

IN THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, ATTINGAL

Present: Sri. K.P. Pradeep, MACT

Monday 27th November, 2023/6 Agrayayanam, 1945

OP(MV) 846/2018

Applicant:

Akhila.A.S, (Minor), D/o Sheela,
aged 10 years, Chothi Bhavan,
Thonnakkal Harijan Colony, Vengode
Kudavoor P.O, Thiruvananthapuram District
represented by her Father ANI.A, S/o Sukumaran, residing at
Chothi Bhavan,
Thonnakkal Harijan Colony, Vengode
Kudavoor P.O, Thiruvananthapuram District

By Advocate: Sri. Rajeev.S

Respondents:

1. Anilkumar, S/o Lalithamma,
Aluvilakathu Veeu, kudavoor P.O,
Thonnakkal, Thiruvananthapuram District
 2. Sreejith @ Unni, S/o Harikumar,
Renjith Bhavan, Kudavoor P.O
Thonnakkal, Thiruvananthapuram District
 3. The Divisional Manager,
United India Insurance Co-Ltd,
LMS Compound, Palayam,
Thiruvananthapuram
- R1 and R2 By Advocate:-Madavoor G. Sureshkumar
R3 By Advocate: Sri. E. Baldwin Victor

This Petition having been finally heard on 22.11.2023 and on
27.11 .2023 the Tribunal passed the following

AWARD

1) Petition filed under section 166 of the Motor Vehicles Act 1988. The petitioner, being a minor, is represented in this claim petition by her father as next friend.

2) The averments in the petition are that on 27/3/2018 at 4.20 p.m., the petitioner (Akhila.A.S., D/o Anilkumar) was walking through Vengode-16th Mile road. When she reached near AKG Centre, Vengode, a Motor Cycle bearing registration No.KL-01/A-1728, ridden by the 2nd respondent, came from Vengode side in a rash and negligent manner, hit against the petitioner. Due to the impact, the petitioner sustained grievous injuries. Immediately after the accident, the petitioner was taken to Al Niyadi Hospital. After gave first aid, she was taken to Medical College Hospital, Thiruvananthapuram. Her treatment was continued as inpatient. The accident occurred due to the rash and negligent riding of Motor Cycle bearing registration No.KL-01/A-1728, by the 2nd respondent. The 1st, 2nd and 3rd respondents are the owner, rider and insurer respectively of the Motor Cycle. Therefore, all respondents are jointly and severally liable to pay compensation to the petitioner.

3) The 1st and 2nd respondents filed written statement by contending that the accident happened due to the negligent crossing of road by the petitioner herself. The 2nd respondent rode the Motor Cycle in a moderate speed and he had valid driving licence at the time of accident. The Motor Cycle bearing registration No.KL-01/A-1728, was insured with the 3rd respondent at the time of accident. If the petitioner is entitled to get compensation, the same is to be realised from the 3rd respondent, company.

4) The 3rd respondent filed written statement by contending that the Motor Cycle bearing registration No.KL-01/A-1728, had valid insurance policy with the 3rd respondent, company. The petitioner has not sustained any injury or disability due to the accident alleged. The amount of compensation claimed is exorbitant. The 2nd respondent rode the Motor Cycle in moderate speed by observing all traffic rules. The accident occurred solely due to the rash and negligent act of the petitioner herself.

5) In view of the above said pleadings, the following issues have been raised for consideration:-

- (1) Whether the accident was occurred due to the rash and negligent riding of Motor Cycle bearing registration No.KL-01/A-1728, by the 2nd respondent?
- (2) Whether the petitioner is entitled to compensation and if so, what is the quantum?
- (3) Who is liable to pay compensation ?
- (4) Reliefs and costs ?

6) From the side of the petitioner, no oral evidence was adduced. In order to prove the alleged accident and negligence on part of the 2nd respondent, the petitioner has produced Exts.A1 to A15. No oral and documentary evidence adduced on the side of the respondents.

7) Heard.

8) **Issue No.(1):-** The case of the petitioner is that on 27/3/2018 at 4.20 p.m., the petitioner (Akhila.A.S, D/o Anilkumar) was walking through Vengode-16th Mile road. When she reached near AKG Centre, Vengode, a Motor Cycle bearing registration No.KL-01/A-1728, ridden by the 2nd respondent, came from Vengode side in a rash and negligent manner, hit against the petitioner. Due to the impact, the petitioner sustained grievous

injuries. Immediately after the accident, the petitioner was taken to Al Niyadi Hospital. After gave first aid, she was taken to Medical College Hospital, Thiruvananthapuram. Her treatment was continued as inpatient. The accident occurred due to the rash and negligent riding of Motor Cycle bearing registration No.KL-01/A-1728, by the 2nd respondent.

