THE COURT OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, KOLLAM

Present: Sri. Jayakumar John.S, MACT, Kollam

Thursday the 18th day of March, 2021

27th day of Phalguna, 1942

OP(MV).No201/2017 & 200/2017

OP(MV).No.201/2017 :

Between

Petitioner : Bincy, aged 31 years,
D/o.Mariyamani,
Mulamoottil Veedu,
West Kallada, Kollam.

By Adv.: Sri. Beena.K

And

Respondents :

1. Byju,
Vipanchika Veedu,
Sithara Junction,
Kottiyam.P.O, Kollam.
(R1 was set exparte)

2. Gireesh Kumar, S/o.Udayan,
Vadavottupadinjattathil,
Sithara Junction, Adichanalloor,
Kottikyam, Kollam.
(R2 was set exparte)

3. Managing Director,
Bajaj Allianz General Insurance Co.Ltd,
G.E.Plaza, Airport Road,
Yerwada, Pune-411 006(India)
(R3 is impleaded as per order in
I.A.No.7611/2018 dated: 10/08/2018)

By Adv. : Sri. S.Dileep Kumar for R3

OP(MV).No.200/2017 :

Between
Petitioner : Biju, aged 40 years,
S/o.George
Mulamoottil Veedu,
West Kallada, Kollam.

By Adv.: Sri. Beena.K

And
Respondents :

1. Byju,
Vipanchika Veedu,
Sithara Junction,
Kottiyam.P.O, Kollam.
(R1 was set exparte)
2. Gireesh Kumar, S/o.Udayan,
Vadavottupadinjattathil,
Sithara Junction, Adichanalloor,
Kottikyam, Kollam.
(R2 was set exparte)
3. Managing Director,
Bajaj Allianz General Insurance Co.Ltd,
G.E.Plaza, Airport Road,
Yerwada, Pune(India)-411 006
(R3 is impleaded as per order in
I.A.No.7611/2018 dated: 10/08/2018)

By Advs. : Sri. S.Dileep Kumar for R3

This OP(MV) coming on for hearing before me on 05-03-2021 and having stood over to 18-03-2021 for consideration the tribunal passed the following:-

COMMON AWARD

These original petitions are filed u/s 166 of the Motor Vehicles Act for the bodily injuries sustained to the claimants in Motor Vehicle Accident.

OP (MV) No. 201/17

2. The specific case advanced on the part of the claimant is as follows:-

On 02.03.2011 at 11.30am while the claimant was travelling in the autorickshaw bearing Reg.No. KL-23 B 4795 from Karalimukku – Kadapuzha road in west east direction, near Muthirapparambu junction the offending tipper lorry bearing Reg.No.KL 02 AG 2146 driven by R2 in negligent manner in the opposite direction collided with it and caused injuries.

3. Since the accident was occurred due to the negligent driving of the offending lorry on the part of R2, R1 being its owner bound to compensate the claimant under vicarious liability. As said vehicle was having valid insurance policy with R3 at the relevant time, under contractual obligation R3 is bound to indemnify the insured. Thus R1 to 3 are jointly and severally liable to compensate the claimant.

4. Though R1 & 2 received notice failed to appear. So they were set exparte.

5. R3 filed written statement contending that compensation claimed under various heads is exorbitant and exaggerated. Negligence attributed against R2 for the accident is not correct. Infact the accident was occurred due to the sole negligence on the part of the driver of the autorickshaw on which the claimant was travelling at the time of accident. Though the offending vehicle was having valid insurance policy coverage with this respondent on the date of accident, because of the violation of policy conditions this insurer is having no bounden duty to indemnify the insured. Age, occupation and income of the claimant should be proved with sufficient evidence. With these contentions R3 prays for dismissal of claim.

6. In the light of pleadings and documents, the following issues are formulated for consideration:-

1. Whether the accident occurred on account of the negligent driving of the offending tipper lorry bearing Reg.No.KL 02 AG 2146 by 2nd respondent as alleged ?
2. Quantum of compensation ?
3. Who is liable to pay compensation to the claimant ?
4. Reliefs and costs?

