

IN THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, N. PARAVUR**Present:-**

Smt. Jyothi V., Addl. Motor Accidents Claims Tribunal /In charge of Motor Accidents Claims Tribunal.

Thursday , 7th day of November, 2024/16th Karthika,1946.

O.P.(M.V) No. 361/2019**Petitioner:-**

Prameesh Prasad, Aged 24 years, S/o. Prasad,
Kakkathuruthi House, Iranikulam, Kakkulasserry,
Thrissur.

By Advs. Babu Jose M. and Benson Baby.

Respondents :-

1. Shiju, Aged 24 years, S/o. Thomas, Udhinaparamban House, Cheruvaloor P.O., Kallur, Vadakkummuri, Thrissur- 680308.
2. Baiju T.D., Aged 44 years, S/o. Damodaran, Thekkoot House, Annanad, Pin- 680309.
3. United India Insurance Co. Ltd., Branch Office, Municipal Building, N. Paravur.

R1 :- Exparte.

R2 :- By Adv. George Thomas Ollukkaran.

R3 :- By Adv. Meena Jose.

This O.P(M.V) having been finally heard on 30.10.2024 and the Tribunal on 07.11.2024 delivered the following.

AWARD

This is a petition filed under Section 166 of the Motor Vehicles Act, 1988 claiming compensation for the injuries sustained by the petitioner in a road traffic accident. The award in this case was passed on 9/11/2023. There after some omission was noted in the award and is corrected U/s 152 CPC as per order in RP No 8/2024 dated 30/10/2024 and passed this corrected award.

2. Case of the petitioner, in brief, is as follows:- On 14.01.2019 at 6.00 PM, while the petitioner was riding a motorcycle bearing registration No.KL-45/P-4857 from East to West along the Annamanada - Mala road and reached in front of KNK Traders, a scooter bearing registration No.KL-64/E-9149 rode by the second respondent, which was going in front of the vehicle of the petitioner, in a rash and negligent manner so as to endanger human life, suddenly turned to the right side of the road without giving any signal. As a result, the vehicle hit against the vehicle of the petitioner and he sustained severe injuries. Immediately he was taken to St. James Hospital, Chalakudy and treated as an inpatient therein. Thereafter he continued his treatment in Ayurveda Hospital, North Paravur. Petitioner claimed that he was a TV Technician and was earning ₹25,000/- per month. According to the petitioner, he has suffered a lot of pecuniary as well as non pecuniary loss due to this accident and hence this claim petition for a compensation of ₹20,00,000/- from the respondents. First respondent is the owner, second respondent is the rider and third respondent is the insurer of the offending vehicle bearing registration No. KL-64/E-9149.

3. First respondent remained absent and was set exparte.

4. Second respondent filed written statement contending as follows:- It is admitted that he was the driver of the scooter bearing registration No.KL-64/E-9149. The accident was occurred not due to the negligence of the respondent. When this respondent reached at the place of incident, he stopped the scooter for

turning to the right side by giving signal to the vehicle coming from back side. Petitioner, without observing any traffic rules came on his motorcycle in a rash and negligent manner and hit on the back side of the scooter of this respondent. So the accident occurred only due to the negligence of the petitioner. Even though police has registered a case against the petitioner under Sections 279 and 338 of IPC, police has also registered a case against this respondent by the influence of the petitioner. This respondent has no role in the alleged accident. Hence the respondent is not liable to compensate the petitioner.

5. Third respondent filed written statement admitted that the vehicle bearing registration No.KL-64/E-9149 was validly insured with the respondent at the relevant time. The 'A' charge produced by the petitioner itself shows that there was also a 'B' charge against the petitioner. Petitioner was the wrong doer and rode the vehicle through the road without keeping the required distance. Petitioner drove the vehicle in a very rash and negligent manner and caused the accident. It is not correct that the accident had occurred due to the negligence committed by the second respondent. There was no valid license to the 2nd respondent at the time of alleged accident. The 1st respondent knowingly and willfully permitted the 2nd respondent to drive the vehicle without driving license and had violated the policy condition. Hence the third respondent is not liable to pay any amount to the petitioner as compensation.

