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

Tuesday, 12th day of March, 2024
22nd day of Phalguna, 1945

ORIGINAL PETITION (MV) No.495/2022

Between:

Anilkumar, aged 40 years, S/o Sethu V.P, Vengoor, Vazhakkandi, Meenangadi, Krishnagiri Post, Sulthanbathery Taluk, Wayanad-673 591.	Petitioner

And:

R1.	Bibin Baburaj, aged 27 years, S/o Baburaj, Kannanpalli House, Koodathai Post, Maikkavu Village, Thamarassery, Kozhikode-673 573. *(Driver of KL-8/BC 7836 Tata Sumo)*	Respondents
R2.	Mrs. Lissy, age about 45 years, W/o Simon, Kidangan House, Fairland Colony, Sulthanbathery Post & Taluk, Wayanad District-673592. *(Owner of KL-8/BC 7836 Tata Sumo)*	
R3.	United India Insurance Company, Branch office, Noornal Building, Mysore Road, Sulthanbathery Post, Sulthanbathery Taluk, Wayanad District. *(Insurer of KL-8/BC 7836 Tata Sumo)*	

This OP(MV) is coming on this the 27th day of February, 2024 for final hearing before me in the presence of Sri.V.P.Pramod, counsel for petitioner, Sri.K.K.Ramesh, counsel for respondent No.3, respondents 1 & 2 remained exparte and having stood over for consideration to this day the Tribunal passed the following.

AWARD

This is an application filed under section 166 of the Motor Vehicles Act, 1988.

2) The petitioner's case is that he sustained injuries in a motor vehicle accident which took place on 16/07/2022 at about 8.50 am. While the petitioner was travelling in his autorickshaw bearing registration No.KL-12/F 4683 from Meenangadi to Krishnagiri side and when the vehicle reached at Ambalappadi, another vehicle bearing registration No.KL-08/BC 7836 driven by 1st respondent, in a rash and negligent manner had hit against the autorickshaw and the autorickshaw got capsized. As a result of the impact, the petitioner sustained injuries. After the accident, the petitioner was taken to Assumption Hospital, Sulthanbathery. The accident happened due to the rash and negligent driving of vehicle bearing Reg.No. KL- 08/BC 7836 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 ₹4,00,000/- to the petitioner.

3) Respondents 1 and 2 did not file written statement, hence they were set ex parte.

4) The respondent No.3 filed written statement. The main contentions of respondent No. 3 are as follows:- The respondent No.3 admits the validity of insurance coverage of the vehicle bearing Reg.No.KL- 08/BC 7836. 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 or negligent driving of vehicle bearing Reg.No. KL-08/BC 7836 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?

6) Neither parties adduced oral evidence. Exts.A1 to A9 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, he sustained injuries in a road traffic accident which took place on 16/07/2022 at about 8.50 am, due to the rash and negligent driving of vehicle bearing Reg.No. KL- 08/BC 7836 by the 1st respondent. In order to prove the negligence of respondent No.1, the petitioner produced Ext.A1 copy of First Information Report in crime No. 559/2022 of Meenangadi police station, Ext.A2 copy of scene mahazar, Ext.A3 series AMVI reports and Ext.A4 charge sheet. Ext.A4 is the copy of final report shows that the accident happened due to the rash and negligent driving of vehicle bearing Reg. No. KL-08/BC 7836 by respondent No.1 and a Crime No.559/2022 for offences punishable U/s 279 and 338 of IPC was registered against respondent No.1 by Meenangadi 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- 08/BC 7836 by the 1st respondent. Thus, issue No.1 is found in favour of petitioner.

9) **Issue No.2 and 3**:- Ext.A5 accident register cum wound certificate and Ext.A6 copy of Ext.A7 discharge summary issued by Assumption Hospital, Sulthan Bathery clearly show that the petitioner sustained injuries in the road traffic accident. In the above circumstances I hold that petitioner is entitled to a just and reasonable compensation.

10) According to the petitioner, he is a driver by profession and has been earning ₹20,000/- per month. But, no cogent evidence was adduced by the petitioner to prove his income. Therefore ₹13,500/- 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 ₹1,00,000/- towards loss of earning. As per the medical records, the petitioner sustained injuries such as, right HIP posterior dislocation with osteochondral fracture, nasal bone fracture, multiple abrasions and frontal contusion scalp. Considering these aspects, I am inclined to allow ₹40,500/- towards loss of earning for a period of three months.

11) Ext.A8 series trip sheets for ₹3,400/- were produced by the petitioner to prove his claim under the transportation charges. Ext.A8 series documents are not disputed by respondents. Therefore, Ext.A8 series can be considered as the proof for transportation charges. Hence, I am inclined to allow ₹3,400/- towards travelling expenses.

12) As per the medical records, the petitioner was hospitalized for 3 days. Therefore, the petitioner is entitled to ₹1,500/- (3x500) towards bystander expenses.

