

IN THE COURT OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL,
KOLLAM

Present: Smt. Prasanna Gopan, MACT, Kollam

Friday the 12th day of July, 2024

21st day of Ashada, 1946

OP(MV) No. 2077/2022

Between

Petitioner :

Ananthu S, aged 25 years, S/o. Sajeerv,
Ananthu Nivas, Uliyanad,
Karamcodu P.O.,
Kollam – 691579.

By Adv . : Sri. R. Dileepkumar

And

Respondents :

1. Renju,
Thiruvathira,
Karamcodu P.O.,
Kollam
2. Vipin, S/o. Mohanan,
Thanal Veedu, Uliyanad,
Karamcodu P.O., Kollam.

3. Divisional Manager,
New India Assurance Company Ltd.,
Beach Road, Chinnakkada,
Kollam – 691001.

By Adv. : Sri. V. Syam Prakash for R3

1st & 2nd Respondents were set ex-parte.

This OP(MV) is coming on for hearing before me on 27-06-2024 and having stood over to 12-07-2024 for consideration and on the same day the Tribunal passed the following:-

AWARD

Petition for compensation filed under Section 140 & 166 of the Motor Vehicles Act claiming compensation for the injuries sustained by the petitioner in the motor accident which occurred on 03/11/2021.

2. The petitioner's case is that on 03/11/2021 at about 8.30 pm the petitioner was riding the motorcycle bearing Reg.No.KL 02 AZ 1422 along Kochalummoodu – Uliyanad road and when the motorcycle reached at Kotheri Junction the scooter bearing Reg.No.KL 02 AT 1395 ridden by the 2nd respondent in a rash and negligent manner came from the opposite direction and hit the motorcycle ridden by the petitioner as a result of which he fell on the road and sustained serious injuries. The petitioner was a coolie and was having a monthly income of ₹20,000/- at the time of accident. The 1st respondent is the owner, the 2nd respondent is the rider and the 3rd respondent is the insurer of the offending scooter. The petitioner is entitled to claim compensation jointly and severally from the respondents.

3. The 1st and 2nd respondents remain exparte.

4. The 3rd respondent filed written statement contending that the petitioner has to prove the alleged injuries. The petitioner sustained only minor injuries and the injuries have not caused any disability to the petitioner. The petitioner has to prove the treatment undergone by him. The amount of compensation claimed is exorbitant. The allegation that the accident occurred due to the rash and negligent riding of the scooter by the 2nd respondent is false. The accident occurred solely due to the negligence of the petitioner.

5. The issues which arise for consideration are:

1. Whether the accident occurred on 03/11/2021 due to the rash and negligent riding of the scooter as alleged?
2. Whether the petitioner sustained injuries in the accident as alleged?
3. Whether the petitioner is entitled to recover compensation from the respondents? If so what is the quantum of award and from whom to be recovered?
4. Relief and costs?

6. Exts.A1 to A12 and Ext.X1 were marked from the side of the petitioner and no evidence was adduced from the side of the respondents.

7. Heard both sides.

8. Issue No.1

The petitioner produced Ext.A1, first information report and first information statement in crime No.586/2021, Chathannoor Police Station and Ext.A2, final report filed by the police after conducting investigation wherein it is stated that on 03/11/2021 at about 8.30 pm the petitioner was riding the motorcycle bearing Reg.No.KL 02 AZ 1422 along Kochalummoodu – Uliyanad road and when the motorcycle reached at Kotheri Junction the scooter bearing Reg.No.KL 02 AT 1395 ridden by the 2nd respondent in a rash and negligent manner came from the opposite direction and hit the motorcycle ridden by the petitioner as a result of which he fell on the road and sustained serious injuries.

9. It is contended by the 3rd respondent that the accident occurred solely due to the negligence of the petitioner. But it is prima facie evident from Ext.A2, charge sheet that the accident happened due to the rash and negligent riding of the offending scooter by the 2nd respondent. In **New India Assurance Company Ltd. Vs. Pazhaniammal (2011 (3) KLT 648)**, *the Division Bench of the Hon'ble High Court held that as a general rule it can safely be accepted that production of the police charge sheet is prima facie sufficient evidence of negligence for the purpose of a claim under S. 166 of the Motor Vehicle Act.* In this case as per Ext.A2, final report the police concluded after investigation that the accident in which the petitioner sustained injuries was caused as a result of the rash and negligent riding of the offending vehicle by the 2nd respondent. The prima facie proof of negligence on the part of the 2nd respondent which is established by Ext.A2, final report is not rebutted by the respondents by adducing contra evidence. *The Hon'ble High Court of Kerala held in Balan.R V. Abhiraj.R and others [2021 (4) KHC 380] that production of police charge sheet is prima facie sufficient evidence to find negligence.* Deviation from police charge is possible only when evidence is adduced to disbelieve the charge sheet, but no evidence is adduced. Hence issue No.1 is found in favour of the petitioner.

