

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

Tuesday, 30th day of January, 2024
10th day of Magha, 1945

ORIGINAL PETITION (MV) No.547/2022

Between:

Shanthappa, aged 42 years, S/o.Late Swamappa,
Oratti House, Harave Hobli Post, Kulagana Village,
Chamrajnagar District, Karnataka State - 571109.

} Petitioner

And:

R1. Unaise P., aged 38 years, S/o.Hamsa P., Poyil House,
Muthanga Post, Noolpuzha Village, Sulthanbathery
Taluk, Wayanad District-673592.
(Driver-cum-owner of Jeep No.KL-53/G-5118)

R2. The Branch Manager, Bajaj Allianz General Insurance
Company Limited, Shaaz Building, Kannur Road,
West Hill Post, Kozhikode District-673005.
(Insurer of Jeep No.KL-53/G 5118)

R3. The Branch Manager, New India Assurance Co. Ltd.,
MGT Building, Kalpetta North, Wayanad-673122.
(Insurer of Motorcycle No.KA-09/HK-7632)

} Respondents

This OP(MV) is coming on this the 6th day of January, 2024 for final hearing before me in the presence of Sri.Sabu John Olickal, counsel for petitioner, Sri.Babu Mathew, counsel for respondent No.3, respondents 1 & 2 remained exparte and having stood over for consideration to this day the Tribunal passed the following.

A W A R D

This claim petition is preferred under Sec.164 of the Motor Vehicles Act, 1988.

2) Case of the petitioner in short is thus:- On 08/06/2022 at about 10.30 a.m., while the petitioner was riding motorcycle bearing Reg.No. KA-09/HK-7632 and when he reached at Muthanga check post, a jeep bearing Reg.No. KL- 53/G-5118 driven by 1st respondent had parked the jeep on the road without any signal and when the petitioner reached near the jeep, the respondent No.1 suddenly moved back the Jeep and took a right turn and thus the jeep hit on the handle of the petitioner's motorcycle. As a result, the petitioner fell down on the road and sustained grievous injuries. Immediately after the accident, he was taken to Iqraa hospital, Sulthanbathery. Thereafter he was taken to Spandana Hospital, Mysore and treated there as inpatient till 12/06/2022. The accident happened only due to the rash and negligent driving on the part of 1st respondent. The 1st respondent was also the owner of the jeep. The vehicle was insured with respondent No. 2 at the relevant time. Respondent No.3 was the insurer of the motorcycle bearing Reg.No. KA-09/HK-7632. Therefore, the respondents 1 to 3 are liable to pay compensation of ₹5,00,000/- to the petitioner.

3) Respondent No.3 filed written statement. Respondents 1 and 2 did not file written statement. Hence they were set ex parte.

4) Respondent No.3 filed written statement raising the

following contentions:- The respondent denies the cause of accident. The accident happened due to the rash and negligent riding of motorcycle bearing Reg.No. KA- 09/HK- 7632 by the petitioner. The respondent No.3 denied the insurance coverage of the jeep. The respondent denies the validity of vehicular document and the validity of driving licence of 1st respondent.

5) This Tribunal framed the following issues for trial:-

- (1) Whether the petitioner sustained disability in the accident arose out of the use of Motor vehicle ?
- (2) Whether the petitioner is entitled to get compensation u/s 164 of the Motor Vehicles Act, 1988 and if so, what is the quantum ?
- (3) Who is liable to pay compensation to the petitioner?
- (4) Reliefs and costs ?

6) Exts.A1 to A11 and Ext.C1 documents were marked on the side of petitioner to prove his case. No oral evidence was adduced on the side of petitioner. No evidence was adduced on the side of respondents.

7) Heard both sides.

8) **Issue No.1**:- The petitioner who sustained injuries in the accident involved in this case, has approached this Tribunal claiming compensation u/s 164 of the Motor Vehicles Act, 1988, for the permanent

disability. It goes without saying that section 164 is a special provision in order to pay compensation. It is well settled that in order to get compensation u/s 164, the petitioner need only to establish the fact that the permanent disability had caused due to the accident arise out of the use of the motor vehicle. If the petitioner succeeded in establishing that fact, then he will be entitled to receive compensation as per the second schedule to the Act.

