

**IN THE COURT OF THE MOTOR ACCIDENTS CLAIMS
TRIBUNAL, KASARAGOD**

Present: - Smt.Sunitha.K.P., Motor Accidents Claims Tribunal.

Wednesday the 20th day of July, 2022/ 29th Ashadha, 1944.

O.P.(M.V.) No.348 OF 2020

Between:-

Abdul Basheer, Aged 25 years,
S/o Ibrahim, R/at Noojam House,
(PO) Nettanige, Mulleriya Village,
Kasaragod Taluk and District - 671543

Petitioner

And

1. Umarul Farook.U.A, Aged 21 years,
S/o Abdul Ameer, R/at Uliyathadka,
Madhur Post and Village,
Kasaragod Taluk and District – 671124.
2. Ahammed Muneer, Proprietor
Majestic Baby World, Thalangara
Shopping Complex,
Kasaragod Taluk and District.
3. The Branch Manager,
Shriram General Insurance Co. Ltd.,
41/339, Azad Tower, Amman Kovil
Cross Road, Ernakulam-Kochi 682035.

Respondents

Petition filed U/s. 166 of the M.V. Act, 1988 for compensation.

Petition presented on : 09.07.2020

Resubmitted after correction : ---

Amount claimed. : ₹7,50,000/-

Amount awarded : ₹7,75,407/-

Court fee payable : ₹ 7,127/-

This petition coming on the 30th day of June, 2022 for final hearing before me in the presence of S/Sri.Subash Bozz.V.M and Abdul Nizar.M.A Advocates

for Petitioner; of Sri.K.K.Mohammed Shafi, Advocate for 1st and 2nd respondents; of Sri.S.Mahalinga, Advocate for 3rd respondent; and having stood over to this day for consideration the Tribunal passed the following:-

AWARD

This is a petition filed under Section 166 of the Motor Vehicles Act, 1988.

2. This is a petition filed by Abdul Bashir, aged 25 years, who sustained injuries in a motor vehicle accident that took place on 14.11.2019 at Narampady in Nekraje village at 15:30 hours. The petitioner is an imam and Madrasa teacher. He was travelling in a scooter bearing registration No.KL-14-V-2938 as a rider. When he reached at a place called Narampady in Nekraje village a traveller delivery van bearing registration No.KL-14H-9162 driven by the first respondent in a rash and negligent manner and hit against the scooter. Thereby he fell down and sustained serious injuries. He was immediately taken to Tejasvini Hospital and SSIOT, Mangalore and admitted there till 23.11.2019. The accident was caused due to the rash and negligent driving of the first respondent, the driver of the vehicle, the vehicle is owned by the second respondent and insured by the third respondent. All the respondents are liable to compensate the petitioner. Hence, this petition.

3. Respondent Nos. 1 and 2 entered appearances and filed written statements mainly making the following contentions:-

The petition is not maintainable either in law and facts. The vehicle was validly insured with third respondent the first respondent was the driver and respondent No.2 was the owner of the vehicle bearing registration No.KL-14H-9162 at the time of accident. The contention that, the accident was due to the rash and negligent driving of the first respondent is not correct and hence denied. In case of any award passed against the respondents, the third respondent is liable to indemnify these respondents. It is further stated that, amount claimed is highly excessive and

imaginary. The petitioner should prove the contention in the petition with strict proof. For the reasons stated above it is prayed to dismiss the petition.

4. The third respondent filed a written statement mainly making the following contentions.:-

The petition is not maintainable either in law and facts. It is admitted that the vehicle bearing registration No.KL-14H-9162 is insured with this company. The nature of the injury alleged in the petition is not correct. The allegation of negligence against the first respondent is not correct. The accident took place due to the negligence of the petitioner. Without prejudice to this contention, it is further stated that the age, nature of injury period of treatment, and expenses as narrated in the petition are not correct and hence denied. The petitioner has to prove these aspects with strict proof. This respondent is contesting the case. For the reasons stated above prays to dismiss the petition.

5. The following issues were framed for consideration:

- 1) Whether the accident occurred due to rash and negligent driving by respondent No.1?*
- 2) Whether the petitioner sustained injuries in the accident?*
- 3) Whether the petitioner is entitled to get compensation and if so, who is liable to pay the same?*
- 4) If issues Nos. 1 to 3 are decided in favour of the petitioner, what should be the quantum?*
- 5) Reliefs and costs?*

6. The evidence in this case consists of Exts.A1 to A7, A8(Series) and X1 on the side of the petitioner. No evidence was adduced on respondent's sides.

7. Heard both sides.

8. **Issue No.1:-** The First Information Report in this case is marked as Ext.A1.

The Final Report in this case is marked as Ext.A2. These documents would clearly indicate that accident took place due to the rash and negligent driving of the first respondent.

