

**IN THE COURT OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL,
KOTTAYAM**

Present:- Sri. Felix Marydas., Motor Accidents Claims Tribunal

Wednesday 13th June, 2018
23rd Jyaishta, 1940

OP(MV) No. 264/2015

PETITIONER:-

**Venugopalan, , S/o.Raman Thankappan,
Chirayilvattamalayil, Near Vimala Hospital,
Ettumanoor Village, Kottayam.**

By Adv. Sri. P.P.Joseph.

RESPONDENTS:

1. **Gokul Krishnan, S/o. Chitharanjan,
37/2970, Karumoor Mana,
Ponoth Road, Kaloore P.O, Ernakulam.**
2. **Chitharanjan, 37/2970,
Karumoor Mana, Ponoth Road,
Kaloore P.O, Ernakulam.**
3. **The Regional Manager,
Bajaj Alliane General Insurance Company Limited,
Kaloore, Ernakulam.**
R1 and R2 – By Adv. Sri. Aji R.Nair
R3- By Adv. Smt. Geetha Sankar L

This Petition having been finally heard on 05.06.2018 and the Tribunal on 13.06.2018 delivered the following:

AWARD

This petition is filed under Sec.166 of the Motor Vehicles Act, 1988, claiming compensation of ₹8,00,000/- towards the injuries sustained by the petitioner in a motor vehicle accident occurred on 09.11.2014.

2. The allegations in the petition are as follows : The accident had occurred at 01.45 p.m on 09.11.2014 in Kaduthuruthy – Ettumanoor road near Kothanelloor SBT.... The petitioner was riding the scooter having registration No.KL-05AJ-4123 from Kaduthuruthy to Ettumanoor, abiding all the traffic rules. The car having registration No.KL-07BL-3412 coming from the opposite direction hit the petitioner's scooter at the place of occurrence. It was driven by the 1st respondent in a rash and negligent manner and in excessive speed. Petitioner was taken to Matha Hospital, Thellakom and treated there as in-patient from 09.11.2014 to 20.11.2014. He had suffered comminuted fracture of both bones of left leg, comminuted fracture of humerus with radial nerve palsy, fracture of radius and segmental fracture of ulna. He was advised to take rest for two years by the doctor who treated him. He spent ₹4,00,000/- for medicine and treatment. The accident occurred solely due to the rash and negligent driving of the 1st respondent. The 2nd respondent is the registered owner of the car and the 3rd respondent is the insurer. All the respondents are jointly and severally liable to pay compensation to the petitioner.

3. Respondents 1 and 2, though filed vakalath, have not filed any written statement.

4. The 3rd respondent stated in its written statement that the accident had occurred due to the negligence of the petitioner. The injuries sustained, expenses incurred and disabilities alleged are denied. The compensation claimed is stated as highly exorbitant. Further it denies the validity of vehicular documents of the car, though it admits the existence of a valid insurance policy for the same at the relevant time. It seeks dismissal of the petition with costs.

5. The issues for consideration in this petition are :

(1) Is the petitioner entitled to get compensation and if so, what should be the quantum?

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(2) Is the 3rd respondent liable to pay compensation?

6. No oral evidence is adduced in this case. Exts.A1 to A9 series, X1 and X2 are marked on the side of the petitioner.

7. **Issue No.1:** The accident is not in dispute and it is proved through the exhibits marked. Ext.A2, a copy of the final report in FIR No.1344/2014 of Kaduthuruthy Police Station, would reveal that the accident had occurred due to the negligence of the 1st respondent. It is revealed from Ext.A7, the copy of the discharge summary issued from Matha Hospital that the petitioner had sustained Type II open comminuted fracture of both bones distal third of left leg, tibial plateau fracture (L), segmental fracture (L) fibula, comminuted fracture of humerus shaft with radial nerve palsy,

fracture of radius proximal third and segmental fracture of ulna.

The petitioner is therefore, entitled to get compensation for the injuries sustained.

8. The next aspect to be considered is regarding the quantum of compensation to be awarded. The injuries noted above are revealed from Exts.A3, A4, A6 and A7 issued from Matha Hospital, Thellakom. It is revealed from Ext.A8 that he had been admitted in the said hospital from 09.11.2014 to 20.11.2014. Ext.A9 series are the medical bills for ₹2,30,241/-expended for treatment. Ext.X1 issued from Government Medical College Hospital, Kottayam would show that he had suffered a disability of 28.42% due to the accident. However, Ext.X2 issued from Medical College Hospital, Thiruvananthapuram shows that he had suffered a disability of 20%. The age of the petitioner shown in the petition is 59 years and his occupation is mentioned is as a helper in Sree Ram Flour Mill, Ettumanoor. His monthly income noted in the petition is ₹15,000/-. However, no evidence is adduced to prove his occupation or income. His income on the date of accident can be notionally taken as ₹6,000/- per month, considering his age. Thus his annual income would come to ₹72,000/-. The multiplier of '9' is applicable and the income for 9 years would come to ₹6,48,000/-. 20% of the same would come to ₹1,29,600/-. 10% of the same has to be added towards future prospects and thus the compensation due to the petitioner towards disability would come to ₹1,42,560/-. Thus the petitioner would be entitled to get the following sum as compensation, as against the amounts payable to the petitioner.

