeared, whereas, the 1st respondent remained absent and placed exparte.

4. The respondent No.2 in its written statement has denied all the material averments and allegations made in the claim petition. It is specifically contended that present petition is not maintainable and the same deserves to be dismissed with costs. It is further contended that the driver of the said car was not holding valid and effective driving license and hence, it amounts to violation of terms and conditions of the Insurance policy. Further, it is contended that the petition is bad for non-joinder of necessary parties. With other several contentions, it is prayed for rejection of the claim petition.

5. On the basis of the above pleadings, the following issues have been framed.

ISSUES

1. Whether the petitioner proves that on 01.05.2017 at about 6.00 p.m., when the petitioner was proceeding from Sakaleshpura towards Mangaluru in his swift car bearing Reg No.KA-19-MG-5798 and when they reached near Shambhavi Hotel, on NH-75, BM Road, Shiradi ghat, Maranahally village, Hanubalu HO, Hassan, a car bearing Reg. No. KA-03-AC-6634 being driven by its driver at a high speed and in a rash and negligent manner, came from opposite direction i.e. from Mangaluru towards Sakaleshpura and dashed to the car, in which the petitioner was proceeding; due to the impact, petitioner has sustained grievous injuries?
2. Whether the petitioner is entitled to compensation? If so, what is the amount and who is liable to pay?
3. What Order or award?

6. In order to prove his case, the petitioner examined himself as PW.1 and doctor as PW.2. He got marked in all 12 documents as Ex.P.1 to Ex.P.12.

7. On the other hand, the 2nd respondent – Insurance Company examined RW.1 and got marked Ex.R.1 to Ex.R.3.

8. After completion of evidence of both the sides, I have heard the arguments. The learned counsel for the petitioner placed reliance on the judgment of Hon'ble Apex Court in the case of ***National Insurance Company Limited vs. Birender and Others*** in ***Civil Appeal No.244 of 2020 dated: 13.01.2020***. Further, relied the judgment of Hon'ble High Court of Himachal Pradesh passed in ***FAO No.433 of 2018 dated: 31.10.2019*** in the case of ***Neema and another vs. Shri Sohan Singh and another***.

9. On the other hand, the learned counsel for the 2nd respondent also placed her written arguments on record and relied the decision reported in ***2004 ACJ 934 (Deepal Girishbhai Soni and others vs. United India Insurance Co. Ltd.)***, ***ILR 2007 KAR 28 (United India Insurance Co. Ltd. and others vs. Anitha and others)*** and ***ILR 2014 KAR 2293 (Smt. Omna Chetan vs. M/s. Oriental Insurance Company Ltd., Bengaluru and others)***.

10. After having heard the arguments and after careful perusal of the material available on record, my findings to the above raised issues are as under:

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

REASONS

11. **Issue No.1:** Since this claim petition is filed u/s.163-A of the M.V. Act, therefore, in this case, the question of considering the negligence does not arise. In other words, in this case, it is totally immaterial to plead and prove due to whose negligence, the accident occurred, but what is required to be established is whether the accident occurred between two vehicles or not. Therefore, the present issue is restricted to find out whether the accident had occurred between two vehicles and in the said accident, the petitioner sustained injuries or not.

12. In order to prove his case, the petitioner entered into witness box as PW.1 by filing his affidavit as examination-in-chief in which he reiterated the averments made in the claim petition. In support of his case, he got marked copy of the FIR registered at Sakaleshpura police station Cr.No.103/2017 for the offences punishable under Section 279 of IPC against the driver of his own car. Ex.P.2 is the copy of the first information lodged by Aravinda M.S. s/o. Late Shankaraiah- the owner of the vehicle bearing Reg.No. KA-03-AC-6634. Ex.P.3 is the wound certificate of the petitioner issued by Tejasvini hospital, Mangaluru. Ex.P.4 is the copy of Crime

Detail Form i.e. mahazar, Ex.P.5 is the copy of the IMV Report.

13. On the other hand, the 2nd respondent – Insurance company examined its Associate Legal Manager by name-Ibrahimsab Mujawar as RW.1 who filed his affidavit as examination-in-chief. He got marked the copy of the authorization letter as Ex.R.1, copy of the insurance policy as Ex.R.2 and copy of the charge-sheet as Ex.R.3.

14. In the cross-examination of PW.1, in my view, nothing worth has been elicited. On the other hand during his cross examination it is admitted that the said accident occurred between those two cars. From the evidence of PW.1, the evidence of RW.1 and contents of Ex.P.1 to Ex.P.5, it is clear that on 01.05.2017 at about 6.00 p.m. near Shambhavi Hotel, NH-75, Shiradi ghat, within the limits Maranahally village, accident occurred between the car of the petitioner bearing Reg.No. KA-19-MG-5798 and another car bearing Reg.No. KA-03-AC-6634, in which, the petitioner sustained three injuries, out of which, one is fracture.

