

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

Thursday, 7th day of March, 2024
17th day of Phalguna, 1945

ORIGINAL PETITION (MV) No.483/2022

Between:

Jomish, aged 32 years, S/o.Jose, Muttapalliyil House,
Perikkallur Post, Pulpally, Sulthanbathery Taluk,
Wayanad District – 673 579.

} Petitioner

And:

R1. Ibrahim, aged 29 years, S/o.Abdulla, Siddique Manzil,
Elannur, Iritty, Chavasseri Post, Kannur Dt.- 670 702.
(Driver of Tanker Lorry No.KL-58/Z 4302)

R2. Shini Joseph, W/o.George Joseph, Karamayil House,
Payanchery, Iritty Post, Kannur District – 670 703.
(RC Owner of Tanker Lorry No.KL-58/Z 4302)

R3. The Manager, New India Assurance Company Limited,
Kalpetta North Post, Wayanad District – 673 122.
(Insurer of Tanker Lorry No.KL-58/Z 4302)

} Respondents

This OP(MV) is coming on this the 22nd day of February, 2024 for final hearing before me in the presence of Sri.Sreekumar S. & Smt.Jomcy John, counsels for petitioner, Sri.K.P.Sebastian, 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.166 of the Motor Vehicles Act, 1988.

2) The case of the petitioner is as follows:- On 19/11/2021 at about 11.30 pm, while the petitioner was driving the lorry bearing registration No. KL-73/C 2151 with vegetables to Kayamkulam through Tanur- Tirur public road and when the lorry reached at Nadakavu bus stop in Nadakkavu amsom, a tanker lorry bearing registration No. KL- 58/Z 4302 driven by 1st respondent, in a rash and negligent manner had hit against the petitioner's lorry. As a result of the impact, the petitioner sustained injuries. After the accident, the petitioner was taken to nearby Mission Hospital and after giving first aid, he was taken to Aster MIMS Hospital, Kottakkal and from there to Iqraa Hospital, Kozhikode. At the time of accident, the petitioner was aged 32 years. The accident happened due to the rash and negligent driving of lorry bearing Reg.No KL- 58/Z 4302 by the 1st respondent. The 2nd respondent was the owner and 3rd respondent was the insurer ; hence, respondents 1 to 3 are jointly and severally liable to pay compensation of ₹12,00,000/- to the petitioner.

3) Respondent No.3 appeared and filed written statement. But respondents 1 and 2 did not file written statement, hence they were set ex parte.

4) The main contentions of 3rd respondent are as follows:- The petition is not maintainable. The respondent denies the cause of accident.

The respondent No.3 admits the validity of insurance coverage of the tanker lorry bearing Reg.No.KL-58/Z 4302. 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.

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

- (1) Whether the accident happened due to the rash and negligent driving of lorry bearing Reg.No. KL-58/Z 4302 by the respondent No.1?
- (2) Whether the petitioner sustained injuries due to the negligent act of respondent No.1 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 parties adduced oral evidence. Exts.A1 to A14 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.

7) Heard both sides.

8) **Issue No.1** : - According to the petitioner, the accident

happened due to the rash and negligent driving of respondent No.1. To prove the rashness and negligence of respondent No.1, the petitioner relied on Ext.A1 copy of First Information Report, Ext.A2 copy of scene mahazar, Ext.A3 AMVI reports and Ext.A4 copy of charge sheet. On perusal of Ext.A1 and A4 documents, it is seen that the accident happened due to the rash and negligent driving of tanker lorry bearing Reg.No. KL- 58/Z 4302 by the respondent No.1 and a crime No: 634/2021 was registered against respondent No.1 by the Tanur 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 lorry bearing Reg.No. KL- 58/Z 4302 by the 1st respondent. Thus, issue No.1 is found in favour of petitioner.

9) **Issue No.2:-** Ext.A5 accident register cum wound certificate issued by Iqraa Hospital, Calicut shows that the petitioner sustained injuries in the road traffic accident. Ext.A6 discharge summary, Ext.A11 discharge summary and Ext.A13 clinical investigation report were also produced by

the petitioner. These documents would prove the injuries sustained by the petitioner in the road traffic accident and the treatment undergone by him. In the above circumstances I hold that petitioner is entitled to a just and reasonable compensation.

10) According to the petitioner, he is a lorry driver and has been earning ₹30,000/- per month. But, no cogent evidence was adduced by the petitioner to prove the avocation and income. Therefore ₹13,000/- 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 ₹2,70,000/- towards loss of earning. As per Ext.A6 discharge summary, the petitioner sustained injuries such as, lateral condylar fracture right tibia, and right 5th metacarpal fracture. The nature of injuries and period of treatment undergone by the petitioner would indicate that he would have been prevented from doing any sort of work for a minimum period of three months. Hence I am inclined to allow ₹39,000/-, @ ₹13,000/- per month being the actual loss of earning for a period of three months.

11) The petitioner claimed ₹40,000/- as compensation towards transportation charges and produced Ext.A9 series tripsheets for

₹35,100/-. Ext.A9 series documents are not disputed by respondents. Therefore, Ext.A9 series can be considered as the proof for transportation charges. Hence, I am inclined to allow ₹35,100/- towards travelling expense.