10. **Issue No. 2 & 3:**

Ext.A5, wound certificate issued from the KIMS Hospital, Kollam would reveal that the petitioner sustained punctured wound star shaped over left parietal region over scalp, multiple abrasions over face, punctured wound left arm near elbow 2x2cm, deformity of left humerus. Ext.A7, discharge summary issued from the Government Medical College Hospital, Thiruvananthapuram would reveal that the petitioner was admitted in that

hospital on 04/11/2021 and was discharged on 16/11/2021 and the diagnosis was fracture distal humerus left with radial nerve palsy, preop grade 2 splenic injury. Ext.A8, discharge summary issued from the Sreechand Hospital, Kannur would reveal that the petitioner was admitted in that hospital on 14/06/2022 and was discharged on 15/06/2022 and the diagnosis was left radial nerve palsy. Ext.A9, discharge summary issued from the Sreechand Hospital, Kannur would reveal that the petitioner was admitted in that hospital on 25/05/2023 and was discharged on 27/05/2023 and the final diagnosis was united left distal humerus fracture with implant in situ with SS infection.

11. The petitioner appeared before the Medical Board, Government Medical College Hospital, Kollam for the purpose of assessment of disability. The Medical Board examined the petitioner and issued Ext.X1, disability certificate stating that the petitioner has permanent disability 7% and permanent disability 7% is taken into consideration for computing compensation for loss of earning power on account of permanent disability.

12. The petitioner's case is that he was a coolie and was having a monthly income of ₹20,000/- at the time of accident. It is evident from Ext.A1, First Information Statement that the petitioner gave statement before police that he had no specific job. There is no evidence to prove the income of the petitioner. So the monthly income of the petitioner is fixed at ₹15,000/- notionally.

13. It is evident from Ext.A11, copy of Pan Card that the date of birth of the petitioner is 24/06/1997 and that he was aged 24 years at the time of

accident and in view of the decision reported in **Sarla Varma and others V. Delhi Transport Corporation [2010 (2) KLT 802 (SC)]** multiplier 18 is adopted for computing compensation for permanent disability as the petitioner was in the age group of 21-25 years at the time of accident. Relying on the decision reported in **Pappu Deo Yadav Vs. Naresh Kumar and Others (2020 KHC 6547)** and the decision reported in **National Insurance Company Vs. Pranay Sethi and Others [2017 (5) KHC 350]** 40% of the income is added as future prospects to the income of the petitioner. Thus compensation for loss of earning capacity on account of permanent disability of the petitioner is calculated as follows:

$$15,000+(15,000 \times 40\%) \times 12 \times 18 \times 7\% = \text{₹}3,17,520/-$$

14. Considering the nature of injuries sustained by the petitioner he might have been incapacitated to do his works for 6 months. Hence towards loss of earning the petitioner is entitled to get compensation of **₹90,000/-** (**₹15,000/-** x 6 months). Considering the nature of the injuries sustained by the petitioner and the pain and suffering undergone by him it is reasonable to award an amount of **₹1,00,000/-** as compensation for pain and suffering and an amount of **₹75,000/-** as compensation for loss of amenities. It is reasonable to award an amount of **₹3,000/-** towards damage to clothing, an amount of **₹10,000/-** towards extra nourishment, an amount of **₹10,000/-** towards

transport to hospital and an amount of ₹9,000/- (18x500) towards bystander's expenses. The petitioner claims an amount of ₹50,000/- towards medical expenses and an amount of ₹1,41,405/- is awarded based on Ext. A12 medical bills.

The table of compensation advanced by the petitioner and awarded by the Tribunal is given below.