9) The case of the petitioner is that he sustained permanent disability on account of the injuries in the accident arose out of the use of a motor vehicle. To prove that the accident arose out of the use of motor vehicle, petitioner relied on Ext.A1 to A5 documents. Ext.A1 is the First Information Report shows that on 08/06/2022 at about 10.30 a.m., while the petitioner was riding motorcycle bearing Reg.No. KA-09/HK-7632 and when he reached at Muthanga check post, a jeep bearing Reg.No. KL- 53/G-5118 driven by 1st respondent had parked the jeep on the road without any signal and when the petitioner reached near the jeep, the respondent No.1 suddenly moved the Jeep back and took a right turn and thus the jeep hit on the handle of the petitioner's motorcycle. As a result, the petitioner fell down on the road and sustained grievous injuries. Ext.A2 is the scene mahazar. Ext.A3 & A4 are the reports of AMVI in respect of the vehicle

involved in the accident. Ext.A5 is the copy of final report submitted by the Sulthanbathery police station. Ext.A5 final report shows that the accident happened due to the rash and negligence of the petitioner while riding the bike bearing Reg.No. KA- 09/HK- 7632.

10) To prove that, the petitioner sustained injuries in the accident and thereby he is permanently disabled, the petitioner mainly relied on Ext.A6 accident register cum wound certificate, Ext.A8 discharge summary and Ext.C1 medical certificate. As per Ext.A6 wound certificate, the petitioner sustained injuries in the road traffic accident happened on 08/06/2022 due to the collision of bike and jeep near Muthanga check post at around 10.00 am and he was referred to high centre for further management. As per Ext.A8 discharge summary, the petitioner sustained injuries such as : type III A open fracture both bone left leg, degloving injury and deformity injury left index finger and he was treated as inpatient in Spandana Hospital, Mysuru from 09/06/2022 and discharged on 12/06/2022.

11) In Ext.C1 medical certificate issued from District Hospital, Mananthavady, it is reported that the permanent disability of the petitioner is assessed as 9%. So, from Ext.A1 to Ext.A8 & Ext.C1, it is clearly established that the petitioner sustained permanent disablement due to the

injuries sustained in the accident which arose out of the use of the Jeep bearing registration No.KL-53/G- 5118. No contra evidence adduced by the respondent to disprove the same.

12) According to the petitioner he was aged 42 years at the time of accident and his monthly income out of his coolie work was ₹25,000/-. The petitioner seeking compensation under section 164 of Motor Vehicles Act. As per the 2nd schedule of the Motor Vehicle Act, ₹40,000/- is the maximum annual income. The petitioner claimed ₹1,50,000/- as compensation under the head loss of earning. Considering the nature of injuries and period of treatment, the petitioner is entitled to get ₹20,000/- as compensation under this head.

13) The petitioner claimed ₹70,000/- towards compensation for treatment and medicine. To prove the same, he produced Ext.A9 series medical bills for ₹65,705/-. But, under no fault liability, the maximum can be granted under this head is ₹15,000/-. Hence I am inclined to allow maximum of ₹15,000/- towards medical expenditure.

14) The petitioner claimed ₹1,00,000/- under the head pain and suffering. According to the petitioner, he sustained injuries such as: type III A open fracture both bone left leg, degloving injury and deformity injury left index finger. Therefore, the petitioner is entitled to ₹5,000/-

as compensation towards pain and suffering.

15) The petitioner claimed ₹3,50,000/- towards loss of earning power. The annual income of petitioner is taken as ₹40,000/-. As per Ext.C1, the permanent disability of the petitioner is assessed as 9%. The petitioner was aged 42 years at the time of accident. The multiplier to be applied in view of the age of petitioner is 14. So the compensation towards loss of earning power can be assessed at ₹ 50,400/- (40,000x14x9/100).

