

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

Thursday, 7th day of December, 2023
16th day of Agrahayana, 1945

ORIGINAL PETITION (MV) No.542/2022

Between:

Goutham Dev P., aged 05 years,(Minor),
Date of Birth 10/08/2017, S/o Bineesh P., Pattelath
House, Kottayithazham, Perumanna Post, Kozhikode
District. Represented by his Mother/Guardian/next
friend: Sribija, D/o Babu, aged 30 years, Illath House,
Nanmanda, Kozhikode District- 673613.

Petitioner

And:

R1. Abdul Salam O.K., aged 37 years,
S/o Kunjimammed O.K., Odalikkandan House,
Konichal, Vythiri Post & Taluk, Wayanad-673123.
(Driver of Maruthi Omini Van No.KL-58/L-6141)

R2. Sajeer A., age about 35 years, S/o Ibrahim,
Ayoth House, Munderi, Kalpetta Post,
Wayanad-673121.
(Owner of Maruthi Omini Van No.KL-58/L-6141)

R3. National Insurance Company Ltd., Branch Office,
Kalpana Shopping Complex, Kalpetta Post, Vythiri
Taluk, Wayanad District-673121
(Insurer of Maruthi Omini Van No.KL-58/L-6141)

Respondents

This OP(MV) is coming on this the 18th day of November, 2023
for final hearing before me in the presence of Sri V.P. Pramod, counsel
for petitioner, Smt.Aneesha K., counsel for respondents 1&2,
Sri. C.P. Prakash Babu, counsel for respondent No.3 and having stood over
for consideration to this day the Tribunal passed the following.

A W A R D

The above application is filed U/s 166(1)(d) of the Motor Vehicles Act, 1988 claiming compensation by the minor petitioner through his mother - next friend for the injuries sustained by the minor in a motor vehicle accident.

2. Case of the petitioner is that on 29/07/2021 at about 3.30 pm, while the minor petitioner was travelling along with his family members from Kalpetta civil station to Bypass road side through Manjadi road; they stopped the vehicle on the extreme left side of the road for his urination. There after, when he was trying to enter into their car, a van bearing Reg.No. KL- 58/L- 6141 driven by 1st respondent, came from the same side in a rash and negligent manner and in over speed had hit on the minor petitioner and he sustained very serious injuries. After the accident, he was taken to Leo Hospital, Kalpetta and treated there as inpatient. At the time of accident, he was aged 05 years. According to him, the accident happened due to the rash and negligent driving of van bearing Reg.No.KL- 58/L- 6141 by the 1st respondent. The respondent No.2 was the owner and respondent No.3 is the insurer of the vehicle; hence respondents 1 to 3 are jointly and severally liable to pay compensation of ₹4,00,000/- to the petitioner.

3. Notice was served to respondents. Respondents 1 to 3 filed written statement.

4. The respondents 1 and 2 filed joint written statement. Their main contentions are as follows:- The respondent No.1 was driving the vehicle in a very slow speed. The amount claimed by the petitioner is very high. Respondent No.2 was having valid vehicular documents. The vehicle was insured with respondent No.3.

5. The 3rd respondent filed written statement. Its main contentions are as follows:- The petition is not maintainable. There was no negligence on the side of 1st respondent. The minor petitioner was entering in the car in a very careless manner. The respondent No.3 admits the validity of insurance coverage of the vehicle bearing Reg.No. KL- 58/L-6141 at the time of accident. The first respondent was not having driving licence and the vehicle was not having vehicular documents.

6. On the basis of the above pleadings, the following issues were framed for consideration.

- 1) Whether the accident happened due to rash or negligent driving of van bearing Reg.No. KL-58/L- 6141 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. Exts.A1 to A11 documents and Ext.C1 document were marked on the side of petitioner to prove his case. No oral evidence was adduced by the petitioner. No evidence was adduced by the respondents.

