

IN THE COURT OF THE ADDL.DISTRICT & SESSIONS COURT-IV/
ADDL.MACT-II, THODUPUZHA

Present:- Smt.V.G.Sreedevi, B.Sc. LL.M, Addl. MACT-II Judge,
Thodupuzha

Friday, 25th day of January, 2019/5th day of Magha, 1940

OP(MV)No.70/2017

(Filed on 02.02.2017)

Petitioner:- Jeena George, aged 33 years, W/o Georgekutty,
Parapallikunnel House, Nalumukku Kara,
Kalkoonthal Village, Udumbanchola Taluk,
Pin 685514.

Respondents:-

- 1) Anu Antony, aged 22 years, S/o Antony,
Periyilakkattil House, Bethel Kara, Melechinnar,
Vathikudy Village, Udumbanchola Taluk,
Pin 685514.
- 2) Bijoy S/o Antony, Perilakkattu House, Bethel Kara,
Melechinnar, Vathikudy Village,
Udumbanchola Taluk, Pin 685514.
- 3) The New India Assurance Company Ltd.,
represented by its branch Manager Adimaly,
Adimaly P.O., Idukki District, Pin 685561.

R1 and R2 - Exparte.

This petition is coming on for hearing on 21.01.2019 in the presence of Adv.P.S.Rajesh for the petitioner. Adv.K.Pradeepkumar for the 3rd respondent and after having stood over for consideration till 25.01.2019 the Tribunal passed the following:

AWARD

This is a petition filed under Section 166 of the Motor Vehicles Act, 1988.

2. The case of the petitioner in brief is as follows:- On 14.1.2014 at 1.00 PM while the petitioner was standing on the left side of the road at a Nathukallu city on the Kattappana-Erattayar road, a motorcycle bearing Registration Number KL 06F 5678 negligently ridden by the first respondent hit the petitioner. Due to the impact of the hit the petitioner suffered injuries. First respondent is the rider, second respondent is the owner and third respondent is the insurer of the offending vehicle. The respondents one to three are jointly and severally liable to compensate the petitioner.

3. The first and second respondents remained ex parte.

4. The third respondent filed written statement with the following contentions:- The vehicle had a valid policy coverage in the name of second respondent with the third respondent during the time of accident. The age, occupation and income shown are not correct. The amount claimed under various heads are highly excessive.

5. The evidence in this case consists of documentary evidence alone which are Exts.A1 to A9.

6. Heard both sides.

7. The issues that arise for consideration are :-

1. Was the accident took place due to the negligence on the part of the first respondent, as alleged?
2. What is the quantum of compensation entitled by the petitioner ?
3. Reliefs and costs ?

8. Issue No. 1: The petitioner alleged that while she was standing on the left side of the road at Nathukallu city on the Kattappana-Erattayar road, a motorcycle negligently ridden by the first respondent hit the petitioner and thereby she suffered injuries. The only contesting respondent, the third respondent disputed the accident itself but no evidence adduced to support that contention. The petitioner produced Ext.A1 First Information Report and private complaint and Ext.A4 charge sheet. These documents would show that the accident was due to the negligence on the part of the first respondent. So , charge sheet being prima facie proof of negligence, I find that the accident was due to the negligence on the part of the first respondent. Issue is found in favour of the petitioner.

9. Issue No.2: Ext.A5 is the wound certificate issued from the St. John's Hospital, Kattappana. It shows she was admitted there on

14.1.2014 and discharged on 18.1.2014. She had lacerated injury on occipital scalp. C.T brain shows subarchanoid haemorrhage. Ext.A8 is the discharge summary. It shows minimal subarchanoid haemorrhage anterior inter hemisphere region. Ext.A9 the treatment certificate also shows the same fact.

10. Petitioner was aged 35 years at the time of accident and she was a coolie. The accident was in the year 2014. There is no documentary evidence to show her actual income. Therefore, only notional income taken in this case and that is ₹7000/-. In view of nature of injuries she suffered, three months rest is considered for convalescence and ₹21,000/- is granted towards loss of earning.

11. She produced Ext.A6 series medical bills for ₹21831.89/-. Hence ₹21,830/- is granted. She was an inpatient for five days. Hence towards bystander's expense ₹1,250/- is granted at the rate of ₹250/- per day.

12. The place of accident is at Nathukallu. She was taken to St.John's Hospital, Kattappana, which is nearly 6 kilometers away. Her house is at Kalkoonthal, which is nearly 14 kilometer away. There are two reviews after the discharge and that can be seen by Ext.A6 series. Hence towards transportation expense ₹3,000/- is granted.

13. Towards extra-nourishment ₹1,250/- is granted for the extra diet she required and another sum of ₹1,000/- is also granted towards damage to clothing.

