IN THE COURT OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, PERUMBAVOOR

Present: - Smt. P. Jyothis Ben, Motor Accidents Claims Tribunal

Wednesday, the 17th day of January, 2024/ 27th day of Pousha 1945.

**O.P. (MV) No. 394/2020**

**Claimant:-**

Salim V.P., aged 46 years, S/o B. Pareedkutty, Valayamkunnu House, U.C. College, Aluva. ( Aadhar No. 2583 0475 8896)

By Adv. Jo Jose

**Respondents :-**

1. Managing Partner, Krishna Industries, Godown Road, Cheranelloor, Ernakulam.
2. Akhil, S/o Sabu, Palakkattuputhenpura House, Kozhippilly P.O., Kothamangalam.
3. United India Insurance Co. Ltd., Joys Building, Padma Junction, Ernakulam.

R1 & R2 - By Adv. Anwar C.K.

R3 - By Adv. N. Biji

This Original Petition (MV) coming on this the 9th day of January, 2024 for final hearing before me and on this day the Tribunal passed the following:

**AWARD**

This is a petition filed u/s 166(1)(a) of the Motor Vehicles Act for compensation of an amount of Rs.1,50,00,000/-, for the injuries sustained by the petitioner in the alleged motor vehicle accident.

2. The case of the petitioner as stated in the petition is as follows:-

On 27.09.2019 at about 11 a.m., while the petitioner was riding his Scooter bearing Reg.No.KL-41/G-7372 through Aluva – Perumbavoor KSRTC Road and when at

Marampilly, a Tata Iris Vehicle bearing Reg.No.KL-7/CC-4053 driven by the second respondent in a rash and negligent manner came from the opposite direction hit against the scooter and the petitioner was thrown down to the road, causing him serious injuries.Petitioner was taken to Medical Trust Hospital, Ernakulam, and was treated there as an inpatient. According to the petitioner the accident occurred due to the rash and negligent driving of the offending Tata Iris Vehicle. The registered owner, driver and insurer of the Tata Iris Vehicle are shown as R1 to R3 respectively.

3. R1 and R2 appeared and filed written statement admitting the accident but denying any negligence on the part of R2. It is submitted that R2 was holding a valid driving licence at the time of accident and the vehicle was validly insured with the third respondent. R1 and R2 also denies the claims under various heads.

4. R3 appeared and filed written statement admitting the insurance of the Tata Iris Vehicle bearing Reg.No.KL-7/CC-4053 with R3 at the time of accident, but denying the rashness and negligence alleged against R2. It is also contended that R2 was driving the Tata Iris Vehicle with due care and caution and the accident occurred solely due to the negligence of the petitioner himself who was riding the Scooter without holding valid driving licence to ride a two wheeler. It is further contended that R1 neither inform the accident nor produced the vehicular documents for verification. So, there is violation of policy conditions and R3 is not liable to indemnify R1. R3 also denies the claims under various heads.

5. On the pleadings, the issues raised for consideration are as follows:-:

(1) Whether the accident occurred due to the rash and negligent driving of Tata Iris vehicle by R2?

(2) Whether the petitioner is entitled for compensation as claimed?. If so, what is the quantum?.

(3) Who is liable to pay the compensation?

(4) Reliefs and costs.

6. As per order in I.A.No.4/2023, R3 was permitted to contest the matter under Section 170 of the MV Act.

7. The petitioner himself is examined as PW1 and the evidence in this case consists of Exts.A1 to A21 and Ext.C1.

8. Issue No.1: The specific case of the petitioner is that on 27.09.2019 at about 11 a.m., while the petitioner was riding his Scooter bearing Reg.No.KL-41/G-7372 through Aluva – Perumbavoor KSRTC road and when reached at Marampilly, a Tata Iris Autorickshaw driven by the second respondent in a rash and negligent manner hit against the Scooter and thereby the petitioner was thrown to the road. Immediately after the accident he was taken to Karothukuzhy Hospital, Aluva and from there he was taken to Medical Trust Hospital, Ernakulam. He deposed that due to the accident he lost the vision of his left eye and partial loss of vision to right eye.