Sl. No.	Head of Claim	Amount Claimed	Amount Awarded
a	Loss of earnings	60,000/-	90,000/-
b	Transport to hospital	2,000/-	10,000/-
c	Extra nourishment	3,000/-	10,000/-
d	Damage to clothing and articles	5,000/-	3,000/-
e	Others: (1) Medicine	50,000/-	1,41,405
	(2) Bystander expenses	30,000/-	9,000/-
	Compensation for pain and sufferings	1,00,000/-	1,00,000/-
	Compensation continuing or permanent disability if any	26,00,000/-	3,17,520/-
	Compensation for loss of earning power	5,00,000/-	
f	Compensation for loss of amenities	50,000/-	75,000/-
g.	Compensation for disfiguration	50,000/-	
	Total	₹8,00,000/-	₹7,55,925/-
(Rupees Seven Lakhs Fifty Five Thousand Nine Hundred and Twenty Five only)			

15. According to the petitioner the offending vehicle had insurance coverage with the 3rd respondent at the time of accident. The 3rd respondent

has not denied the fact that the offending vehicle had insurance coverage with it at the time of accident. So the 3rd respondent is liable to indemnify the 1st respondent and to compensate the petitioner and issue No.2 & 3 are found in favour of the petitioner accordingly.

16. Issue No.4

In the result, OP is allowed in part and award is passed in favour of the petitioner as follows :

1. Petitioner is entitled to recover an amount of **₹7,55,925/- (Rupees Seven Lakhs Fifty Five Thousand Nine Hundred and Twenty Five only)** with 9% interest per annum thereon from the date of filing of the original petition, i.e., from 30/09/2022 till date of realization and proportionate costs from the 3rd respondent.

2. The 3rd respondent is directed to produce crossed cheque for ₹7,373/- towards court fee and for ₹8,000/- towards legal benefit fund in favour of the Motor Accident Claims Tribunal, Kollam.

3. The 3rd respondent is directed to deposit the balance award amount after deducting the court fee and the amount towards legal benefit fund directly

by NEFT or RTGS or any other electronic mode to the credit of the bank account of the Motor Accident Claims Tribunal, Kollam maintained with the State Bank of India, Civil Station Branch, Kollam with Account No. **42796965391** (IFSC Code SBIN0070053, MICR Code 691002903).

4. The bank account details of the petitioner are given below:-

The Indian Bank, The Indian Bank Ltd., Chirakkara Branch, IFSC Code No. IDIB000C141 MICR Code 691019803, Account Number 7135325142.

5. Office shall issue free copy of the award to the petitioner and the 3rd respondent forthwith.

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

Sd/-
Prasanna Gopan
Motor Accident Claims Tribunal

Appendix:-
Exhibits for the Petitioner:-

A1	04-12-2021	Copy of FIR & FIS
A2	18-12-2021	Copy of Final Report

A3	04-12-2021	Copy of Scene Mahazar
A4	06-12-2021	Copy of Vehicle Mahazar
A5	03-11-2021	Copy of Wound Certificate
A6	06-12-2021	Copy of AMVI Report
A7	16-11-2021	Copy of Discharge Summary
A8	15-06-2022	Copy of Discharge Summary
A9	27-05-2023	Copy of Discharge Summary
A10	-	Copy of Aadhar Card
A11	-	Copy of Pan Card
A12	-	Medical Bills

Exhibits for the Respondents : Nil

Third Party Exhibits :

X1 26-03-2024 Disability Certificate

Witness examined for both sides : Nil

Id/-
Motor Accidents Claims Tribunal

Note as per Rule 7(2) of destruction of records Rules 2004.

(" The parties should apply as soon as possible for the return of all documents which they may wish to preserve, as the record will be liable to be destroyed twelve years from this date").

Data Entry By : Ramsa Beevi. E.

Compared By : Remya T.R.

MOTOR ACCIDENTS CLAIMS TRIBUNAL, KOLLAM

**Memo of Cost
OP(MV) 2077/2022**

1.	Court fee	₹ 7,373/-
2.	Legal Benefit Fund	₹ 8,000/-
3.	Vakkalath fee	₹ 6/-
4.	Stamp for Exhibits	₹ 20/-
5.	Process fee	₹ 90/-
6.	Petition fee	₹ 5/-
7.	Writing Fee	₹ 500/-
8.	Advocate Fee	₹ 40,196/-

Total	----- ₹ 56,190/- =====
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(Rupees Fifty Six Thousand One Hundred and Ninety only)

Id/-
Motor Accidents Claims Tribunal

Copy of Award in
OP(MV) No. 2077/2022
Dated: 12/07/2024