

**IN THE COURT OF THE PRINCIPAL MOTOR ACCIDENTS CLAIMS
TRIBUNAL,KOZHIKODE**

Present:- Sri. Rajesh.K, Motor Accidents Claims Tribunal.

Friday, 7th, day of February, 2025

O.P.(M.V.) No. 1858/2022

Petitioners:

1. Vinod, (Died)
S/o.Sathyabhama,
Aged 47 years,
Kunimmal House,
P.O. Karuvisseri,
Kozhikode District, Pin 673010.
Phone No. 9947655842.

Supplemental

2. Sathyabhama,
W/o.Sami,
Aged 87 years,
Residing at Kunimmal House,
PO Kuruvisseri, Kozhikode,
Pin 673010.
(Supplemental Petitioner No.2 is amendment as
per order in IA 6/25 dated 07.01.2025)

Advs. Binuraj R and Bijush Chand P.M

Respondents:

1. Amith,
S/o.Ajayan,

Aged 27 years,
 Kolangarakath House, Purkkattiri,
 P.O. Thalakkulathur, Kozhikode District,
 Pin 673317.
 D.L.No. 11/8448/2016
 Valid from 24/06/2016 to 23/06/2036.

2. The Manager,
 Cholamandalam MS General Insurance Co.Ltd,
 Dare House, 2 N.S. C. Bose Road,
 Chennai – 600001.

R1	-	Adv.Khaleel O.P
R2	-	Adv. Thomas Mathew

This Original Petition coming on this 31st day of January, 2025 for hearing before me, in the presence of the above advocates and having stood over to this day for consideration and the Tribunal passed the following:

AWARD

This is a petition filed under Sec. 166 of the Motor Vehicles Act, 1988.

Prosecution case

2. Brief matrix of the case of the petitioner, as borne out from the petition, is as follows:- Petitioner Vinod sustained injuries in a motor accident held at Malikkadavu on 23.1.2022. A motorcycle bearing No.KL 18 BU 1936 ridden by respondent No.1, in a rash and negligent manner hit against the petitioner while he was walking through Malikkadavu road. Respondent No.1 is the owner cum rider and respondent No.2 is the insurer of the offending vehicle. They are jointly and severally liable to compensate the petitioner. Petitioner is a driver and earning Rs.30,000/- (rupees thirty thousand) per month. Petitioner claimed a total compensation of Rs.10,00,000/-(Rupees ten lakhs). Hence the petition.

3. Both respondents were duly served. Respondent No.1 filed written statement denying the allegations in the petition. Accident happened due to the negligence on the part of the petitioner. The vehicle was insured with 2nd respondent at the time of accident and prayed to direct the 2nd respondent to pay the compensation.

4. Respondent No.2 filed written statement admitting that motorcycle bearing No. KL 18 BU 1936 was insured with this respondent at the time of accident. This respondent denied the age, occupation and income of the petitioner. The amount of compensation claimed is excessive and prayed to dismiss the petition.

5. After hearing both sides and perusing the records the following issues were casted for consideration:-

- 1 Was the accident caused due to the negligence on the part of 2nd respondent as alleged?
- 2 Did the petitioner sustain injuries in the accident?
- 3 Is the petitioner entitled to get compensation and if so, who is liable to pay the same?
- 4 If issue Nos.1 to 3 are decided in favour of the petitioner, what should be the quantum?
- 5 Relief and costs?

6. Neither side adduced any oral evidence. Exts.A1 to A9 documents were marked on the side of the petitioner. Respondents not adduced any evidence.

7. Issue No.1:-

According to petitioner motorcycle bearing No.KL 18 BU 1936 ridden by Respondent No.2 in a rash and negligent manner, hit against the petitioner while he was walking through the side of Malikkadavu road. Petitioner produced Ext.A1 FIR and Ext. A2 final report to prove that the accident was occurred due to the negligence of Respondent No.1.

8.In **New India Assurance Company Ltd. Vs.Pazhani Ammal and others, reported in ILR 2011(3) Kerala 677** Hon'ble High Court of Kerala held in para 7 “ *But as a general rule it can safely be accepted that production of the police charge sheet is prima facie sufficient evidence of negligence for the purpose of a claim under S.166 of the Motor Vehicles Act. A system cannot feed itself on a regular diet of distrust of the police. 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 charge sheet, the burden must be on such party to adduce oral evidence*”.

9. The dictum in the above case shows that in the absence of contra evidence a final report can be taken as prima facie proof of negligent riding of the accused, against whom the charge was laid. As per Ext. A2 final report, respondent No.1 rode the motorcycle in a rash and negligent manner. There is no contra evidence to prove that respondent No.1 was not negligent at the time of accident. Hence it is found that the accident was caused due to the negligence of respondent No.1 and this point is found in favour of the petitioner.

10. Issue No.2

Ext. A9 wound certificate shows that the petitioner sustained serious injuries in the accident. A conjoined reading of Ext. A2 final report and Ext.A6 O.P case sheet would go to show that petitioner sustained injuries in the accident alleged in this case. Hence this issue is found in favour of the petitioner.