9. Exts.A1 F.I.R, Ext.A2 scene mahazar, and Ext.A4 AMVI's report stand to prove the accident. Ext.A5 is the charge sheet, as per which R2 is charge sheeted for

the offence punishable under Section 279, 337 and 338 of I.P.C. It is specifically stated in Ext.A5 charge sheet that the accident occurred due to the rash and negligent driving of the Tata Iris Autorickshaw by the second respondent. There is nothing on record to go against the charge sheet. No evidence, either oral or documentary, is let in to attribute any sort of negligence on the part of petitioner herein, who was riding the Scooter by keeping his correct side. So on perusal of records, it is proved that the accident occurred due to the rash and negligent driving of R2. This issue is answered accordingly.

10. Issue No.2: Ext.A3 is the wound certificate issued from Medical Trust Hospital, Ernakulam which shows that the petitioner was brought to that hospital on 27.09.2019 at 12.10 p.m. with injuries sustained in RTA. Ext.A6 is the discharge summary issued from Medical Trust Hospital, Ernakulam stating that the petitioner was brought to that hospital with the following injuries:

- Head injury (right frontal bone fracture, multiple facial bone fracture extending upto skull base, right frontal SDH)
- Left direct high flow caroticocavernous fistula – S/P embolisation
- Right shoulder gelnoid neck fracture
- Right hand third and fourth metacarpal fracture
- Right side facial nerve palsy (HB grade V)
- Left sided II, III, IV, VI with optic atrophy

Ext.A6 further shows that the petitioner was admitted in that hospital on 27.09.2019 and managed conservatively with supportive care and discharged from the hospital on 18.10.2019. Ext.A7 is the treatment summary issued from Medical Trust Hospital, Ernakulam which shows that the petitioner was admitted in the Neurosurgery department with traumatic brain injury, carotid cavernous fistula, right eye traumatic third nerve neuropathy, right hand third and fourth metacarpal fracture and right glenoid neck fracture. Ext.A8 is another discharge summary issued from Medical Trust Hospital, Ernakulam which shows that the petitioner was again admitted there on 25.11.2019 for K-wire removal under LA on and was discharged on the same day. Ext.A9 is another discharge summary issued from Sreedhareeyam Ayurvedic Eye Hospital & Research Centre (P) Ltd, Koothattukulam which shows that the petitioner was admitted there on 01.03.2020 with blurred vision of RE, since 4 months, difficulty to close the RE, since 4 months, loss of vision in LE since 4 months. He was treated conservatively and discharged from the hospital on 15.03.2020. Ext.A10 is the prescription summary dated 29.09.2019 issued from Medical Trust Hospital, Ernakulam which shows that the petitioner had high flow direct carotid cavernous fistula on left side. Ext.A11 is the prescription summary dated 28.09.2019 issued from Medical Trust Hospital, Ernakulam which shows that the petitioner had cerebral angiography. Ext.A12 is another discharge summary issued from Nangelil Ayurveda Medical College Hospital, Kothamangalam which shows that the petitioner was admitted there on 15.02.2023 and he was treated with pathra pinda swedam with kottamchukkadi tailma + Karpooradi thailam and discharged from the hospital on

24.02.2023. Ext.A13 is another discharge summary issued from Nangelil Ayurveda Medical College Hospital, Kothamangalam which shows that the petitioner was admitted there on 30.12.2019 and discharged from the hospital on 19.01.2020. Ext.A14 is another discharge summary issued from Aravind Eye Hospital dated 19.11.2019 which shows that the petitioner had right eye facial palsy. Ext.A16 is medical bills for Rs.11,20,446/- and Ext.A17 is another medical bill for Rs.64,904/- incurred in connection with the treatment of the petitioner. So, the total amount is Rs.11,85,350/-, and that amount is awarded towards treatment expenses of the petitioner.