16) The petitioner is approached this tribunal for claiming compensation under section 164 of Motor Vehicles Act; hence, the petitioner is not entitled to any other compensation.

17) 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)	150000	20,000	Nil
2	Loss of earning (Partial)	0	0	Nil
3	Medical and miscellaneous expenses	70000	15,000	Nil
4	Future treatment	50000	0	Nil
5	Bystander expenses	60000	0	Nil
6	Transportation expenses	30000	0	

7	Extra nourishment	20000	0	Nil
8	Damage to clothing, etc	3000	0	Nil
9	Pain and suffering	100000	5,000	Nil
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	350000	50,400	40,000 x14x9/100
15	Loss of amenities and conveniences, etc	60000	0	Nil
16	Funeral expenses	0	0	Nil
17	Compensation for continuing/permanent disability	200000	0	Nil
18	Physical and mental shock	30000	0	
19	Loss of expectation of life	50000	0	
20	Inconveniences, hardship, discomfort, disappointment	60000	0	
	Total	₹12,33,000/- limited to ₹5,00,000/-	₹90,400/-	

18. Therefore I find it just and reasonable to award ₹90,400/- (Rupees Ninety thousand and four hundred only) as compensation and issue No.2 is answered in favour of petitioner in respect of the compensation awarded as referred to above.

19. **Issue No.3:-** As per the discussions in issue No.1 and 2

petitioner sustained permanent disability on account of the injuries sustained in the accident that arose out of the use of the motor vehicles including the jeep bearing Reg.No. KL- 53/G- 5118. Respondents 1 and 2 are the driver and insurer of that vehicle respectively. Respondent No.2 admitted the insurance coverage for the vehicle. The respondent No.2 being the insurer is liable to indemnify respondent No.1, as the owner and pay compensation awarded to the petitioner. Hence I find that respondent No.2 is liable to pay compensation.

20. **Issue No.4:-** In view of above discussion, the petitioner is entitled to ₹90,400/- (Rupees Ninety thousand and four hundred only) with interest @ 8% per annum from the date of filing of petition i.e., on 08/12/2022, till realisation with proportionate cost.

Respondent No.2 is directed to furnish a cheque for ₹4,373/- towards Court Fee another cheque for ₹5,000/- towards LBF payable by the petitioner in the name of Motor Accidents Claims Tribunal, Kalpetta.

Respondent No.2 is directed to deposit the balance amount directly to the bank account of the petitioner by way of electronic transfer and he is entitled to withdraw the amount as and when required.

Respondent No. 2 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.2 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 30th day of January, 2024)

Sd/-

MOTOR ACCIDENTS CLAIMS TRIBUNAL

APPENDIX

Petitioner's Witnesses : Nil

Petitioner's Exhibits :

A1-	06-10-2022	Copy of FIR
A2-	07-10-2022	Copy of Scene Mahazar
A3-	15-11-2022	Copy of AMVI report
A4-	10-11-2022	Copy of AMVI report
A5-	16-11-2022	Copy of final report
A6-	16-11-2022	Copy of wound certificate

A7-	05-06-2022	Copy of policy
A8-	12-06-2022	Copy of Discharge Summary
A9(s)-	-	Medical bills
A10-	-	Copy of Aadhar
A11-	25-11-2003	Copy of Bank Pass Book

Respondents' Witnesses & Exhibits : Nil

Court Witnesses : Nil

Court Exhibits :

C1-	14-02-2023	Medical Board Report issued by Superintendent, District Hospital, Mananthavady, Wayanad.
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Sd/-
MOTOR ACCIDENTS CLAIMS TRIBUNAL

Typed by : Abhilash Devassy

Compared by : Sindhu A.R.

FCS :

<u>FAIR AWARD IN O.P.(MV)</u> <u>No.547/2022</u>	
<u>Dated : 30/01/2024</u>	
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”.