9. As far as the evidentiary value of Ext. A2 is concerned in *New India Assurance Co. v. Pazhaniammal and others* (2011 (3) KLT 648) and in *Kolavan and Others V. Salim and Others* (2018 (1) KLT 489) the Honourable High Court of Kerala was pleased to explain that, *prima faice*, charge sheet filed by a police officer after due investigation can be accepted as evidence of negligence against the inditree. According to the Honourable High Court, if any one of the parties does not accept such a charge sheet, the burden must be on such party to adduce oral evidence. It is explained that, if oral evidence is adduced by any party in a case where charge sheet was filed, the Tribunal should give further opportunity to others also to adduce oral evidence and in such a case, the charge sheet will pale into insignificance and the dispute will have to be decided on the basis of the evidence. It is further explained that, in all other cases such a charge sheet can be reckoned as sufficient evidence of negligence in a claim under Section 166 of the Act.

10. In this case the Final report can be accepted as proof of negligence of first respondent as no contra evidence is forth coming. The above discussion can be summarised by holding that the accident occurred due to the negligence of respondent No.1 in driving the vehicle involved in the accident. This issue is found in favour of the petitioner.

11. **Issue No.2:-** Ext.A3, is the Wound Certificate and A4 is the discharge summary. The narration of road traffic accident in the petition is tallying with the wound certificate and discharge summary. As per Ext.A3 wound certificate the petitioner is having lacerated wound measuring 5 x4 cm deep over the right leg, multiple abrasion over the right thigh and right forearm, lacerated wound over the

right leg 3 x 1 x 1 cm deep and fracture of right tibia and fibula bone. These documents should clearly indicate that the petitioner sustained injuries in an accident as stated in the petition. This point is found in favour of the petitioner.

12. **Issue No. 3:-** Once it is found that the petitioner sustained injuries in the accident and that the accident was caused due to the negligence of 1st respondent, the petitioner is entitled to get compensation under section 166 of the MV Act. The respondent No.3 admitted that the said vehicle was duly insured with them covering the date of accident. No violation of policy condition is also brought about.

13. That be so the third respondent is bound to indemnify respondent No.2 the owner of the vehicle and shall deposit the compensation amount to be awarded by the Tribunal to the petitioner. This issue is found in favour of the petitioner.

14. **Issue No.4:-** From the findings in issue Nos. 1, 2 and 3, the petitioner is entitled to get compensation under section 166 of the MV Act. In *Ramachandrappa vs Manager Royal Sundaram Alliance Insurance Company Limited 2011 KHC 4675*, it is held by the Hon'ble supreme Court that "In all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time."

15. Even though the petitioner in the petition stated that he is working as an Imam and Madrassa teacher and is earning an amount of ₹.18,000/- per month, no documents are produced to substantiate the same. Hence, the notional income as laid down in *National Insurance Company v. Pranay Sethi and others (2017 (5) KHC 350)* is taken as ₹.9,500/- per month with all the probable addition as laid down in

that dictum. On the basis of the documentary evidence adduced compensation is calculated as follows:-

The petitioner was having fracture and could not be able to do any work till the fracture is united. Considering this aspects, towards loss of earnings an amount of ₹.28,500/- is allowed, that is the earning for 3 months (9,500 x 3). Considering the nature of injury period of treatment and other circumstances, towards pain and suffering an amount of ₹.30,000/- is allowed. Towards loss of amenities an amount of ₹.20,000/- is allowed. He was in the hospital for a total period of 10 days. Towards bystander's expense an amount of ₹.5,000/- is allowed i.e the expenses for 10 days at the rate of 500/- per day (500 x 10). Towards extra nourishment an amount of ₹.5,000/- is allowed i.e the expenses for 10 days at the rate of 500/- per day (500 x 10). Towards transportation an amount of ₹.4,000/- is allowed. Though there is no proof of any damage to clothing or articles, an amount of ₹.1,000/- can be allowed on that count also by reasonably assuming that at least the dress of the petitioner might have been damaged in such an accident. Towards medical expenses an amount of ₹.1,19,887/- is allowed as per Ext.A8(series). No evidence is forth coming to show that there is loss of earning power. Therefore no amount is allowed towards that head.

16. To prove the disability the petitioner produced Ext.X1 medical certificate, which should go to show that the petitioner is having 48% permanent locomotor disability in relation to lower limb. It can be seen from the wound certificate and also from the disability certificate. The disability with respect to the upper body. That be so, the effect of such disability of the limb on the functioning of the entire body that is permanent disability suffered by that person is to be assessed. In ***Raj Kumar v Ajay Kumar 2011(1) SCC 343***, it was held that, if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person is to be decided with reference to the evidence. In

this case, from the available evidence and also taking into consideration the nature of the injury and its effect on the whole body and assessment of the medical board, the percentage of disability calculated by the medical board is to be converted into whole-body disability. Considering the impact on the whole body I am taking 60% of the same as permanent disability. That will come to 28.8% rounded to 29%. As per the dictum laid down in *Sarala Verma and others v. Delhi Transport Corporation and another (2010(2) KLT 802)*, the multiplier for a person aged 25 years is ‘17’ (Seventeen). Compensation towards loss of permanent disability come to $9,500 \times 12 \times 17 \times 29/100 = ₹.5,62,020/-$. That amount is allowed.