11. As per the petition, the petitioner aged 46 years at the time of accident was working as Manager in Teejan Furnishing LLC, Sultanate of Oman and as per the claim petition his monthly income is 829/- Oman Riyal equivalent to Rs.1,57,510/-. The petitioner was examined as PW1. He deposed that in the accident he sustained a severe head injury and lost the vision of his left eye completely and that of the right eye, partially. He suffers facial palsy and the left side facial muscles are droopy and left side of his body also suffers atrophy. He was admitted in an Ayurvedic Hospital for the treatment of his eye till 15.3.20. At the time of accident he had been employed in Middle East, at Oman. As his treatment was prolonged beyond six months he was unable to resume duty and lost his job and family Visa got canceled.He had been drawing a monthly salary of 829 Omani Rial which comes around Rs.1,57,510/-. He met with the accident at

the age of 46 years, but due to the disability of diminished vision he fails to find out a new job. In cross examination he made it clear that he is unable to use computer and to drive vehicles.

12. The Learned counsel for R3 made suggestions to the effect that the accident was caused due to his negligence, he does not suffer so much disability as is shown in the Ext.C1 certificate, he does not suffer from hemiparesis and from the hospital records it can be seen that he was stable at the time of discharge from the hospital. He denied all those suggestions and stated that he regained even his memory after some six months time, was able to walk with the help of physiotherapy only and he could even reach the court with the help of others.

13. PW1 was thoroughly cross examined on the truthfulness off his salary details and it was suggested that the salary slip does not state the details of the income tax. He explained that in Oman the salary is free of any tax. PW1 admitted that while residing in the Middle East he had to bear the living expenses of his family on his own.

14. Ext.A15 is the salary certificate issued from Teejan Furnishing LLC, Sultanate of Oman which shows that the petitioner was drawing a monthly basic salary of RO 509/- and other allowances of RO 320/- and he was on leave from 27.07.2019 onwards. Ext.A18 is a certificate issued from Teejan Furnishing LLC,

Sultanate of Oman certifying that the petitioner was employed there as Sales Manager from 06.05.1996. He left Oman on 25.07.2019 with the intention of returning within six months, in accordance with the immigration regulations of Oman. During his leave of absence, the Company received information that the petitioner suffered a major accident in his home town in Kerala, India and due to this accident he was prevented from rejoining duty within the stipulated six month time frame. Due to these unforeseen circumstances and the inability to renew his employment visa as a result of his extended absence, they were left with no choice but to terminate the petitioner’s employment with their organization. The said documents were attested by the Embassy of India, Muscat. Ext.A19 is the copy of the passport of the petitioner. Ext.A20 is the resident card of the petitioner. Ext.A21 is the family visa of the petitioner's wife and children. These all are legally acceptable documents and the said documents are accepted in evidence. Considering the nature of injuries sustained by the petitioner, it appears that he would have been on complete rest for at least 11 months. But learned counsel for R3 cautions that if loss of earnings for 11 months is granted to the petitioner taking his income at Rs.1,57,510/- that itself will make the award exorbitant and unjust. At the same time the learned counsel for the petitioner reminds that, as per the decision of the Hon’able Supreme Court in **Mohd.Sabeer v. Regional Manager, UP Road Transport Corporation [2023(1) KLT SN 14]**, “*It becomes the duty of the Court to, at the very least, restore the claimant as best as possible to the position he was in before the occurrence of the disability, and to do so must award* *compensation in a liberal manner*." Learned counsel for the petitioner mentioned that while deciding the amount of compensation, the sad plight of the petitioner should be considered that the life of himself and his family fell apart in a single day that they were well settled in the Middle East and the family had been very comfortable there. After the accident their visa got cancelled, the petitioner is still unemployed and now their social status itself got changed and they are struggling to cope with it. According to the learned counsel for R3, while assessing the compensation to be given to a person working abroad, the tribunal has to assess the income of a person in the context of Indian standards, taking the probable income which he might get if he is working in India during the relevant time, as is held in the decision of the Hon'ble High Court of Kerala in **Aarifa and others v. Anwar Sadat in MACA 551/ 2011**. He relies on the decision of the Hon'ble Supreme Court in **Chanderi Devi & others v. Jaspal Singh & others ( 2015 ICO 413)**, where the income of an Indian cook working in Germany was considered. It was pointed out that though Rs.62,975/- was claimed as monthly income, the court held that "*on considering the facts, circumstances of the case and plausibly estimating as to how much a cook of similar nature as the deceased would have earned in India in the year 2006, we are of the view that it would be just and reasonable for us to ascertain the income of the deceased at the time of his death at Rs.15,000 per month*." Here, as per Ext.A15, the monthly salary of the petitioner is Rs.1,57,510/-. As the salary slip is duly proved also. Considering the whole circumstances the case it appears that it is appropriate to take 1/3rd of this as the income of the petitioner who had been working as a Manager and it is calculated as Rs.52,500/-. After the accident he might have been as complete rest for at least 11 months. So towards loss of earnings for 11 months, a sum of Rs.5,77,500/-(Rs.52,500/- X 11 months) is granted.

