

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

Saturday, 16th day of December, 2023
25th day of Agrahayana, 1945

ORIGINAL PETITION (MV) No.541/2022

Between:

Nejiha Nishath, aged 35 years, W/o.Shabeer Ali M.K.,
Shafreena Manzil, Kunnathidavaka, Vythiri Taluk,
Wayanad District – 673 576.

} Petitioner

And:

R1. Mohammed Ershad, aged 23 years,
S/o.Sulaiman A.M., Anamchirackal House,
Vythiri Post, Wayanad – 673 576.
(Driver of KL-12/A 2970 Jeep)

R2. Sulaiman, aged 50 years, S/o.Muhammed,
Anamchirackal House, Vythiri Post,
Wayanad – 673 576.
(Owner of KL-12/A 2970 Jeep)

R3. The Branch Manager, New India Assurance
Company Ltd., Kalpetta DO 72200 MGT,
Kalpetta North, Wayanad – 673 122.
(Insurer of KL-12/A 2970 Jeep)

} Respondents

This OP(MV) is coming on this the 28th day of November, 2023 for final hearing before me in the presence of Sri.A.J.Antony and Smt.Aneesha K., counsels for petitioner, Sri.K.M.Thomas, counsel for respondent No.3, respondents 1 and 2 remained exparte and having stood over for consideration to this day the Tribunal passed the following.

A W A R D

This application is filed for compensation U/s 166 (1)(a) of The Motor Vehicles Act, 1988 due to the bodily injuries caused to the petitioner, in a road accident.

2. The case of the petitioner is that on 25/05/2022 at about 09.00 a.m, while the petitioner was travelling as a pillion rider of the scooter bearing Reg.No. KL-12/K- 7029 from Vythiri to Vengappally and when they reached at Pozhuthana junction at Vythiri, another vehicle bearing registration No. KL-12/A- 2970, driven by respondent No.1 in a rash and negligent manner and in over speed had hit on the vehicle on which the petitioner was travelling. Due to the accident, the petitioner sustained serious injuries and she was taken to Vythiri Hospital and after giving first aid due to the dental injuries she was referred to Leo Hospital, Kalpetta. At the time of accident she was aged 35 years, working as Lab technician, under Health Department, Government of Kerala and has earning ₹41,065/- per month. The accident happened only due to the rash and negligent driving of jeep bearing registration No. KL-12/A- 2970 by the respondent No.1. The vehicle was owned by respondent No.2 and insured with respondent No.3. Hence, the respondents are jointly and severally liable to pay compensation to the petitioner. The petitioner

claimed ₹6,14,065/- as compensation, but the claim has been limited to ₹3,00,000/-.

3. Respondents 1 and 2 did not file written statment; hence they were remained ex parte.

4. The respondent No.3 filed written statement. It's main contentions are as follows: The respondent No.3 denies the cause of accident. The accident happened due to the rash and negligent riding of scooter bearing Reg.No. KL-12/K- 7029 by its rider. The petition is bad for non joinder of necessary parties. There was no rashness or negligence on the part of 1st respondent in driving the jeep bearing Reg. No. KL-12/A- 2970. The respondent No.3 admits the insurance coverage of the jeep bearing Reg.No. KL-12/A- 2970. The respondent No.3 denies the validity of vehicular documents and the validity of driving licence of 1st respondent. The amount claimed by the petitioner is highly exorbitant.

5. On the basis of the pleading of the parties, the Tribunal framed the following issues.

- (1) Whether the accident happened due to the rash and negligent driving of vehicle bearing Reg.No.KL-12/A- 2970 by the respondent No.1?
- (2) Whether the petitioner sustained injuries due to the negligent act of 1st respondent and is the petitioner entitled to get compensation as claimed and if so what is the quantum?

(3) Who is liable to pay compensation to the petitioner?

(4) Relief and cost?

6. Neither the parties adduced oral evidence. On the side of the petitioner Ext.A1 to A15 documents were marked. No documents were marked on the side of respondents.

7. **Issue No.1** : The case of the petitioner is that the accident happened only due to the negligent driving of jeep bearing Reg.No KL-12/A- 2970 by the respondent No.1. To prove the rash and negligence, the petitioner has produced Ext.A1 First Information Report, Ext.A2 Scene Mahazar, Ext.A3 & A4 AMVI Reports and Ext.A5 Charge Sheet. Ext.A5 copy of final report shows that the petitioner sustained injuries due to the rash and negligent driving of vehicle No. KL-12/A- 2970 by the respondent No.1 and a Crime No. 208/2022 for offences punishable U/s 279, 337 and 338 of IPC was registered against respondent No.1 by Vythiri 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 vehicle bearing Reg.No. KL-12/A- 2970 by the 1st respondent. Thus, issue No.1 is found in favour of petitioner.

8. **Issue No.2:-** Ext.A6 accident register cum wound certificate issued by Vythiri Taluk Head Quarters Hospital shows that the petitioner sustained injuries in the accident. Ext.A10 CT Scan report and Ext.A12 series OP tickets were produced by the petitioner to substantiate her case. In the above circumstances I hold that petitioner is entitled to a just and reasonable compensation.