14. The petitioner suffered a minimal sub arachnoid haemorrhage with laceration. Hence ₹ 15,000/- is granted towards pain and sufferings.

15. The petitioner was personally present before the Tribunal in order to assess her present physical condition. She stated that she cannot bend forward. Hence not going for work, cannot go out in sun. She had a child after the accident. Considering the present physical inconveniences she point out an amount of ₹10,000/- is granted towards loss of amenities and conveniences.

16. She produced Ext.A7 disability certificate issued from the medical board of District Hospital, Idukki. It shows head injury and the percentage assessed as 20. When 20% of disability converted as the disability of whole body, 5% is taken as her disability in view of the decision of Hon'ble Supreme Court in **2011 (1) KLT 620 Raj Kumar vs. Ajay Kumar and Another.** The multiplier is '16' as per **Sarla Verma's case 2010 (2) KLT 802** as she was 35 years at the time of the accident. Thus towards loss of earning capacity ₹67,200/- ($7,000 \times 12 \times 16 \times 5 / 100$) is granted.

17. Thus a total sum of ₹1,41,530/- is granted towards compensation which is summarised as follows:-

TABULAR STATEMENT

Sl. No	Head of claim	Amount claimed (in Rupees)	Amount awarded (in Rupees)	Basis -vital details in a nut shell
1	Loss of earning	60,000	21,000	7,000x3 months
2	Medical and miscellaneous expenses	50,000	21,830	Acceptable bills for ₹21831.89 produced.
3	Bystander expense	50,000	1,250	₹250 x 5days one person
4	Transportation expenses	15,000	3,000	
5	Extra nourishment	40,000	1,250	
6	Damage to clothing etc	6,000	1,000	
7	Pain and suffering	30,000	15,000	
8	Disability & disfiguration	2,00,000	67,200	7000x12x16x5/100
9	Loss of amenities and conveniences	50,000	10,000	
	Total	Claim limited to 4,00,000	₹1,41,530/-	₹1,41,530/- along with interest at the rate of 9% p.a from 2.2.2017.

18. **Issue No.3**- In the result, this petition is allowed and the following award is passed:-

1. A total amount of ₹1,41,530/-with interest at the rate of 9% per annum with costs is awarded towards compensation to the petitioner.
2. Respondents one to three are directed to pay the said amount.
3. The third respondent shall deposit ₹3,373/- and ₹4,000/- separately towards court fee payable and legal benefit fees respectively in favour of MACT, Thodupuzha.
4. The third respondent shall produce cheque for the balance amount in the name of the petitioner and he is permitted to withdraw the amount.
5. The amount shall be paid within one month from the date of this award.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open Court on this the 25th day of January, 2019.

Sd/-
V.G.SREEDEVI,
ADDL. MOTOR ACCIDENTS CLAIMS TRIBUNAL-II
THODUPUZHA.

APPENDIX**Petitioner's Exhibits:-**

A1	02.04.2014	Certified copy of FIR in crime No.568/14 of Kattappana Police Station.
A2	03.04.2014	Certified copy of Mahazar in crime No.568/14 of Kattappana Police Station.
A3	21.04.2014	Certified copy of AMVI report of vehicle No.KL 6F/5578.
A4	30.04.2014	Certified copy of Final report in crime No.568/14 of Kattappana Police Station.
A5	14.01.2014 18.01.2014	Certified copy of accident register cum wound certificate of Jeena George.
A6	-	Medical bills.
A7	08.06.2017	Disability certificate of Jeena George issued from District Medical board, Idukki.
A8	14.01.2014	Discharge summary of Jeena George issued from St.John's Hospital, Kattappana.
A9	18.10.2018	Treatment certificate of Jeena George issued from St.John's Hospital, Kattappana.

Respondent's Exhibits:-

NIL

Court Exhibits:-

NIL

Petitioner's Witness:-

NIL

Respondent's Witness:-

NIL

Court Witness:-

NIL

Id/-

ADDL.MOTOR ACCIDENTS CLAIMS TRIBUNAL-II

Skn/- Comp.by:

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

OP(MV)No.70/2017

Petitioners		Respondents
787.80	Court Fees	---
5.00	Stamp for Vakkalath	5.00
5.00	Stamp for Petitions	---
---	Stamp for Documents	---
90.00	Process Fees	---
9,476.50	Advocate Fees	---
---	Advocate Fees(Junior)	---
1,000.00	Other Charges	---
1,415.00	Legal benefit fund	---
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Total: 12,779.30		5.00
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Rounded to ₹ 12,779/- (Twelve thousand seven hundred and seventy nine only)

Allowed
Certified

Not Allowed
Not Certified

Id/-
Clerk

Id/-
Head Clerk
[True Copy] By Order,

Id/-
MACT-II

Head Clerk.

AWARD IN
OP(MV) No.70/2017
Dated:25.01.2019
