

IN THE COURT OF ADDL. MOTOR ACCIDENTS CLAIMS TRIBUNAL-I,
THODUPUZHA

Present: Sri. P. Madhavan, B.A., LL.B., Addl.MACT-I, Thodupuzha
Monday, the 23rd day of February, 2015/ 4th day of Phalguna, 1936

O.P.(MV) No.60/2011
(Filed on 05.02.2011)

Petitioner: Mathew S/o. Yohannan, Pulickakunnel (H),
Udayagiri Kara, Vathikudy Village.
(represented by his son and next friend
Jibin, S/o. Mathew, Pulickakunnel (H),
Udayagir Kara, Vathikudy Village)

By Adv. Sri.Basil Mathew.

Respondents: 1. Saji, S/o. Pappachan, Pazhayalackal (H),
Marygiri Kara, Thankamany Village.
(Driver)

2. The Manager, Mariyan Public School, Marygiri,
Marygiri P.O., Thopramkudy, Idukki District. (Owner)

3. The New India Assurance Company Ltd.
Represented by its Dividsional Manager,
Kottayam.
(Insurer of KL6.D. 9858 Service Bus)

R1 and R2. Exparte.
R3 by Adv. Sri. Jolly James.

This petition is coming on for hearing on 03/02/15 in the presence of the above counsel on both sides and after having stood over for consideration till 23/2/15 the Tribunal passed the following:

AWARD

This is a claim petition filed under S. 166 of M.V. Act 1988 for an amount of ₹.7,00,000/- under various heads as compensation from the respondents.

2. The petitioner's case is that on 16.8.2010 while he was walking along the Kattappana-Thopramkudy road and when he reached at Perumthotty junction a bus Reg.No.KL.6D/5269 came from the opposite side driven by the first respondent in a rash and negligent manner and hit the petitioner and he sustained minor and grievous injuries. He was taken to St.John's Hospital, Kattappana. The second respondent is the registered owner and third respondent is the insurer of the bus at the relevant time.

3. The R1 and R2 remained ex-parte.

4. R3 entered appearance and filed written statement admitting the accident and stated that bus bearing Reg.No.KL.6D/5269 was insured with them in the name of the second for a period from 27.5.2010 to 26.5.2010 as policy No.76011131100100002322 and contended that the accident took place due to the negligence of the petitioner. According to R3, the age, occupation and income of the petitioner is not correct and the amount claimed under various heads are excessive in nature.

5. The following issues are settled for trial:

- 1) Whether the claimant sustained injuries in the road accident as alleged ?
- 2) Whether R3 insurer of the bus is liable to compensate the petitioner?
- 3) If so, what is the amount of compensation to be paid?

6. **Issue Nos.1 and 2 :** For the sake of convenience, these issues are considered together. The claimant has produced and marked nine documents as Exts.A1 to A9. The petitioner examined one witness as PW1 and respondents have not adduced any evidence.

7. The insurance company has no dispute regarding the fact that the offending vehicle was insured with it. Ext.A1 FIR, Ext.A2 is the charge sheet filed after investigation and Ext.A3 is the copy of the accident register cum

wound certificate produced by the police. Ext A2 shows that the accident took place due to the negligence of the driver (R1) of the offending vehicle No.KL.6D/5269. No contra-evidence was adduced by the respondent in this respect. So, I find that the applicant had sustained injuries in the accident as stated by him. It has also to be held that it is because of the negligence of the driver of the offending vehicle the accident took place and applicant had sustained injuries. As per Ext.A3 certificate issued from the St.John's hospital, the applicant had sustained severe head injury with fracture right temporo parietal bone, infra cerebral hamotoma, right temporal contusion right temporal and frontal sinus. He underwent two surgeries for craniotomy temporal and discharged on 1.10.2010.

8. So, I find that petitioner had sustained grievous injuries in the accident and it is because of the rash and negligent driving of the bus by R1, the accident took place. Since R3 is the insurer of the offending vehicle and it had admitted the insurance. So I find that R3 is liable to pay the compensation to the petitioner.

9. **Issue No.3:-** Though the insurer has disputed the income of the claimant, no evidence is adduced against the evidence of the claimant. The claimant states that he is a salesman and he gets a monthly income of ₹.6,500/-. The owner of the shop was examined as PW1. PW1 has not produced any certificate or register for proving the monthly income of the petitioner. Hence income has to be estimated on the basis of a reasonable estimate of the wages of a casual labourer. A casual labourer in Kerala in 2010 gets ₹.250/- per day and he will get 20 days work on an average. Hence his notional income is fixed as ₹.5,000/- per month. In Ext.A5, it can be seen that the petitioner underwent two surgeries for craniotomy temporal right. He requires constant medications and support of bystanders for daily activities. He was admitted on 16.8.2010 and discharged on 1.10.2010 and again he was admitted on 6.10.2010 and

discharged on 15.10.2010. His injuries were reviewed several days. The petitioner was treated in the St.John's Hospital as in-patient for 56 days. In Ext.A5, he had suffered brain injury and permanent disability and not in a position to travel to appear before court for assessment of disability. He has to take rest for a total period of at least 9 months. He was treated at St.John's hospital, Kattappana. The petitioner has produced taxi vouchers for ₹.8,000/- and it can be granted for transportation expenses.

