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

Saturday, 24th day of February, 2024
5th day of Phalguna, 1945

ORIGINAL PETITION (MV) No.484/2022

Between:

Binu C.V., aged 41 years, S/o Gopalan, Cholamboth, Irulam, Valavayal, Wayanad District – 673 596.	Petitioner

And:

R1.	Sameer P.K., aged 40 years, S/o Ali, Poolakundan House, Kodoor Post, Perinthalmanna, Malappuram District-676 504. *(Driver-cum-owner of Omni van No.KL-64/D 8636)*	Respondents
R2.	The Manager, IFFCO General Insurance Co.Ltd., City Gallery, 4th Floor, 6/835 E1, Near YMCA Junction, Kannur road, Calicut-673001. *(Owner of Omni van No.KL-64/D 8636)*	

This OP(MV) is coming on this the 8th day of February, 2024 for final hearing before me in the presence of Sri.Abdu Samad K.K. & Smt.Aneesha K., counsels for petitioner, Sri.V.P. Pramod, counsel for respondent No.1, Sri.K.M.Thomas, counsel for respondent No.2 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) Case of the petitioner is that on 30/11/2021 at about

12.00 pm, while the petitioner was riding his three wheeler scooter bearing Reg.No. KL-73/B 6413 from Moonanakuzhi to Irulam side and when he reached infront of Valavayal church, an Omni van bearing Reg.No. KL-64/D 8636 driven by respondent No. 1 in a rash and negligent manner with over speed had hit against the petitioner's scooter, by which he sustained injuries. Immediately after the accident, he was taken to Government Hospital, Meenangadi and from there he was taken to WIMS Hospital, Meppadi. From there he was referred to Medical College Hospital, Kozhikode. The accident happened due to the rash and negligent driving of the said van by the 1st respondent. Respondent No.1 was also the owner of the vehicle. Respondent No. 2 was the insurer. Hence, respondents 1 and 2 are jointly and severally liable to pay compensation of ₹25,00,000/- to the petitioner.

3) Respondent No.1 filed written statement. His main contentions are as follows:- Respondent No.1 was the driver cum owner of the omni van bearing Reg.No.KL-64/D 8636 and respondent No.2 was the insurer. There was no negligence on the side of respondent No.1. copy of RC particulars, copy of policy and copy of driving licence were attached with the written statement.

4) Respondent No.2 filed written statement. The main

contentions are as follows:- The respondent No.2 denies the accident. The accident happened only due to the negligent riding of the petitioner. Respondent No.2 denies the insurance coverage of the van bearing Reg.No.KL-64/D 8636. Respondent No.2 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 van bearing Reg.No. KL-64/D 8636 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) No oral evidence was adduced on the side of the petitioner. Ext.A1 to A9 documents and Ext.C1 medical board report were marked on the side of petitioner to prove the case. RW1 was examined and Ext.B1 to B3 documents were marked on the side of respondents.

7) Heard both sides.

8) **Issue No.1** : - The case of the petitioner is that the accident happened only due to the negligent driving of respondent No.1. To prove the accident, the person responsible for the accident and to prove the negligence, the petitioner produced Ext.A1 First Information Report with First Information Statement, Ext.A2 Scene Mahazar, Ext.A3 & A4 AMVI Reports and Ext.A5 Charge Sheet. On perusal of Ext.A1 and A5 documents, it is seen that relating to the accident, on the basis of complaint given by the mother of the injured named Valli, the investigating officer of Kenichira Police Station registered a crime against respondent No.1 as crime No.665/2021 for the offences punishable U/s 279 and 338 of IPC. Ext.A3 and A4 also show that there was no mechanical defect to the vehicles at the time of accident. 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 van bearing Reg.No. KL- 64/D 8636 by the 1st respondent. Thus, issue No.1 is found in favour of petitioner.