15. The petitioner was admitted in three hospitals, and had availed several reviews. So a sum of Rs.10,000/- is awarded towards transportation expenses. The petitioner was admitted in the hospital for 65 days, and so towards bystander expenses and extra-nourishment Rs.32,500/- each (Rs.500 x 65 days) is awarded. The petitioner is also entitled to a sum of Rs.1,000/- towards damage to clothing.

16. Exts. A6, A7, A10 and A11 hospital records would show the nature of the injuries including the bone fractures and Carotid Cavernous Fistula suffered by the petitioner. Carotid Cavernous Fistula, a vascular shunt allowing blood to flow from the carotid artery into the cavernous sinus is caused by the head injury he suffered. The condition is very much painful to the eye and can even experience a whistling sound in the head persistently and he had to undergo embolisation (placing small platinum coils where the abnormal connection is) under general anesthesia. Considering the nature of injuries sustained by the petitioner and treatment undergone, a sum of Rs.2,50,000/- is awarded towards compensation for pain and suffering and Rs.2,50,000/- towards loss of amenities and enjoyment in life.

17. The petitioner was referred to the Medical Board of Medical College Hospital, Thrissur for assessment of permanent disability, and the Medical Board report received thereof is marked as Ext.C1. On perusal of Ext.C1 it is seen that the Medical Board had examined the petitioner and found that the petitioner had 24% Neurosurgery disability due to right spastic hemiparesis 15% and UMN facial 10%, 3% Orthopaedics disability and 30% Ophthalmology disability due to left traumatic optic neuropathy, and the whole body permanent disability of the petitioner is calculated as 48.396%. So by accepting Ext.C1, the occupational disability of the petitioner can be assessed as 50%. The petitioner was personally present before this tribunal. He is in a wheelchair. Ext.C1 gives 24% Neurosurgery disability and 30% Ophthalmology disability which will affect his earning power by 50%. So by accepting Ext.C1, the occupational disability can be taken as 50%. As per Aadhar card attached with the petition the date of birth of the petitioner is 20.05.1973, and as such the petitioner was 46 years old at the time of accident. It is submitted by the learned counsel for the petitioner that due to the permanent disability, the petitioner, will not be able to do any work in his life as usual, and there is total loss of earning power and urged for a position that while calculating compensation for permanent disability, his future prospects need to be added to the income derived. He placed reliance on the dictum laid down by our Hon'ble High Court in ***Santharam P v. K Raveendran and Another, reported in 2016(1) KHC 455(DB)***. It is held in the decision cited that the Tribunal has to consider the future profession prospects and the chances of the claimant earning more while awarding compensation. So relying upon the said

decision, it is found that this is a case where the petitioner being a person with 50% occupational disability is entitled for future prospects on his income. The monthly income of the petitioner has already arrived at as Rs.52,500/-. Since the petitioner being a self employed person in the age group 40-49, is entitled to get 25% increase in monthly income as future prospects (National Insurance Co. Ltd. v. Pranay Sethi reported in 2017(4) KLT 66), and his income for the purpose of computing disability is considered as Rs.65,625/- (Rs.52,500 + 13,125). So towards 50% disability, the petitioner is entitled to a sum of Rs.51,18,750/- (Rs.65,625 x 12 x 13 x 50%) as compensation.