9) To prove the alleged incident and negligence on the part of the 2nd respondent, petitioner has produced Exts.A1 to A5. Ext.A1 is the FIR in Crime No.649/2018 of Mangalapuram Police Station. Ext.A2 is the scene mahazar. Ext.A3 is the seizure mahazar of Motor Cycle bearing registration No.KL-01/A-1728. Ext.A4 is the AMVI report of Motor Cycle bearing registration No.KL-01/A-1728. Ext.A5 is the final report. The offences alleged against the rider of the Motor Cycle, the 2nd respondent, (accused in the final report) are punishable u/s 279, 337 and 338 of IPC. The Hon'ble High Court of Kerala in '**New India Assurance Company Ltd Vs. Pazhaniammal and Others**', cited in 2011(3) KHC 595, *has held as follows:* “*Prima facie, charge sheet filed by a police officer after due investigation can be accepted as evidence of negligence against the indictee. If any one of the parties do not accept such charge sheet, the burden must be on such party to adduce oral evidence. If oral evidence is adduced by any party, in a case where charge sheet is filed, the tribunals should give further opportunity to others also to adduce oral evidence and in such a case the charge sheet will pale into insignificance and the dispute will have to be decided on the basis of the evidence.*” In the absence of contra evidence, the above said evidence adduced by the petitioner, it is seen that the alleged incident took place due to rash and negligent riding of the Motor Cycle bearing registration No.KL-01/A-1728, by the 2nd respondent. Accordingly Issue No.(1) is answered.

10) **Issue No. (2) :-** Ext.A6 is the treatment certificate of the petitioner issued from Medical College Hospital, Thiruvananthapuram. Ext.A7 is the discharge summary of the petitioner issued from Medical College Hospital, Thiruvananthapuram. Ext.A8 is the treatment certificate of the petitioner issued from Medical College Hospital, Thiruvananthapuram. Ext.A9 is the outpatient record issued from Medical College Hospital, Thiruvananthapuram. Ext.A10 is the treatment certificate of the petitioner issued from SAT Hospital. Ext.A11 is the outpatient ticket of the of the petitioner issued from Medical College Hospital, Thiruvananthapuram. Ext.A14 is the outpatient record of the petitioner issued from Medical College Hospital, Kollam. The above said medical records reveal that the petitioner had sustained Type I compound fracture of right tibia and large hematoma on frontal region. The above said medical records also reveal that the petitioner was given treatment as inpatient for 8 days.

11) Ext.A13 is the Aadhar Card of the petitioner. In Ext.A13, the date of birth of the petitioner is shown as 27/10/2007. So, he was 11 years of age at the time of accident.

12) Ext.A15 is the disability certificate issued by the Directorate of Medical Education, Department of Orthopaedics, Govt. Medical College Hospital, Kollam. In Ext.A15, Dr.R.Manojkumar, Professor of Orthopaedics, Govt. Medical College Hospital, Kollam, has assessed the disability of the petitioner due to the alleged road accident as 11%. Here in this case Ext.A15 was not issued by the medical board. Considering the injuries sustained and other facts and circumstances of this case, I am of the view that disability can be fixed as 11% and there was no much dispute with regard to the same from the side of the petitioner as well as the 3rd

respondent.

13) The Hon'ble Apex Court in 'Master Mallikarjunan Vs. National Insurance Co. Ltd. reported in 2014 (14) SCC 396' has held as follows: *"Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs."* As the petitioner, who was just 11 years of age at the time of accident, has sustained 11% permanent disability, I am inclined to grant an amount of Rs.3,00,000/- as compensation in the light of above said decision of the Hon'ble Apex Court, on all heads other than actual expenditure for treatment and attendant charges.

14) Ext.A12 series bills produced by the petitioner reveal that a total amount of Rs.2,614/- was spent for her treatment. Hence, I am inclined to award an amount of Rs.2,614/- as 'Medical expense'.

15) Since the petitioner sustained grievous injury she could not have performed her day to day activities without the help of others. Therefore, I am inclined to grant Rs.3,600/- (450 x 8) as 'Bystander Expense for 8 days.

16). In the light of said decision, the petitioner is thus entitled to get a total compensation of **Rs.3,06,300/- (Rupees Three Lakh Six Thousand Three Hundred Only)** as shown in the table below:-

<i>Sl. No.</i>	<i>Head of claim</i>	<i>Amount claimed (in Rupees)</i>	<i>Amount awarded (in Rupees)</i>	<i>(in Pais)</i>	<i>Basis-Vital Details in a nut shell</i>
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<u>Part-I</u>					
1	Loss of earning	-	-	-	-
2	Loss of earnings(partial)	-	-	-	-
3	Transportation charges including Ambulance charges	10,000	-	-	-
4	Extra Nourishment	25,000	-	-	-
5	Damage to Clothing	2,000	-	-	-
6	Medical expenses	50,000	2,614	-	Ext.A12 series bills produced.
7	By-stander expenses	10,000	3,600		450 x 8 days
<u>Part-II</u>					
8	Pain and suffering mental and physical shock, hardship, inconvenience and discomforts etc., and loss of amenities in life on account of permanent disability	1,00,000 2,00,000 2, 00,000	3,00,000		Considering the injury and disability sustained by the petitioner.
(Claim limited to Rs.3,50,000/-)		5, 97,000/- =====			
Total award amount			Rs.3,06,214/- =====		
Rounded off			Rs.3,06,300/- =====		
(Rupees Three Lakh Six Thousand Three Hundred Only)					

Issue No.(2)is answered accordingly.