8. Heard both sides.

9. **Issue No.1** : - According to the petitioner, the accident happened due to the rash and negligent driving of van bearing Reg.No. KL-58/L- 6141 by the respondent No.1. To prove the rash and negligent driving of respondent No.1, the petitioner relied on Ext.A1 to A4 documents. Ext.A1 First Information Report and Ext.A4 Final report submitted by Kalpetta Police against respondent No.1 show that on 29/07/2021 at 15.30 hours, the van bearing Reg.No. KL- 58/L- 6141 hit down the petitioner due to the rash and negligent driving of respondent No.1 and as a result, the petitioner sustained injuries. A Crime No. 730/2021 For offences punishable U/ss 279 and 338 of IPC was registered against respondent No.1 by Kalpetta Police. Ext.A2 is the scene mahazar and Ext.A3 is the report of the inspection of motor vehicle. No contrary evidence was adduced by respondents to rule out the negligence on the part of the respondent No. 1. *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 van bearing Reg.No. KL- 58/L- 6141 by the 1st respondent. Thus, issue No.1 is found in favour of petitioner.

10. **Issue Nos.2 and 3:-** The fact that the accident arose out of the use of a motor vehicle is established from Ext.A1 to A4 documents. To prove the fact that the petitioner sustained injuries in the accident and was treated in the hospital, he produced Ext.A5 wound certificate and Ext.A6 discharge summary. Ext.A7 is the CT scan report of brain (Plain), Ext.A8 series are the prescriptions. Ext.A9 series are the photographs. Exts.A5 and A6 documents show that the petitioner sustained injuries in the road traffic accident. In the above circumstances I hold that the petitioner is entitled for a just and reasonable compensation. Now the question to be decided is about the quantum of compensation to be awarded to the petitioner.

11. The petitioner was a minor aged 05 years and a student. Hence there is no question of loss of earning power during the period of hospitalization.

12. The petitioner claimed ₹20,000/- towards transportation to hospital. Ext.A10 series trip sheets were produced by the petitioner to prove his claim under this head. Ext.A10 series shows that the petitioner had incurred an amount of ₹26,300/- towards transportation expenses. Hence I am inclined to allow ₹26,300/- towards travelling expense.

13. The petitioner claimed ₹5,000/- under the head damage to clothing; but, I am inclined to allow ₹2,000/- for damage to clothing.

14. The petitioner claimed ₹25,000/- under the head by-stander's expense and ₹50,000/- under the head extra nourishment. Considering the fact that the petitioner was treated as inpatient for 17 days in Leo Hospital, Kalpetta, I am inclined to allow ₹8,500/- under the head bystanders expense and ₹2,500/- under the head extra nourishment.

15. The petitioner claimed ₹2,00,000/- towards medical expenses. To prove the same he has produced Ext.A11 series medical bills amounting to ₹62,157/-. Hence I am inclined to award ₹62,157/- as compensation under this head.

16. The petitioner claimed ₹1,00,000/- towards loss of amenities and ₹2,00,000/- towards compensation for continuing or permanent disability and ₹50,000/- towards loss of earning power. Ext.C1 medical certificate shows that the petitioner sustained injuries such as, degloving

injury left leg ankle with tendon injury and fracture tibia left and assessed his permanent disability as 3%. In *Mallikarjun v. Divisional Manager, National Insurance Co. Ltd and another* (2013(3)KLJ 815), the Hon'ble Apex Court observed as follows:- *“Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, ₹3 lakhs; upto 60%, ₹4 lakhs; upto 90%, ₹5 lakhs and above 90%, it should be ₹6 lakhs. For permanent disability upto 10%, it should be ₹1 lakh, unless there are exceptional circumstances to take different yardstick”.*

17. Thus, in view of the above dictum and by considering the infirmities (3%) stated in Exhibit C1 percentage of disability, the minor is entitled to ₹1,00,000/- as compensation towards compensation for disability.

