IN THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, OTTAPALAM
Present :- Smt. Gosha C.G., M.A.C. Tribunal

Wednesday 15th day of May, 2024
25th day of Vaisakha, 1946 S.E.)

ORIGINAL PETITION (MV) No. 726/2022

Petitioner

Kunhimon V.M., aged 57 years, (DOB 25/05/1965), S/o Moidunny, Virippu Nilath house, Chiyyanoor, Alamkode, Nannamukku, Kokkur P.o., Malappuram Dist, Pin - 679 591
Ph: No. 8943834788

By advocates : Adv. N.B. Sukumaran, Adv. Deepa Iyyani,
Adv. K.P. Vijayakrishnan & Adv. Renjith K.G.

V/s

Respondents

1) Vimal (age not known), S/o Vijayan, Mankuthiparambil house, P.o. Peramangalam, Thrissur Dist, Pin 680 545. (Owner of KL 26/5633 Ape Autorickshaw)
2) Jayachandran V.R, aged 48 years, S/o Raman nair, Veluthedath house Manalithara P.O., Wadakkanchery, Thrissur Dist, Pin 680 589, DL No. 48/579/1996, Valid from 11/05/2018 to 10/12/2024 (Driver of KL 26/5633 Ape Autorickshaw)
3) Future Generali India Insurance Co. Ltd., Rep by Manager, 3rd Floor, Central Warehouseing, Corporation building, No. 2253, Maveli Road Kadavanthara, Ernakulam, Cochin – 682020. Policy No. V7329128, Valid till 30/06/2022 (Insurer of KL – 26/5633 Ape Autorickshaw)

R2 : Adv. Dinesan P.K, & Adv. Aparna P. Balan
R3 : Adv. Rajasankar P
R1 : Called absent set exparte

This petition having been finally heard on 13/04/2024 and the Tribunal on 15/05/2024 passed the following.

AWARD

This is an application filed by the petitioner for compensation for the injuries sustained in a motor vehicle accident under section 166(1) (a) of the Motor Vehicles Act, 1988.

2. Case of the petitioner in brief is that on 01.06.2022 at 8.00 a.m., the 2nd respondent being the driver of the autorickshaw bearing registration No. KL-26/5633 drove the vehicle in a rash and negligent manner through Chalissery – Mukkutta public road and when it reached at the place Chalissery Kallumpuram it hit on the scooter bearing registration No. KL-54/K-2761 rode by the petitioner thereby the petitioner was sustained grievous injuries. Hence, the petition for compensation.

3. The 1st respondent, registered owner of the offending vehicle remained exparte.

4. The 2nd respondent, driver of the offending vehicle filed written statement denying the petition averments. According to this respondent there was no negligence on his part as alleged in the petition. In fact negligence of the petitioner alone was the reason for the accident. At the material time of accident the 1st respondent was having valid and effective driving licence and the offending vehicle was validly insured with the 3rd respondent. Even if any amount is found liable to be paid to the petitioner, it has to be paid by the 3rd respondent. Therefore, the petition has to be disposed accordingly.

5. The 3rd respondent insurance company filed written statement denying the petition averments. At the same time this respondent admits that the autorickshaw bearing registration No.KL-26/5633 was validly insured with this respondent at the material time of accident. There was no negligence on the part of the 2nd respondent as alleged in the petition. On the other hand negligence of the petitioner alone was the reason for the accident. The age, occupation and income of the petitioner have to be proved by him. The amount claimed in the petition is highly excessive and exaggerated. Therefore, the petition has to be disposed accordingly.

6. To prove the case of the petitioner PW1 was examined and Exts.A1 to A13 were marked. No oral or documentary evidence has been adduced on the side of the respondents.

7. Heard both sides.

8. Now the issues that arise for consideration in the petition are:

1. Whether the 2nd respondent who was the driver of the offending vehicle bearing registration KL-26/5633 was driving the vehicle in a rash and negligent manner with excessive speed and thereby caused the accident?

