

IN THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, ATTINGAL

Present: Sri. Sreekumar.D, Motor Accidents Claims Tribunal

FRIDAY, 13th MARCH 2026/ 22nd PHALGUNA 1947

OP(MV) –354/2019

Applicant:-

Sanesh Babu, S/o Dinesh Babu, aged 37 years,
Panthuvila Veedu, D.S Bhavan, Ayanthi,
Varakala P.O, Thiruvananthapuram – 695141.

By Advocates: - Sri.M.Vysakh & Smt. Veena.S

Respondents:-

1. Shiji.V, S/o Mohanan, Shiji Bhavan,
Near Govt. H.S. Vailoor, Kannukalivanam,
Sasthavattom P.O, Thiruvananthapuram- 695305.
2. United India Insurance Co. Ltd, Ash- Har Complex,
Palace Road, Attingal, Thiruvananthapuram- 695101.

R1 by Advocate:- NIL

R2 by Advocate:- Smt.G.Prabha.

This Petition having been finally heard on 13.03.2026 and on the same day,
the Tribunal passed the following:

AWARD

1. Petition filed under section 166 of the Motor Vehicles Act 1988.
2. The petitioner's case is briefly stated as follows:-The accident referred

to in this case occurred on 22/10/2018 at about 22.15 hours while the petitioner was riding his motorcycle bearing Reg.No.KL-20N-1145 from Attingal to Kazhakoottam along the Attingal-Kazhakoottam public road. When he reached near Chembakamangalam, A motorcycle bearing Reg.No.KL-16T-7127, ridden by the 1st respondent in a rash and negligent manner and coming from the opposite direction, hit the petitioner's motorcycle. As a result, he was thrown onto the road and sustained serious injuries. He underwent treatment at the Govt. Medical College Hospital, Thiruvananthapuram, Dental College Hospital, Thiruvananthapuram, Slavia Hospital, and Adi Dental Clinic. The respondents Nos.1 and 2 are the registered owner cum driver and insurer, respectively, of the offending motorcycle. The accident occurred due to the rash and negligent riding of the offending motorcycle by the 1st respondent. Hence, the petitioner claims compensation from the respondents.

3. The 1st respondent remained absent despite notice.

4. The 2nd respondent filed a written statement, the substance of which is as follows:- The original petition is not maintainable either in law or on facts. The motorcycle bearing Reg.No.KL-16T-7127 was duly insured with the 2nd respondent for the period from 15/03/2018 to 14/03/2019. However, the 2nd respondent has no

liability to indemnify the 1st respondent or to compensate the petitioner. The 1st respondent did not possess a valid driving licence to ride the motorcycle. Hence, he was charged for having committed an offence punishable under Section 3(1) r/w S.181 of the Motor Vehicles Act. The accident occurred solely due to the negligence of the petitioner. He was under the influence of alcohol. The petitioner is bound to prove his age, occupation and income. He is also required to prove the injuries sustained by him and the treatments he underwent. The amounts claimed under various heads of compensation are exorbitant.

5. On the basis of the pleadings, the following issues were framed for consideration:-

- (1) Whose negligence caused the accident referred to in this case?
- (2) Is the petitioner entitled to compensation? If so, what shall be the amount?
- (3) Who is liable to pay the compensation, if any ?
- (4) Reliefs and costs