17. Adding all these together, the just compensation entitled by the petitioner is quantified at **₹.7,75,407/-(Rupees Seven Lakhs Seventy Five Thousand Four Hundred and Seven Only)**. The issue is found in favour of the petitioner.

SUMMARY OF CLAIMS RAISED AND ALLOWED

Sl.No	Head of claim	Amount claimed (Rs)	Amount awarded (Rs)
1	Loss of earnings	1,80,000/-	28,500/-
2	Partial loss of earnings	50,000/-	
3	Transport to Hospital	10,000/-	4,000/-
4	Expenses for extra nourishment	20,000/-	5,000/-
5	Damage to clothing and articles.	2,000/-	1,000/-
6	Others: Medical expenses Bystander's expenses	1,20,000/-	1,19,887/- 5,000/-
7	Compensation for pain and sufferings	70,000/-	30,000/-
8	Compensation for loss of amenities	----	20,000/-
9	Compensation for continuing permanent disability if any	3,50,000/-	5,62,020/-

10	Compensation for the loss of earning power	1,00,000/-	
	Amount claimed	9,02,000/-	
	Claim restricted to	7,50,000/-	
	Total compensation granted to the petitioner		7,75,407/-

18 **Issue No. 5 :**

In the result,

- 1) The petition is allowed.
- 2) An award is passed in favour of the petitioner for an amount of **₹.7,75,407/-(Rupees Seven Lakhs Seventy Five Thousand Four Hundred and Seven Only)** payable by the 3rd respondent with interest at the rate of 8% per annum from the date of the petition (09.07.2020) till realization with proportionate costs.
- 3) The petitioner shall be liable to pay ₹.7,127/- towards court fee.
- 4) The 3rd respondent shall deposit an amount of ₹.5,00,000/- directly to the bank account of petitioner within one month from the date of award by way of electronic funds transfer, which the petitioner shall be at liberty to withdraw. And for the balance amount with interest and proportionate costs, after deducting the court fee of ₹.7,127/-, create a Fixed Deposit for one year which shall have a lien marked on the face of the receipt stating that the amount shall be repaid only on maturity by automatically crediting it with interest to the petitioner's account or else only on the orders of the Tribunal/High Court. This shall be done within one month from the date of order.

5) Immediately when the payments as afore stated are made, 3rd respondent shall file a statement before the Tribunal, regarding compliance of the order along with a copy of the transaction records including 3 copies of FD receipts certified by the Bank concerned which will be countersigned and issued to the petitioner by the Tribunal.

6) Office shall make necessary entries in the registers of the Tribunal, evidencing payment of the amounts to the petitioner.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected, and pronounced by me in open Court, this the 20th day of July 2022).

Sd/-

JUDGE, Motor Accident Claims Tribunal, Kasaragod

Schedule of Bank Account details of petitioners in which deposit shall be made:

Name of the petitioner	Name of Bank	Account Number	IFSC number.
Abdul Basheer	Kerala Gramin Bank	40506101030381	KLGB0040506

Sd/-

JUDGE, Motor Accident Claims Tribunal, Kasaragod

APPENDIX OF EVIDENCE

Exhibits marked for Petitioners :-

- | | | |
|-----|------------|---|
| A1. | 27.01.2020 | Copy of F.I.R in Crime No.35/2020 of Badiadka Police Station. |
| A2. | 29.02.2020 | Copy of Final Report in Crime No.35/2020 of Badiadka Police Station |
| A3. | 27.11.2019 | Wound Certificate issued by Tejasvini Hospital & SSIOT Mangalore |

- A4 23.11.2019 Discharge summary issued by Tejasvini Hospital & SSIOT Mangalore
- A5 Copy of Bank pass book
- A6 14.11.2019 Salary and dismissal certificate issued by Jalaliya Masjid Committee
- A7 - Copy of Adhar Card
- A8 Series
A8, A8(a) to A8(v) - Medical bills

Exhibits marked for Respondents :- Nil

Court Exhibits:-

- X1 - 17.11.2021 Medical Board Report issued by Chairman,
Medical Board, District Hospital, Kanhangad.

Witness examined for either sides: None

Sd/-

JUDGE, MOTOR ACCIDENTS CLAIMS TRIBUNAL

Typed by : Reena.P.P.
Compared by : Remleth.T

Fair/Copy of Award in
OP(MV) No.348/2020
Dated: 20.07.2022