7. OP (MV) No. 200/17

The specific case advanced on the part of the claimant is as follows:-

On 02.03.2011 at 11.30am while the claimant was travelling in the autorickshaw bearing Reg.No. KL-23 B 4795 from Karalimukku – Kadapuzha road in west east direction near Muthirapparambu junction the offending tipper lorry bearing Reg.No.KL 02 AG 2146 driven by R2 in negligent manner in the opposite direction collided with it and caused injuries.

8. Since the accident was occurred due to the negligent driving of the offending lorry on the part of R2, R1 being its owner bound to compensate the claimant under vicarious liability. As said vehicle was having valid insurance policy with R3 at the relevant time, under contractual obligation R3 is bound to indemnify the insured. Thus R1 to 3 are jointly and severally liable to compensate the claimant.

9. R1 & 2 filed written statement contending that negligence attributed against R2 for the accident is not correct. Infact the accident was invited by the driver of the autorickshaw in which the claimant was travelling at the time of accident. So neither the driver nor the insured of the said tipper lorry is bound to pay compensation to the claimant. Apart from that the offending vehicle was having valid insurance policy coverage with R3 at the relevant time. In the absence of any violation of policy

conditions R3 is bound to indemnify the insured. With these contentions R1 & 2 pray for dismissal of claim.

10. R3 filed written statement contending that compensation claimed under various heads is exorbitant and exaggerated. Negligence attributed against R2 for the accident is not correct. Infact the accident was occurred due to the sole negligence on the part of the driver of the autorickshaw in which the claimant was travelling at the time of accident. Though the offending vehicle was having valid insurance policy coverage with this respondent on the date of accident, because of the violation of policy conditions this insurer is having no bounden duty to indemnify the insured. Age, occupation and income of the claimant should be proved with sufficient evidence. With these contentions R3 prays for dismissal of claim.

11. In the light of pleadings and documents, the following issues are formulated for consideration:-

1. Whether the accident occurred on account of the negligent driving of the offending tipper lorry bearing Reg.No.KL 02 AG 2146 by 2nd respondent as alleged ?
2. Quantum of compensation ?
3. Who is liable to pay compensation to the claimant ?
4. Reliefs and costs?

12. Evidence in these cases consists of Ext.A1 to A11and X1 on the part of the claimants and no evidence adduced on the part of the respondents.

13. Issue No.1 in OP.MV Nos.201/17 & 200/17

The specific case advanced on the part of the claimants is that on 02.03.2011 at 11.30am while the claimants OPMV 201/17 and 200/17 were travelling in the autorickshaw bearing Reg.No. KL-23 B 4795 from Karalimukku – Kadapuzha road in west east direction near Muthirapparambu junction, the offending tipper lorry bearing Reg.No.KL 02 AG 2146 driven by R2 in negligent manner in the opposite direction collided with it and caused injuries.

14. A crime was registered by Sasthamcotta police vide Crime No.270/2011 alleging offences punishable u/s 279,337& 338 IPC as evident in Ext.A1 FIR based on the FIS of the claimant in OP MV 201/17. Ext.A2 scene mahzar establishes the spot of accident. A perusal of the same would indicate that the accident has taken place 1.6mts towards south from the northern tar end of the road wherein the tar portion of the road is having the width of 4.3mts. According to the claimants at the time of accident they were travelling in the autorickshaw from west to east. If that be so they are expected to proceed through the northern track of the road. The spot of accident as per Ext.A2 scene mahazar would indicate that the offending vehicle which was proceeding from east to west through the southern track

encroaching into the northern track and collided with the autorickshaw and caused injuries to the claimants. So negligence on the part of R2 is established by virtue of the scene mahazar itself. On completion of investigation the investigating agency has filed Ext.A6 final report establishing the negligence of R2 before the Judicial First Class Magistrate Court Sasthamcotta. On the strength of Ext.A4 & Ext.A5 AMVI reports in respect of the vehicles involved in the accident would rule out mechanical defects. So on evaluating the evidence as a whole the negligence of R2 is established as the cause of accident in which the claimant sustained injuries. Hence I find these issues infavour of the claimants.

