

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.550/2022

Between:

Najiya P., aged 19 years, D/o Saifudheen, Panachikkal House,
Idiyamvayal, Achooranam Post and Village, Vythiri Taluk,
Wayanad District - 673575.

} Petitioner

And:

R1. Achuthan, aged 56 years, S/o Arumukan,
Pattarumadathil House, Rattakolly, Kalpetta Post and
Village, Wayanad District-673121.
(Driver of KL-01-CG 1202 Car)

R2. Joint Registrar, Kerala Co-operative Development and
Welfare Fund Board, Near Gandhari Amman Kovil
Road, Pulimoodu, Thiruvananthapuram - 695 001.
(Owner of KL-01-CG 1202 Car)

R3. SBI General Insurance Co. Ltd., 2nd Floor, Rep. by its
Manager, Tarra Tower, TC 9/2596(6), Vellayambalam,
Sasthamangalam Road, Sasthamangalam Post,
Thiruvananthapuram-695 010.
(Owner of KL-01-CG 1202 Car)

} Respondents

This OP(MV) is coming on this the 17th day of February, 2024 for final hearing before me in the presence of Sri.M.C.M Jamal, counsel for petitioner, Sri.Rajesh T.George, counsel for respondent No.3, respondents 1 & 2 remained exparte and having stood over for consideration to this day the Tribunal passed the following.

A W A R D

The claim petition is preferred U/s 166 of The Motor Vehicles Act, 1988.

2) Case of the petitioner is as follows:- On 15/02/2022 at about 07.25 pm, while the petitioner along with her family were walking on the side of the road at Kalpetta town and when they reached near the E-planet showroom, an innova car bearing registration No. KL-01/CG 1202 driven by 1st respondent had hit on the petitioner and the family members. As a result of the impact, the petitioner sustained injuries and she was taken to Leo Hospital, Kalpetta. The petitioner states that she was aged 19 years at the time of accident and the accident happened due to the rash and negligent driving of the car bearing Reg. No.KL-01/CG 1202 by the 1st respondent. Respondents 2 and 3 were the owner and insurer respectively. Hence, respondents 1 to 3 are jointly and severally liable to pay compensation of ₹50,000/- to the petitioner.

3) Respondents 1 and 2 did not file written statement. Hence they were declared ex parte.

4) Respondent No.3 filed written statement. The main contentions of 3rd respondent are as follows:- The respondent No.3 admits the validity of the insurance coverage of the car bearing reg. No.KL-01/CG 1202; but 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 car bearing Reg.No. KL-01/CG 1202 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) Neither parties adduced oral evidence. Ext.A1 to A63 documents were marked on the side of petitioner to prove her case. No evidence was adduced on the side of respondents.

7) Heard both sides.

8) **Issue No.1**:- Ext.A1 is the copy of First Information Report in Crime No.161/2022 of Kalpetta Police station. Ext.A2 is the copy of scene mahazer prepared in the said crime. Ext.A3 is the report of Motor Vehicle Inspector. This report shows that the accident was not due to any mechanical defect in the vehicle. Ext.A4 is the copy of final report in the said crime. After investigation, the concerned investigating officer found that accident happened on account of rash and negligent driving of the car by respondent No.1. 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 by the 1st respondent. Thus, issue No.1 is found in favour of petitioner.

9) **Issue No.2:-** Ext.A5 wound certificate and Ext.A6 discharge summary clearly prove that in the accident, she 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, she was aged 19 years and she had been earning ₹20,000/- per month from her tailoring work. But, the petitioner did not produce any evidence to prove her 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 ₹1,20,000/- towards loss of earning. As per

the medical records, the petitioner sustained injuries such as, contusion right arm and back. Considering the nature of injuries, I am inclined to allow ₹13,500/- as compensation towards loss of earnings for a period of one month.

12) The petitioner claimed ₹30,000/- as compensation towards transportation charges. But, considering the distance from the residence and from the place of occurrence to the hospital, ₹1,500/- is allowed as compensation towards transportation charges.

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

14) As per Ext.A6 discharge summary, the petitioner was hospitalized for 4 days in total. Hence I am inclined to allow ₹2,000/- (500 x4) as compensation towards bystander's expenses.

15) Towards extra nourishment, ₹1,000/- is allowed.

16) The petitioner claimed ₹2,00,000/- under the head pain and suffering. Considering the injuries sustained by the petitioner, I am inclined to allow ₹20,000/- as compensation towards pain and suffering, and ₹10,000/- towards loss of amenities.

17) The petitioner claimed ₹4,00,000/- towards loss of earning power. The materials available before the Tribunal do not show that the

petitioner had suffered any disability due to the accident. Hence, the petitioner is not entitled to get compensation under this head.

18) The compensation claimed by the petitioner and the compensation payable to the petitioner under different heads are summarized in the table below.

19) Thus, I find that the petitioner is entitled to a total compensation of **₹50,000/- (Rupees Fifty thousand only)** as summarized in the table.

Sl. No.	Head of claim	Amount claimed in ₹	Amount awarded in ₹	Basis
1	Loss of earning (Total)	120000	13,500	₹13500x1 month
2	Loss of earning (Partial)	0	0	Nil
3	Medical expenses	100000	0	Nil
4	Future treatment	100000	0	Nil
5	Bystander expenses	50000	2,000	Nil
6	Transportation expenses	30000	1,500	Nil
7	Extra nourishment	50000	1,000	Nil
8	Damage to clothing, etc	15000	2,000	Nil
9	Pain and suffering	200000	20,000	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	400000	0	Nil
15	Loss of amenities and conveniences, etc	0	10,000	Nil
16	Compensation for continuing/permanent disability	3000000	0	Nil
17	Physical and mental shock	300000	0	Nil
18	Loss of expectation of life	0	0	Nil
19	Inconveniences, hardship, discomfort, frustration, disappointment and mental stress in life	300000	0	Nil
20	Loss of future earning	200000	0	
	Total	₹21,65,000/- claim limited to ₹50,000/-	₹50,000/-	

20) **Issue No.4:-** Respondent No.3 admitted the insurance coverage of the vehicle during the period of accident. So, respondent No.3 is liable to pay compensation awarded to the petitioner. The issue No. 4 is answered accordingly.

21) **Issue No. 5:-** As stated above, the respondent No.1 is responsible for the accident and respondent No.3 is liable to pay compensation to the petitioner.

22) In the result, this application is allowed and an award is

passed for **₹50,000/- (Rupees Fifty thousand only)** with interest @ 8% per annum from the date of filing of petition i.e., on 09/12/2022, 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 ₹123/- towards Court Fee and ₹500/- 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 her 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 the 24th day of February, 2024)

Sd/-

MOTOR ACCIDENTS CLAIMS TRIBUNAL

APPENDIX

Petitioner's Witnesses : Nil

Petitioner's Exhibits :

- A1- 15/02/2022 Copy of First Information Report
- A2- 16/02/2022 Copy of Scene Mahazer
- A3- 18/02/2022 Copy of AMVI Report
- A4- 15/06/2022 Copy of Final Report
- A5- 19/02/2022 Copy of Wound Certificate
- A6- 19/02/2022 Copy of Discharge Summary

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</u> <u>O.P.(MV) No.550/2022</u>	
<u>Dated: 24/02/2024</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”.