

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

Tuesday, 17th day of October, 2023
25th day of Aswina, 1945

ORIGINAL PETITION (MV) No.546/2022

Between:

Afnas P.H., aged 23 years, S/o Hussain P.A.,
Afnas Manzil, Puzhakkal House, Paralikunnu,
VTC, Madakkimala Post, Wayanad District-673121.

} Petitioner

And:

- R1. Muhammadh Haneefa, aged 32 years, S/o Abdulla,
Kannoth House, Tharuvana Post, Mananthavady,
Wayanad-670 645.
(Driver of KL-72/A 4168 Car)
- R2. Maimootty, aged 45 years, S/o Palliyal Moidu,
Palliyal House, Tharuvana Post, Tharuvana Amsom,
Mananthavady, Wayanad District – 670 645.
(Owner of KL-72/A 4168 Car)
- R3. The Branch Manager, New India Assurance Co.Ltd.,
MGT Buildings, Kalpetta North Post-673122.
(Insurer of KL-72/A 4168 Car)

} Respondents

This OP(MV) is coming on this the 19th day of September, 2023 for final hearing before me in the presence of Sri.A.J.Antony and Smt.Aneesha K., counsels for petitioner, Sri.Abdul Sathar, counsel for respondents 1 & 2, Sri. Abdurahiman, counsel for respondent No.3 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 22/08/2022 at about 5.30 pm, while the petitioner was riding the motorcycle bearing registration No. KL-12/A-5680 from Pozhuthana to Vythiri and when he reached at 12th bridge, near coffee grow restaurant, another vehicle bearing registration No. KL-72/A-4168 driven by the 1st respondent, in a rash and negligent manner and in over speed 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, Vythiri and from there he was shifted to Leo Hospital, Kalpetta. At the time of accident, the petitioner was aged 23 years. The accident happened due to the rash and negligent driving of the said car. 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) In response to the summons issued by the Tribunal, the

respondents appeared and filed written statement.

4) The main contentions of 1st and 2nd respondent are as follows:- the petition is not maintainable. Respondents 1 and 2 admit that they were the driver and owner of the vehicle respectively. Respondent No.3 was the insurer. There was no negligence on the side of respondent No.1. Respondent No.1 was having driving licence.

5) In the written statement filed by the 3rd respondent, the following contentions are raised:- The 3rd respondent denies the cause of accident. The 3rd respondent admits the validity of insurance coverage of the vehicle bearing Reg.No.KL-72/A-4168. The amount claimed by the petitioner is highly exorbitant.

6) On the basis of the above pleadings, the following issues were framed for consideration.

- (1) Whether the accident happened due to rash or negligent driving of car bearing Reg.No.KL-72/A-4168 by respondent No.1?
- (2) Whether the petitioner sustained any injuries or permanent disability 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 to the petitioner?
- (5) Relief and costs?

7) Exts.A1 to A10 documents and Ext.C1- Medical Board Report 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 on the side of respondents.

8) Heard both sides.

9) **Issue No.1** : - The case of the petitioner is that the accident happened due to rash and negligent driving of car bearing Reg.No.KL-72/A-4168 by the respondent No.1. To prove the rashness and negligence of respondent No.1, the petitioner relied on Ext.A1 to A5 documents. Ext.A5 is the copy of final report submitted by the Sub Inspector of police, Vythiri Police Station against 1st respondent herein alleging commission of offences punishable u/ss 279 and 337 of IPC. Ext.A1 is the copy of First Information Report with First Information Statement, Ext.A2 is the copy of scene mahazar. Ext.A3 and A4 are the reports of the inspection of motor vehicles and those reports state that there was no mechanical defect to the vehicles. 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 car bearing Reg.No.KL-72/A- 4168 by the 1st respondent. Thus, issue No.1 is found in favour of petitioner.

10) **Issue No.2:-** To prove the injuries, the petitioner produced Ext.A6 wound certificate. Ext.A6 accident register cum wound certificate issued by Taluk Head Quarters Hospital, Vythiri and Ext.A9 discharge summary issued from Leo Hospital Kalpetta show that the petitioner sustained injuries in the accident. Therefor the issue No.2 is found in favour of petitioner.

11) **Issue No. 3:-** In the light of my findings on issue No.1 and 2, the petitioner is entitled to a just and reasonable compensation.

12) As per the petition, he is working as a cell collection agent and has been earning ₹12,000/- per month. Considering the averments in the petition and the year of accident, I am of the view that ₹12,000/- per month can be fixed as income of the petitioner for the purpose of calculating the loss of earning. The petitioner claimed ₹96,000/- towards loss of earning. As per Ext.A6 discharge summary, the petitioner sustained injuries such as, deep lacerated wound EDL, EHB and peroneus tertius cut and dorsalis pedis vessel cut. The injuries sustained by the petitioner would have been prevented from doing any sort of work for a minimum period of 3

months. Hence I am inclined to allow ₹36,000/- as compensation towards loss of earnings.

13) The petitioner claimed ₹15,000/- 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 ₹3,000/- towards travelling expense.