9. According to the petitioner, she was aged 35 years and has been earning ₹41,065/- per month from her job. The petitioner claimed ₹41,065/- as compensation under the head loss of earnings. Ext.A7 medical certificate and Ext.A11 salary slip were produced by the petitioner. But, she did not produce any certificate to prove that she sustained any loss of earning due to the accident. Therefore the petitioner is not entitled to get any compensation under this head.

10. The petitioner claimed for ₹5,000/- as compensation towards transportation charges. Considering the distance from the

residence of petitioner to the hospital where she had undergone treatment, I am inclined to allow ₹5,000/- towards travelling expense.

11. There was no hospitalisation and therefore, no bystander charge is need to be awarded.

12. Towards extra nourishment, ₹1,000/- is allowed.

13. The petitioner is entitled to ₹2,000/- as compensation under the head damage to clothing as reasonable amount.

14. The petitioner claimed ₹1,00,000/- towards compensation for treatment and medicine and produced Ext.A13 series medical bills to prove the same. But, Ext.A13 series documents show that she had incurred an amount of ₹15,350/- only towards treatment expense. Hence I am inclined to allow ₹15,350/- towards medical expenditure.

15. The petitioner claimed ₹50,000/- under the head pain and suffering. According to the petitioner, she sustained injuries such as, pain left leg, left hand and dental injury, abrasion on right side of face, abrasion on left heel, leg and knee, and fracture to mandible teeth. Considering all these aspects I am inclined to allow compensation under the heads, ₹25,000/- towards pain and suffering, ₹10,000/- towards loss of amenities and ₹5,000/- towards inconveniences caused.

16. The petitioner claimed ₹10,000/- towards loss of earning power. Admittedly the petitioner is a government employee and the materials available before the Tribunal do not show that the petitioner had suffered any disability due to accident. Hence the petitioner is not entitled to get compensation under this head.

17. The petitioner claimed ₹1,00,000/- towards compensation for future treatment. Ext.A7 medical certificate shows that the petitioner sustained fracture to mandible teeth. Therefore I am inclined to allow ₹40,000/- as compensation under this head.

18. The compensation claimed by the petitioner in all other remaining heads are denied as there is no evidence to substantiate the claim under these heads.

19. 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)	41065	0	Nil
2	Loss of earning (Partial)	0	0	Nil
3	Medical and miscellaneous expenses	100000	15,350	Ext.A13series

4	Future treatment	100000	40,000	Ext.A7
5	Bystander expenses	5000	0	Nil
6	Transportation expenses	5000	5,000	Nil
7	Extra nourishment	25000	1,000	Nil
8	Damage to clothing, etc	3000	2,000	Nil
9	Pain and suffering	50000	25,000	For major fracture
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	10000	0	Nil
15	Loss of amenities and conveniences, etc	100000	10,000	Nil
16	Compensation for continuing/permanent disability	50000	0	Nil
17	Physical and mental shock	25000	0	Nil
18	Loss of expectation of life	25000	0	
19	Inconveniences, hardship, discomfort, frustration, disappointment and mental stress in life	25000	5,000	Nil
	Total	₹6,14,065/- claim limited to 3 lakh	₹1,03,350/- rounded to ₹1,03,400/-	

20. Therefore I find it just and reasonable to award ₹1,03,400/- (Rupees One lakh three 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.

21. **Issue No.3:-** As per the above findings, the accident happened due to the rash and negligent driving of jeep bearing Reg.No. KL-12/A- 2970. Respondents 1 and 2 are the driver and owner respectively. Respondent No.3 admitted the insurance coverage of the vehicle during the period of accident. 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 to the petitioner. The issue No.3 is answered accordingly.

22. **Issue No. 4 :-** Respondent No.1 is the tortfeasor and respondent No.3 is liable to pay compensation to the petitioner, as discussed above.

23. In the result, this application is allowed and an award is passed for **₹1,03,400/- (Rupees One lakh three thousand and four hundred only)** with interest @ 8% per annum from the date of filing of petition i.e., on 06/12/2022, 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 ₹2,373/- towards Court Fee and ₹3,000/- 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 her 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 16th day of December, 2023)

Sd/-

MOTOR ACCIDENTS CLAIMS TRIBUNAL

APPENDIX

Petitioner's Witnesses: Nil

Petitioner's Exhibits :

A1-	25/05/2020	Copy of First Information Report
A2-	26/05/2022	Copy of Scene Mahazer
A3(s)-	31/05/2022	Copy of AMVI Report
A4-	31/05/2022	Copy of AMVI Report
A5-	-	Copy of Final Report
A6-	25/05/2022	Copy of Wound Certificate
A7-	25/05/2022	Copy of Medical Certificate
A8-	15-12-2021	Copy of Policy
A9-	07/09/2017	Copy of Driving License
A10-	25/05/2022	CT Scan Report (Brain)
A11-	26/09/2023	Salary Slip
A12(s)-	-	OP Tickets
A13(s)-	-	Medical Bills
A14-	-	Copy of Aadhar Card
A15-	20/10/2011	Copy of Bank Pass Book

Respondents' Witnesses & Exhibits: Nil

Court Witnesses & Exhibits : Nil

Sd/-
MOTOR ACCIDENTS CLAIMS TRIBUNAL

Typed by : Shinu V J
Compared by : Sindhu A R
FCS :

<u>FAIR AWARD IN</u> <u>O.P.(MV) No.541/2022</u>	
<u>Dated: 16/12/2023</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”.