

IN THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, PUNALUR.

**Present:- Sri. Abdul Jaleel.A, Motor Accidents Claims Tribunal
Saturday the 18th day of January, 2025/ 28th Pousha, 1946.**

OP (M.V) No. 521/2022

Between

Petitioner:-

Leena, Aged 54 years, W/o Shaji,
Latha Bhavan (leena Bhavan), Venchempu P.O,
Karavaloor, Kollam Dist, Pin -691333.

Represented by Adv. Sri. B. Reghunathan Pillai.

And

Respondents:-

1. Biju, Aged 45 years, S/o Pachan,
Nellikunnu Veedu, Mathra P.O,
Ayanikodu, Karavaloor, Kollam Dist,
691333.
2. M/s New India Assurance Co.Ltd.,
Khaise Building, Opp. Benzigar Hospital,
Beach Road, Kollam -691001.

R1 Ex-parte.

R2 represented by Adv. Smt. G. Sarojini Amma.

This OP(MV) have been finally heard on 16-01-2025 and on
18-01-2025 the Tribunal delivered the following:-

AWARD

This is a petition for compensation filed u/s 166 of the Motor Vehicles
Act, 1988.

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

On 12-06-2022 at about 7.30 a.m, while the petitioner was riding
scooter bearing Reg. No. KL-25H/3922 along Venchempu-Ayanikkodu canal

road and when the petitioner reached near Velankonam canal road, Motor Cycle bearing Reg. No. KL-25H/2625 ridden by the 1st respondent came in a rash and negligent manner and hit the motor cycle ridden by the petitioner and as a result petitioner fell down and sustained serious injuries. Immediately after the accident petitioner was taken to Taluk Head Quarters Hospital, Punalur and admitted and treated as inpatient. The accident occurred due to the rash and negligent riding of the motor cycle bearing Reg. No. KL-25H/2625 by the 1st respondent who is also the owner of the offending vehicle. The 2nd respondent is the insurer of the offending vehicle. Petitioner was aged 54 years and conducting a poultry farm, earning Rs. 20,000/- per month at the time of accident. Petitioner is entitled to get a total amount of Rs.3,00,000/- as compensation from the respondents. Both the respondents are jointly and severally liable to pay compensation to the petitioner.

3. 1st respondent remained ex-parte.

4. 2nd respondent filed written statement which is summarised as follows :- It is not correct to say that the accident occurred due to the rash and negligent riding of the motor cycle bearing Reg. No. KL-25H/2625 by the 1st respondent. The accident occurred due to the collision between two vehicles scooter bearing Reg. No. KL-25H/3922 and motor cycle bearing Reg. No. KL-25H/2625. The age, occupation and income of the petitioner as stated in the claim petition are to be proved by the petitioner with documentary evidence. Petitioner sustained only simple injuries. No disability was caused to the

petitioner as an impact of the accident. The amount claimed by the petitioner as compensation under various heads are exorbitant. It is admitted that 2nd respondent issued a valid policy to the vehicle bearing Reg. No. KL-25H/2625 covering the date of accident. But the 1st respondent/insured did not report the accident and did not produce vehicular documents for verification. Hence the 2nd respondent is not liable to indemnify the 1st respondent and to pay compensation to the petitioner due to violation of policy conditions.

5. The following issues are raised for consideration:-

1. Whether the petitioner sustained injuries in the accident due to the rash and negligent act of the 1st respondent as alleged ?
2. Whether the petitioner is entitled to get compensation ? If so, what is the quantum?
3. Who is liable to pay compensation to the petitioner ?
4. Reliefs and costs?

6. On the side of the petitioner no oral evidence was adduced and Exts.A1 to A8 were marked. No evidence was adduced on the side of the 2nd respondent.

7. Heard both sides

8. **Issue No. 1 :-** The case of the petitioner is that on 12-06-2022 at about 7.30 a.m, while she was riding scooter bearing Reg. No. KL-25H/3922 along Venchempu-Ayanikkodu canal road and when she reached near Velankonam canal road, Motor Cycle bearing Reg. No. KL-25H/2625 ridden by the 1st respondent came in a rash and negligent manner

and hit the motor cycle ridden by her and as a result she fell down and sustained serious injuries.