14) The petitioner claimed ₹30,000/- under the head bystander's expense and ₹25,000/- under the head extra nourishment. As seen from the Ext.A8 discharge summary, the petitioner sustained injuries such as deep lacerated wound EDL, EHB and peroneus tertius cut, dorsalis pedis vessel cut and was admitted in the hospital on 22/08/2022 and discharged on 29/08/2022. Bystanders expenses can be fixed as ₹500/- per day. Considering the nature of injuries and period of treatment, I am inclined to allow ₹4,000/- under the head bystander's expense and ₹5,000/- under the head extra nourishment.

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

16) The petitioner claimed ₹30,000/- towards compensation for treatment and medicine and produced Ext.A10 series medical bills for

₹67,973/- in total. Hence I am inclined to allow ₹68,000/- towards medical expenditure.

17) The petitioner claimed ₹50,000/- 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.

18) Ext.C1 Medical certificate issued by Medical Board, District Hospital, Mananthavady shows that petitioner sustained injury such as lacerated wound EDL, EHB, peroneus Tertius cut 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 ₹25,000/- each under the heads loss of amenities and inconveniences caused.

19) 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 ₹25,000/- is awarded for loss of amenities and enjoyment in life, I am not inclined to award compensation under the above heads separately.

20) Now the question is how far the permanent disability has affected the earning power of petitioner. The petitioner claimed ₹50,000/- towards loss of earning power. The monthly income of petitioner is already arrived at ₹12,000/-. The age of petitioner is 23 years at the time of accident. The annual income of petitioner is arrived at ₹1,44,000/-. For the age group between 21 and 23, the applicable multiplier is '18' as per the dictum in ***Sarla Verma and Others Vs Delhi Transport Corporation and another*** reported in ***AIR 2009 SC 3104***. The petitioner was examined by the District Medical Board for assessing permanent disability and the Medical Board had issued Ext.C1 certificate. The Board has assessed permanent disability at 7%. 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 ₹1,81,440/- ie. [$₹144000 \times 18 \times 7/100$] (annual income x multiplier x percentage of functional disability)].

21) 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.

22) 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)	96000	36,000	12000x3
2	Loss of earning (Partial)	0	0	Nil
3	Medical and miscellaneous expenses	30000	68,000	Ext.A10 series
4	Future treatment	50000	0	Nil
5	Bystander expenses	30000	4,000	8x500
6	Transportation expenses	15000	3,000	Nil
7	Extra nourishment	25000	5,000	Nil
8	Damage to clothing, etc	5000	2,000	Nil

9	Pain and suffering	50000	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	50000	1,81,440	12000x12x18 x7/100
15	Loss of amenities and conveniences, etc	30000	25,000	Nil
16	Compensation for continuing/permanent disability	200000	0	Nil
17	Physical and mental shock	25000	0	Nil
18	Loss of expectation of life	25000	0	Nil
19	Inconveniences, hardship, discomfort, frustration, disappointment and mental stress in life	50000	25,000	Nil
	Total	₹6,81,000/- claim limited to 4 lakh	₹3,99,440/- rounded to ₹3,99,500/-	

23) Therefore I find it just and reasonable to award ₹3,99,500/- (Rupees Three lakh ninety nine thousand and five hundred only) as compensation. This issue is answered in favour of petitioner in respect of the compensation awarded as referred to above.

24) **Issue No.4:-** In view of the above discussions on issue No.1, I found that the accident happened due to the rash and negligent driving of

car bearing Reg.No. KL-72/A- 4168. Respondent No.1 was the driver and Respondent No.2 was the owner. Respondent No.3 admitted the insurance coverage of the vehicle during the period of accident. Hence respondents 1 to 3 are jointly and severally liable to pay compensation awarded by this Tribunal to the petitioner. The respondent No.3 being the insurer is liable to indemnify respondent No.2 and pay compensation awarded to the petitioner. The issue No.4 is answered accordingly.

25) **Issue No. 4**:- In the light of my findings on issues 1 to 4, I find that respondent No.1 is the tortfeasor and respondent No. 3- insurer is liable to pay compensation to the claimant.

26) In the result, this application is allowed and an award is passed for **₹3,99,500/- (Rupees Three lakh ninety nine thousand and five hundred only)** with interest @ 8% per annum from the date of filing of petition i.e., on 08/12/2022, 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 **₹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 17th day of October, 2023)

Sd/-

MOTOR ACCIDENTS CLAIMS TRIBUNAL

APPENDIX

Petitioner's Witnesses : Nil

Petitioner's Exhibits :

- A1- 24/08/2022 Copy of FIR and FIS
- A2- 20/09/2022 Copy of Scene Mahazer
- A3- 31/08/2022 Copy of AMVI Report
- A4- 31/08/2022 Copy of AMVI Report
- A5- 17/09/2022 Copy of Charge Sheet
- A6- 22/08/2022 Copy of Wound Certificate
- A7- 27/06/2017 Copy of Driving License of Petitioner
- A8- 22/08/2022 Document
- A9- 29/08/2022 Discharge Summary
- A10(s)- - Discharge Bill and Medical Bills

Respondents' Witnesses & Exhibits: Nil

Court Witnesses: Nil

Court Exhibits:

- C1- 25/04/2023 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 :

<u>FAIR AWARD IN O.P.(MV) No.</u> <u>546/2022</u>	
<u>Dated: 17/10/2023</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”.