

IN THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, NEYYATTINKARA

Present:- R. Vinayaka Rao , Motor Accidents Claims Tribunal

Tuesday, the 27th day of October, 2020
5th day of Karthika, 1942

O.P. (M.V.) No. 1173/2013

Applicant:-

Chidamparam Pillai @ Venu,
Aged 42, S/o Subrahmanya Pillai,
S.K. Nivas, Amaravila,
Kollayil Desom, Kollayil Village

By Advs. : Sri. Arayoor K Aji Kumar & Sri. D.R. Manoj

Respondents:-

1. Jayakumar (Died),,
Aged 50 years, S/o Kolappan,
Swathi, Punnakkadu Thalalayal Desom
Athiyanloor Village,
Perumpazhuthoor.P.O., Pin: 695 126

Addl. R2. Sudha, Aged 45 years,
W/o Late Jayakumar,
--do-- --do--

Addl. R3. Swathi, Aged 26 years,
D/o Late Jayakumar, and Sudha,
--do-- --do--

Addl. R4. Akash, Aged 23 years,
S/o Late Jayakumar, and Sudha,
--do-- --do--

(Addl.2 to 4th Respondent are impleaded as the LR's of 1st Respondent as per order on I.A. 4726/17 dated, 14-12-2018)

By Adv's. R1 - Died
R3 - NIL
R2 & R4 - Ex-Parte

This O.P. have been finally heard on **20-10-2020** and the Tribunal on **27-10-2020** delivered the following.

A W A R D

This is an application filed u/s. 166 of the M.V Act by the applicant for getting compensation for the injuries sustained in the road traffic accident.

2. The case of the applicant / claimant is as follows:--

On 18.10.11 at 06.30 pm while the applicant was returning to home by riding his bicycle through the Parassala – Neyyattinkara NH Road and when he reached near Akshaya Complex, Neyyattinkara the offending vehicle bearing Reg. No. KL-20-C-4196 driven by the respondent in the same direction in a rash and negligent manner at reckless speed hit the bicycle and the applicant fell on the road and sustained injuries. The applicant was taken to District Hospital, Neyyattinkara and after first aid he was referred to MCH, Thiruvananthapuram. He was also treated in the Dental Hospital and Regional Institute of Ophthalmology, Thiruvananthapuram. As a result of the accident he is put to both physical and mental agony. He was an electrician and plumber by profession. He used to earn ₹10,000/- per month. He was aged 42 years at the time of the accident. The accident occurred due to the negligent act of the driver of the above said vehicle. The applicant claimed a total compensation of ₹3,04,500/- and limited the claim to ₹2,00,000/-.

3. As the respondent was reported died, additional respondents 2 to 4 were impleaded as the legal representatives of the deceased respondent. Respondents 2 and 4 were called absent and set exparte. The 3rd respondent did not contest the case. Exts.A1 to A12 were marked from the side of the applicant. I heard the learned counsel for the applicant.

4. On the basis of the above pleadings the following issues arises for determination by this Tribunal : --

1. Whether the accident alleged in the above case arose out of the use of a motor vehicle and whether it was due to the negligent driving of the offending vehicle bearing Reg. No. KL-20-C-4196 by the respondent ?
2. Whether due to the negligent driving of the offending vehicle by the respondent, he caused injuries to the applicant ?
3. Whether the applicant is entitled to get compensation from the respondents and if so, from which respondent ?
4. The quantum of compensation to which the applicant is entitled ?
5. Reliefs and costs ?

5. **Issue Nos.1 & 2 : --** These issues can be considered together for the sake of convenience.