15. Since the material on record are sufficient to hold that there was an accident between two vehicles in which the petitioner sustained injuries, therefore in my opinion, the issue under consideration deserves to be answered in the affirmative.

16. **Issue No.2:** The learned counsel for the 2nd respondent during arguments submits that the claim petition

filed u/s.163-A of the M.V. Act is not maintainable, as the income of the petitioner was more than ₹.40,000/- per annum. She took me to the cross-examination of PW.1, in which he has stated that he is receiving monthly pension of ₹.28,000/-, as he was serving in Postal department and got retired some 5 years back.

17. According to the counsel for the 2nd respondent, as the petitioner is receiving monthly pension of ₹.28,000/-, therefore, his annual income is more than ₹.40,000/- and therefore, he is not entitled to seek compensation by filing a claim petition u/s.163-A of the M.V. Act. In support of her contention, she placed reliance on the decisions reported in **2004 ACJ 934, ILR 2007 KAR 28 and ILR 2014 KAR 2293.**

18. On the other hand, the learned counsel for the petitioner submits that the pension of the petitioner cannot be treated as his income within the meaning of Section 163-A and II Schedule of the Act. It is further submitted that even if for the time being, the said pension is treated as income of the petitioner, then also, the Tribunal can restrict the income as ₹.40,000/- per year and award just compensation. In support of her submission, she placed reliance on the judgment of Hon'ble Apex Court passed in **Civil Appeal No.244 of 2020 dated: 13.01.2020** and the judgment of Hon'ble High Court of Himachal Pradesh passed in **FAO No.433 of 2018 dated: 31.10.2019** (supra).

19. I have carefully perused the decisions relied by both the sides. In my opinion, the decisions relied by the counsel for the 2nd respondent aptly applicable to the facts and circumstances of the case in hand and not the decisions relied by the counsel for the petitioner.

20. The Hon'ble Apex Court in **Civil Appeal No.244 of 2020** while considering the petition filed u/s.166 of M.V. Act, made an observation that the family pension received by the wife of the deceased cannot be treated as an income while considering the loss of dependency. In that decision, nowhere it is observed that the pension of the petitioner cannot be treated as income and moreover the said case was not in respect of the Section 163-A of the M.V. Act. Therefore, the said decision in noway applicable to the present case in hand.

21. As far as the judgment of Himachal Pradesh High Court passed in *FAO No.433 of 2018* is concerned, in my opinion, the said judgment cannot be made applicable to the present case in hand, as the Division Bench of Hon'ble High Court of Karnataka has clearly ruled that the petition u/s.163-A of the M.V. Act, is not maintainable if the income of the petitioner is more than ₹.40,000/- per year. In other words, when the Division Bench of Hon'ble High Court of Karnataka in **ILR 2007 KAR 28** and **ILR 2014 KAR 2293** has specifically held that the claim petition u/s.163-A of the Act by the persons having annual income more than ₹.40,000/- is not maintainable, therefore, the decision of Hon'ble High

Court of Himachal Pradesh are not helpful to the case of the petitioner.

22. After considering all the material available on record, in my opinion, the present claim petition is not maintainable, as the petitioner is having annual income of more than ₹.40,000/-. Therefore, in this claim petition the petitioner is not entitled for any compensation. With these observations, I have answered the issue under consideration accordingly.

23. **Issue No.3:** For the forgoing reasons, I proceed to pass the following:

ORDER

The petition filed by the petitioner under Section 163-A of M.V. Act, 1988 is hereby dismissed with costs.

Draw up award accordingly.

(Dictated to the Judgment Writer, the transcript thereof is corrected and then pronounced by me in the Open court, this the 12th day of April 2022)

(Abhay Dhanpal Chougala)

Member MACT-III & II Addl. District &
Sessions Judge, D.K., Mangaluru.

ANNEXURE**List of witnesses examined for the petitioner:**

PW-1 T. Govinda Naik
PW-2 Dr. Mahabalesh Shetty

List of witnesses examined for the respondents:

RW-1 Ibrahimsab Mujawar

List of documents exhibited for the petitioner:

Ex.P.1 Copy of FIR
Ex.P.2 Copy of complaint
Ex.P.3 Copy of wound certificate
Ex.P.4 Copy of Crime Detail form
Ex.P.5 Copy of MVA Report
Ex.P.6 Disability certificate
Ex.P.7 Discharge summary
Ex.P.8 Medical certificate
Ex.P.9 Medical bills (16 in nos.)
Ex.P.10 X-ray
Ex.P.11 Case-sheet
Ex.P.12 X-rays

List of documents exhibited for the respondents:

Ex.R.1 Authorization letter
Ex.R.2 Copy of Insurance policy
Ex.R.3 Copy of charge-sheet

(Abhay Dhanpal Chougala)

Member MACT-III & II Addl. District &
Sessions Judge, D.K., Mangaluru.