

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

Tuesday, 12th day of September, 2023
21st day of Bhadra, 1945

ORIGINAL PETITION (MV) No.534/2022

Between:

Saji @ Saji K.C., aged 44 years, S/o Chacko Mathai,
Kuzhiyalil House, Chitramoola, Kaniyambetta Post,
Vythiri Taluk, Wayanad-673613.

} Petitioner

And:

R1. Aabid K.K., aged 23 years, S/o Abdul Rahman,
Kaniyamkandy House, Pulikkode,
Tharuvana Post, Wayanad District – 670 645.
(Driver of KL-72-C/3641 Goods Carrier)

R2. Moidu Chankarappan, age about 45 years,
S/o Ammad C.H., Chankarappan House,
Tharuvana Post, Wayanad District - 670645.
(Owner of KL-72-C/3641 Goods Carrier)

R3. The Branch Manager, Universal Sompo General
Insurance Co. Ltd., Door No: 37/3913, B3 & B4,
2nd Floor, Central Arcade, Azad Road North End,
Kaloor, Cochin, Kerala-682017.
(Insurer of KL-72-C/3641 Goods Carrier)

} Respondents

This OP(MV) is coming on this the 22nd day of August, 2023 for final hearing before me in the presence of Smt.Bincy Aby Cheriyan, counsel for petitioner, Sri.K.A.Ayoob, counsel for respondents 1 & 2, respondent No.3 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 in short is as follows:- On 02/09/2022 at about 9.00 pm, while the petitioner was crossing the road at Varadoor town, a goods carrier bearing Reg.No. KL-72/C- 3641 driven by 1st respondent, in a rash and negligent manner had hit down the petitioner. As a result of the impact, the petitioner sustained injuries. After the accident, the petitioner was taken to General Hospital, Kalpetta and after giving first aid, he was taken to DM WIMS Hospital, Meppadi. At the time of accident, the petitioner was aged 44 years. The accident happened due to the rash and negligent driving of vehicle bearing Reg.No. KL- 72/C- 3641 by the 1st respondent. The 2nd respondent was the owner and 3rd respondent was the insurer of the said vehicle; hence, respondents 1 to 3 are jointly and severally liable to pay compensation of ₹3,00,000/- to the petitioner.

3) Respondent No. 3 did not file written statement; hence, R3 was set ex parte.

4) The respondents 1 and 2 filed joint written statement. Their main contentions are as follows: The respondents 1 and 2 admit that respondent No.1 was the driver and respondent No. 2 was the owner of the vehicle at the time of accident. Respondents 1 and 2 deny the cause of accident. There was no negligence on the part of 1st respondent.

Respondent No.1 was having valid driving licence and the vehicle was duly insured with respondent No.3. 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) Did the accident happen due to rash or negligent driving of vehicle bearing Reg.No.KL-72/C-3641 by respondent No.1?
- (2) Has the petitioner sustained any injuries in the accident?
- (3) Has the petitioner sustained any permanent disability due to the accident?
- (4) Whether the petitioner is entitled to any compensation, and if so, what shall be the quantum?
- (5) Who is liable to pay compensation to the petitioner?
- (6) 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** :- To prove the rashness and negligence of respondent No.1, the petitioner relied on Ext.A1 to A4 documents. Ext.A4 is

the copy of final report submitted by the Sub Inspector of police, Meenangadi Police Station against 1st respondent herein alleging commission of offences u/ss 279 and 338 of IPC. Ext.A1 is the copy of First Information Report, Ext.A2 is the copy of scene mahazar. Ext.A3 is the report of the inspection of motor vehicle. It is reported that there was no mechanical defect to the vehicle. It is very pertinent to note that these documents were admitted in evidence without any objection on the side of the contesting respondents. *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- 72/C- 3641 by the 1st respondent. Thus, issue No.1 is found in favour of petitioner.

9) **Issue Nos.2 and 3 :-** According to the petitioner, he sustained injuries in the accident and therefore, he is entitled to get compensation. To prove the same, he has produced Ext.A5 copy of discharge summary issued from Dr. Moopens hospital. It shows that the petitioner sustained injuries in the accident. The documents available before

the Tribunal do not show that the petitioner sustained permanent disability due to the accident. Issues are answered accordingly.

10) **Issue No.4:-** As per findings on issue No.1 and 2, the petitioner sustained injuries in the accident. Hence the petitioner is entitled to just and reasonable compensation.

11) According to the petitioner, he is a driver by profession and has been earning ₹24,000/- per month. But, no cogent evidence was adduced by the petitioner to prove the income. Therefore ₹15,000/- 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 MINNUROUT case (2013)10 SCC 695*). The petitioner claimed ₹1,15,200/- towards loss of earning. As per Ext.A5 Discharge summary, the petitioner sustained injuries such as, comminuted fracture involving the anterior and lateral walls of the right maxillary sinus, extending to the floor of the orbit causing right maxillary hemosinus and orbital emphysema. 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 two months. Hence I am inclined to allow ₹30,000/- as compensation under the head loss of earning.