9. Ext.A1 is the certified copy of FIR and Ext.A1(a) is the certified copy of FIS in Crime No.933/2022 of Punalur Police Station registered in connection with the accident for the offences punishable u/s 279, 337 and 338 of IPC. Ext.A2 is the certified copy of scene mahazar. Ext.A3 is the certified copy of vehicle mahazar. Ext.A4 is the certified copy of AMVI report in respect of vehicle bearing Reg. No. KL-25H/2625 and Ext.A5 is the copy of AMVI report in respect of vehicle bearing Reg. No. KL-25H/3922. Ext.A6 is the certified copy of final report in Crime No.933/2022 of Punalur Police Station submitted by the Sub Inspector of Police, Punalur against the 1st respondent herein in the Court of Judicial First Class Magistrate-II, Punalur for the offences punishable u/s 279, 337 and 338 of IPC. In **New India Assurance Co. Ltd. v. Pazhaniammal and Others reported in 2011(3) KHC 595**, the Hon'ble High Court has held that "As a general rule, production of the police charge sheet is prima facie sufficient evidence of negligence for the purpose of a claim u/s 166 of the Motor Vehicles Act. If any one of the parties do not accept such charge sheet, the burden must be on such party to adduce oral evidence." In the case at hand the 1st respondent owner cum rider of the offending vehicle bearing Reg. No. KL-25H/2625 remained ex-parte and did not contest the case. The 2nd respondent insurer of the offending vehicle in their written statement denied the negligence alleged

against the 1st respondent. Eventhough such a contention was raised by the 2nd respondent, no evidence in this regard was adduced. In the case at hand no rebuttal evidence was adduced on the side of the 2nd respondent to negative the prima facie proof of negligence against the 1st respondent established by the charge sheet produced by the police.

10. Ext. A7 and A8 are the medical records in connection with the treatment of the petitioner. Ext. A7 and A8 medical records proved the bodily injuries sustained by the petitioner in the accident. From the available evidence I find that the accident occurred due to the rash and negligent riding of the motor cycle bearing Reg. No. KL-25H/2625 by the 1st respondent and petitioner sustained injuries in the accident on account of the negligence of the 1st respondent. Issue No. 1 is answered accordingly.

11. **Issue Nos. 2 and 3:-** For the sake of convenience of discussion, the above issues are considered together. Ext.A7 is the certified copy of wound certificate issued from Taluk Head Quarters Hospital, Punalur. Ext.A8 is the certified copy of treatment certificate issued from Taluk Head Quarters Hospital, Punalur. In Ext.A8 treatment certificate the following injures are noted :

1. Fracture fibular head ® knee
2. Fracture P1, P2 ® big toe.

It is evident from Ext.A8 treatment certificate that petitioner was treated as inpatient from 14-06-2022 to 21-06-2022.

12. As per the averments in the claim petition, petitioner was conducting a poultry farm and earning Rs. 20,000/- per month at the time of accident. As per Ext.A1(a) FI statement of the petitioner/injured, age of the petitioner was shown as 53 years. Hence age of the petitioner at the time of the accident can be taken as 53 years. Ext.A1(a) FI statement would show that petitioner was conducting a poultry farm at the time of accident. In the case at hand no evidence was adduced on the side of the petitioner to prove her income at the time of accident. So monthly income of the petitioner is to be notionally fixed for the purpose of assessing compensation. Considering the age and avocation of the petitioner, year of accident and other circumstances monthly income of the petitioner is notionally fixed at Rs.15,000/-. Considering the nature of injuries sustained by the petitioner in the accident, petitioner would have taken rest for a period of 3 months. Hence Rs.45,000/- is awarded as compensation for loss of earnings (15,000 x 3 months). For transport to hospital, Rs.4,000/- is awarded. For extra diet and nourishment, Rs. 7,500/- is awarded. For damage to clothing and other articles, Rs. 2,000/- is awarded. In the case at hand no medical bill was produced in connection with the treatment of the petitioner. Hence the claim for medical expenses is disallowed. It is evident from Ext.A8 treatment certificate that petitioner was treated as inpatient from 14-06-2022 to 21-06-2022. Rs. 6,000/- is awarded towards bystanders expenses (8 x 750). Considering the nature of injuries sustained by the petitioner and period of treatment, Rs.50,000/- is awarded as

compensation for pain and suffering. Ext.A8 treatment certificate would show that petitioner sustained fracture fibular head @ knee and fracture P1, P2 @ big toe. In the case at hand no disability certificate was produced. There is no doubt that the fracture sustained by the petitioner has resulted in permanent disability which would affect her future earning capacity. Considering the nature of injuries sustained by the petitioner in the accident, permanent disability of the petitioner is assessed at 5%. Petitioner was aged 53 years at the time of accident. The relevant multiplier applicable in this case is '11'. Hence the petitioner is entitled to Rs.99,000/- towards compensation for loss of earning power on account of permanent disability ($15,000 \times 12 \times 11 \times 5/100$). Rs. 30,000/- is awarded for loss of amenities. All other claims are disallowed as there is no evidence to prove the same.

