IN THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, WAYANAD, KALPETTA
Present: Sri.S.K.Anilkumar, Motor Accidents Claims Tribunal, Kalpetta

Tuesday, 12th day of March, 2024
22nd day of Phalguna, 1945

ORIGINAL PETITION (MV) No.453/2022

Between:

M.N.Krishnan, aged 54 years, S/o Narayanan,
Palookarapoyil House, Karimkutty Post,
Kottathara Village, Vythiri Taluk, Wayanad District. — Petitioner

And:

R1. Rasheed, aged 26 years, S/o Mammootty,
Vysian House, Kottathara Post and Village,
Vythiri Taluk, Wayanad District.
(Driver of KL-18/R 8618 Autorikshaw)

R2. Riyas, age not known, S/o Not known,
Vaisyan House, Kottathara Post and Village,
Vythiri Taluk, Wayanad District.
(Owner of KL-18/R 8618 Autorikshaw) — Respondents

R3. The Manager, United India Insurance Company,
Rawther Building, Floor No.1, Pinangode Junction,
Kalpetta Post and Village, Vythiri Taluk,
Wayanad District.

Suppl. R4. M.R. Mansoor, age not known, S/o Kunhabdulla,
Thurutheri, Thazhekkuniyil House, Keezhal Post,
Vatakara, Kozhikode District.
(Insured of KL-18/R 8618 Autorikshaw)
(Supplemental respondent No.4 Impleaded and amended as per orders in IA 5/2023 and 6/2023 dated 03/02/2023)

This OP(MV) is coming on this the 24th day of February, 2024 for final hearing before me in the presence of Sri.P.M.Rajeev, counsel for petitioner, Sri.V.G.Laiju, counsel for respondents 1 & 2, Sri.P.C.Prasad, counsel for respondent No.3, supplemental respondent No.4 remained exparte and having stood over for consideration to this day the Tribunal passed the following.

A W A R D

This is an application filed under section 166 of the Motor Vehicles Act, 1988.

2) The petitioner's case is that on 21/04/2022 at about 05.00 pm, while the petitioner was standing on the road side at Palapoyil near Kottathara, an autorickshaw bearing registration No.KL-18/R 8618 driven by 1st respondent, in a rash and negligent manner had hit down the petitioner, by which, he sustained injuries. The accident happened due to the rash and negligent driving of autorickshaw bearing Reg.No. KL-18/R 8618 by the 1st respondent. The 2nd respondent was the owner and 3rd respondent was the insurer. Supplemental respondent No.4 was the insured of the vehicle. Therefore all respondents are jointly and severally liable to pay compensation of ₹8,00,000/- to the petitioner.

3) Supplemental respondent No.4 did not file written statement, hence he was set ex parte.

4) In the written statement filed by respondents 1 and 2, the main contentions raised by them are as follows:- The petition is not maintainable. Respondents 1 and 2 deny the cause of accident. Respondent No.1 was having valid driving licence at the time of accident. The vehicle was duly insured with respondent No.3.

5) The respondent No.3 filed written statement with the following contentions:- The petition is not maintainable. The respondent No.3 admits the insurance coverage of the autorickshaw bearing Reg.No.KL- 18/R 8618. The insured is a necessary party. The petition is bad for non joinder of necessary parties. The respondent No.3 has no privity of contract with respondent No.2. The autorickshaw had no valid permit at the time of accident. The 3rd respondent denies the existence of driving license of 1st respondent and the validity of vehicular documents. The amount claimed by the petitioner is highly exorbitant.

6) On the basis of the above pleadings, the following issues

were framed for consideration.

1) Whether the accident happened due to the rash or negligent driving of the vehicle bearing Reg.No. KL-18/R 8618 by the 1st respondent ?
2) Whether the petitioner sustained any injuries in the accident?
3) Whether the petitioner is entitled to any compensation, and if so, what shall be the quantum?
4) Who is liable to pay compensation ?
5) Relief and costs?

7) Neither parties adduced oral evidence. Exts.A1 to A6 documents and Ext.C1- Medical Board Report produced by the petitioner were marked on the side of petitioner to prove his case. No evidence was adduced on the side of respondents.

8) Heard both sides.

