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

Saturday, 19th day of August, 2023
28th day of Sravana, 1945

ORIGINAL PETITION (MV) No.507/2022

Between:

Rahmathulla V., aged 45 years, S/o Saithalavi, Vallanchira House, Pazhamjana Post, Vellamunda, Wayanad District. — Petitioner

And:

R1. Ratheesh Kumar, aged 35 years, S/o Kumaran, Pulikal House, Mylambadi Post, Purakkadi, Wayanad. *(Rider cum owner of KL-73/D-7971 Motorcycle)*

R2. The Branch Manager, National Insurance Co. Ltd., Kalpetta Branch, Main Road, Kalpetta, Wayanad. *(Insurer of KL-73/D-7971 Motorcycle)*

— Respondents

This OP(MV) is coming on this the 17th day of August, 2023 for final hearing before me in the presence of Sri.Ranjithkumar A., counsel for petitioner, Sri.V.K.Joseph, counsel for respondent No. 2, respondent No.1 remained exparte and having stood over for consideration to this day the Tribunal passed the following.

A W A R D

The above application is filed U/**s 166(1)(a)** of The Motor Vehicles Act, 1988 claiming compensation by the petitioner, for the injuries sustained by him in a motor vehicle accident.

2) The case of the petitioner is as follows:- On 08/02/2022 at

about 17.15 hours, while the petitioner was travelling on a motor cycle bearing registration No. KL-72/B-1024 through the Panamaram -Meenangadi public road and when he reached infront of Petrol pump, Karani, another motor cycle bearing registration No.KL-73/D- 7971 ridden by 1st respondent, in a rash and negligent manner had hit down the motor cycle on which the petitioner was travelling. As a result of the impact, the petitioner sustained injuries. After the accident, the petitioner was taken to Taluk Hospital, Sulthanbathery. Due to the severe injuries, he was shifted to Medical College Hospital, Kozhikode. At the time of accident, the petitioner was aged 45 years. The accident happened due to the rash and negligent riding of motorcycle bearing Reg.No. KL- 73/D- 7971 by the 1st respondent, who was also the owner of the vehicle. The 2nd respondent was the insurer; hence, respondents are jointly and severally liable to pay compensation of ₹3,00,000/- to the petitioner.

3) Notice was served to respondents. Respondent No.1 did not file written statement; hence, he was set ex parte.

4) Second respondent raised the following contentions in his written statement:- Second respondent denies the cause of accident. Second respondent denies the validity of insurance coverage of the motorcycle bearing Reg.No.KL-73/D- 7971. But the second respondent

admits the insurance coverage of the motorcycle bearing Reg.No. KL-73/D-7971. Second respondent denies 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 rash or negligent riding of vehicle bearing Reg.No. KL-73/D- 7971 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) Exts.A1 to A6 documents were marked on the side of petitioner to prove his case. No oral evidence was adduced on the side of petitioner. No evidence was adduced by the respondents.

7) Heard both sides.

8) **Issue No.1** :- According to the petitioner, the accident happened due to the rash and negligent riding of vehicle bearing Reg.No. KL-73/D- 7971 by the respondent No.1. To prove the rashness and negligence of respondent No.1, the petitioner relied on Ext.A1 to A4 documents. Ext.A4 copy of final report shows that the petitioner sustained

injuries due to the rash and negligent driving of vehicle No.KL-73/D 7971 by respondent No.1 and Crime No. 232/2022 for offences punishable U/s 279 and 338 of IPC was registered against respondent No.1 by Meenangadi Police. Ext.A1 is the copy of FIR, Ext.A2 is the copy of scene mahazar. Ext.A3 series are the reports of the inspection of motor vehicle. 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 riding of vehicle bearing Reg.No. KL-73/D- 7971 by the 1st respondent. Thus, issue No.1 is found in favour of petitioner.

9) **Issue Nos.2 and 3**:- The fact that the accident happened due to the use of a motor vehicle is established from Ext.A1 to A4 documents. Ext.A5 discharge certificate for police cases and Ex.A6 discharge card shows that the petitioner sustained injuries in the accident. In the above circumstances I hold that petitioner is entitled to a just and reasonable compensation.