2. Whether the petitioner sustained injuries and is entitled to get compensation as claimed?

3. If so, what is the quantum to be awarded?

4. Who is liable to pay compensation to the petitioner?

9. Issue No.1:- It is the case of petitioner that on 01.06.2022 at 8.00 a.m., the 2nd respondent being the driver of the autorickshaw bearing registration No. KL-26/5633 drove the vehicle in a rash and negligent manner through Chalissery – Mukkutta public road and when it reached at the place Chalissery Kallumpuram it hit on the scooter bearing registration No. KL-54/K-2761 rode by the petitioner thereby the petitioner was sustained grievous injuries. According to the 3rd respondent there was no negligence on the part of the 2nd respondent as alleged in the petition. On the other hand negligence of the rider of the scooter alone was the reason for the accident. Though so many contentions are raised in the written statement of the 3rd respondent, no evidence has been adduced to prove this. On the other hand to prove the negligence of the 2nd respondent, copy of FIR was marked as Ext.A2, copy of scene mahazar was marked as Ext.A3, copy of charge sheet was marked as Ext.A4 and copy of AMVI report was marked as Ext.A5. Copy of wound certificate was marked as Ext.A6, copy of discharge certificate for police cases was marked as Ext.A7, discharge summary was marked as Ext.A8, driving licence of the petitioner was marked as Ext.A9, medical bills were marked as Ext.A10 series, copy of bank pass book of the petitioner was marked as Ext.A11 and copy of Aadhar card of the petitioner was

marked as Ext.A12 and copy of PAN card of the petitioner was marked as Ext.A13. A perusal of Ext.A4 shows that the then Inspector of Police, Chalissery Police Station, conducted investigation of the case, completed the investigation and submitted the final report with finding that on 01.06.2022 at 8.00 a.m., the 2nd respondent being the driver of the autorickshaw bearing registration No. KL-26/5633 drove the vehicle in a rash and negligent manner through Chalissery – Mukkutta public road and when it reached at the place Chalissery Kallumpuram it hit on the scooter bearing registration No. KL-54/K-2761 rode by the petitioner thereby the petitioner was sustained grievous injuries. Hence the 2nd respondent had committed the offences punishable u/ss. 279 and 337 of IPC. It is well settled that final report is the sufficient prima facie evidence to prove negligence in a claim for compensation u/s 166 of the Motor Vehicles Act **(New India Assurance Company Ltd. v. Palani Ammal and others – ILR 2011(3) Kerala 677)**. So I find that the petitioner has successfully proved his case that the accident was occurred solely due to the rash and negligent driving of the 2nd respondent with the aid of Exts.A2 to A5. Issue is answered accordingly.

10. Issue Nos.2 & 3:- It is the case of petitioner that as a result of the accident he was sustained grievous injuries, immediately taken to Ansar Hospital, Perumpilavu and from there taken to Jubilee Mission Medical College Hospital, Thrissur, admitted and treated there as an inpatient from 01.06.2022 to 03.06.2022.

To prove the injuries sustained, hospitalisation and treatment given to the petitioner copy of accident register cum wound certificate was marked as Ext.A6 and discharge summary was marked as Ext.A8. As per the above documents, the petitioner was treated as stated above. As per Ext.A6 the petitioner was sustained lacerated wound on left little finger.

As per Ext.A8 the diagnosis is as follows:-

diagnosis:-

traumatic brain injury

right sylvian and basal cistern SAH

11. Going through the above medical records, I find that the petitioner was sustained injuries in the accident which was caused due to the rash and negligent driving of the 2nd respondent while driving the vehicle in question. Therefore, I find that the petitioner is entitled to get compensation for the injuries sustained in the accident.