6. From the side of the petitioner Exts. A1 to A21 were marked. Ext.B1 was marked from the side of the 2nd respondent.

7. Heard.

8. **Issue No.(1)** :- For proving the negligence on the part of the 1st respondent, the petitioner has relied on Exts.A1 to A5 and A7 documents. Ext.A1 is a copy of the FIR in Crime No.1773/2018 registered on 16/1/2018 at the Mangalapuram Police Station in connection with the accident. Ext.A2 is a copy of the FIS given by the petitioner on 06/11/2018. Ext.A3 is a copy of the scene mahazar prepared in this connection on 06/11/2018. Ext.A4 is a copy of the mahazar of the vehicles involved in the accident prepared on 08/11/2018. Ext.A5 series consists of the copies of the reports of inspection of the vehicles bearing Reg.Nos.KL-20N-1145 and KL-16T-7127 prepared by the AMVI. According to these documents, the accident was not a result of any mechanical defect in the vehicles. Ext.A7 is a copy of the final report. In Ext.A7 final report, the conclusion of the investigating officer is that the accident occurred due to the rash and negligent driving of the scooter bearing Reg.No.KL-16T-7127, by the 1st respondent. The Hon'ble High Court of Kerala in '**New India Assurance Company Ltd Vs. Pazhani Ammal and Others**': **2011(3) KHC 595**, has held as follows: *“Prima Facie, charge sheet filed by a police officer after due investigation can be accepted as evidence of negligence against the indictee. If any one of the parties do not accept such a charge sheet, the burden must be on such party to adduce oral evidence. If*

oral evidence is adduced by any party, in a case where charge sheet is filed, the tribunals 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 the absence of contra evidence, the above said evidence adduced by the petitioner, when read in the light of the above said decision, persuades me to hold that the petitioner has proved that the accident referred to this case occurred due to the rash and negligent driving of the scooter bearing Reg.No.KL-16T-7127, by the 1st respondent Issue No.(1) is answered accordingly.

9. **Issue No. (2)** :- The petitioner has produced the records relating to the treatment undergone by him following the accident, to show that he had sustained injuries in the above accident.

10. Ext.A6 is a copy of the accident-register-cum-wound certificate issued from the Taluk Hospital, Attingal showing that the petitioner had sought treatment at that hospital on 22/10/2018 with a history of RTA occurred on that date. Ext.A8 is purported to be a treatment certificate issued from AADHI Dental Clinic, Palachira showing that the petitioner underwent treatment there with history of RTA. Ext.A9 is a copy of a treatment certificate issued from Stavyah Life care marked to prove the

follow up treatment. Ext.A10 is copy of a treatment certificate issued from the Medical College Hospital, Thiruvananthapuram. Exts.A11, one document in Ext.A19 series and A17 are outpatient records dated 23/10/2018, 22/10/2018, 29/10/2018, 08/02/2019 issued from the Medical College Hospital, Thiruvananthapuram showing that the petitioner sought further treatment at the above hospital. Ext.A12 is a discharge summary issued from Stavyah Life Care which shows that the petitioner had undergone inpatient treatment for 5 days from 24/10/2018 to 28/10/2018. Ext.A13 is purported to be a copy of case record issued from the Dental College, Thiruvananthapuram. Ext.A14 and A15 are purported to be treatment certificates issued from AADHI Dental Clinic, Palachira.

11. The learned counsel for the insurer filed a written objection to the following exhibit; showing that they are photostat copies. Ext.A8 treatment certificate purported to be issued from AADHI Dental Clinic, Ext.A9 treatment certificate purported to be issued from Stavya Life Care, Ext.A13, copy of case records purported to be issued from the Dental College Hospital, Ext.A14 OP card purported to be issued from AADHI Dental Clinic.

12. The petitioner has not offered any valid explanation for the non production of the originals of the above documents. In the said circumstance the

objection is sustainable. Hence, the above documents are discarded. The treatment records show that the petitioner sustained **fracture distal end of radius left side and fracture ulnar styloid left side.**

13. I have already found under Issue No.(1) that the accident in which the petitioner sustained injuries occurred due to the negligent driving of the offending motorcycle by the 1st respondent. Thus, the petitioner has proved his entitlement to compensation. Now, the question remains with respect to the quantum of compensation.

14. According to the petitioner, at the time of the accident, he was doing Business with a monthly income of ₹10,000/-. Ext.A16, a copy of the driving licence would go to show that the date of birth of the petitioner is 15/05/1982. It means the petitioner was 36 years old at the time of the accident. But there is nothing on record to prove his employment and exact income at the time of the accident. Therefore, for the purpose of determining the compensation payable under the head 'loss of earning' and the allied heads, the only option available is to fix a reasonable amount as his income. The Hon'ble High Court in **Latheef @ Abdul Latheef V.Noufal P.P, reported in 2024 KHC 1687** by referring to G.O.(P) 56/2017/Fin. Dated 28/04/2017 and referring to the decision of the Apex Court in

Angad Tiwari and Another V. National Insurance Company Limited and Another in civil appeal No.10950/2024, fixed the notional income of an Agricultural Labourer as ₹17,325/- per month. The above G.O. prescribes the minimum wages liable to be paid under the provisions of the Minimum Wages Act,1948 with effect from 01/04/2017. Thus, in the case on hand, a minimum wage of ₹17,325/- can be fixed as notional income.