15. Issue No.2 in OP MV 201/17

To prove the injuries sustained in the accident claimant produced Ext.A7 wound certificate issued from Taluk head quarters Hospital Sasthamcotta. After first aid she was referred to Taluk head quarters Hospital Karunagappally. Ext.A9 treatment certificate issued form Padmavathy Medical Foundation Hospital Sasthamcotta would reveal the treatment of the claimant for undisplaced fracture of right tibia with plaster mobilisation. Plaster was removed on 25.05.2011. On the strength of Ext.A 10 medical bills towards treatment expenses ₹7,000/- is awarded. Considering the treatment provided to the victim under the head of bystander expenses ₹ 3,000/- is awarded @ of ₹ 200/- per day for 15 days. Considering the treatment provided to the claimant , towards transportation expenses ₹ 4,000/- is awarded. According to the claimant she was having income to the tune of ₹ 5,000/-per mensum being a daily wages. As per her FIS she was having no job except as house wife. Towards notional income ₹ 6,000/- is awarded @ of ₹ 300/- per day for 20 days. Considering the injury 2 months notional income is awarded to the claimant towards loss of earning. Considering the injury under the head of damages to clothing and articles ₹ 2,000/- is awarded and towards extra nourishment ₹ 4,000/- is awarded. In the light of the injury under the head of pain and suffering ₹ 40,000/- is awarded. Towards compensation for loss of amenities and enjoyment in life ₹ 25,000/- is awarded and towards future treatment expenses ₹ 10,000/- is awarded. All other claims advanced on the part of claimant is rejected for want of sufficient evidence.

16. In the result, the following sum is granted to the claimants towards just and reasonable compensation.

Sl. No.	Heads	Amount claimed	Amount awarded
1.	Loss of earnings	30,000/-	12,000/-
2.	Partial loss of earnings		
3.	Transport to hospital	3,000/-	4,000/-
4.	Extra nourishment	35,000/-	4,000/-

5.	Damages to clothing and articles Medicine Bystander expenses	2,000/- 10,000/- 20,000/-	2,000/- 7,000/- 3,000/-
6.	Compensation for pain and suffering Compensation for loss of amenities Compensation for loss of earning power	30,000/- 30,000/- 50,000/-	40,000/- 25,000/-
7.	Compensation for future treatment		10,000/-
	Total	2,00,000/-	**₹1,07,000/-**

17. Issue No.2 in OP MV 200/17

To prove the injuries sustained in the accident claimant produced Ext.A11 wound certificate issued from Padmavathy Medical Foundation. The medical officer could notice injury left parietal region. No other treatment record is produced. Considering the injury herein above referred, apart from pain on right side of chest ₹ 15,000/- is awarded towards pain and suffering. Considering the injury towards loss of earning ₹ 3,500/- is awarded. Considering the treatment provided to the claimant towards transportation expenses ₹ 1,000/- is awarded. Considering the injury under the head of damages to clothing and articles ₹ 2,000/- is awarded and towards extra nourishment ₹ 1,500/- is awarded. Considering the injury under the head of bystander expenses ₹ 400/- is awarded. Towards compensation for loss of amenities and enjoyment in life ₹ 3,500/- is awarded and towards future treatment expenses ₹ 1,000/- is awarded. All other claims advanced on the part of claimant is rejected for want of sufficient evidence.