12) The petitioner claimed ₹10,000/- 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 ₹5,000/- towards travelling expense.

13) The petitioner claimed ₹10,000/- under the head bystander's expense and ₹10,000/- under the head extra nourishment. Considering the nature of injuries and period of treatment, I am inclined to allow ₹1,500/- under the head bystander's expense and ₹5,000/- under the head extra nourishment.

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

15) The petitioner claimed ₹20,000/- towards compensation for treatment and medicine and produced Ext.A6 series medical bills amounting to ₹337/- to prove the same. Hence I am inclined to allow ₹337/- towards medical expenditure.

16) The petitioner claimed ₹1,00,000/- under the head pain and suffering. According to the petitioner, he sustained injuries such as, comminuted fracture involving the anterior and lateral walls of the right maxillary sinus, extending to the floor of the orbit causing right maxillary

hemossinus and orbital emphysema, blunt trauma right eye and abrasions on face and body. Considering all these aspects I am inclined to allow ₹25,000/- as compensation towards pain and suffering and I am inclined to allow ₹15,000/- under the head loss of amenities and ₹10,000/- under the head inconveniences caused.

17) The petitioner claimed ₹2,00,000/- towards loss of earning power. The materials available before the Tribunal do not show that the petitioner had suffered any disability due to accident. Hence the petitioner is not entitled to get compensation under this head.

18) 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.

19) 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)	115200	30,000	15000x2
2	Loss of earning (Partial)	57600	0	Nil
3	Medical and miscellaneous expenses	20000	337	Ext.A6

4	Future treatment	0	0	Nil
5	Bystander expenses	10000	1,500	500x3
6	Transportation expenses	10000	5,000	Nil
7	Extra nourishment	10000	5,000	Nil
8	Damage to clothing, etc	5000	2,000	Nil
9	Pain and suffering	100000	25,000	Nil
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	200000	0	Nil
15	Loss of amenities and conveniences, etc	100000	15,000	Nil
16	Compensation for continuing/permanent disability	500000	0	Nil
17	Physical and mental shock	100000	0	Nil
18	Loss of expectation of life	0	0	
19	Inconveniences, hardship, discomfort, frustration, disappointment and mental stress in life	0	10,000	Nil
20	Salary paid to attendant	60000	0	Nil
21	Future recurring expenses	10000	0	Nil
22	Compensation for functional disability	300000	0	Nil
	Total	₹15,97,800/- claim limited to 3 lakhs	₹93,837/- rounded to ₹94,000/-	

20) Therefore I find it just and reasonable to award ₹94,000/- (Rupees Ninety four thousand only) as compensation. This issue is answered in favour of petitioner in respect of the compensation awarded as referred to above.

21) **Issue No.5:-** Respondent No.1 was the driver of vehicle involved in the accident and Respondent No.2 was the owner. Respondent No.3 was the insurer. Hence respondents 1 to 3 are jointly and severally liable to pay compensation awarded by this Tribunal to the petitioner. The issue No.5 is answered accordingly.

22) **Issue No. 6 :-** In view of the above findings on issues 1 to 5, I find that the accident happened due to the rash and negligent driving of vehicle bearing Reg.No.KL- 72/C- 3641 by the respondent No.1. Respondents 2 and 3 were the owner and insurer respectively. The respondent No.3 being the insurer is liable to indemnify respondent No.2 and pay compensation awarded to the petitioner. Hence the respondent No.3 is liable to pay compensation to the petitioner.

23) In the result, this application is allowed and an award is passed for ₹94,000/- (Rupees Ninety four thousand only) with interest @ 8% per annum from the date of filing of petition i.e., on 05/12/2022, 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 ₹2,373/- towards Court Fee and ₹3,000/- 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 12th day of September 2023)

Sd/-

MOTOR ACCIDENTS CLAIMS TRIBUNAL

APPENDIX

Petitioner's Witnesses : Nil

Petitioner's Exhibits :

- A1- 09/09/2022 Copy of First Information Report
- A2- 10/09/2022 Copy of Scene Mahazer
- A3- 12/09/2022 Copy of AMVI Report
- A4- 15/09/2022 Copy of Charge
- A5- 05/09/2022 Copy of Discharge Summary
- A6- - Medical Bills

Respondents' Witnesses & Exhibits: Nil

Court Witnesses & Exhibits: Nil

Sd/-
MOTOR ACCIDENTS CLAIMS TRIBUNAL

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

<u>FAIR AWARD IN O.P.(MV)</u> <u>No. 534/2022</u>	
<u>Dated: 12/09/2023</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”.