9) **Issue No.1** : - According to the petitioner, he sustained injuries in a road traffic accident due to the rash and negligent driving of autorickshaw bearing Reg.No. KL-18/R 8618 by the 1st respondent. In order to prove the negligence of respondent No.1, the petitioner produced Ext.A1 copy of First Information Report, Ext.A2 copy of

scene mahazar, Ext.A3 AMVI report and Ext.A4 charge sheet. Ext.A4 is the copy of final report shows that the accident happened due to the rash and negligent driving of autorickshaw bearing Reg.No. KL-18/R 8618 by respondent No.1 and a Crime No.190/2022 for offences punishable U/s 279 and 338 of IPC was registered against respondent No.1 by Kambalakkadu Police. No contrary evidence to rule out the negligence on the part of respondent No.1 was adduced. *As per the decision of the Hon'ble High Court reported in* ***New India Assurance Co. Ltd. V Pazhaniammal and others [2012 ACJ 1370],*** it is settled that Final report submitted by the police can be considered as a prima facie proof of negligence in a claim for compensation under the Motor Vehicles Act. Hence, I conclude that the accident happened due to the rash and negligent driving of autorickshaw bearing Reg.No. KL- 18/R 8618 by the 1st respondent. Thus, issue No.1 is found in favour of petitioner.

10) **Issue No.2 and 3**:- Ext.A5 discharge certificate for police cases issued by Medical College Hospital, Kozhikode shows that the petitioner sustained injuries in the accident. In the above

circumstances, I hold that petitioner is entitled to a just and reasonable compensation.

11) According to the petitioner, he is working as a porter and has been earning ₹30,000/- per month. But, no cogent evidence was adduced by the petitioner to prove his income. Therefore ₹13,500/- per month can be fixed as income of the petitioner for the purpose of calculating the loss of earning, *in view of the decision reported by our Honorable Supreme Court in* ***RAMACHANDRAPPA case*** *(2011)13 SCC 236).* The petitioner claimed ₹60,000/- towards loss of earning. As per Ext.A5 document, the petitioner sustained fracture both bone left leg due to the accident. Considering the injuries sustained by the petitioner, I am inclined to allow ₹40,500/- towards loss of earning for a period of three months.

12) The petitioner claimed ₹10,000/- as compensation towards transportation charges. Considering the distance from the residence of petitioner to the hospital where he had undergone treatment, I am inclined to allow ₹10,000/- towards travelling expense.

13) As per medical record, the petitioner was hospitalized for 12 days. Therefore, the petitioner is entitled to ₹6,000/- (12x500) towards bystander's expenses.

14) Towards extra nourishment, ₹5,000/- is allowed.

15) Towards damage to clothing, ₹2,000/- is allowed.

16) The petitioner claimed ₹50,000/- towards compensation for treatment and medicine and produced Ext.A6 series medical bills for ₹10,092/-. Hence I am inclined to allow ₹10,092/- towards medical expenditure.

17) The petitioner claimed ₹2,00,000/- under the head pain and suffering. Considering the injuries sustained by the petitioner, I am inclined to allow ₹50,000/- as compensation towards pain and suffering.

18) Ext.C1 Medical certificate issued by Medical Board, District Hospital, Mananthavady shows that the petitioner suffered 7% permanent disability due to the injury. Considering the loss of enjoyment in life and loss of amenities in life due to permanent

disability sustained by the petitioner, I am inclined to allow ₹30,000/- under the head loss of amenities and ₹20,000/- under the head inconveniences caused.

19) The petitioner claimed ₹2,00,000/- under the head compensation for continuing/permanent disability. *In **George Vs. E.T. Thomas and others** reported in **ILR 2013 (1) Ker 559** the Honourable High Court of Kerala held that "although often Motor Accident Claims Tribunals and litigants refer to three heads for assessing compensation on account of permanent disability as, (1) compensation for physical disability, (2) compensation for loss of enjoyment of amenities of life and (3) compensation for loss of earning power, (1) and (2) essentially comes under the same head and therefore compensation on account of physical disability caused by the accident has to be assessed only under two heads, viz.; (1) for physical disability or loss of amenities of life and (2) loss of earning power. This is clear from the contents of Form Comp.A. prescribed under R.371 of the Kerala Motor Vehicles Rules for submission of application for payment of compensation before Motor Accidents Claims Tribunals".* Since compensation of ₹30,000/- is

awarded for loss of amenities and enjoyment in life, I am not inclined to award compensation under the above heads separately.

20) The petitioner claimed ₹1,50,000/- towards loss of earning power. The monthly income of petitioner is already arrived at ₹13,500/-. The petitioner was aged at 54 years at the time of accident. Considering the age of petitioner, the applicable multiplier is ' 11 ' as per the dictum in ***Sarla Verma and Others Vs Delhi Transport Corporation and another*** *reported in* ***AIR 2009 SC 3104.*** Ext.C1 Medical Certificate shows that the petitioner has suffered 7% permanent disability due to the injury. Considering, the nature of impairments shown in Ext.C1 certificate, the age and avocation of petitioner, I am of the view that functional disability can be taken as 7% for the purpose of assessing the loss of earning power of petitioner due to physical disability. Thus, the compensation for loss of income and earning power due to permanent disability is arrived at ₹1,24,740/- ie. [₹13500x12x11x7/100) (annual income x multiplier x percentage of functional disability)].