18. 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)	0	0	Nil
2	Loss of earning (Partial)	0	0	Nil
3	Medical and miscellaneous expenses	200000	62,157	Ext. A11 series
4	Future treatment	0	0	Nil
5	Bystander expenses	25000	8,500	17x500
6	Transportation expenses	20000	26,300	Ext.A10 series
7	Extra nourishment	50000	2,500	Nil
8	Damage to clothing, etc	5000	2,000	Nil
9	Pain and suffering	200000	0	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	00	0	Nil
14	Loss/reduction in earning capacity	50000	1,00,000	As per Mallikarjuna case
15	Loss of amenities and conveniences, etc	100000		
16	Compensation for continuing/permanent disability	200000		
17	Physical and mental shock	0	0	
18	Loss of expectation of life	0		
19	Inconveniences, hardship, discomfort, frustration, disappointment and mental stress in life	0		
	Total	₹8,50,000/- claim limited to 4 lakh	₹2,01,457/- rounded to ₹2,01,500/-	

19. Therefore I find it just and reasonable to award ₹2,01,500/- (Rupees Two lakh one thousand and five hundred only) as compensation and Issue No.2 is answered in favour of petitioner in respect of the compensation awarded as referred to above.

20. **Issue No.4:-** It is already found that the accident took place due to the rash and negligent driving of van bearing Reg.No.KL- 58/L- 6141 by respondent No.1. The respondent No.2 was the owner. The vehicle was insured with respondent No.3. Hence, respondents 1 to 3 are jointly and severally liable to pay compensation awarded by this Tribunal to the petitioner. The respondent No.3 being the insurer is liable to indemnify respondent No. 2 and pay compensation awarded. Thus, issue No.4 is answered accordingly.

21. In the result, this application is allowed and an award is passed for **₹2,01,500/- (Rupees Two lakh one thousand and five hundred only)** with interest @ 8% per annum from the date of filing of petition i.e., on 07/12/2022, till realisation with proportionate cost.

Respondent No.3 is directed to furnish a cheque for ₹3,373/- towards Court Fee and another cheque for ₹4,000/- towards LBF payable by the petitioner in the name of Motor Accidents Claims Tribunal, Wayanad.

Respondent No.3 is directed to deposit **₹100,000/-** (Rupees One lakh

only) directly to the Bank Account of the minor petitioner and produce before the Bank, in which minor petitioner is holding the account, along with a copy of this Award to create a fixed deposit in the name of minor petitioner till he attains majority.

Respondent No.3 is directed to deposit the balance amount directly to the bank account of the guardian/mother of the minor by way of electronic transfer and she is entitled to draw the amount as and when required.

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 7th day of December, 2023).

Sd/-

MOTOR ACCIDENTS CLAIMS TRIBUNAL

APPENDIX

Petitioner's Witnesses: Nil

Petitioner's Exhibits:

A1-	30/08/2021	Copy of First Information Report & First Information Statement
A2-	31/08/2021	Copy of Scene Mahazer
A3-	02/09/2021	Copy of AMVI Report
A4-	-	Copy of Charge Sheet
A5-	14/08/2021	Copy of Wound Certificate
A6-	14/08/2021	Copy of Discharge Summary
A7-	29/07/2021	CT Scan Report (Brain)
A8(s)-	-	Prescriptions
A9(s)-	-	Photographs
A10(s)-	-	Trip Sheets
A11(s)-	-	Medical bills

Respondents' Witnesses & Exhibits: Nil

Court Witnesses : Nil

Court Exhibits:

C1-	22/08/2023	Medical Board Report issued by Superintendent, District Hospital, Mananthavady, Wayanad.
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Sd/-

MOTOR ACCIDENTS CLAIMS TRIBUNAL

Typed by : Ramla T.
Compared by : Sindhu A.R.
FCS :

<u>FAIR AWARD IN O.P.(MV)</u> <u>No.542/2022</u>	
<u>Dated: 07/12/2023</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".