12) The petitioner claimed ₹15,000/- under the head bystander's expense. The learned counsel for the petitioner submitted that the petitioner was hospitalized for 9 days. Therefore the petitioner is entitled to ₹4,500/- (500x9) towards bystanders expenses.

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

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

15) The petitioner claimed ₹2,00,000/- towards compensation for treatment and medicine and produced Ext.A10 series medical bills, Ext.A14 medical bills and Ext.A12 discharge bill and Ext.A6(a) discharge bill to prove the same. But, these documents show that he had incurred an expenditure of ₹1,49,079/- only towards treatment expense. Hence I am inclined to allow ₹1,49,079/- towards the medical expenditure.

16) The petitioner claimed ₹1,00,000/- under the head pain and suffering. As per the medical records, the petitioner sustained lateral condylar fracture right tibia, and right 5th metacarpal fracture. Considering

the nature of injuries, I am inclined to allow ₹30,000/- as compensation towards pain and suffering.

17) Ext.C1 Medical certificate issued by Medical Board, District Hospital, Mananthavady shows that petitioner sustained injury such as, tibial plateau fracture schatzker type 2 – right leg and fracture head of 5th metacarpal right hand and percentage of disability is 3%. 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 ₹20,000/- under the head loss of amenities and ₹10,000/- under the head inconveniences caused.

18) The petitioner claimed ₹9,18,000/- 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 ₹20,000/- is awarded for loss of amenities and enjoyment in life, I am not inclined to award compensation under the above heads separately.

19) The petitioner claimed ₹1,00,000/- towards loss of earning power. The monthly income of petitioner is already arrived at ₹13,000/-. The age of petitioner was aged 32 years at the time of accident. For the age group between 31 and 35, the applicable multiplier is ' 16 ' 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 suffered 3% 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 3% 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 ₹74,880/- ie. $[\text{₹}13,000 \times 12 \times 16 \times 3/100]$ (annual income x multiplier x percentage of functional disability)].

20) 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.

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)	270000	39,000	₹13000x3 months
2	Loss of earning (Partial)	0	0	Nil
3	Medical and miscellaneous expenses	200000	1,49,079	Ext. A10 series, A12, A6(a) and A14 series
4	Future treatment	100000	0	Nil
5	Bystander expenses	15000	4,500	9x500
6	Transportation expenses	40000	35,100	Ext. A9 series
7	Extra nourishment	10000	5,000	Nil
8	Damage to clothing, etc	5000	2,000	Nil
9	Pain and suffering	100000	30,000	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	100000	74,880	13000x12x16 x3/100
15	Loss of amenities and	0	20,000	Nil

	conveniences, etc			
16	Compensation for continuing/permanent disability	918000	0	Nil
17	Physical and mental shock	50000	0	Nil
18	Loss of expectation of life	0	0	Nil
19	Inconveniences, hardship, discomfort, frustration, disappointment and mental stress in life	0	10,000	Nil
	Total	₹18,08,000/- claim limited to ₹12,00,000/-	₹3,69,559/- rounded to ₹3,69,600/-	

22) Therefore I find it just and reasonable to award ₹3,69,600/- (Rupees Three lakh sixty nine thousand and six 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.3:-** Respondent No.3 admitted the insurance coverage of the vehicle during the period of accident. Therefore, the respondent No.3 is liable to pay compensation to the petitioner. Thus, issue No.3 is answered accordingly.

24) **Issue No.4 :-** In view of the above discussion, the respondent No. 3 is liable to pay compensation to the petitioner.

25) In the result, this application is allowed and an award is passed for **₹3,69,600/- (Rupees Three lakh sixty nine thousand and six hundred only)** with interest @ 8% per annum from the date of filing of petition i.e., on 15/11/2022, 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 ₹11,373/- towards Court Fee and ₹12,000/- 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 7th day of March, 2024)

Sd/-

MOTOR ACCIDENTS CLAIMS TRIBUNAL

APPENDIX

Petitioner's Witnesses : Nil

Petitioner's Exhibits :

A1-	23-11-2021	Copy of FIR
A2-	24-11-2021	Copy of Scene Mahazar
A3-	24-11-2021	Copy of AMVI report
A4-	07-12-2021	Copy of final report
A5-	06-12-2021	Copy of wound certificate
A6(s)-	-	Discharge Summary (2 Nos.)
A7-	12-12-2020	Copy of policy
A8-	19-04-2022	Medical prescription
A9(s)-	-	Trip Sheets
A10(s)-	-	Medical bills
A11-	25-01-2024	Discharge Summary (IQRAA Hospital, Calicut)
A12-	24-01-2024	Discharge bill

A13- 22-01-2024 Clinical investigation report

A14(s)- - Medical bills

Respondents' Witnesses & Exhibits : Nil

Court Witnesses : Nil

Court Exhibits :

C1- 12-09-2023 Medical Board Report issued by Superintendent,
District Hospital, Mananthavady.

Sd/-

MOTOR ACCIDENTS CLAIMS TRIBUNAL

Typed by : Abhilash Devassy

Compared by : Sindhu A.R.

FCS :

<u>FAIR AWARD IN</u> <u>O.P.(MV) No.483/2022</u>	
<u>Dated : 07/03/2024</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”.