9) **Issue No.2**:- Ext.A6 discharge certificate for police cases and A6(a) discharge card clearly prove that in the accident, the petitioner sustained injuries. Therefore, this issue is also found in favour of petitioner.

10) **Issue No.3**:- The petitioner proved the negligence on the part of respondent No. 1 and sustaining of injuries; hence, the petitioner is entitled to a just and reasonable compensation.

11) According to the petitioner, he was aged 40 years and had been earning ₹15,000/- per month from the lottery business. But, the petitioner did not produce any materials to prove his 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 ₹72,00,000/- towards loss of earning. As per the medical records, the petitioner sustained injuries such as Cervical spine injury fracture burst C6, C7 with quadriplegia, Supra condylar femur right, sub trochanteric fracture left femur. According to the petitioner, he was having 75% permanent disability due to his traumatic quadripalvis. Due to the accident, the petitioner needs attendance of a bye stander for his basic needs and he is not able to do his work as before. Considering these aspects, I am inclined to allow ₹39,000/- (13000x3) as compensation

towards loss of earning for a period of 3 months.

12) The petitioner claimed ₹50,000/- as compensation towards transportation charges. The petitioner was treated at various hospitals such as, Government Hospital, Meenangadi, WIMS Hospital Meppadi and Medical College Hospital, Kozhikode. Considering these aspects and the distance travelled by the petitioner, I am inclined to allow ₹25,000/- as compensation towards transportation charges.

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

14) As per medical records, the petitioner was hospitalized for 30 days. Bystander's expenses can be fixed as ₹500/- per day. Hence I am inclined to allow ₹15,000/- (500 x 30) as compensation towards bystander's expenses

15) Towards extra nourishment, ₹10,000/- is allowed.

16) Ext.A7 series medical bills produced by the petitioner show that he had incurred an amount of ₹24,371/- towards treatment expenses. Therefore, the petitioner is entitled to get ₹24,371/- towards treatment expenses.

17) From the medical records, it is seen that the petitioner sustained multiple injuries including Cervical spine injury fracture burst C6,

C7 with quadriplegia, Supra condylar femur right, sub trochanteric fracture left femur. Considering the nature of injuries, I am inclined to allow ₹50,000/- as compensation towards pain and suffering.

18) Ext.C1 Medical certificate issued by Medical Board, District Hospital, Mananthavady shows that petitioner sustained injury such as, Cevical spine injury C6, C7 fracture, Supra condylar fracture right femur and sub trochanteric fracture left femur and percentage of disability is 80%. 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 ₹25,000/- under the head loss of amenities and ₹25,000/- under the head inconveniences caused.

19) The petitioner claimed ₹10,00,000/- towards loss of earning power. As per Ext. C1 certificate, the petitioner has suffered 80% permanent disability due to the accident.

20) To prove the veracity of Ext. C1 medical certificate, RW1 was examined on the side of respondents. RW1 was the doctor who issued Ext.C1 medical certificate. RW1 deposed before the Tribunal that he was the member of the medical board and Ext.C1 bears his signature. RW1 further deposed that during the accident, the petitioner sustained injury on cervical spine and both thighs also and the accident caused the immobility to

his limbs.

21) From the oral evidence of RW1, it is found that due to the accident, the petitioner could not move and bed ridden. Therefore his disability is ascertained by the doctor as 80%. Due to the accident, the petitioner could not do his lottery selling business as his spinal cord was broken. It is to be noted that when the petitioner was having 75% disability, he had been conducting lottery business by travelling in three wheeler bike. But due to the accident, he is completely bed ridden. Therefore his functional disability can be fixed at 75%.

