

IN THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, IRINJALAKUDA

Present:-

Sri. Gopakumar G., B.A.L., LL.M., Motor Accident Claims Tribunal
Friday, 9th day of September, 2016/18th Bhadra, 1938

O.P.(MV)No. 204/2013

Petitioner:-

Sunil Kumar.K.S, aged 44 years, S/o Subramanian, Karuvath House, Madavana, Athani, Kodungallur, Thrissur.

By Adv. K.P. Paulose Murimattam.

Respondents:-

1. Latha, W/o Nithyanandan, H.No.11/153, Vadaykkapurath House, Kodungallur Municipality, Thrissur- 680664.
2. Nithyanandan,-do-,-do-,-do-.
3. The United India Insurance Co.Ltd.,South Chalakudy- 680307.

R1, R2- Exparte R3- by Adv. C.G.Janardhanan

This petition having come up before me for final hearing on 06.09.2016 and having stood over to this day for consideration this tribunal passed the following:-

AWARD

This is a claim petition filed u/s 166 of M.V.Act seeking compensation for the injury sustained.

2. According to the claimant while he was riding his autorickshaw bearing Reg.No.KL-8-G 4771 through the Panchayat road near Parakkulam Temple a mini lorry/Tempo bearing Reg.No.KL-9-R 3076 driven by R2 came in a terrific speed and applied sudden brake and scraped on the right side of the auto

as a result of which the auto got jammed in between an electric post and the mini lorry. Petitioner claims that his knee joint got jammed in between an electric post and the autorickshaw resulting in severe injuries. Subsequently his leg was amputated below knee. According to the petitioner the accident happened on account of the rash and negligent driving of R2. R1 is the owner of the mini lorry and R3 is the insurer.

3. R1 and 2 remained exparte.

4. R3 filed its written statement admitting the insurance policy of KL-9-R 3076 mini lorry. Accident and involvement of mini lorry was denied by R3. R3 contends that no damage was caused to KL-9-R 3076 mini lorry. The police had also referred the case. R3 contends that the petitioner had cooked up false case to make a claim against R3. The age, occupation, monthly income and the amount claimed under various heads were also disputed.

5. On the basis of the above pleading, the following issues arise for consideration:-

1. Whether the accident had happened as a result of the rash and negligent driving of the 2nd respondent?
2. What is the quantum of compensation to be awarded in favour of the petitioner?
3. Reliefs and costs?

6. The evidence in this case consists of oral testimony of PW1 and PW2

and Exts.A1 to A14 marked from the side of the petitioner. Ext.B1 was marked from the side of respondents.

7. Issue No.1 :- Ext.A1 is the FIR in Cr.No.812/13 of Kodungallur Police Station. Ext.A1 is registered against the driver of KL-9 R 3076 mini lorry. Ext.A1 was registered 32 days after the accident. Ext.A2 is the private complaint filed by the brother of the petitioner before JFCM Court, Kodungallur. Ext.A2 was filed almost one month after the accident. Ext.A14 is the referred final report given in the said crime. As per the refer report the petitioner while driving an autorickshaw applied sudden brake on seeing KL-9 R 3076 tempo/mini lorry and there upon the autorickshaw hit upon a compound wall as a result of which the petitioner sustained injuries. The finding of the investigating officer is that the accident had happened on account of the negligence of the petitioner himself. Accordingly the case was referred without registering a crime against R2.

8. The first question to be decided is whether an accident had happened as alleged by the petitioner. The crucial document in this regard is Ext.A6 wound certificate which was prepared on 10-4-12. As per the wound certificate the history of the injury is narrated as “while driving auto when giving side to another vehicle his left leg got trapped between a wall and auto at Kodungallur

on 9-4-12 at 6 p.m”. It is also written in Ext.A6 wound certificate that he was initially treated at Medicare Hospital, Kodungallur and later at Medical College Hospital, Thrissur. Ext.A4 is the AMVI report of KL-8/G 4771 autorickshaw. From Ext.A4 it can be seen that the auto had sustained severe damages. The AMVI report of the mini lorry was not produced by petitioner. But Ext.A5 seizure mahazar of the mini lorry was produced by the petitioner. R3 on the other hand had produced Ext. B1 AMVI report of mini lorry. From Ext. A5 and B1, it has come out that the mini lorry did not sustain any damages. From the side of the petitioner the claimant was examined as PW1 and one witness was examined as PW2. Claimant had filed proof affidavit in tune with the averments raised in the claim petition. During his cross examination he deposed that there was another passenger in the autorickshaw and his name was Anandan. But according to him he is presently employed at Gulf. His case is that apart from the said Anandan PW2 had also witnessed the incident. There is nothing wrong in the investigation done by the police.

9. PW2 is an eye witness to the incident. According to him the petitioner sustained injuries. When his auto was jammed between the KL-9 R 3076 mini lorry/ van and a compound wall. During cross-examination his version is that he had seen the incident while going for a bath in a temple pond.

