

IN THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, PUNALUR
Present :- Sri.V. Hari Nair, B Sc, LL.B., Motor Accidents Claims Tribunal.
Monday the 18th May ,2015 / 28th Vaisakha , 1937.
OP(M.V) 152/2010

Between

Petitioner:-

1.Neethu Varghese, D/o. Geevarghese, Inchakkattu Veedu,
Kizhakketheruvu P.O., Kottarakkara.(Minor aged 12 years)

2. Geevarghese, S/o. Kunjumon,
Inchakkattu Veedu,
Kizhakketheruvu P.O., Kottarakkara.

(1st petitioner being the minor filing this application through the 2nd petitioner, father
and guardian of 1st petitioner)

(By Adv. K.Josekutty)

AND

Respondents:-

1.Jayalal, S/o.Gopinathan, Kochuthundu Kizhakkethil,
A.M.Jn. Edakkadam P.O., Ezhukone.

2.M/s. National Insurance Co.Ltd., Joseph 5 Press Building,
Vazhuthacadu, Thiruvananthapuram.

(By Adv. N.Rajendran for R2)

This OP (MV) coming on for final hearing before me on 07-05-2015 and on
18.05.15 the Tribunal passed the following :-

AWARD

This is an application for compensation filed under section 166 of the Motor
Vehicles Act, 1988.

2. The case of the petitioner is that, the 1st respondent drove a motor cycle bearing Reg. No. KL-24A/4227 in a rash and negligent manner so as to endanger human life along the Kollam-Schencottah public road from east to west on 22-01-2009 and at 3 p.m., the motor bike hit against the minor petitioner who was standing on the road. The accident occurred at Kizhakketheruve, Kottarakara. As a result of the accident, the minor petitioner sustained serious injuries. On the grounds that the accident was on account of the rash and negligent riding of the of the motor cycle by the 1st respondent and all the respondents are jointly and severally liable to compensate the petitioner, this OP was filed u/s 166 of M.V. Act, claiming an amount of Rs. 50,000/- as compensation.

3. The 1st respondent failed to appear. Hence, he was set ex-parte. The 2nd respondent filed written statement raising the following contentions :- There was no insurance policy to vehicle bearing Reg. No. KL-24A/4227 at the time of accident. The policy number stated in the OP is related to vehicle bearing Reg. No. KL-01N/2134 owned by one Padma Kumar. Therefore, the insurance company has no liability to pay compensation to the petitioner. The 2nd respondent prayed for dismissal of the OP with costs.

4. Issues for consideration are :

1. Whether the motor accident resulting injuries on the petitioner was due to the rash and negligent riding of the motor cycle bearing Reg. No. KL-24A/4227 by the 1st respondent ?
2. Is the petitioner entitled to recover compensation from respondents jointly and severally ?

3. If so, what is the quantum ?
4. Reliefs and costs ?
5. Both sides did not adduce any oral evidence. Exts.A1 to A9 were marked from the side of the petitioner.
6. Heard both sides
7. **Issue Nos. 1 & 2 :-** The 2nd petitioner gave first information statement with the police on 25-01-2009. After recording his statement, the S.I of Police, Kottarakara, registered a crime as FIR No. 125/2009 alleging offences committed by the rider of the motor bike bearing Reg. No. KL-24A/4227 U/Ss. 279 & 337 IPC. The investigating officer proceeded with the investigation by questioning the witnesses and collecting other evidence. After the completion of the investigation, he laid a report u/s 173 Cr.PC before the JFMC-I, Kottarakara The contesting respondent did not adduce any evidence to prove contrary to the report prepared by the police. Exts. A1 to A5 documents prima facie prove the rash and negligent riding of the motor bike bearing Reg. No. KL-24A/4227 by the 1st respondent.
8. The learned counsel appearing for the 2nd respondent submitted that the vehicle bearing Reg. No. KL-24A/4227 was having no insurance coverage with the 2nd respondent. He added that the policy number quoted in the OP is related to an insurance policy issued to a Hero Honda Motor Bike bearing Reg. No. KL-01N/2134 owned by one Padma Kumar. In the course of the arguments, the counsel for the petitioner stated about the absence of policy to the offending motor bike. Therefore, I am of the view that the claim against the 2nd respondent would not sustain.