22) The monthly income of petitioner is already arrived at ₹13,000/-. The age of petitioner is 40 at the time of accident for the purpose of calculating loss of earning power. Since the age of petitioner is below 49 years, an enhancement of 25% is to be added to the monthly income for future prospects as per the dictum *in National Insurance Company Limited Vs. Pranay Sethi and others reported in AIR 2017 SC 5157*. Accordingly the annual income of petitioner is arrived at ₹1,95,000/- ie., [(13000+25% of 13000)12]. For the age group between 36 and 40, 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.*** Thus, the compensation for loss of income and earning power due

to permanent disability is arrived at ₹21,93,750/- ie. [₹195000x15x75/100) (annual income x multiplier x percentage of functional disability)].

23) 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)	7200000	39,000	₹13000x3 months
2	Loss of earning (Partial)	0	0	Nil
3	Medical expenses	50000	24,371	Ext. A7 series
4	Future treatment	50000	0	Nil
5	Bystander expenses	500000	15,000	30x500
6	Transportation expenses	50000	25,000	Nil
7	Extra nourishment	50000	10,000	Nil
8	Damage to clothing, etc	3000	2,000	Nil
9	Pain and suffering	100000	50,000	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	1000000	21,93,750	13000+25% of 13000x12x15x 75/100
15	Loss of amenities and conveniences, etc	100000	25,000	Nil
16	Compensation for continuing/permanent	100000	0	Nil

	disability			
17	Physical and mental shock	50000	0	Nil
18	Loss of expectation of life	25000	0	Nil
19	Inconveniences, hardship, discomfort, frustration, disappointment and mental stress in life	100000	25,000	Nil
20	Loss of future earning	0	0	
	Total	₹93,78,000/- claimlimited to 25 lakhs	₹24,09,121/- rounded to **₹24,09,200/-**	

24) Therefore I find it just and reasonable to award ₹24,09,200/- (Rupees Twenty four lakh nine thousand and two hundred only) as compensation. This issue is answered in favour of petitioner in respect of the compensation awarded as referred to above.

25) **Issue No.4**:- It is already found that the accident happened due to the rash and negligent driving of van bearing Reg.No. KL-64/D 8636. Respondent No.1 was the driver cum owner. Respondent No.2 -the insurer is liable to pay compensation to the petitioner. Therefore the issue No.4 is answered accordingly.

26) **Issue No. 5** :- As discussed above, the respondent No.1 is responsible for the accident and respondent No.2 is liable to pay

compensation to the petitioner.

27) In the result, this application is allowed and an award is passed for **₹24,09,200/- (Rupees Twenty four lakh nine thousand and two hundred only)** with interest @ 8% per annum from the date of filing of petition i.e., on 16/11/2022, 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 ₹24,373/- towards Court Fee and ₹25,000/- towards LBF payable by the petitioner, in favour of Motor Accidents 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 the 24th day of February, 2024)

Sd/-
MOTOR ACCIDENTS CLAIMS TRIBUNAL

APPENDIX

Petitioner's Witnesses : Nil

Petitioner's Exhibits :

A1-	02/12/2021	Copy of First Information Report & First Information Statement
A2-	03/12/2021	Copy of Scene Mahazer
A3-	14/12/2021	Copy of AMVI Report[KL-64/D 8636]
A4-	14/12/2021	Copy of AMVI Report[KL-73/B 6413]
A5-	03/03/2022	Copy of Final Report
A6-	28/02/2022	Copy of Discharge certificate
A7-	24/12/2021	Copy of Discharge certificate
A8-	30/07/2012	Copy of disability certificate
A9-	07/02/2024	Photograph of the petitioner

Respondents' Witnesses :

RW1-	16/12/2023	Dr.K.Suresh

Respondents' Exhibits:

B1-	13/06/2016	Copy of R/C
B2-	17/07/2021	Copy of policy
B3-	02/02/2015	Copy of driving licence

Court Witnesses: Nil

Court Exhibits:

C1-	7/03/2023	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 :

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<tr><td colspan="2"><u>FAIR AWARD IN
O.P.(MV) No.484/2022</u></td></tr>
<tr><td colspan="2"><u>Dated: 24/02/2024</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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