18. The learned counsel for the petitioner submitted that the petitioner is still continuing treatment as outpatient. The petitioner had sustained head injury (right frontal bone fracture, multiple facial bone fracture extending upto skull base, right frontal SDH), Left direct high flow caroticocavernous fistula – S/P embolisation, Right shoulder gelnoid neck fracture, Right hand third and fourth metacarpal fracture, Right side facial nerve palsy (HB grade V) and Left sided II, III, IV, VI with optic atrophy. He is on treatment since September 2019 and still continuing treatment as outpatient. He is having Carotid Cavernous Fistula. He will require prolonged treatment for his eye and regular follow up. Considering the nature of injuries sustained by the petitioner, his present condition and age, he requires future treatment, and it is only just and proper to allow a sum of Rs.1,00,000/- is awarded towards future treatment expenses of the petitioner.

19. Considering the nature of injuries, treatment undergone, and other facts and circumstances of the case, I hold that the petitioner is entitled to get compensation as stated in the following table:

| Sl. No. | Head of Claim Compensation for | Amount Claimed (in Rupees) | Amount Awarded | Basis – vital details in a nut shell |
|---|---|---|---|---|
| 1 | Loss of earnings | 1800000 | 577500 | R52500/- x 11 months |
| 2 | Transport to Hospital | 50000 | 10000 | 3 Hospitals + reviews |
| 3 | Extra nourishment | 100000 | 32500 | |
| 4 | Medical expenses | 2000000 | 1185350 | Actual medical bills |
| 5 | Pain & suffering | 1000000 | 250000 | |
| 6 | Loss of amenities etc. | 3000000 | 250000 | |
| 7 | Permanent disability | 23000000 | 5118750 | Rs 52500x12x13x50% |
| 8 | Attendance charge | 100000 | 32500 | Rs.500 x 65 days |
| 9 | Damage to clothes etc | 3000 | 1000 | |
| 10 | Disfiguration | 500000 | NIL | |
| 11 | Future medical expense | 1000000 | 100000 | |
| | Total | 325,53,000/- limited to 15000,000/- | 75,57,600/- ======= | |

20. <u>Issue No.4</u>: It has already been answered in Issue No.1 that the accident occurred due to the negligent driving of the Tata Iris Vehicle by R2. R2 being the driver is primarily liable to pay compensation. R1 being the registered owner of the offending Tata Iris Vehicle is vicariously liable to pay compensation. Admittedly, R3 is the insurer. So, being the insurer, R3 is liable to indemnify the insured. Hence,

it is concluded that R1 to R3 are jointly and severally liable to compensate the petitioner. This issue is answered accordingly.

21. Issue No.4: In the result, this petition is allowed in part, and an award is passed for an amount of Rs.75,57,600/-, with interest @8% per annum from the date of petition till realisation to the petitioner, and he is entitled to get proportionate cost. R3 is directed to deposit the amount as aforesaid within one month from the date of this award as follows:

R3 is directed to deposit two cheques in the name of M.A.C.T., Perumbavoor for Rs.1,49,373/- towards court fee, and for Rs.1,50,000/- towards Legal Benefit Fund payable by the petitioner

deposit Rs.20,00,000/- directly to the bank account of the petitioner maintained with **'State Bank of India, Aluva Branch, IFSC Code-SBIN0070147, SB.A/c.No.57044476442,** by way of electronic fund transfer. A copy of passbook showing details of account of the petitioner is appended herewith

The insurance company shall further file a statement before this Tribunal regarding compliance of the order along with a copy of the transaction record certified by the Bank concerned.

R2 is further directed to make payment of the balance amount with interest and costs by way of cheque drawn in the name of the claimant, and the company shall produce the cheque before **Canara Bank (2), Perumbavoor**

**Branch,** along with a copy of the award and create a fixed deposit for two years. It is further clarified that the deposit have a lien marked on the face of its receipt stating that the amount shall be repaid only on maturity and by crediting to the claimant's account or else only on the orders of the Tribunal/ High Court. The Fixed Deposit amount, on maturity, along with its interest shall be automatically credited to the claimant's bank account furnished herewith.

The insurance company shall further file a statement regarding compliance of the order along with a copy of the transaction record certified by the Bank concerned. The Bank shall on production of such statement can hand over the fixed deposit receipt to the claimant.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open court on this the 17th day of January, 2024.