11. Issue No.3:-

As per my finding on issue No.1 and 2 petitioner sustained injuries in the accident taken place on 23.1.2022 at Malikkadavu. It is also found that negligence of respondent No.1 resulted in the accident. So petitioner is entitled to get compensation in this case.

12. The next question to be addressed under this issue is that who is liable to pay compensation to the petitioner. Petitioner contended that respondent No.1 and 2 are jointly and severally liable to compensate him. Respondent No.2 insurer admitted that the motorcycle involved in the accident had valid insurance at the time of accident. I have already come to a conclusion that the accident was caused due to the negligence of Respondent No.1. Hence, I find that Respondent No.1 is liable to pay compensation and Respondent No.2 is liable to indemnify the same. Hence this issue is found against Respondent No.2.

13.Issue No.4 :-

Petitioner claimed a total compensation of ₹10,00,000/- (Rupees ten lakhs) on various heads. The claim of petitioner for compensation on different heads can be considered separately as follows:-

14. Loss of earnings :-

Petitioner claimed a sum of ₹2,00,000/- (Rupees two lakhs) towards loss of earnings from 23.1.2022 to the date of filing of this petition. Petitioner contended that he was a driver and was getting monthly income of ₹ 30,000/- (rupees thirty thousand) at the time of accident. Learned counsel for the petitioner submitted that the loss of earnings has to be calculated for a period of 8 months as the petitioner could not attend for his job during that period. Learned counsel for respondent No.3 contended that petitioner sustained only minor injuries and the loss of earnings is to be calculated for a period of 4 months. It is pertinent to note that petitioner failed to produce any document to show the period of his absence from the job. By considering the fracture sustained on the left clavicle, left scapula, left iliac crest fracture, 2nd and 5th ribs and the nature of occupation of the petitioner, I find that loss of earnings can be calculated for a period of 6 months.

15. Petitioner not produced any document to prove his income. Respondent No.2 submitted that income of the petitioner can be calculated as per the prescribed notional income as held in ***Ramachandrappa Vs. The Manager, Royal Sundaram Alliance Insurance Company Ltd. [AIR 2011 SC 2951]***. Notional income for the year 2022, in the light of the above judgment is ₹13,500/-. He has not adduced any evidence to establish this claim. In the absence of valid evidence to prove the income, I am inclined to calculate compensation under this head on the basis of the Notional income fixed as above. So petitioner is entitled to get compensation towards loss of earnings for a period of 6 months at the rate of ₹13,500/- per month. Thus the amount will be

₹13,500 x 6 = ₹81,000/-. (rupees eighty one thousand)and is awarded towards this claim.

16.Transport to hospital:-

Petitioner claimed ₹10,000/-(ten thousand) towards transport to hospital. The accident was taken place at Malikkadavu. Petitioner was taken to District Co-operative hospital Kozhikode. He had two reviews in connection his treatment as per Ext.A5 and A6. He has not adduced any evidence in support of this claim. Petitioner is a resident of Karuvissery. By considering these facts and in the absence of evidence to prove the mode of transportation availed by petitioner, I find that normal taxi fare can be awarded for his transportation. Thus an amount of ₹ 3,000/- (Rupees three thousand) can be awarded towards transportation.

17. Extra nourishment and damage to clothing:-

Petitioner claimed an amount of ₹ 3,000/- (rupees three thousand) each towards extra nourishment and damage to clothing. Petitioner was treated as inpatient for a total period of 30 days as per Ext.A9 wound certificate. The nature of injury sustained to him shows that he should have taken special diet to recoup his health. Hence an amount of ₹25,000/- (Rupees twenty five thousand) can be granted towards Extra nourishment and ₹2,500/- (rupees two thousand five hundred) towards damage to clothing and articles.

18. Medical bills-

Petitioner claimed an amount of ₹1,00,000/-(rupees one lakh) under this head. Petitioner produced Ext.A7 series medical bills for an amount of ₹

1,94,651/-. At the time of evidence both counsels agreed the amount covered under these bills. Hence Rs. 1,94,651/- (rupees one lakh ninety four thousand six hundred and fifty one) is awarded towards the expenses for medicines.

19. Bystander's Expenses:-

Petitioner claimed ₹40,000/- (rupees forty thousand) towards bystander's expenses. As per Ext. A9 wound certificate, he was admitted in District Co-operative hospital from 23.1.2022 to 21.2.2022. So petitioner was treated as inpatient for a period of 30 days. Hence, I am inclined to grant bystander expenses for one person at the rate of ₹900/- per day. So the amount will be ₹ 900x 30 = ₹27,000/-(Rupees twenty seven thousand only) and is awarded towards this claim.

20. Compensation for pain and sufferings and loss of amenities:-

Petitioner claimed ₹2,00,000/-(rupees two lakhs), each under these heads as compensation. As discussed in the foregoing paragraphs, petitioner was admitted in the hospital for 30 days. He sustained fracture sustained on the left clavicle, left scapula, left iliac crest fracture and 2nd and 5th ribs. Every injury in a road traffic accident generate pain and sufferings to the victim and it is the duty of the Tribunal to award adequate amount towards compensation. Taking into consideration, the nature of injuries, pain, suffering, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with health. Hence he has to be compensated and a consolidated amount of ₹2,50,000/- (Rupees two lakh fifty thousand) can be granted towards pain and sufferings and

₹2,50,000/- (Rupees two lakh fifty thousand) can be granted towards loss of amenities.