10. The medical bills for the treatment undergone by the petitioner was produced and marked Ext.A8. Ext.A8 series is for an amount of ₹.1,80,428/- for the treatment of the petitioner. There is no dispute and the said amount can be granted as medical expenses incurred.

11. The petitioner has produced a disability certificate, ie marked as Ext.A10 in this case. The Medical Board of the Medical College Hospital, Kottayam had examined the petitioner and had found that the petitioner had 12% disability. The petitioner was aged 44 years at the time of accident. As per the decision of the Hon'ble Supreme Court in **Sarla Varma vs. Delhi Transport Corporation (2010 (2) KLT 802 (SC))** the multiplier to be used for ascertaining future loss of income has to be taken as 14. The percentage of disability is taken as 12% for calculating future loss. Considering the facts and circumstances in this case, the following amounts of compensation is granted to the petitioner under various heads .

Sl. No.	Head of claim	Amount Claimed (in Rupees)	Amount Awarded (in Rupees)	Basis-vital details in a nut shell
1	Loss of earning	30,000/-	45,000/-	5,000/- x 9 months
2	Transportation expense	15,000/-	8,000/-	Bills produced
3	Extra nourishment	5,000/-	5,000/-	Reasonable estimate made
4	Damage to clothing	500/-	500/-	Reasonable estimate

				made
5	Treatment expenses	1,40,000/-	1,80,425/-	Bills produced worth Rs.1,80,428/-.
6	Charges for by-stander	10,000/-	10,200/-	200/- x 56 days
7	Compensation for pain and suffering	35,000/-	35,000/-	Reasonable estimate made
8	Disability	5,00,000/-	1,00,800/-	5,000/-x12x12/100x 14 vide Sarla Varma's case
9	Loss of amenities	25,000/-	33,600/-	1/3rd of disability
10	Total	Limited to Rs.7,00,000	₹.4,18,525	₹.4,18,525/- -along with interest @ 7% per annum from 5.2.2011 till realisation.

So, the issues are answered accordingly.

In the result the OP(MV) is allowed and award passed allowing the claimant to recover an amount of Rs.4,18,525/- (Rupees Four lakh eighteen thousand five hundred and twenty five only)with simple interest @ 7% per annum from the date of petition, ie 5.2.2011 till realization from the respondents jointly and severally.

The respondent No.3 the insurance company is liable to pay compensation and they are directed to produce a cheque for Rs.6,373/- in the name of MACT, Thodupuzha towards court fee and the balance amount in the name of the petitioner by crossed cheque within 30 days of the award. The petitioner is entitled to withdraw the amount forthwith. The petitioner is entitled to get proportionate cost of the proceedings.

Dictated to the Confidential Assistant, transcribed by her, corrected and pronounced by me in open court, this the 23rd day of February, 2015.

P. MADHAVAN
ADDL.MOTOR ACCIDENTS CLAIMS TRIBUNAL-I
(in charge)

APPENDIX

Petitioner's Exhibits:

A1	16.08.10	Copy of FIR and FIS in crime No. 256/10 of Murickasserry Police Station.
A2	31.10.10	Copy of Final report in crime No. 256/10 of Murickasserry Police Station.
A3		Copy of Accident Register cum wound certificate issued from St. John's Hospital, Kattappana in the name of Petitioner.
A4		Discharge summary issued from St. John's Hospital, Kattappana in the name of petitioner
A5	02.10.10	Treatment Certificate issued from St. John's Hospital, Kattappana in the name of petitioner.
A6		Copy of Identity card issued by the Election Commission of India in the name of petitioner.
A7	07.08.14	Certificate issued by one kuttappan Gopalapillai, Irumbanathu in the name of petitioner.
A8		Series of Medical bills for ₹. 1,80,428/-
A9		Taxi vouchers for ₹. 8000/-
A10		Disability Certificate issued from Govt. Medical College Hospital, Kottayam in the name of Petitioner

Petitioners Witness: Nil

PW1 19.01.15 Kuttappan.

Respondent's Exhibits: Nil

Respondent's Witness: Nil

Court Exhibits: Nil

Court Witness: Nil

Addl. Motor Accidents Claims Tribunal-I
Thodupuzha.

OP(MV)No.60/2011

PETITIONER'S Rs. Ps.		RESPONDENT'S Rs. Ps.
6373.00	Court Fee	
5.00	Stamp for Vakalath	5.00
15.00	Stamp for petition	5.00
12.00	Stamp for Documents	2.00
90.00	Process fee	
23326.00	Advocate Fees	
350.00	Other Charges	
30171.00	Total	12.00

Allowed
(Certified)

Not allowed
(Not certified)

Clerk

Head Clerk

M.A.C.T.-I

Typed by: Maya.A.D.
Compd by:

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.

OP(MV) No.60/2011
Dtd:23/02/2015