He admitted that he did not notice the number of the autorickshaw driven by the appellant and the tempo van which had scraped the auto. But according to him the tempo driver had stopped his vehicle, immediately after the accident.

10. Thus the petitioner relies on the oral evidence of PW1 and PW2 to prove the accident and involvement of KL-9 R 3076 tempo. It is true that there is a delay of more than one month in registering the FIR. But from Ext.A6 wound certificate it can be seen that he had narrated the incident and the involvement of the tempo/mini lorry to the doctor on the very next day after the accident. Claimant had suffered serious injury in the incident and his left leg was amputated. Hence he was not in a position to file a complaint before the police promptly. Ext. A6 wound certificate was prepared at Lissy Hospital, Ernakulam on 10-4-2012. However it seems, the hospital authorities had failed to intimate the matter to the police promptly. Hence the delay in registering FIR is not on account of the negligence of the claimant. Ext.A3 private complaint itself was filed by the brother of the claimant. Thus it is clear that the claimant was not in a position to file a private complaint even after the lapse of more than one month after the incident. Thus the delay caused has been sufficiently explained by the petitioner. It is true that the wound certificate from the Medicare Hospital, Kodungallur and Medical College Hospital, Thrissur has not

been produced. But from the finding in Ext.A14 final report it is clear that even the police after due investigation had come to a conclusion that the petitioner has sustained injuries while his auto hit against an electric post. The finding of the police is that accident occurred when the claimant suddenly swayed the auto to the left side on seeing the lorry driven by R2. Thus the finding of the police corresponds with the history of accident narrated in Ext.A6 wound certificate and the case pleaded by the claimant. Hence it can be safely concluded that the cause of injury sustained by the petitioner is the result of the accident as pleaded by the claimant.

11. Now the question to be considered is whether the lorry had scraped the autorickshaw. Apart from the interested testimony of PW1 and evidence of PW2 there is nothing on record to show that the lorry had touched the autorickshaw. The evidence of PW2 in this regard cannot be believed, since it is impossible for a passerby to depose whether two vehicles moving through a road had touched or scuffed on the other. No damage was noted to the lorry in Ext.B1 AMVI report. But for entering into a finding regarding negligence it is not necessary that the offending vehicle should have actually hit against the other vehicle. The doctrine of Bywell Castle Rule can be applied in the facts and circumstances of case. When a person is put in sudden danger, one cannot expect

him to exercise, due care, still, coolness and wisdom, which is expected from a man of ordinary prudence. In such a confused state of affair, if a person does any thing, with the intention of avoiding an imminent danger, No negligence cannot be attributed against him as in the case of an ordinary men. I am fortified to take such a stand relying on the dictum laid down in 2013(4)KLJ 820.

12. The case of the petitioner is that while he was driving the autorickshaw a tempo driven by R2 came in a rash and negligent manner in over speed and on seeing the tempo he got frightened and he swayed the autorickshaw to the left side for avoiding an accident . He has given evidence in this regard. The evidence of PW1 is supported by evidence of PW2. PW2 has deposed that he was questioned by the police. Hence his presence at the spot cannot be doubted. The conclusion reached by the police in Ext.A14 also point out towards such a possibility. Hence relying on the doctrine of Bywell castle rule I find that R2 has also contributed to the accident.

13. From Ext.A14 final report it has come out that the petitioner was also driving the autorickshaw in over speed. If he was in fact driving his autorickshaw carefully then there was no need to sway his autorickshaw to the left side suddenly. He could have stopped his auto then and there. Hence from the facts and circumstances of the case I am of the view that the petitioner has

also contributed to the accident. From the proven facts and circumstances the negligence on the part of the petitioner is more than the negligence on the part of R2. Hence the inter-se negligence between the petitioner and the 2nd respondent is fixed in the ratio 70:30. This issue is found accordingly.

14. Issue No.2:- Petitioner remained as in-patient from 10-4-12 to 21-4-12. Ext.A8 is the discharge summary of the petitioner. He had suffered comminuted fracture of both bones of left leg. It is also noted in Ext.A8 discharge summary that his leg was subsequently amputated. Ext.A8 shows that he remained as in-patient from 22-4-12 to 19-5-12. Ext.A9 treatment certificate also shows that he underwent below knee amputation of his left leg. Ext.A10 is the discharge summary from Lisie Hospital. Ext.A10 shows that the petitioner had sustained fracture to tibia and fibula bone of left leg and chip fracture to distal phalanx of 1st toe. According to the petitioner he was an auto driver and getting Rs10,000/- p.m as his income. In the absence of proof regarding the monthly income, considering the fact that he is an auto driver, his income is fixed as Rs.6,000/-. Petitioner might have remained bed ridden for a period of 6 months on account of the injury suffered. Hence the petitioner is granted a sum of Rs. 36,000/- towards loss of earnings. Petitioner claims that he was aged 44 years on the date of the accident. As per Ext.A11 his age is shown as 45. In

