

IN THE COURT OF M.A.C. TRIBUNAL, ALAPPUZHA

Present: Smt. Ash K. Bal M. A. C. Tribunal

Monday the 31st January, 2022

O.P.(M.V) 453/17

(Filed on 27/05/2017)

Petitioner:

1. Sulochana aged 40, W/o Surendra Pillai, Aruvanthara, Illichira, Purakkad, Ambalappuzha, Alappuzha.
2. Leelabhai Amma, aged 65, W/o Gopala Pillai, Kannambalath, Perinad, Kollam.

By Adv. P.P. Madhusoodanan

Respondents:

1. Naushad S/o Ebrahimkutty, Noora Manzil, Clappana, P.O, Karunagappally, **(Driver)**
2. The Director of Health Services, General Hospital, Trivandrum.
3. Kerala State Insurance Department, District, Insurance Officer, Kollam.

R3 - Govt. Pleader

This petition having been finally heard on 15/01/2022 and the Tribunal on 31/01/2022 delivered the following:-

AWARD

1. Application for compensation on account of death of one Surendra Pillai who was died in the Road Traffic Accident occurred on 18.12.2015. Petitioners are the wife and mother of deceased Surendra Pillai. The petitioners have filed this application u/s.166 of The Motor Vehicles Act, 1988.

2. The case of the petitioners is that on the aforesaid date at 8.00 pm, while deceased was traveling on a Scooter bearing Reg.No.KL-4-AH-6172 through Alappuzha – Kollam NH road and when reached near Puthen Nada Temple at Purakkad, an Ambulance van bearing Reg.No.KL-1-BA-3443 hit on the Scooter as a result of which deceased was thrown to the road and sustained injury. He was taken to Medical College Hospital at Alappuzha and treated. While undergoing treatment he was succumbed to the injuries at 11.00 pm. on the same day. Accident occurred due to the rash and negligent driving of the Ambulance by the 1st respondent. 2Nd respondent is the owner and 3rd respondent is the insurer of the vehicle. They are jointly and severally liable to pay compensation to the petitioners. The petitioners claimed an amount of ₹.14,00,000/- as compensation.

3. Respondents 1 & 2 have appeared before the tribunal but not filed any written statement. 3Rd respondent alone has filed written statement. Contentions raised by the 3rd respondent are as follows.

4. Application is not maintainable. The name, Address, driving license, badge and authorization to drive the vehicle at the time of accident are disputed by the 3rd respondent. Insured has not given any intimation regarding the accident to the 3rd respondent. Accident as alleged in the petition is not correct. Accident was occurred solely due to the negligence on the part of the petitioner. There is gross negligence on the part of the rider of the Scooter. 3Rd

respondent has no liability to indemnify the insured. Compensation claimed in the petition is highly excessive. 3rd respondent has admitted the existence of valid insurance policy issued for the Ambulance Van covering the date of accident. But contented that as there is violation of policy condition it has no liability and the application is to be dismissed.

5. The following points are raised for consideration:-

1. Whether the accident occurred due to the rash and negligent driving of Ambulance Van bearing Reg.No.KL-1/BA-3443 by the 1st respondent as alleged?
2. Whether the petitioners are entitled to recover any amount as compensation from the respondents if so the quantum and from which respondent?
3. Reliefs and costs.

6. Parties have not adduced any oral evidence. Documents produced by the petitioner were marked as Ext.A1 to Ext.A8.

Point No.1 & 2

7. Ext.A1 is the copy of FIR which shows that relating to the incident police have registered case against the Ambulance driver for offences u/s. 279 and 304 (A) of IPC. Copy of Scene mahazar was marked as Ext.A2. After due investigation police have filed Ext.A5 Final report against the 1st respondent Noushad for offences u/s. 279 and 304 (A) of IPC. As per the Final report accident occurred solely due to the rash and negligent driving of the

Ambulance Van by the 1st respondent. There is absolutely no contra evidence to doubt the same. So the point is answered in favour of the petitioners.

8. Petitioners have produced the Legal Heir-ship certificate marked as Ext.A6 which would show that 1st petitioner is the wife and 2nd petitioner is the mother of deceased Surendra Pillai. Ext.A7 is the copy of death certificate which shows that Surendra Pillai died on 18.12.2015. Copy of Inquest report and the Postmortem certificate produced were marked as Ext.A3 and Ext.A4 respectively. It is evident from the documents that Surendra Pillai has sustained severe injuries in the accident which resulted in his death on the same day. It is clearly noted in Ext.A4 Postmortem certificate that death was due to the multiple injury sustained in the accident. As mentioned above 3rd respondent has admitted the valid insurance policy. There is absolutely no evidence to show the violation of policy condition if any. In the circumstances 3rd respondent is held liable to indemnify the 2nd respondent and to pay compensation to the petitioners.