15. While considering the nature of injuries sustained and the age of the petitioner, it is reasonable to conclude that the petitioner must have taken at least 4 months time to recover and therefore, he can be presumed to have lost her earnings during that period. Therefore, I am inclined to award an amount of ₹69,300/- under the heading 'Loss of income'.

16. Considering his visits to the hospitals in connection with treatment, an amount of ₹4,000/- is awarded towards 'Transportation Expenses'.

17. Considering the grievous nature of injury sustained by him, an amount of ₹4,000/- is awarded towards 'Extra Nourishment Expense'.

18. I am inclined to award an amount of ₹1,500/- towards 'Damages to Clothing'.

19. Since the petitioner was treated as an inpatient for 5 days, an amount of ₹2,500/- is awarded as 'By-stander expense', calculated at the rate of ₹500/- per day.

20. Ext.A18 series, bills reveal that an amount of ₹61,050/- was spent for the treatment of petitioner. The learned counsel for the insurer filed written objection with respect to the bill covering ₹50,450/- dated 08/12/2018 purported to have been issued from AADHI Dental Clinic. In spite of the said objection, no steps were taken to duly prove the above document by examining the doctor who has issued the same. In the said circumstances, the above document is discarded. After deducting the said amount the amount payable towards treatment expenses is ₹10,600/-.

21. Considering the gravity of injuries sustained by the petitioner, his age and the sufferings, I am inclined to award an amount of ₹55,000/- as compensation towards 'Pain and Suffering'.

22. Considering the discomfort, unhappiness and inconvenience which the petitioner would suffer on account of the injuries sustained in the accident, an amount towards ₹45,000/- is also awarded as compensation for 'loss of amenities of life'.

23. Ext.A20 is a disability certificate issued by Dr. R.Manoj Kumar, Professor of Othopaedics, Govt. Medical College Hospital, Kollam. It shows that the

petitioner has suffered 11% permanent disability due to the accident. For assessing the disability, the doctor has considered the following:

Prominence of ulnar styloid of left wrist. Tenderness at fracture site on radius. Dorsiflexion and Palmar flexion of left wrist limited by 10 degrees each, weakness of grip strength of left hand with Garde IV + Power, wasting of 1cm of left forearm muscles, difficulty in carrying heavy weight, loss of one teeth, difficulty in biting solid food, difficulty in drinking hot and cold fluids, pain on prolonged driving.

Now, as laid down by the Hon'ble Apex Court in '**Rajkumar Vs. Ajayakumar : (2011) 1 SCC 343**,' the reduction in the earning capacity of the petitioner caused on account of said permanent disability is to be determined by this Tribunal. Hence, I am of the view that, there would be some reduction in the earning capacity of the petitioner on account of the permanent functional disability caused by the grievous injuries sustained in the accident. In the absence of any materials substantiating his occupation, treating him as a casual labourer, I assess the percentage of reduction in his earning capacity as 7%. Since the petitioner was aged 36 years at the time of

the accident, the multiplier applicable is 15 as per the decision of the Hon'ble Apex Court in '**Sarla Verma Vs. Delhi Transport Corporation**' : 2010(2) **KLT 802.**' Therefore, the loss of earnings on account of said permanent disability would be ₹2,18,295/-

24. The petitioner is thus entitled to get a total compensation of **₹4,10,200/-(Rupees Four Lakh Ten Thousand Two Hundred Only)** as shown in the table below:

<i>Sl. No.</i>	<i>Head of claim</i>	<i>Amount claimed</i>	<i>Amount awarded</i>	<i>Basis-Vital Details in a nutshell</i>
<u>Part-I</u>				
1	Loss of earning	60,000	69,300	17325 x 4 months
2	Loss of earnings(partial)	Nil	Nil	
3	Transportation charges	5,000	4,000	Travel to and from the hospital
4	Extra Nourishment	3,000	4,000	Considering the grievous injuries sustained by the petitioner
5	Damage to Clothing	1,000	1,500	
6	Medical expenses	75,000	10,600	Ext. A18 series bills
7	By-stander expenses	-	2,500	500 x 5 days