9. **Issue No. 3:-** Immediately after the accident, the minor petitioner was taken to Vijaya Hospital, Kottarakara for the management of injuries sustained by her in the motor vehicle accident. The minor petitioner sustained head injuries. There was subdural hemorrhage on the left side of frontal region. Ext.A7 shows cortical contusion and adjacent intra parenchymal hemorrhage in the left frontal lobe. The petitioner took treatment from Vijaya Hospital, Kottarakara as inpatient from 22-01-2009 to 24-01-2009. It is evident from Ext.A9 that the parents of the petitioner spent an amount of Rs. 3,996/- towards treatment expenses for the management of injuries sustained by the minor petitioner. Considering the gravity of injuries sustained by the petitioner and the treatment that she had taken from Vijaya Hospital, Kottarakara, I am of the view that the amount claimed by the petitioner as per Ext.A9 is reasonable. Therefore, the petitioner is allowed to receive Rs. 3,996/- under the head of medical expenses.

10. In the facts and circumstances of this case, it is reasonable to award the minor petitioner an amount of Rs. 1,000/- Rs. 8,000/- Rs. 750/- (250 x 3 days) & Rs. 500/- respectively under the head of transport to hospital, extra nourishment, bystanders service and damages to clothing.

11. In the nature of the injuries and sufferings that the injured had undergone, an amount of Rs. 8,000/- under the head of compensation for pain and sufferings and Rs. 8,000/- under the head of loss of amenities and enjoyment of life would meet the ends of justice.

12. On considering the pleadings and evidence, the claim is settled as per the table below.

Sl. No.	Head of claim	Amount claimed Rs.	Amount awarded Rs.	Basis-vital details in a nut shell
1	Transport to hospital and back	1000	1000	
2	Extra nourishment	2000	8000	
3	Damages to clothing and articles	1000	500	
4	Cost of medicine and bystanders expenses	6000	3996 750	(for medical expenses) (250 x 3 days)
5	Compensation for pain and sufferings	25000	8000	
6	Compensation for permanent disability and loss of earning power	15000	—	(Not allowed)
7	Loss of amenities and enjoyment of life	Not claimed	8000	
	Total	50000	30246	
	Rounded to		30250	

On the whole, the minor 1st petitioner is entitled to an aggregate amount of Rs. 30,250/- (Rupees thirty thousand two hundred and fifty only) under the heads of general and special damages.

13. **Issue No. 4 :-** In the result, an award is passed in favour of the minor 1st petitioner for realization of Rs. 30,250/- (Rupees thirty thousand two hundred and fifty only) as compensation with interest @ 9% per annum from the date of petition, ie. 09-03-2010 till the date of deposit and cost of Rs. 500/- (Rupees five hundred only) from R-1 and its assets. The claim against 2nd respondent stands dismissed. The 1st respondent will deposit the balance amount within 30 days from today, which shall exclude the payment, if any, made by it complying with interim award, if any, u/s 140 of M.V. Act. The award amount of the minor 1st petitioner will be deposited in a Nationalized Bank as fixed deposit till she attains majority.

14. Issue free copy of the award in favour of the petitioner and R-3.

Dictated to the Confidential Assistant, transcribed and typed by her revised and corrected by me and pronounced in open Tribunal on this the 18th day of May, 2015.

Sd/-

V. HARI NAIR
MOTOR ACCIDENTS CLAIMS TRIBUNAL

APPENDIX

Exhibits for the Petitioners:-

- | | | |
|----|------------|--|
| A1 | 25-01-2009 | Certified Copy of F.I.R and FIS in Crime No.125/09 of Kottarakkara. |
| A2 | 26-01-2009 | Certified Copy of Scene Mahazar-do- |
| A3 | 27-01-2009 | Certified Copy of Vehicle Mahazar -do- |
| A4 | 27-01-2009 | Certified Copy of AMVI Report -do- |
| A5 | 31-01-2009 | Certified Copy of Final Report -do- |
| A6 | 22-01-2009 | Certified Copy of Wound Certificate issued from Vijaya Hospital, Kottarakkara. |
| A7 | 22-01-2009 | C.T.Brain issued from Muthoot Scans, MRI -CT Laboratories and Research Centre, Kottarakkara. |
| A8 | 22-01-2009 | Discharge/ Refefence card issued from Vijaya Hospital, Kottarakkara. |
| A9 | 22-01-2009 | Medical Bills |

Exhibits for the Respondent:- Nil.

Witness for both sides : Nil

Id/-

Motor Accidents Claims Tribunal.

// True Copy//

Typed by : Rekha

Compd by :

MOTOR ACCIDENTS CLAIMS TRIBUNAL.