6. The following issues were framed for consideration:-

- 1) *Whether the accident has occurred due to the rash or negligent driving by R2?*
- 2) *Whether the petitioner has sustained injuries in the accident?*
- 3) *Whether the petitioner is 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 of compensation?*
- 5) *Reliefs and costs?*

7. No oral evidence was adduced on either sides. However documents produced from the side of the petitioner were marked as Exts.A1 to A13. Except Ext.A10, the documents were marked unopposed. Third respondent opposed the marking of Ext.A10 disability certificate on the ground that it was not issued by the medical board. From the side of the respondents Exts.B1 and B2 were marked.

8. Heard both sides and perused the records.

9. **Issue No.1:-** The petitioner specifically contended that the accident was occurred due to the negligence of the second respondent, who was riding the vehicle bearing registration No.KL-64/E-9149 at the relevant time. In order to prove this, petitioner has produced copy of the FIR in crime No.46/2019 registered against the second respondent by the Mala police. The same is marked as Ext.A1. Ext.A1 would show that Mala police had registered a case against the

second respondent for driving a vehicle in a rash and negligent manner through a public road and causing grievous hurt to the petitioner. Moreover the petitioner has also produced copy of the final report filed by the Mala police after investigation in the above crime alleging offences under Section 279 and 338 of the IPC against the second respondent. The same was marked as Ext.A2. Ext.A2 would show that second respondent had been driving the vehicle through the road in a negligent manner at the time of the incident. However, Ext.A2 would also show that police had registered a case against the petitioner for driving the vehicle in a rash and negligent manner through the public road and causing the accident as per the complaint given by the second respondent. On the basis of the same police had filed 'B' charge against the petitioner. The same was produced and marked as Ext.B2. Ext.B2 would show that the alleged accident was occurred due to the joint contributory negligence of the petitioner and the second respondent. So, from the evidence it is clear that the alleged accident was occurred due to the equal negligence of the petitioner and second respondent and both are contributorily responsible for the same.

10. **Issue No.2:-** In order to prove the injuries sustained by the petitioner, he has produced the accident register cum wound certificate issued from St. James Hospital, Chalakudy. The same was marked as Ext.A5. The discharge card issued from Government Ayurveda Hospital, N. Paravur was produced and marked as Ext.A6. The discharge summary issued from St. James

Hospital, Chalakudy was produced and the same was marked as Ext.A7. The report of the MRI scan was also produced and marked as Ext.A8. The CT scan issued from Navajeevan Scan Centre was also produced. The same was marked as Ext.A9. From these documents it can be seen that petitioner has sustained the following injuries:

- 1) subarachnoid hemorrhage,
- 2) left medullary contusion,
- 3) right temporal contusion,
- 4) C3-4 to C6-7 mild posterior disc protrusion.

More over, petitioner has also produced the disability certificate to prove his case. The same was marked as Ext.A10. Under these circumstances, there is no difficulty in arriving at a conclusion that the petitioner has sustained the above said injuries in the accident. The issue is answered accordingly.

11. **Issue No.3:-** We have already found that the petitioner sustained injuries in the accident and the accident was occurred due to the rash and negligent riding of the offending vehicle bearing registration No.KL-64/E-9149 by the second respondent. Admittedly the above vehicle was owned by the first respondent and insured with the third respondent, during the relevant time. Under these circumstances, first respondent is tortuously liable to pay compensation to the petitioner. First respondent being the owner is vicariously liable to compensate the petitioner. Since, the vehicle was insured with the third

respondent, the liability of the first respondent is to be indemnified by the third respondent in the capacity of the insurer.

12. Though the insurance coverage of the offending vehicle bearing registration No.KL-64/E-9149 as on the date of accident was admitted by the third respondent, the liability to pay compensation was seriously disputed contending that the second respondent had no valid driving license as on the date of accident and hence it is a violation of policy conditions. In order to prove said case, third respondent filed I.A.No.10/2020 calling upon first respondent to produce the driving license of the second respondent. In spite of notice, driving license was not produced. So, an adverse inference is drawn against the first respondent that second respondent had no valid driving license at the time of accident, which is a violation of policy conditions. However, since the offending vehicle bearing registration No:KL-64/E-9149 was validly insured with the third respondent during the relevant time, the primary duty is on the Insurance company to pay the compensation. The Insurance company would be definitely entitled to recover the compensation amount from the owner/insured of the vehicle i.e. the first respondent u/s.174 of M.V Act. But we have already found that petitioner and second respondent are equally attributed to the accident. So 50% of the compensation has to be deducted in proportion to the negligence attributed from the side of the petitioner. The issue is answered accordingly.