6. The case of the applicant is that on 18.10.11 at 06.30 pm while the applicant was returning to home by riding his bicycle through the Parassala – Neyyattinkara NH Road and when he reached near Akshaya Complex, Neyyattinkara the offending vehicle bearing Reg. No. KL-20-C-4196 driven by the respondent in the same direction in a rash and negligent manner at reckless speed hit the bicycle and the applicant fell on the road and sustained injuries. To prove the case the

applicant relied on Ext.A1 which is the copy of CMP filed by the applicant before the JFMC, Neyyattinkara, Ext.A2 which is the copy of the FIR registered by the police on the basis of the above CMP forwarded to the police by the Magistrate Court, Ext.A3 which is the copy of the scene mahazar in the criminal case charged by the police with respect to the above incident as against the respondent, Ext.A5 which is the copy of the mahazar concerning the offending vehicle prepared by the police, Ext.A6 which is the copy of the final report submitted by the police in the criminal case charged against the respondent for offences u/s. 279, 337 and 338 of I.P.C. The said document proves that on 18.10.11 at 06.30 pm the respondent drove the offending vehicle bearing Reg. No. KL-20-C-4196 from Neyyattinkara towards Amaravila in a rash and negligent manner and at high speed and in front of Bhavana Textiles at Neyyattinkara the vehicle was hit on the applicant who was proceeding in a bicycle and as a result the applicant fell down on the road and sustained injuries. Exts.A9 to A11 are the outpatient cards concerning the treatment of the applicant, which revealed that the applicant had sustained swelling [R] maxillary region, [R] eye lids oedemation. He had also lacerated wound 1x0.5x0.5 cm over [R] eye lid, peri orbital edema and ecchymosis over [R] eye, SCH on right eye, abraded wound over [R] zygomatic arch, Depression over [R] zygomatic arch, swelling over [R] molar region. It is seen that he had also undergone dental treatment. He had swelling on the [R] lateral orbit. He had also [R] zygomatic arch fracture and fracture on lateral wall of [R] orbit. The above documents prove that the applicant had sustained injuries in the above said accident. The final report submitted by the police in the criminal case charging the rider of the vehicle with the above said offences is sufficient to arrive at a conclusion regarding the negligence of the respondent in driving the offending vehicle. It was held by the Hon'ble High Court as per the ruling in *New India Assurance Co. Ltd. v. Pazhani Ammal* [2012 AC] 1370: 2011 (3) KLT 648], *held that production of police charge sheet is prima facie sufficient evidence of negligence for the purpose of a claim*

u/s. 166. If any one of the parties did not accept such charge sheet, the burden must be on such party to adduce oral evidence. If oral evidence is adduced by any party, in case where charge sheet is filed, the Tribunal should give further opportunity to others also to adduce oral evidence and in such a case, the charge sheet will pale into insignificance and the dispute will have to be decided on the basis of the evidence. In all other cases, such charge sheet can be reckoned as sufficient evidence of negligence. So is it found that the accident in the above case arose out of the use of motor vehicle and the respondent by his rash and negligent driving had hit the offending vehicle on the applicant and caused injuries to him. These issues are answered in favour of the applicant.

7. **Issue Nos. 3 & 4: --** These issues can be considered together for the sake of convenience.

8. The applicant was aged 42 years at the time of the accident. The respondent was the owner of the offending vehicle at the time of the accident. Ext.A8 is the copy of the registration certificate in the name of the respondent. The injuries sustained by the applicant have already been described by me. It is seen that the applicant was managed conservatively. The applicant had also undergone ophthalmic consultation which is borne out by Ext.A11. It is seen that during the pendency of O.P the original respondent was reported dead and additional respondents 2 to 4 were impleaded. It is seen that the offending vehicle was transferred in the name of the 2nd additional respondent on 06.05.17. Ext.A12 is the copy of the registration details. Ext.A13 is the certified copy of a sale deed concerning immovable property in the name of Jayakumar and the 2nd respondent. As it is proved that the applicant had sustained injuries in the above said road traffic accident which had taken place due to the rash and negligent driving of the offending vehicle by the original respondent the applicant is entitled to get compensation for the injury sustained from additional

respondents 2 to 4 they being the legal representatives of the deceased original respondent.

9. The original applicant was said to be a plumber and electrician. No documents are produced to prove his occupation. Considering the fact that the accident had happened in the year 2011 I find that the monthly notional income of the applicant can be taken as ₹6,000/-. Considering the nature of injuries sustained by him I find that he is entitled to get compensation for loss of earning during the period of treatment for a period of 4 months to the tune of ₹24,000/-.