10) According to the petitioner, he is working as Khathib

(priest) in mosque and has been earning ₹25,000/- 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 ₹40,000/- together towards loss of earning and partial loss of earning. As per Ext.A6 discharge card, the petitioner sustained injuries such as, fracture calcaneus right and fracture radial styloid left. 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 ₹40,500/- as compensation towards loss of earnings.

11) The petitioner claimed ₹2,000/- as compensation towards transportation charges. Considering the distance from the residence of petitioner to the hospital where he had undergone treatment, I am inclined to allow ₹10,000/- towards travelling expense.

12) The petitioner claimed ₹50,000/- under the head bystander's expense. Ext.A6 shows that the petitioner sustained injuries and he was hospitalized for 11 days. Considering the nature of injuries and period of treatment, I am inclined to allow ₹5,500/- under the head

bystander's expense and ₹10,000/- under the head extra nourishment.

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

14) The petitioner claimed ₹10,000/- towards compensation for treatment and medicine. But the petitioner did not produce any medical bills to prove his claim. Hence I am not inclined to allow compensation under this head.

15) The petitioner claimed ₹1,00,000/- under the head pain and suffering. According to the petitioner, he sustained injuries such as, fracture calcaneus right and fracture radial styloid left. Considering the nature of injuries, I am inclined to allow ₹50,000/- as compensation towards pain and suffering and also ₹25,000/- each as compensation under the head loss of amenities and inconveniences caused.

16) 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.

17) 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)	25000	40,500	13500x3
2	Loss of earning (Partial)	15000	0	Nil
3	Medical and miscellaneous expenses	10000	0	Nil
4	Future treatment	0	0	Nil
5	Bystander expenses	50000	5,500	11x500
6	Transportation expenses	30000	10,000	Nil
7	Extra nourishment	2000	10,000	Nil
8	Damage to clothing, etc	100000	2,000	Nil
9	Pain and suffering	100000	50,000	₹50000/-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	0	0	Nil
15	Loss of amenities and conveniences, etc	50000	25,000	Nil
16	Compensation for continuing/permanent disability	30000	0	Nil
17	Physical and mental shock	0	0	Nil
18	Loss of expectation of life	0	0	Nil
19	Inconveniences, hardship, discomfort, frustration, disappointment and mental stress in life	0	25,000	Nil
	Total	₹4,87,000/- claim limited to 3 lakhs	₹1,68,000/-	

18) Therefore I find it just and reasonable to award ₹1,68,000/- (Rupees One lakh sixty eight thousand only) as compensation. This issue is answered in favour of petitioner in respect of the compensation awarded as referred to above.

19) **Issue Nos 4 and 5:-** Respondent No.1 was the rider cum owner of vehicle bearing registration No.KL- 73/D- 7971. Respondent No.2 admitted the insurance coverage of the vehicle during the period of accident. The respondent No.2 being the insurer is liable to indemnify respondent No.1 and pay compensation awarded to the petitioner.

20) In the result, this application is allowed and an award is passed for **₹1,68,000/- (Rupees One lakh sixty eight thousand only)** with interest @ 8% per annum from the date of filing of petition i.e., on 26/11/2022 till realisation with proportionate cost. Respondent No.2 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.2 is directed to furnish cheques for ₹2,373/- towards Court Fee and ₹3,000/- towards LBF payable by the petitioner, in favour of Motor Accidemts Claims Tribunal, Kalpetta. Respondent No.2 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.2 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 19th day of August, 2023)

Sd/-
MOTOR ACCIDENTS CLAIMS TRIBUNAL

APPENDIX

Petitioner's Witnesses : Nil

Petitioner's Exhibits :

A1-	14/03/2022	Copy of First Information Report
A2-	15/03/2022	Copy of Scene Mahazer
A3(s)-	19/03/2022	Copy of AMVI Report
A4-	13/04/2022	Copy of Final Report
A5-	18/05/2022	Copy of Discharge Certificate

A6- 19/02/2022 Discharge Card

Respondents' Witnesses & Exhibits: Nil

Court Witnesses & Exhibits: Nil

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. 507/2022</u></td></tr>
<tr><td colspan="2"><u>Dated: 19/08/2023</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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