17. Issue No.(3):- I have already found that the accident took place due to the negligent riding of Motor Cycle bearing registration No.KL-01/A-1728, by the 2nd respondent. Hence, the 2nd respondent is liable to pay

compensation to the petitioner. The 1st respondent, who is undisputedly the owner of said Motor Cycle, is therefore vicariously liable to compensate the petitioner. It is admitted by the 3rd respondent that the said Motor Cycle was insured with the 3rd respondent at the time of accident. Therefore, the 1st, 2nd and 3rd respondents are liable to pay compensation. Since there is valid insurance policy, the company has to indemnify respondent No. 1 and therefore, the company is liable to pay the compensation. Accordingly Issue No.(3) is answered.

18. Issue No.(4):- In view of my findings on issue Nos.(1), (2) and (3), the petition is allowed in part and an award is passed as follows:-

- (1) Respondent No.3 shall pay an amount of **Rs.3,06,300/- (Rupees Three Lakh Six Thousand Three Hundred Only)**, before MACT, Attingal and the same shall be deposited in a nationalized bank in the name of the petitioner together with interest at the rate of 8% per annum from the date of petition [27/12/2017] till realization, with proportionate costs.
- (2) Respondent No.3, the insurer, being contractually and statutorily liable to satisfy the award, deposit award amount of **Rs.3,06,300/- (Rupees Three Lakh Six Thousand Three Hundred Only)** with interest and proportionate costs before MACT, Attingal and the same shall be deposited in a nationalized bank in the name of the petitioner. The petitioner can withdraw the amount on attaining majority.
- (3) The 3rd respondent shall produce cheques for Rs.2,873/- and Rs.3,500/- respectively as court fee and additional court fee towards legal benefit fund in the name of MACT, Attingal, payable in the case.

- (4) The 3rd respondent is directed to deposit the amount within one month failing which the petitioner can recover the same in accordance with law.

Dictated to the C.A., transcribed and typed by her, corrected by me and pronounced in open court on this the 27th day of November, 2022.

Sd/-

K.P.PRADEEP
MOTOR ACCIDENTS CLAIMS TRIBUNAL

APPENDIX

Exhibits for the applicant:

A1	01.04.2018	FIR in Crime No 649/2018 of Mangalapuram Police Station
A2	01.04.2018	Scene Mahazar
A3	03.04.2018	Seizure Mahazar
A4	03.04.2018	AMVI report
A5		Final report
A6	28.04.2018	Treatment certificate issued from Medical College Hospital, Thiruvananthapuram
A7	04.04.2018	Discharge Summary issued from Medical College Hospital, Thiruvananthapuram
A8	28.04.2018	Treatment certificate issued from Medical College Hospital, Thiruvananthapuram
A9	01.05.2018	Outpatient record issued from Medical College Hospital, Thiruvananthapuram

A10		Treatment certificate issued from SAT Hospital
A11		Outpatient ticket issued from Medical College Hospital, Thiruvananthapuram
A12	series	Medical bills
A13		Copy of Adhar Card
A14	05.07.2023	Outpatient record issued from Medical College Hospital, Kollam
A15	05.07.2023	Disability Certificate
<u>Exhibits for the respondent:</u>		Nil
<u>Court exhibits:</u>		Nil
<u>Witness for both sides:</u>		Nil

Sd/-

MOTOR ACCIDENTS CLAIMS TRIBUNALMEMO OF COSTSCost for the Applicant:

Petition fee	10.00
Vakalath fee	5.00
Process fee	90.00
Document fee	20.00
Legal Benefit fund	100.00
Advocate fee Senior (As per certificate)	17,100.00 (Certificate produced)
Total	----- 17,325.00 (Order for realization) =====

Cost for the Respondents:

Vakalath fee	5.00

Total	5.00 No order for realization)
	=====

Id/-

MOTOR ACCIDENTS CLAIMS TRIBUNAL

Typed by :nr

Compared by :

FCS

Sd/-

MOTOR ACCIDENTS CLAIMS TRIBUNAL

//True copy//

Sd/-

SHERISTADAR

NB: The parties should apply as soon as possible for the return of all documents which they may wish to preserve, as the record will be liable to be destroyed after twelve years from this date.

Copy of Award in OP (MV) 846/2018

Dated : 27.11.2023