12. Ext.A12 series are the medical bills produced and marked by the petitioner for a total sum of ₹18,733/- which is not in dispute. According to the petitioner at the time of accident he was aged 57 years, self employed and his monthly income was of ₹30,000/-. As per Ext.A11 copy of bank passbook of the petitioner his date of birth is 01.01.1950, as per copy of Aadhar card of the petitioner his year of birth is 1950 and as per Ext.A13 copy of pan card of the petitioner his date of birth is 01.01.1950. Therefore, at the time of

accident the petitioner was aged 72 years. To prove the occupation and income of the petitioner no evidence has been adduced. Even then considering the age of the petitioner and other attending circumstances, I find that monthly income of the petitioner can be calculated as of ₹13,500/- for the purpose of computing compensation.

13. Ext.A1 is the disability certificate issued Dr.Biju Krishnan R., Professor of Neuro Surgery, Medical College Hospital, Thrissur. The doctor was examined as PW1. As per Ext.A1 the petitioner is having permanent whole body disability of 15%. The 3rd respondent contended that the disability assessed by PW1 is on a higher side. During cross examination, PW1 admitted that the petitioner was treated conservatively. The 3rd respondent has further pointed out that Ext.A8 discharge summary would indicate that the patient was discharged without consent of the doctor. If proper treatment was taken, there would have some improvement. Moreover, PW1 also admitted that MMSE reduction is considered for disability. Even after discharge he should have further treatment. He further admitted that due to other diseases also there would be changes to MMSE score and head ache is the complaint of the patient. No surgery was done. Fresh X-ray was not taken. Hence the 3rd respondent has contended that without taking fresh X-ray and radiological treatment as per the complaint of the petitioner, the doctor assessed the disability. Considering the medical documents and evidence of PW1 are concerned, I am of the view that the disability assessed by the doctor is high. Hence I am of the view

that the petitioner is having permanent whole body disability of 13%. The petitioner being aged 72 years at the time of accident the proper multiplier is 5. Therefore, the compensation for loss of functional disability can be assessed at ₹13500x 12x 5x 13/100= ₹1,05,300/-. According to the petitioner due to the accident he was not able to go for work for three months. Considering the nature of injuries and the medical records are concerned, I am of the view that he did not able to work for three months. So he is entitled to get ₹40,500/- towards loss of earning.

Considering the entire facts and circumstances of the case, nature of injuries sustained, period of treatment, disability etc. I find that the following can be fixed as just and reasonable compensation in the case.

Sl. No.	Head of Claim	Amount claimed ₹	Amount awarded ₹	Basis-vital details in a nut shell
1	Loss of earning	100000	40500	13500x3 months
2	Transport to hospital	10000	4000	As per the available documents the petitioner went to the hospital several times
3	Extra nourishment	5000	2000	
4	Damage to clothing and articles	2000	1000	Nominal amount
5	Bystander expenses	10000	1200	400x3 days
6	Medical expenses	20000	18733	As per Ext.A10 series medical bills
7	Compensation for pain and suffering	50000	40000	Considering the nature of injuries
8	Compensation for loss of enjoyment and amenities of life	40000	40000	Considering the disability
9	Compensation for permanent disability, compensation for loss of earning power and disfigurement	450000	105300	13500x12x5x13/100
	Total	6,87,000	2,52,733	

Issues are answered accordingly.

14. Issue No.4:- It is stated in the written statement of the 3rd respondent that the vehicle bearing registration KL-26/5633 was validly insured with this respondent at the material time of accident. This Tribunal found that the accident occurred due to the negligence on the side of the 2nd respondent. Therefore, the 3rd respondent is liable to indemnify the other respondents.

In the result, the application is allowed in part and an award is passed for ₹2,52,733/- (Rupees two lakh fifty two thousand seven hundred and thirty three only) with interest @ 8% per annum from the date of filing of the petition ie. from 01.12.2022 till realisation with proportionate cost.