<u>Part-II</u>				
8	Pain and suffering	25,000	55,000	Considering the grievous injuries sustained by the petitioner .
9	Compensation for permanent or continuing disability	50,000	2,18,295	$17,325 \times 12 \times 15$ $\times 7\%$
10	Compensation for loss of future earning power	50,000	Nil	Nil
11	Loss of amenities of life	25,000	45,000	Considering the grievous injuries sustained by the petitioner
(Claim limited to ₹2,50,000/-)		2,94,000 =====		
Total award amount			₹4,10,195/- =====	
Rounded of			₹4,10,200/- =====	
(Rupees Four Lakh Ten Thousand Two Hundred Only)				

25. The compensation awarded by the Tribunal has exceeded the claim of the petitioner in the original petition. But as the duty of the Tribunal is to award just compensation, there is no impropriety in awarding compensation higher than what is claimed by the petitioner in the light of the decision rendered by the Hon'ble Apex Court in '**Ramla Vs. National Insurance Company Ltd :2019 (2) SCC 192**'. Issue

No.(2) is answered accordingly.

26. **Issue No.(3):-** I have already found that the accident took place due to the negligent driving of the motorcycle bearing Reg.No.KL-16T-7127, by the 1st respondent, who also happens to be the undisputed owner of the said vehicle. Therefore the 1st respondent is liable to pay compensation in his dual capacity as owner-cum-driver of the said vehicle. Ext.B1, a copy of the insurance policy certificate of scooter reveals that the said vehicle was insured with the 2nd respondent at the time of the accident. The 2nd respondent has taken a contention that the 1st respondent, the rider of the scooter, was not holding a valid driving licence at the time of accident. As per Ext.A7 final report, the police have also charged the 1st respondent for having committed an offence punishable u/s. 3(1) r/w S.181 of M.V. Act by riding the vehicle without a valid driving license. Driving a vehicle without a valid driving licence is a fundamental violation of the policy conditions. The primary liability to pay compensation rests on the 1st respondent, the owner of the offending vehicle and he remained absent despite notice and did not turn up before the Tribunal to prove otherwise that he was possessing a valid driving licence at the time of the accident. Since it is a clear violation of the policy conditions by the insured, the insurer is not liable to indemnify the insured, in

paying the compensation. Considering the well settled legal positions by the Apex Court including that in **Pappu and Others v. Vinod Kumar Lamba and Another: 2018 KHC 6020**, the principle of 'pay and recovery' will apply and the 2nd respondent, the insurer, has to pay the awarded sum to the petitioners at the first instance and to recover the said sum from the insured-registered owner, the 1st respondent, in the very same proceedings. The issue is answered accordingly.

27. Issue No.(4):- In view of my findings on Issue Nos.(1), to (3) the petition is allowed in part and an award is passed as follows:

(1) Respondent No. 1 is liable to pay an amount of **₹4,10,200/-(Rupees Four Lakh Ten Thousand Two Hundred Only)** to the petitioner with interest at the rate of 8% per annum from the date of petition [13/03/2019] till realization or payment with proportionate costs.

(2) The 2nd respondent is directed to deposit the awarded sum directly to the credit of the Savings Bank Account of Saneesh Babu.D., A/c No.40911682311 of SBI, Maidanam Branch with IFSC Code: SBIN0070048 as per Ext.A21 document furnished by the petitioner and send a copy of the payment advice to this Tribunal and also serve a copy of the same to petitioner or his counsel, as required by the Hon'ble High Court in its Circular No.01/2025 dated 19/09/2025. In case of TDS.

form 16-A of the Income Tax Act 1961 shall be provided to the petitioner to enable him to seek refund of the tax deducted. The petitioner shall furnish either a certificate of the banker giving details of the bank account or a copy of a cancelled cheque of the bank account in compliance with the above circular.