Sl. No.	Head of Claim	Amount Claimed (₹)	Amount Awarded (₹)	Basic vital details in a nut shell
a)	Loss of earnings from 09.11.14 to till date	2,10,000	72,000	Salary for 6 months
b)	Partial loss of earnings from 09.11.14 to till date	12,000	Nil	
c)	Transport to hospital	10,000	5,000	Considering hospitalization
d)	Extra nourishment	5,000	5,000	Moderate rate
e)	Damage to clothing and articles	1,000	1,000	Moderate rate
f)	Medical expenses including anticipated future medical expenses	4,00,000	2,30,241 + 50,000	Supported by Ext.A9 series Medical Bills & Ext.A8 Certificate
	Expenses for bystander	30,000	10,000	Considering hospitalisation
g)	Compensation for pain and suffering	2,00,000	2,00,000	In view of the grievous injuries
h)	Compensation for permanent disability	6,00,000	1,42,560	Considering Ext.X1
i)	Compensation for loss of earning power	3,00,000	Nil	Covered by (h)
j)	Compensation for loss of amenities & comforts in life	2,00,000	75,000	Reasonable considering the nature of injuries.
TOTAL		19,68,000 Limited to 8,00,000	7,90,801	

9. Thus the petitioner is entitled to get a total compensation of ₹7,90,801/-. Also he is entitled to realise the said amount with 9% interest per annum from the date of petition (28.02.2015) till the end of December, 2016 and thereafter, 7% interest per annum till realisation, with proportionate costs.

10. **Issue No.2:** The 3rd respondent disputes its liability to pay compensation. However, the existence of a valid insurance policy at the relevant time is admitted. Also it is proved that the accident had occurred due to the rash and negligent driving of the 1st respondent. The 3rd respondent could not point out any ground absolving it of its liability to pay compensation to the petitioner. It is therefore found liable to pay the compensation awarded to the petitioner.

11. Resultantly, the petition is allowed and an award is passed in favour of the petitioner, allowing him to realise ₹7,90,801/- (**Rupees Seven Lakhs Ninety Thousand Eight Hundred and One only**) with 9% interest per annum from the date of petition (28.02.2015) till the end of December, 2016 and thereafter, 7% interest per annum till realisation, with proportionate costs, from the respondents.

- (1) **The 3rd respondent shall produce a crossed cheque or demand draft for ₹.7,373/- (Rupees Seven Thousand Three Hundred and Seventy Three only) in the name of M.A.C.T, Kottayam towards court fee.**
- (2) **Out of the remaining sum, it shall produce a cheque or demand draft for ₹.5,00,000/- (Rupees Five Lakhs only) in the name of the petitioner for immediate release.**

- (3) It shall produce a cheque or demand draft for the balance amount in the name of the petitioner and shall be deposited in a nationalized bank for release after two years.
- (4) It shall produce all the cheques or drafts as above, within a month from today, as required under Sec.168 (3) of the Act.

Issue free copy of this award to both sides.

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

Dictated to the Confdl. Asst., transcribed and typed by her, corrected by me and pronounced in open Court, on this the 13th day of June, 2018.

Felix Marydas
Motor Accidents Claims Tribunal

APPENDIX

Exhibits For the Petitioner:

A1	:	11.11.2014	:	Copy of FIR in Crime No.1344/14 of Kaduthuruthy P S .
A2	:	11.11.2014	:	Copy of Final Report
A3	:	09.11.2014	:	Copy of Wound Certificate
A4	:	07.03.2017	:	Treatment Certificate
A5	:	Series	:	Photos
A6	:	18.02.2015	:	Copy of Discharge Summary
A7	:	20.11.2014	:	Copy of Discharge Summary
A8	:		:	Medical Certificate
A9	:	Series	:	Medical Bills

Exhibits For the Respondents:- : NIL

Court Exhibits: -

X1	:	09.03.2016	:	Disability Certificate
X2	:	24.10.2017	:	Disability Certificate

Witness For the Petitioner:- : Nil

Witness for the Respondents:- : NIL

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MEMO OF COSTS FOR THE PETITIONER

Court Fee	₹	7,272.00
Vakalath	₹	05.00
Document	₹	10.00
Typing & Writing	₹	100.00
Advocate fee	₹	41.900.00

Total	₹	49,287.00(Allowed)
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Sd/-

Motor Accidents Claims Tribunal

// True Copy//

Copied by:

Compared by:

Motor Accidents Claims Tribunal

**Copy of AWARD In
OP(MV) 264/2015
Dated, 13.06.2018**