21) The compensation claimed by the petitioner and the

compensation payable to the petitioner under different heads are summarized in the table below.

Sl. No.	Head of claim	Amount claimed in ₹	Amount awarded in ₹	Basis
1	Loss of earning (Total)	60,000	40,500	₹13500x3 months
2	Loss of earning (Partial)	75000	0	Nil
3	Medical and miscellaneous expenses	50000	10,092	Ext.A6 series
4	Future treatment		0	
5	Bystander expenses	30000	6,000	12x500
6	Transportation expenses	10000	10,000	Nil
7	Extra nourishment	50000	5,000	Nil
8	Damage to clothing, etc	7000	2,000	Nil
9	Pain and suffering	200000	50,000	For major fractures
10	Loss of dependency	0	0	Nil
11	Loss of consortium	0	0	Nil
12	Loss of love and affection	0	0	Nil
13	Loss of estate	0	0	Nil
14	Loss/reduction in earning capacity	150000	1,24,740	13500x12x11x 7/100
15	Loss of amenities and conveniences, etc	100000	30,000	Nil
16	Compensation for continuing/permanent disability	200000		Nil
17	Physical and mental	100000	0	Nil

	shock			
18	Loss of expectation of life	0	0	Nil
19	Inconveniences, hardship, discomfort, disappointment, frustration and mental stress in life	0	20,000	Nil
	Total	₹10,32,000/- claim limited to 8 lakh	₹2,98,332/- rounded to **₹2,98,400/-**	

22) Therefore I find it just and reasonable to award ₹2,58,400/- (Rupees Two lakh ninety eight thousand and four hundred only) as compensation. This issue is answered in favour of petitioner in respect of the compensation awarded as referred to above.

23) **Issue No.4**:- Respondent No.3 admitted the insurance coverage of the vehicle during the period of accident. So, the respondent No.3 is liable to pay compensation to the petitioner.

24) **Issue No.5** :- In view of what is stated above, it is held that the respondent No.3 is liable to pay compensation of **₹2,58,400/- (Rupees Two lakh ninety eight thousand and four hundred**

only) to the petitioner with interest @ 8% per annum from the date of filing of petition i.e., on 03/11/2022, till realisation with proportionate cost.

Respondent No.3 is directed to deposit the entire amount after deducting court fee and LBF payable by the petitioner directly to the bank account of the petitioner by way of electronic transfer and the petitioner is entitled to withdraw the amount as and when required.

Respondent No.3 is directed to furnish cheques for ₹7,373/- towards Court Fee and ₹8,000/- towards LBF payable by the petitioner, in favour of Motor Accidents Claims Tribunal, Kalpetta.

Respondent No.3 shall comply with the above directions within one month from the date on which the petitioner furnishes the details of his bank account such as Account No. and IFSC Code. It is clarified that the petitioner shall not be entitled for interest from this date till the date of furnishing the Bank Account details.

Respondent No.3 shall file a statement regarding the compliance of the order before this Tribunal along with a copy of transaction record certified by the bank concerned.

The petition is allowed accordingly.

(Dictated to Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, this the 12th day of March, 2024)

MOTOR ACCIDENTS CLAIMS TRIBUNAL

APPENDIX

Petitioner's Witnesses : Nil

Petitioner's Exhibits :

A1-	24/04/2022	Copy of First Information Report
A2-	25/04/2022	Copy of Scene Mahazer
A3-	11/05/2022	Copy of AMVI Report
A4-	-	Copy of Final Report
A5-	12/05/2022	Discharge certificate for police cases
A6(s)-	21/04/2022	Medical Bills

Respondents' Witnesses & Exhibits: Nil

Court Witnesses: Nil

Court Exhibit :

C1- 05/09/2023 Medical Board Report issued by Superintendent, District Hospital, Mananthavady, Wayanad.

MOTOR ACCIDENTS CLAIMS TRIBUNAL

Typed by : Shinu.V.J
Compared by : Sindhu.AR
FCS :

FAIR AWARD IN O.P.(MV) No.453/2022	
Dated: 12/03/2024	
Court fee paid on	:
Award ready on	:
Date notified for appearance to receive the copy	:
Date when copy delivered	:
FAIR COPY SUPERINTENDENT	
Note:	"The parties should apply as soon as possible for the return of all documents which they may wish to preserve as the record will liable to be destroyed after twelve years from this date".