Sd/-

P.Jyothis Ben
Motor Accidents Claims Tribunal.

**APPENDIX**

**Petitioners' Exhibits :-**

| | | | | |
|---|---|---|---|---|
| A1 | - | 01/10/2019 | - | Copy of FIR in Crime No. 1951/2019 of Perumbavoor Police Station. |
| A2 | - | 02/10/2019 | - | Copy of scene mahazar in Crime No. 1951/2019 of Perumbavoor Police Station. |
| A3 | - | 27/09/2019 | - | Copy of wound certificate issued from Medical Trust Hospital, Ernakulam. |
| A4 | | 09/10/2019 | - | Copy of AMVI report of vehicle No. KL-41-G-7372 |
| A5 | - | 30/10/2019 | - | Copy of charge sheet in Crime No. 1951/2019 of Perumbavoor Police Station. |

| | | | | |
|---|---|---|---|---|
| A6 | - | 18/10/2019 | - | Discharge summary issued from Medical Trust Hospital, Ernakulam |
| A7 | - | 28/09/2019 | - | Treatment summary issued from Medical Trust Hospital, Ernakulam |
| A8 | - | 25/11/2019 | - | Discharge summary issued from Medical Trust Hospital, Ernakulam |
| A9 | - | 15/03/2020 | | Discharge summary issued from Sredhareeyam Ayurvedic Eye Hospital and Research Centre, Koothattukulam |
| A10 | - | - | - | Prescription/ summary issued from Medical Trust Hospital, Ernakulam. |
| A11 | - | - | - | Prescription/ summary issued from Medical Trust Hospital, Ernakulam. |
| A12 | - | 24/02/2023 | - | Discharge summary issued from Nangelil Ayurveda Hospital, Kothamangalam. |
| A13 | - | 19/01/2020 | - | Discharge summary issued from Nangelil Ayurveda Hospital, Kothamangalam. |
| A14 | - | 19/11/2019 | - | Discharge summary issued from Aravind Eye Hospital |
| A15 | - | 16/11/2019 | - | Salary certificate issued from Teejan Furnishing LLC, Oman |
| A16 | - | - | - | Medical Bills |
| A17 | - | - | - | Medical Bills |
| A18 | - | 16/10/2023 | - | Certificate issued from Teejan Furnishing LLC, Oman |
| A19 | - | - | - | Copy of passport of the petitioner |
| A20 | - | - | - | Resident card of the petitioner |
| A21 | - | - | - | Copy of family visa of petitioner’s wife and children |

**Respondents' Exhibits :- Nil**

**Court Exhibits :-**

| | | | | |
|---|---|---|---|---|
| C1 | - | 26/07/2023 | - | Disability Certificate |

**Petitioner’s Witnesses :-**

| | | | | |
|---|---|---|---|---|
| PW1 | - | 28/10/2023 | - | Salim V.P. |

**Respondents' Witnesses :- Nil**

Id/-
Motor Accidents Claims Tribunal.

## MEMO OF COSTS

**Petitioner's side:**

| | | | |
|---|---|---|---|
| Court fee | : | ₹ | 74949.00 |
| Additional CF | : | ₹ | 75576.00 |
| Stamp for Vakkalath | : | ₹ | 05.00 |
| Stamp on documents | : | ₹ | 25.00 |
| Stamp on petitions | : | ₹ | 30.00 |
| Process Fee | : | ₹ | 90.00 |
| Senior Advocate Fee | : | ₹ | 380280.00 |
| Junior Advocate Fee | : | ₹ | 00.00 |
| Writing Fee | : | ₹ | 100.00 |
| | | | -------------- |
| Total | : | ₹ | 531055.00 |
| | | | ========== |

Proportionate cost ₹ **5,31,055/-** allowed.

Sd/-
Motor Accidents Claims Tribunal
//True Copy// ( By Order)

Sheristadar

Jb
Compd by: sks

NB. The parties should apply as soon as possible for the return of all the documents which they may wish to preserve as the documents are liable to be destroyed after 12 years from this date.

Copy of AWARD

O.P.(MV)No. 394/2020

Dated:17/01/2024