13. **Issue No.4 & 5:-** Now the next aspect to be determined in this

case is the quantum of compensation to be paid to the petitioner. Petitioner claims that he was a T.V. Technician and was earning ₹25,000/- per month during the relevant time. However, no evidence was adduced to prove his occupation or income. Hence, he can only be treated as Coolie/Daily wages worker, and notional income has to be taken accordingly. In ***Soman vs. Jinesh James and Others***, reported in ***ILR 2020(3) Kerala 1003, Hon'ble High Court of Kerala*** was pleased to hold as follows:-

*“A coolie was fixed with a notional income of ₹4,500 per month in the year 2004, by Hon'ble Supreme Court in **Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Limited** [(2011) 13 S.C.C. 236]. The Hon'ble Supreme Court has also recognized the principle that there would be incremental enhancement in the case of even self-employed individuals in the un-organized section [**National Insurance Co. Ltd. v. Pranay Sethi** [(2017) 16 S.C.C. 680] and with respect to an unspecified job of a coolie. Considering the increase in cost of living and economic advancements over the years, it can be safely assumed that even a coolie would be eligible for incremental addition of at least ₹500 in every subsequent year. In such circumstances, the appellant who is a coolie, is entitled to be fixed with a notional income of ₹7500 as on the year of accident, which is 2010.”*

By applying the above yardstick, the notional income of the petitioner can be assessed as ₹12,000/- since the accident has occurred in the year 2019. Petitioner has suffered severe injuries as mentioned under issue No.2. So, it can be assumed that due to the injuries he was prevented from attending any kind of work at least for four months. Thus the petitioner is entitled to get an amount of **₹48,000/- (Rupees Forty eight thousand only)** (12000 x 4) towards compensation for loss of income.

14. In order to prove transportation expenses, no evidence was adduced. However, after the accident, petitioner was taken to St. James Hospital, Chalakudy as proved by Ext.A5 document. Thereafter he was treated at General Ayurveda Hospital, N. Paravur, as proved by Ext.A6. So, it can be presumed that the petitioner might have engaged a minimum of four special conveyances for going to hospital and to back home. So he is entitled to get an amount of **₹4,000/- (Rupees Four thousand only)** towards transportation charges.

15. The petitioner has suffered serious injuries as mentioned under issue No.2, which has ultimately resulted in permanent disability also. So, considering the nature of injuries and the period of treatment the petitioner has undergone, he would have definitely consumed considerable amount of nutritious foods to regain his health. So I assess an amount of **₹5,000/- (Rupees Five thousand only)** towards extra nourishment charges.

16. Likewise, an amount of **₹2,000/- (Rupees Two thousand only)** can be

granted towards damages to clothing and articles.

17. Petitioner was treated as inpatient for 5 days from 14.01.2019 to 18.01.2019 as proved by Ext.A7 document. Though the petitioner has produced the discharge card issued from Government Ayurveda Hospital, North Paravur, marked as Ext.A6, there is no evidence to prove that he was treated there as an inpatient due to the injuries sustained in the accident. Hence the same cannot be accepted to pay compensation for bystander expenses. Hence Ext.A7 alone can be accepted. Considering the cost of living and expenses during the relevant period, petitioner is entitled to get an amount of ₹1,000/- per day for the said period. Hence the petitioner is entitled to get an amount of **₹5,000/- (Rupees Five thousand only)** towards expenses for bystander.

18. More over petitioner has produced Ext.A11 series (32 numbers) medical bills to prove his expenses for treatment, for an amount of ₹37,322/-. Ext.A11 series were marked without any objection from the respondents. So, the petitioner is entitled to get this amount reimbursed. After rounding the amount, petitioner is entitled to get an amount of **₹37,400/- (Rupees Thirty seven thousand and four hundred only)** and can be granted towards medical expenses.

19. Petitioner has suffered serious injuries as mentioned under issue No.2, which has ultimately resulted in permanent disability also. No doubt, as a result of the injuries, petitioner might have undergone severe amount of pain and

sufferings as well as loss of comforts and amenities. Hence, I am of the opinion that an amount of **₹60,000/- (Rupees Sixty thousand only)** can be granted as compensation for pain and suffering and another amount of **₹40,000/- (Rupees Forty thousand only)** can be granted as compensation for loss of comfort and amenities.