13. Compensation awarded to the petitioner under different heads are given below :-

Sl. No.	Heads	Amount claimed	Amount awarded	Basis-vital details in a nut shell
1	Loss of earnings	60,000	45,000	(15,000 x 3)
2	Transport to hospital	10,000	4,000	Reasonable estimation
3	Extra nourishment	5,000	7,500	„
4	Damage to clothing and other articles	3,000	2,000	„
5	Medical expenses	75,000		Disallowed
	Bystander's expenses		6,000	(8 x 750)
6	Compensation for pain and sufferings	50,000	50,000	Reasonable estimation

7	Compensation for continuing or permanent disability and loss of future earning power	30,000 35,000	99,000	$\frac{(15,000 \times 12 \times 11 \times 5)}{100}$
8	Compensation for loss of amenities in life	35,000	30,000	Reasonable estimation
	Total Claim limited to	3,03,000 3,00,000	2,43,500	

14. Thus the petitioner is entitled to get a total compensation of Rs.2,43,500/- (Rupees Two Lakhs Forty Three Thousand and Five Hundred only) from the respondents as shown in the schedule.

15. While answering Issue No. 1, I have already found that the accident occurred due to the negligence of the 1st respondent who is also the owner of the offending vehicle bearing Reg. No.KL-25H/2625. The 2nd respondent is the insurer of the offending vehicle bearing Reg. No. KL-25H/2625 involved in the accident. Admittedly the offending vehicle was insured with the 2nd respondent covering the date of accident. Eventhough the 2nd respondent contended that there is violation of policy conditions, no evidence in this regard was adduced. In view of the valid insurance policy at the time of accident, 2nd respondent is liable to indemnify the 1st respondent by paying compensation to the petitioner. Issue No. 2 and 3 are answered accordingly.

16. **Issue No. 4 :-**

In the result, the O.P is allowed and award is passed on the following terms:-

(2) 2nd respondent is directed to deposit two cheques in the name of MACT, Punalur for Rs. 2,373/- and Rs. 3,000/- towards court fee and legal benefit fund and to deposit the balance award amount with interest and proportionate costs to the bank account of the MACT (A/C No. 42808558658, IFSC Code: SBIN0070059), within 30 days from the date of this award and amount due to the petitioner shall be transferred directly to the credit of the bank account of the petitioner (Leena), Federal Bank, Punalur Branch, Account No. 10280100178025 IFSC Code :FDRL0001028 through NEFT or RTGS or any Electronic mode as per the direction in the official memorandum No. D1-1/62475/2016 dated 06-03-2024 read with Circular No. 1/24 of the Hon'ble High Court of Kerala.

17. Issue free copies of this award to the petitioner and 2nd respondent.

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

Dictated to the Confidential Assistant, transcribed and typed by her, revised and corrected by me, and pronounced in open Tribunal, on this the day of 18th January, 2025.

Sd/-

Abdul Jaleel. A

MOTOR ACCIDENTS CLAIMS TRIBUNAL.

Appendix:-

Exhibits for the Petitioner:-

A1 16-06-2022

Certified Copy of FIR in Cr.No. 933/2022
of Punalur Police Station.

A1(a)	16-06-2022	Certified Copy of FIS in Cr.No. 933/2022 of Punalur Police Station.
A2	16-06-2022	Certified Copy of Scene Mahazar in Cr.No. 933/2022 of Punalur Police Station.
A3	13-07-2022	Certified Copy of Vehicle Mahazar in Cr.No. 933/2022 of Punalur Police Station.
A4	13-07-2022	Certified Copy of AMVI Report in respect of vehicle bearing Reg.No. KL-25H-2625 in Cr. No. 933/2022 of Punalur Police Station.
A5	13-07-2022	Certified Copy of AMVI Report in respect of vehicle bearing Reg.No. KL-25H-3922 in Cr. No. 933/2022 of Punalur Police Station.
A6	15-10-2022	Certified Copy of Final Report in Cr.No. 933/2022 of Punalur Police Station.
A7	12-06-2022	Certified Copy of Accident Register Cum Wound Certificate issued from Taluk Headquarters Hospital, Punalur.
A8	10-10-2022	Certified Copy of Treatment Certificate issued from Taluk Headquarters Hospital, Punalur.

Exhibits for the Respondents:- Nil

Witness for both sides:- Nil

Id/-

Motor Accidents Claims Tribunal.

//True Copy//

Typed by. Jayasree.S

Compd by.

MOTOR ACCIDENTS CLAIMS TRIBUNAL.

MOTOR ACCIDENTS CLAIMS TRIBUNAL, PUNALUR**Memo of Costs**
OP(MV) 521/2022**Cost for the Petitioner**

1.	Court Fee	2,373/-
2	LBF Fee	3,000/-
3.	Vakalath Fee	5/-
4.	Stamp for exhibits	16/-
5.	Process Fee	60/-
6.	Petition Fee	5/-
7.	Advocate Fee	14,575/-

Total**Rs. 20,034/-**

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(Rupees Twenty Thousand and Thirty Four only)
(Proportionate Costs allowed. Cost memo not filed.)

MOTOR ACCIDENTS CLAIMS TRIBUNAL.