18. In the result, the following sum is granted to the claimants towards just and reasonable compensation.

Sl. No.	Heads	Amount claimed	Amount awarded
1.	Loss of earnings	10,000/-	3,500/-
2.	Partial loss of earnings		
3.	Transport to hospital	1,000/-	1,000/-
4.	Extra nourishment	5,000/-	1,500/-
5.	Damages to clothing and articles Medicine Bystander expenses	2,000/- 2,000/- 5,000/-	2,000/-

			400/-
6.	Compensation for pain and suffering Compensation for loss of amenities Compensation for loss of loss of earning power	15,000/- 10,000/-	15,000/- 3,500/-
7.	Compensation for future treatment		1,000/-
	Total	50,000/-	**₹27,900/-**

<u>19. Issue No.3 : in OP.MVNos. 201/17 & 200/17</u>

Since the policy and accident is admitted by the 3rd respondent, being the insurer of the offending vehicle R3 is bound to pay compensation to the victim, under contractual obligation with R1, the owner of the offending vehicle, though he is bound to pay compensation to the claimant based on vicarious liability, because the negligence of R2 is proved as the reason for the accident. Hence this issue is answered accordingly.

<u>20. Issue No.4 in OP.MVNo. 201/17</u>

1) Award passed for an amount of **₹1,07,000/-**(Rupees One Lakh Seven Thousand only) with interest at the rate of 8% per annum from the date of the petition till the date of realisation excluding interest for future treatment expenses.

2) The 3rd respondent is directed to produce crossed cheque for ₹1,373/- towards court fee in favour of the Tribunal.

3) The 3rd respondent is further directed to deposit the award amount after deducting court fee by way of electronic fund transfer in the account of the claimant as envisaged in clause (b) of Circular No. 3/19 of Hon'ble High Court of Kerala based on the attested copy of the first page of the Bank Pass Book having Account No. and IFSC Code along with an intimation to this tribunal noting the head of payments such as Principal amount, interest the number of days for calculating interest, cost, date of transfer etc within one month from getting account details herein above referred. If the claimant fails to furnish such account details within 1 month from the date of receipt of award, R3 is excused from payment of interest thereafter.

<u>21. OP (MV) No. 200/17</u>

1) Award passed for an amount of **₹27,900/-**(Rupees Twenty Seven Thousand Nine Hundred only) with interest at the rate of 8% per annum from the date of the petition till the date of realisation.

2) The 3rd respondent is directed to produce crossed cheque for ₹187/- towards court fee in favour of the Tribunal.

4) The 3rd respondent is further directed to deposit the award amount after deducting court fee by way of electronic fund transfer in the account of the claimant as envisaged in clause (b) of Circular No. 3/19 of Hon’ble High Court of Kerala based on the attested copy of the first page of the Bank Pass Book having Account No. and IFSC Code along with an intimation to this tribunal noting the head of payments such as Principal amount, interest the number of days for calculating interest, cost, date of transfer etc within one month from getting account details herein above referred. If the claimant fails to furnish such account details within 1 month from the date of receipt of award, R3 is excused from payment of interest thereafter.

Dictated to the Confdl.Asst. transcribed and typed by her, corrected and pronounced by me in open court on this 18th day of March 2021.

Sd/-
Jayakumar John.S.,
Motor Accidents Claims Tribunal

Appendix:-

Exhibits for the Petitioner:-

A1	02-03-2011	Copy of FIR &FIS
A2	03-03-2011	Copy of scene mahazar

A3	05-03-2011	Copy of Vehicle Mahazar
A4	05-03-2011	Copy of AMVI Report
A5	05-03-2011	Copy of AMVI Report
A6	-------------	Copy of Charge Sheet.
A7	02-03-2011	Copy of Wound Certificate
A8	-----------	Copy of Insurance Policy
A9	25-05-2011	Treatment Certificate
A10	---------------	Medical Bills
A11	---------------	Copy of Wound Certificate

Exhibit for the Respondents : Nil

Third Party Exhibit :

X1 07-03-2011 Certificate

Witness for both sides : Nil

Sd/-
Motor Accidents Claims Tribunal

//True Copy//

Motor Accidents Claims Tribunal

Data Entry By : Salini. L
Compared By : Molykutty A.

Copy of Common Award in
OP(MV) No:201/2017 &
200/2017
Dated 18-03-2021