20. For proving permanent disability, petitioner has produced Ext.A10 disability certificate issued by a Professor of Neurosurgery. But the admissibility of this document was disputed and challenged by the third respondent on the ground that it is not issued by a medical board. It is not necessary to produce disability certificate issued by a medical board in all cases. There is no hard and fast rule that disability certificate issued by Medical Board alone can be accepted by Tribunal for determining the compensation. However without producing any materials merely challenging the admissibility of the certificate is not sufficient to discard the same. The Tribunal has ample power to assess the actual disability taking into consideration of the facts and circumstances of the case. A perusal of Ext.A10 disability certificate would show that the doctor had arrived at the percentage of disability after taking into consideration of all aspects. There is no reason to disbelieve the findings of the doctor in this regard. The second respondent did not take any steps to examine the doctor to prove the veracity of the document. So there is no reason to completely discard Ext.A10 certificate. In Ext.A10 doctor has assessed 25% whole body permanent physical impairment.

Since Ext.A10 being issued by a Government doctor, it can be accepted by taking the permanent disability of the petitioner as 23%. So, it can be concluded that as a result of the accident, petitioner has suffered 23% of occupational/ functional disability.

21. At the time of accident, petitioner was aged 24 years. In order to prove his date of birth, petitioner has produced the copy of the aadhar card. The same was marked as Ext.A13. From Ext.A13 it can be seen that the date of birth of the petitioner is 09.12.1995. So, the multiplier for the age 24 applicable as per **Sarala Varma's Case (2010(2) KLT 802) confirmed in Pranay Sethi Case(2017(5) KHC 350 (SC) is 18**. As already found the monthly income of the petitioner is ₹12,000/-. Therefore, the compensation for disability and loss of future earnings would come to ₹5,96,160/- (**Rupees Five lakh ninety six thousand one hundred and sixty only**) $(12,000 \times 12 \times 18 \times 23)/100$.

22. Thus the compensation to which the petitioner is entitled under different heads can be summarized as follows:-

SUMMARY OF CLAIMS RAISED AND ALLOWED

Sl. No.	Head of claim	Amount Claimed (₹)	Amount Awarded (₹)	Basis-vital details in a nutshell
1	Complete loss of earnings	1,00,000	48,000	Para 14
2	Transport to hospital	5,000	4,000	Para 15
3	Extra Nourishment	5,000	5,000	Para 16

4	Damage to clothing and articles	5,000	2,000	Para 17
5	Bystander expenses	30,000	5,000	Para 18
6	Medical Expenses	3,00,000	37,400	Para 19
7	Pain and suffering	5,50,000	60,000	Para 20
8	Compensation for loss of comfort and amenities	3,00,000	40,000	Para 20
9	Compensation for loss of earning power due to permanent disability	10,00,000	5,96,160	Para 22
10	Loss of partial earnings	20,000	---	
11	Loss of earning power	3,00,000	---	
TOTAL		26,15,000/- But claim is limited to 20,00,000/-	₹7,97,560/- rounded to ₹7,97,600/-	

As the petitioner is also responsible for the accident, he is entitled to get only 50% of the total compensation. Thus, he is entitled to get **₹3,98,800/- (Rupees Three lakh ninety eight thousand and eight hundred only)** as compensation. Issues are answered accordingly.

In the result,

An award is passed in favour of the petitioner to realise an amount of **₹3,98,800/- (Rupees Three lakh ninety eight thousand and eight hundred only)** from the respondents, with interest @ 8% per annum from the date of the petition (29.08.2019) till realisation with proportionate costs. Third respondent/ insurer is directed to deposit the amount as aforesaid within one month from the date of this award as follows :-

- 1) Third respondent/insurer is directed to deposit two cheques in the name of MACT, North Paravur for **₹19,373/- (Rupees Nineteen thousand three hundred and seventy three only)** being the balance court fee and **₹20,000/- (Rupees Twenty thousand only)** being the additional court fee towards the Legal Benefit Fund payable by the petitioner.
- 2) Third respondent/insurer shall pay the balance amount of compensation with interest and costs to the petitioner by depositing by NEFT or RTGS or any other electronic mode to the credit of the Bank account of the Motor Accidents Claims Tribunal, North Paravur, details of which are furnished below:

Name	Name Bank and Branch	Account Number	IFSC Code
Motor Accidents Claims Tribunal (MACT), N. Paravur	SBI, Main road, North Paravur	00000042799852487	SBIN0070153

- 3) The compensation amount due to the petitioner shall be disbursed by transferring directly to the petitioner's Bank account by NEFT or RTGS or any other electronic mode. Bank account details of the petitioner shall be appended with the award.
- 4) Third respondent shall submit a letter to the Motor Accidents Claims

Tribunal enclosing a copy of the bank advice in prescribed format, as per which the deposit was made to the Bank account of the Motor Accidents Claims Tribunal (MACT), North Paravur.

- 5) Third respondent is entitled to recover the amount from the first respondent/owner, after effecting payment.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open Court on this the 7th day of November, 2024.

Jyothi V

Addl. Motor Accidents Claims Tribunal/
Motor Accidents Claims Tribunal [I/C]

Appendix:-

Petitioner's Exhibits:

- | | | |
|-------|------------|---|
| A1 | 16.01.2019 | Copy of FIR in Crime No. 46/2019 issued from Mala Police Station. |
| A2 | 31.03.2019 | Copy of Final report in Crime No.46/2019 issued from Mala Police Station. |
| A3 | 16.01.2019 | Copy of Scene Mahazer in Crime No. 46/2019 issued from Mala Police Station. |
| A4 | 24.01.2019 | Copy of AMVI Report issued from Sub Regional Transport Office, Chalakkudy. |
| A4(a) | 24.01.2019 | Copy of AMVI Report issued from Sub Regional Transport Office, Chalakkudy. |
| A5 | 14.01.2019 | Copy of Wound Certificate issued from St. James Hospital, Chalakkudy. |
| A6 | 02.03.2019 | Discharge Card issued from Govt. Ayurvedha Hospital, N. Paravur. |

- A7 18.01.2019 Discharge Summery issued from St. James Hospital, Chalakkudy.
- A8 16.01.2019 MRI Scan Report issued from Tesla Scan and Health Care.
- A9 14.01.2019 CT Scan Report issued from Navajeevan Scan Centre.
- A10 10.11.2019 Permanent Disability Certificate issued by Dr. Biju Krishnan R., Medical College, Thrissur.
- A11 Series Medical Bills.
- A12 12.12.2022 Certified copy of award issued from MACT, Irinjalakkuda.
- A13 - Copy of Adhar.

Petitioner's Witness :- Nil

Respondent's Exhibits :-

- B1 - Policy Copy issued by United India Insurance Co.
- B2 12.06.2019 Copy of Final Report issued from Mala Police Station.

Respondent's Witness :- Nil

Court's Evidence :- Nil

Motor Accidents Claims Tribunal[I/C]

Memo of Cost
O.P.(M.V) No. 361/2019

Petitioner's cost:-

Court fee	-	Rs.	19,373.00
Vakalath fee	-	Rs.	3.00
Document fee	-	Rs.	22.00
Petition fee	-	Rs.	6.00
Senior Advocate fee	-	Rs.	1,02,400.00 (Certificate filed)
Junior Advocate fee	-	Rs.	51,200.00 (Certificate filed)
L.B.F	-	Rs.	20,000.00
Total	-	Rs.	<u>1,93,004.00</u>

Proportionate cost of Rs. 76,970/- allowed.

Respondent's cost:-

R1 : Exparte.

R2 :	Vakalath fee	-	Rs.	3.00
	Document fee	-	Rs.	6.00
	Petition fee	-	Rs.	15.00
	Total	-	Rs.	<u>24.00</u> (No Order)

R3 :	Vakalath fee	-	Rs.	3.00
	Document fee	-	Rs.	2.00
	Petition fee	-	Rs.	8.00
	Total	-	Rs.	<u>13.00</u> (No Order)

Memo of cost drafted on - 18.11.2024

Memo of cost published on - 18.11.2024

Memo of cost signed on - 21.11.2024

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

B.C

J.S

Shr

Motor Accidents Claims Tribunal[I/C]

O.P.(M.V) No. 361/2019
Award dated : 07.11.2024.