21. Permanent disability, loss of earning power:-

Petitioner claimed ₹ 8,00,000/- (rupees eight lakhs) towards permanent disability, ₹2,00,000/- (two lakhs) towards loss of earning power. But he has not adduced any evidence in support of these claims. In the absence of evidence, this Tribunal has no way other than to deny the claim under these heads. Hence, I am not inclined to grant compensation towards these heads.

22. The upshot of the above discussion leads me to calculate the total compensation to be paid to the petitioner as follows:-

SUMMARY OF CLAIMS RAISED AND ALLOWED

Sl. No.	Head of claim	Amount claimed ₹	Amount Awarded ₹	Basis-vital details in a nut shell
1	Loss of earnings	2,00,000	81,000	
2	Transport to hospital	10,000	3,000	
3	Extra nourishment	3,000	25,000	
4	Damage to clothing and articles	3,000	2,500	
5	Medical expenses	1,00,000	1,94,651	
6	Bystander expenses	40,000	27,000	
7	Compensation for pain and sufferings	2,00,000	2,50,000	
8	Compensation due to permanent disability	8,00,000	----	
9	Compensation for loss of amenities	2,00,000	2,50,000	
10	compensation for loss of earning power	2,00,000	---	
	Total ₹17,56,000 Claim limited: ₹14,00,000		8,33,151 rounded to 8,33,200	

23.Issue No.5

In view of my findings on the above issues, petitioner is entitled to get compensation of **₹8,33,200/-**(Rupees eight lakhs thirty three thousand two hundred only) with interest at the rate of 8% (Eight percentage) per annum from the date of petition (24.9.2022) till the date of realisation with proportionate costs from the respondents.

In the result,

(1). Petitioner is entitled to get a total amount of **₹8,33,200/-**(Rupees eight lakhs thirty three thousand two hundred only) with interest at the rate of 8% (Eight percentage) per annum from the date of petition (24.9.2022) till the date of realisation with proportionate costs from the respondents.

(2) 2nd respondent shall furnish a cheque for ₹9,373/-(Rupees three thousand three hundred and seventy three only) towards court fee and ₹10,000/-(Rupees ten thousand only) towards Legal Benefit Fund payable in favour of M.A.C.T., Kozhikode.

(3) Respondent No.2 shall deposit the awarded sum to the credit of the bank account of this Tribunal vide SB Account No. 42793395060, IFC No. SBIN0000861 of State Bank of India Mananchira branch Kozhikode by way of NEFT or RTGS or any other electronic mode within one month from today.

(4) On such deposit respondent No.2 shall submit a letter to this Tribunal enclosing a copy of the said bank advice in the prescribed format and serve a copy of the same on the claimants or their counsel as the case maybe.

(5) Respondent No.2 shall provide form 16 – A to the claimant so as to enable him/her to seek refund of tax deducted at source.

(6) On receipt of intimation from the bank regarding the deposit, office shall create a fixed deposit of Rs.4,00,000/- (Rupees four lakh) in a Nationalized bank, in the name of petitioner for a period of three years by transferring the amount to that bank through NEFT or RTGS or any other electronic mode.

(7) A lien shall be marked on the face of the receipt stating that the amount shall be repaid only on maturity and by crediting to the petitioner's account or else only on the Orders of the Tribunal/High Court.

(8) Office shall transfer the balance amount to the following bank account of the claimant through NEFT or RTGS or any other electronic mode.

(9) Account details of the claimants

(1)	Name of the claimant with address	Sathyabhama, Kunimmal house, P.O Karuvisserri, Kozhikode
(2)	Name of the bank and branch	Canara Bank Kunduparamba branch
(3)	Bank IFSC code	CNRB0014406
(4)	Account No. of the claimant	44062200020098

(10) Free copy of the award will be issued to both sides within 15 days from today.

(11) The amount shall be paid within one month from the date of this award.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open Court on this the 7th day of February 2025).

Sd/-

MOTOR ACCIDENTS CLAIMS TRIBUNAL

Petitioner's Witness : Nil

Petitioner's Exhibits:

A1	04.02.2022	:	True copy of FIR in crime No. 83/2022 of Chevayoor P.S
A2	23.04.2022	:	True copy of final report in crime No.83/2022
A3	27.09.2024	:	Death certificate
A4	16.12.2024	:	Family membership certificate
A5	08.03.2022	:	Prescription
A6	09.04.2022	:	O.P. Case sheet
A7	21.02.2022	:	Medical Bill
A8	–	:	True copy of S.S.L.C. Certificate
A9	18.03.2022	:	True copy of wound certificate

Respondent's Witness : Nil

Respondent's Exhibits: : Nil

Court Exhibits: : Nil

Witness Exhibits : Nil

Sd/-

MOTOR ACCIDENTS CLAIMS TRIBUNAL