Ext.A9 his age is shown as 44. Hence petitioner can be treated as a person belonging to the age group of 40-45. The appropriate multiplier applicable for the petitioner is 14. From Ext.A9 treatment certificate it can be seen that his leg was amputated below knee. As per the schedule annexed to Employees Compensation Act, the disability of a person whose leg was amputated below knee is fixed as 50 %. Hence the petitioner is granted a sum of Rs. 5,04,000/- ($6,000 \times 12 \times 14 \times 50\%$) towards disability. Petitioner is also granted a sum of Rs.75,000/- towards pain and suffering and Rs.25,000/- towards loss of amenities for the period during which he remained bed ridden. Though petitioner has produced Ext.A12 series trip sheet the said documents were not proved properly. Hence Ext.A12 is discarded. Petitioner is granted a sum of Rs.8000/- towards transport to hospital. In addition to that petitioner is granted sum of Rs.2,500/- towards extra relinquishment, Rs.1,000/- towards damages to clothing and articles and Rs.11,400/- (300×38) towards bystander's expenses. Petitioner has produced Ext.A13 medical bills for a sum of Rs.1,43,274/-. Hence the petitioner is granted a sum of Rs.1,43,300/- towards treatment expenses. The rest of the claims are rejected. The petitioner is entitled to 30% of the above compensation awarded.

Sl. No	Head of Claim	Amount Claimed (Rs.)	Amount Awarded (Rs.)	Basis Vital details in a nut shell
01	Loss of earnings	1,00,000	36,000	6000 x 6months
02	Transportation expenses	20,000	8,000	
03	Damage to clothings	5,000	1,000	
04	Extra nourishment }		2,500	
05	Medical expenses }	3,00,000	1,43,300	
06	Attendant expenses}		11,400	
07	Pain and suffering	1,00,000	75,000	
08	Permanent disability	3,00,000	5,04,000	6,000x12x14x50 %
09	Loss of earning power	2,00,000	-	
10	Loss of amenities	2,00,000	25,000	
Total		12,25,000 (Limited to Rs. 7,00,000)	8,06,200/-	Rs. 241860/- long with interest @ 9% p.a. from 4-3-13 till realisation. (30% of the above compensation)

11. Issue No.3:- I have already found that the accident had happened as a result of the rash and negligent driving of the 2nd respondent also. 1st respondent who is the owner is vicariously liable for all acts, omissions and commission on the part of the 2nd respondent. 3rd respondent being the insurer is liable to satisfy the award on account of indemnity contract. Hence respondents 1 to 3 are jointly and severally liable to pay 30% of the compensation awarded in this case.

In the result,

1. Petitioner is entitled to Rs. 2,41,860/- (Rupees Two lakhs forty

one thousand eight hundred and sixty only) with 9% interest and proportionate costs.

2. R3 shall deposit the amount within two months from the date of this award.

3. The petitioner is permitted to withdraw the sum deposited in his favour.

4. R3 shall also produce a separate cheque towards court fee and the same shall be adjusted to the compensation deposited by it.

5. If R3 fails to deposit the award then the petitioners are free to execute the award against respondents 1 to 3 in accordance with law.

(Dictated to the Confidential Asst., transcribed and typed by her corrected and pronounced by me in open court, this the 9th day of September, 2016).

Gopakumar G. ,
Motor Accident Claims Tribunal.

APPENDIX

Petitioner's Exhibits:-

- A1 : Annexure Victim details
- A2 : Complaint
- A3 : Scene mahazar
- A4 : AMVI report of KL-8-G-4771
- A5 : Copy of policy
- A6 : Wound certificate
- A7 : Diet pass
- A8 : Discharge card
- A9 : O.P. Ticket

- A10 : Discharge summary
 A11 : Discharge certificate
 A12 : Trip sheet
 A13 : Medical bills of Rs.1,43,274/-
 A14 : Final report

Respondents' Exhibits:- B1 : AMVI report of Kl-09-R-3076

Petitioner's Witness:-

- PW1 : Sunil (19.7.16)
 PW2 : Venu(19.7.16)

Respondents' Witness:- Nil.

Court fee Rs.6,373/- to be deposited by R3.

C O S T S

Petitioners Costs:- (Allowed)

Court fee	:	1791.00
Vakalat	:	25.00
Stamp on document	:	50.00
Petition copies	:	50.00
Process writing fee	:	50.00
Document copies	:	50.00
petition writing fee	:	50.00
Stamp on petition	:	5.00
Senior Adv. Fee	:	14493.00
Junior Adv. fee	:	7246.00
Total	:	23810.00

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MOTOR ACCIDENTS CLAIMS TRIBUNAL

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Parties should apply as soon as possible for the return of all documents which they may wish to preserve as the record will liable to be destroyed after 12 years from this date.