Point No.3

9. As mentioned above petitioners are the wife and mother of deceased Surendra Pillai. Ext.A8 extract of School admission Register of Surendra Pillai shows that he was 45 years at the time of accident and not completed 46. Petitioners case is that deceased was engaged in fish marketing at the time of accident and his monthly income was Rs.15,000/-. In the absence of any

satisfactory evidence to prove the actual income, national income of the deceased at the time of accident can be taken as Rs.10,500/- per month. He was 46 at the time of accident. *In view of the decision in Natiuonal Insurance Company Ltd. V/s Praney Sethi*, 25% addition can be given towards future prospects. Petitioners are the dependents of the deceased. So 1/3 of the income is to be deducted towards personal and living expenses of the deceased. Multiplier applicable is 14. So dependency compensation can be fixed as Rs.14,70,000/- (13,125 x 14 x 12 x 2/3).

10. In addition to that an amount of Rs.5,000/- is allowed towards transport expenses including ambulance charges. Rs.15,000/- each are allowed under the head funeral expenses and loss of estate. Rs.40,000/- is allowed towards loss of consortium to 1st petitioner and Rs.40,000/- towards loss of filial consortium to the 2nd petitioner. In addition to that an amount of Rs.5,000/- is allowed as compensation to pain and sufferings of deceased till death. So the petitioners are entitled to get a total compensation of Rs.16,61,000/- with interest and proportionate costs and is to be divided in the ratio 60:40.

11. The compensation awarded can be scheduled as follows:-

No.	Head of claim	Amount Claimed	Amount Awarded
PART-I			
a)	Transportation and Ambulance charges	25,000/-	5,000/-
b)	Medical Expenses	25,000/-	Not allowed
c)	Damages to cloth	10,000/-	Not allowed
d)	Funeral expenses	50,000/-	15,000/-
PART-II			
e)	Compensation for pain and suffering	1,00,000/-	5,000/-
f)	Compensation for loss of love & affection	2,00,000/-	Not allowed
g)	Compensation for loss of consortium to P1 & P2	3,00,000/-	40,000 + <u>40,000</u> 80,000/-
h)	Compensation for loss of estate	-----	15,000/-
i)	Compensation for loss of dependency	7,00,000/-	14,70,000/-
Total		14,10,000/- (claim is limited to Rs.14,00,000/-)	15,90,000/-

12. Petitioner is entitled to get an amount of ₹.15,90,000/- with interest @ 7% per annum from the date of filing of this petition, i.e, from 27.05.2017, till realization with proportionate costs and is to be divided in the ratio 60:40.

13. In the result, the petition is allowed in part as follows:-

1. Award is passed for a sum of **₹.15,90,000/-** with interest @ 7% per annum for the awarded amount from 27.05.2017, i.e, the date of petition till realization with proportionate costs and is to be divided in the ratio 60:40.
2. The 3rd respondent shall produce a cheque for ₹.15,273/- drawn in favour of MACT, Alappuzha towards court fee payable by the petitioners.
3. The petitioners have already furnished the details of bank account, copy of PAN card, Aadhaar card etc. with copy to 3rd respondent.
4. 3rd respondent shall produced a cheque for Rs. 5 Lakh in the name of 1st petitioner which shall be deposited in a Nationalized Bank for 5 years. On maturity amount shall be transfer to the bank account of the 1st petitioner by way of Electronic Transfer Fund within 30 days.
5. The 3rd respondent shall transfer balance amount due to 1st petitioner and the share due to the 2nd petitioner by way of Electronic Fund Transfer to the account of petitioners with proportionate interest and costs within one month.

Dictated to Confdl. Asst., transcribed and typed by her, corrected and pronounced by me in an open Court, on this, the 31st day of January, 2022.

Sd/-

ASH.K.BAL
Motor Accident Claims Tribunal

APPENDIX:-

Exhibits Marked for the Petitioner's side:

A1	-	19/12/2015	Copy of FIR & FIS
A2	-	19/12/2015	Copy of scene mahazar
A3	-	19/12/2015	Copy of inquest report
A4	-	19/12/2015	Copy of postmortem certificate
A5	-	19/12/2015	Copy of charge

A6 - 01/04/2017 Legal heirship certificate
A7 - - Copy of death certificate
A8 - - Copy of school admission register

Witness for the Petitioner: Nil

Exhibits marked for the Respondents side: Nil

Witnesses Marked for the Respondent side:- Nil

Other Exhibit:- Nil

Id/-
M A C Tribunal

Memo of costs : Cost statement not filed

Sd/-
M A C Tribunal