10. Considering the nature of injuries sustained by him he is entitled to compensation for pain and suffering to the tune of ₹30,000/- and compensation on account of loss of amenities and enjoyment of life to the tune of ₹25,000/-.

11. For the purpose of treatment he might have travelled to the hospital and under that head he can be awarded an amount of ₹2,000/-.

12. He is entitled to get an amount of ₹1,000/- towards damage to clothing and articles.

13. He is also entitled to get an amount of ₹2,000/- towards extra nourishment charges.

14. No disability certificate is seen produced. But taking into consideration the nature of injuries sustained by him I find that he might have sustained some disability. So eventhough no disability certificate is produced I find that he can be awarded an amount of ₹20,000/- as compensation for permanent disability.

15. The compensation due to the claimant is shown below in the tabular column.

Sl. No.	Head of Claim	Amount claimed (in ₹)	Amount awarded (in ₹)	Basic vital details in a nut shell
1	Loss of earning	30,000	24,000	6,000 x 4 months
2	Transportation expenses	3,000	2,000	
3	Extra nourishment	5,000	2,000	
4	Damage to clothing	10,000	1,000	
5	Medical expenses	5,000	--	
6	Bystander's expenses	--	--	
7	Pain and sufferings	50,000	30,000	
8	Compensation for loss of earning power	1,00,000		
9	Loss of amenities and enjoyment in life	50,000	25,000	
10	Permanent disability	--	20,000	
	Total		1,04,000	₹1,04,000/- with 8% interest per annum from 26.12.13 till realization

16. I hold that the claimant is entitled to recover compensation of ₹1,04,000/- [Rupees One Lakh and Four Thousand only].

17. Issue Nos. 3 & 4 is answered in favour of the applicant to the above extent.

18. **Issue No.5: --** In the result, the O.P is allowed as follows: --

- (1) The claimant is allowed to realize an amount of ₹1,04,000/- [Rupees One Lakh and Four Thousand only], with interest @ 8% per annum from 26.12.13, which is the date of this claim petition, till realization.
- (2) The parties shall bear their respective cost.
- (3) Additional respondents 2 to 4 are ordered to deposit cheque for ₹1,373/- in the name of M.A.C.T., Neyyattinkara towards court fees payable on the claim petition.
- (4) Additional respondents 2 to 4 are directed to transfer the balance amount to the bank account of the claimant. On such transfer, the claimant is permitted to withdraw the said amount.
- (5) The office is directed to give copy of the relevant page of the bank pass book to additional respondents 2 to 4 along with this award.

[Dictated to the Confidential Assistant, transcribed by her,
Corrected by me and pronounced in open court,
this the 27th day of October, 2020]

Sd/-
R. VINAYAKA RAO
MOTOR ACCIDENTS CLAIMS TRIBUNAL.

APPENDIX**Exhibits Marked for the Applicant:**

- A1 - Copy of CMP
- A2 - Copy of FIR Crime No.1941/11 Neyyattinkara Police Station
- A3 - Copy of Scene Mahazar
- A4 - Copy of Wound Certificate from Taluk Hospital, Neyyattinkara
- A5 - Copy of Vehicle Mahazar
- A6 - Copy of Final Report.
- A7 - Copy of Deposition
- A8 - Copy of RC Book
- A9 - O.P. Record from Medical College Hospital, Thiruvananthapuram
- A10 - Case Record from Dental College, Thiruvananthapuram
- A11 - Referral O.P. Record
- A12 - Copy of Registration details
- A13 - Certified Copy of Sale deed

Exhibits Marked for the Respondents: NIL**Witness Examined : NIL**

Id/-
MOTOR ACCIDENTS CLAIMS TRIBUNAL
//True Copy// (By Order)

SHERISTADAR

**COPY OF AWARD IN
OP(MV): 1173/2013
DATED: 27.10.2020.**