The 3rd respondent is directed to furnish cheque for ₹6,238/- being Court Fee and ₹6,870/- being Legal Benefit Fund payable by the petitioner in the name of Motor Accidents Claims Tribunal, Ottapalam.

R3/insurer shall deposit the balance Award amount to the credit of the Bank Account of Motor Accidents Claims Tribunal, Ottapalam shown below, directly by National Electronic Fund Transfer (NEFT)/ Real Time Gross Settlement (RTGS) or any other electronic mode.

Name of Account Holder	Name of Bank	Name of Branch	Account Number	IFSC Code
OTTAPALAM MACT	**State Bank of India**	**Ottapalam**	**42798164060**	**SBIN0000257**

(2) R3/insurer shall instruct their bank to ensure deposit of the Award amount by way of Direct Bank Transfer to the account of the Motor Accidents Claims Tribunal, Ottapalam shown above containing following informations in the prescribed format (which is already circulated) by way of compliance of the Award.

1	OP(MV) Number	
2	On the file of (Motor Accidents Claims Tribunal Name)	
3	Date of Award	
4	Compensation Amount	
5	Income Tax Deduction at Source, if any, in accordance with law.	
6	Bank Transaction Reference No./Unique Transaction Reference (UTR) No.	

(3) On such deposit being made R3/insurer shall submit a letter to this Tribunal enclosing a copy of said bank advice in the prescribed format (which is already circulated) as per which deposit was made to the bank account of this Tribunal.

(4) R3/insurer shall also send a copy of payment advice to the Motor Accidents Claims Tribunal concerned and serve a copy of the same on the claimants or their counsels.

(5) The Office of this Tribunal shall ensure that as and when the Award amount is received in the Bank account of MACT, it shall be disbursed to the credit of the

bank accounts of claimants shown below directly by way of NEFT/ RTGS or any other electronic mode.

Name of petitioner	Name of Bank	Name of Branch	Account Number	IFSC Code
Kunhimon V.M.	**Kerala State Co-operative Bank**	**Ayyanthole**	**146512001217551**	**KSBK0001465**

(6) The office is further directed to make necessary entries in the Cheque Issue Register or any other Registers concerned, evidencing payment of above amount to the petitioners.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, this the 15th day of May 2024.

Motor Accidents Claims Tribunal

APPENDIX

Petitioner's Witness Examined :
PW1: Dr. Bijukrishnan R

Petitioner's Exhibits Marked :

A1	:	23/09/2022	:	Disability Certificate
A2	:	04/06/2022	:	Copy of FIR
A3	:	04/06/2022	:	Copy of Scene mahazar
A4	:	Nil	:	Copy of Final Report
A5	:	Nil	:	Copy of AMVI report
A6	:	23/06/2022	:	Copy of Wound Certificate

A7	:	03/06/2022	:	Copy of Discharge Certificate of police case
A8	:	03/06/2022	:	Discharge Summary
A9	:	20/09/2022	:	Driving licence of petitioner
A10	:	Series	:	Medical Bills
A11	:	17/04/2024	:	Copy of Bank passbook
A12	:	Nil	:	Copy of Aadhar Card
A13	:	Nil	:	Copy of Pan card

Respondent's Witness examined and Exhibits Marked : Nil

Motor Accidents Claims Tribunal

MEMO OF COST

Petitioner's Cost : Allowed. Cost list filed

Sl No	Particular	Amount
1	Court fee	1900.00
2	Stamp on vakkalath	5.00
3	Writing fee	200.00
4	Advocate Fee	15037.00
5	Stamp on Petition	15.00
6	Process fee	150.00
7	Stamp on document	20.00
8	Wittness Batha	680.00
	Total	**18007.00**

Respondents Cost **:** Not Allowed.

Motor Accidents Claims Tribunal

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

Typed by : Smeril Samuel
Compared by : Deepa K.S

Fair/Copy of Award
in OP (MV) No.726/2022
Dated: 15/05/2024

(1+3)