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

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

15) The petitioner claimed ₹1,00,000/- towards compensation

for treatment and medicine and produced Ext.A9 series medical bills for ₹11,388/-. Hence I am inclined to allow ₹11,388/- towards medical expenditure.

16) The petitioner claimed ₹1,00,000/- under the head pain and suffering. Considering the injuries sustained by the petitioner, I am inclined to allow ₹50,000/- as compensation towards pain and suffering.

17) Ext.C1 Medical certificate issued by Medical Board, District Hospital, Mananthavady shows that petitioner sustained injuries such as right hip posterior dislocation with osteochondral fracture, nasal bone fracture, and multiple abrasions, frontal contusion scalp and percentage of disability is 7%. 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 ₹30,000/- under the head loss of amenities and ₹20,000/- under the head inconveniences caused.

18) The petitioner claimed ₹2,00,000/- 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 ₹30,000/- 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 ₹50,000/- towards loss of earning power. The monthly income of petitioner is already arrived at ₹13,500/-. The petitioner was aged at 40 years at the time of

accident. Considering the age of petitioner, the applicable multiplier is ' 15 ' 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 has suffered 7% 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 7% 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 ₹1,70,100/- ie. [₹13500x12x15x7/100) (annual income x multiplier x percentage of functional disability)].

20) 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)	100000	40,500	₹13500x3 months
2	Loss of earning (Partial)	50000	0	Nil
3	Medical and miscellaneous expenses	100000	11,388	Ext.A9 series

4	Future treatment		0	
5	Bystander expenses	20000	1,500	3x500
6	Transportation expenses	10000	3,400	Ext.A8
7	Extra nourishment	40000	5,000	Nil
8	Damage to clothing, etc	5000	2,000	Nil
9	Pain and suffering	100000	50,000	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	50000	1,70,100	13500x12x15x 7/100
15	Loss of amenities and conveniences, etc	50000	30,000	Nil
16	Compensation for continuing/permanent disability	200000	0	Nil
17	Physical and mental shock	0	0	Nil
18	Loss of expectation of life	0	0	Nil
19	Inconveniences, hardship, discomfort, disappointment, frustration and mental stress in life	0	20,000	Nil
	Total	₹7,25,000/- claim limited to 4 lakh	₹3,33,888/- rounded to ₹3,33,900/-	

21) Therefore I find it just and reasonable to award ₹3,33,900/- (Rupees Three lakh thirty three thousand and nine hundred only) as compensation. This issue is answered in favour of petitioner in respect of the compensation awarded as referred to above.

22) **Issue No.4:-** Respondent No.3 admitted the insurance coverage of the vehicle during the period of accident. So, the respondent No.3 is liable to pay compensation to the petitioner.

23) **Issue No. 5** :- In view of what is stated above, it is held that the respondent No.3 is liable to pay compensation of **₹3,33,900/- (Rupees Three lakh thirty three thousand and nine hundred only)** to the petitioner with interest @ 8% per annum from the date of filing of petition i.e., on 21/11/2022, 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 ₹3,373/- towards Court Fee and ₹4,000/- 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 12th day of March, 2024)

Sd/-

MOTOR ACCIDENTS CLAIMS TRIBUNAL

APPENDIX

Petitioner's Witnesses : Nil

Petitioner's Exhibits :

A1-	16/07/2022	Copy of First Information Report
A2-	17/07/2022	Copy of Scene Mahazer
A3(s)-	19/07/2022	Copy of AMVI Report
A4-	30/07/2022	Copy of Charge Sheet
A5-	20/07/2021	Copy of Wound certificate
A6-	18/07/2022	Copy of Discharge Summary
A7-	18/07/2022	Discharge Summary
A8-	-	Trip Sheets
A9-	-	Medical Bills

Respondents' Witnesses & Exhibits: Nil

Court Witnesses: Nil

Court Exhibit :

C1-	07/11/2023	Medical Board Report issued by Superintendent, District Hospital, Mananthavady, Wayanad.

Sd/-
MOTOR ACCIDENTS CLAIMS TRIBUNAL

Typed by : Shinu.V.J
Compared by : Sindhu.AR
FCS :

<table>
<tr><td colspan="2"><u>FAIR AWARD IN O.P.(MV) No.495/2022</u></td></tr>
<tr><td colspan="2"><u>Dated: 12/03/2024</u></td></tr>
<tr><td>Court fee paid on</td><td>:</td></tr>
<tr><td>Award ready on</td><td>:</td></tr>
<tr><td>Date notified for appearance to receive the copy</td><td>:</td></tr>
<tr><td>Date when copy delivered</td><td>:</td></tr>
<tr><td colspan="2">FAIR COPY SUPERINTENDENT</td></tr>
<tr><td>Note:</td><td>“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”.</td></tr>
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