(3) The 2nd respondent shall produce cheques for ₹3,475/- and ₹4,102/- respectively as court fee and additional court fee towards legal benefit fund in the name of MACT, Attingal, payable in the case.

(4) Upon deposit being made, the 2nd respondent shall submit to the Tribunal a copy of the bank advice and a memo in the prescribed format. A copy of the payment advice, along with a copy of the memo shall also be served on the contesting parties and their respective counsel, if any.

(5) The office is directed to make necessary entries in the registers maintained in the office evidencing payment of the amount to the petitioner.

(6) The 2nd respondent is directed to pay the amount within one month failing which the petitioner can recover the same in accordance with law.

(7) The 2nd respondent, the insurer is entitled to recover the amount paid by it in terms of this award, from the 1st respondent. However, the right of reimbursement shall become inoperative, if in a proceedings for recovery, the 1st

respondent produces record to show that he was duly licensed to ride the offending motor cycle on the date of the accident and a finding to that effect is entered in that petition subject to payment of reasonable cost to the insurance company.

*Dictated to the C.A., transcribed and typed by her, corrected by me
and pronounced in open court on the 13th day of March. 2026.*

Sd/-
SREEKUMAR.D
MOTOR ACCIDENTS CLAIMS TRIBUNAL

APPENDIX

Exhibits for the Applicant:

- | | | |
|-----------|------------|--|
| A1 | 06.11.2018 | : Copy of FIR in Crime No. 1773/2018
of Mangalapuram Police Station. |
| A2 | 06.11.2018 | : Copy of FIS statement. |
| A3 | 06.11.2018 | : Copy of Scene Mahazar. |
| A4 | 08.11.2018 | : Copy of Vehicle Mahazar. |
| A5 series | | : Copy of AMVI Reports. |
| A6 | 22.10.2018 | : Copy of Accident Register Cum Wound Certificate. |
| A7 | 28.02.2018 | : Copy of Final Report. |
| A8 | 24.01.2019 | : Copy of Treatment Certificate issued from Aadhi Dental
Clinic, Palachira. |
| A9 | 28.10.2018 | : Copy of Treatment Certificate issued from
Stavyah Life Care. |

- A10 25.02.2019 : Copy of Treatment Certificate issued from Govt. Medical College, Thiruvananthapuram.
- A11 23.10.2018 : Out Patient Record from Medical College Hospital, Thiruvananthapuram.
- A12 28.10.2018 : Discharge Summary issued from Stayyah Life Care.
- A13 : Copy of Case Records issued from Dental College Thiruvananthapuram.
- A14 24.10.2018 : Copy of Treatment records issued from Aadhi Dental Clinic, Palachira.
- A15 02.11.2018 : Treatment records issued from Aadhi Dental Clinic, Palachira.
- A16 - : Copy of Driving License.
- A17 29.10.2018 : Out Patient Record from Medical College Hospital, Thiruvananthapuram.
- A18 series : Medical Bills.
- A19 series : OP Cards and Medical Bills.
- A20 07.06.2024 : Disability Certificate.
- A21 - : Copy of Bank Passbook.

Exhibits for the Respondent:

B1 : Copy of Insurance Policy.

Court Exhibits: Nil

Witness for the Petitioner: Nil

Witness for the Respondent: Nil

Id/-

MOTOR ACCIDENTS CLAIMS TRIBUNAL

MEMO OF COSTSCost for the Applicant:

Court fee and Additional Court fee	Rs. 7577/-
Petition fee	Rs. 40/-
Vakalath fee	Rs. 5/-
Process fee	Rs. 60/-
Document fee	Rs. 30/-
Senior Advocate fee (As per rule)	Rs.22,910/-(Certificate produced)
Junior Advocate fee (As per rule)	Rs.11,455/-(Certificate produced)

Total	Rs. 42,077/- (Order for realization)
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Cost for the Respondents:

Vakalath fee	Rs. 5/-

Total	Rs. 5/- (No order for realization)
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*Sd/-***MOTOR ACCIDENTS CLAIMS TRIBUNAL**

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

Typed by: jr

Compared by: raji

FCS:

***AWARD IN OP (MV)354/2019
DATED:13..03..2024***