

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

Tuesday, 23rd day of April, 2024
3rd day of Vaisakha 1946

ORIGINAL PETITION (MV) No.562/2022

Between:

Tobin Joshy, aged 28 years, S/o.Joshy K.George,
Residing at Rose Villa, Thonichal, Nalloornad,
Mananthavady, Wayanad - 670645. } Petitioner

And:

- R1. Joshy K. George, aged 52 years, S/o.George,
Residing at 537 A, Kolarayil 8, Edavaka Post &
Panchayath, Wayanad -670645.
(Owner of Car No.KL-72/B 9319)
- R2. Amal Sibi, aged 28 years, S/o.Sibi Paul,
Residing at Vettickal House, Nalloornad Post,
Mananthavady, Wayanad -670645.
(Driver of Car No.KL-72/B 9319)
- R3. United India Insurance Company Limited,
Branch Office Kalpetta, 2nd floor, Kalpetta Arcade,
Near New Bus Stand, Wayanad -673121.
(Insurer of Car No.KL-72/B 9319)
- } Respondents

This OP(MV) is coming on this the 4th day of April, 2024 for final hearing before me in the presence of Sri.Babu P.Benedict, Sri.Aboo Puthiyottil & Sri.Sabin Babu, counsels for petitioner, Sri.Biju Mathew K., counsel for respondent No.2, respondents 1 & 3 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) Case of the petitioner is this- On 27/05/2022 at about 9.45 pm, while the petitioner was travelling from Mananthavady to Thonichal side, in a car bearing registration No. KL-72/B 9319 driven by 1st respondent and when the vehicle reached at Chanagadakadavu Bridge, Mananthavady, due to the over speed and negligence of respondent No.2, the car hit on pedestrians. Due to the impact, the petitioner sustained serious injuries. Immediately after the accident he was taken to Aster MIMS Hospital, Kozhikode and treated there as inpatient. The accident happened due to the rash and negligent driving of respondent No.2. Respondent No.1 was the owner and respondent No.3 was the insurer; hence, respondents 1 to 3 are jointly and severally liable to pay compensation of ₹10,00,000/- to the petitioner.

3) Respondents 1 and 3 did not file written statement;

hence they were set ex parte.

4) Respondent No.2 filed written statement. His main contentions are as follows:- Respondent No.2 admits that he was the driver and respondent No.1 was the owner of the car bearing Reg.No. KL-72/B 9319. Respondent No.2 denied the cause of accident. The vehicle was insured with respondent No.3. Respondent No.2 was having valid driving licence.

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-72/B 9319 by the respondent No.2 ?
- 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 A4 documents and Ext.C1- Medical Board Report produced by the petitioner 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.

7) Heard both sides.

8) **Issue No.1** : - According to the petitioner, he sustained injuries in the road traffic accident happened on 27/05/2022 at about 9.45 pm. His specific case is that the accident happened due to the rash and negligent driving of car bearing Reg.No. KL-72/B 9319 by the respondent No.2. To prove the rashness and negligence of respondent No.2, the petitioner relied on Ext.A1 and A2 documents. Ext.A2 is the copy of final report submitted by the Sub Inspector of police, Mananthavady police station against respondent No.2 herein alleging commission of offences punishable u/ss 279, 338 and 304(A) of Indian Penal Code. Ext.A1 is the copy of First Information Report. No contrary evidence to rule out the negligence on the part of respondent No.2 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 vehicle by the respondent No.2. Thus, issue No.1 is found in favour of petitioner.

9) **Issue No.2:-** Petitioner produced Ext.A3 copy of wound certificate to prove the injuries sustained in the road traffic accident. Ext.A4 series discharge summaries were also marked on the side of petitioner to prove his case. These documents would prove the injuries sustained by the petitioner in the road traffic accident and the treatment undergone by him. Therefore, issue No.2 is found in favour of petitioner.

10) **Issue No.3:-** In the light of the above findings, the petitioner is entitled to a just and reasonable compensation.

11) According to the petitioner, he is an architecture by profession and also an educational consultancy and has been earning ₹50,000/- per month. But, no cogent evidence was adduced by the petitioner to prove his income. By considering the averments in the petition, I find that ₹15,000/- per month can be taken as income of

the petitioner for the purpose of calculating the loss of earning. The petitioner claimed ₹2,00,000/- towards loss of earning. As per Ext.A4 discharge summary, the petitioner sustained injuries such as, crush injury L UL, and extensor zone 8 injury and the petitioner was treated as inpatient from 28/05/2022 till 30/05/2022. 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 **₹45,000/-** as compensation towards loss of earnings for a period of three months.

12) The petitioner claimed ₹25,000/- as compensation towards transportation charges. The petitioner was treated as inpatient in three times in Aster MIMS Hospital, Kozhikode. Considering these aspects, I am inclined to allow ₹15,000/- towards travelling expense.

13) As per the medical records, the petitioner was treated as inpatient for 13 days in ASTER MIMS Hospital, Kozhikode. Therefore, the petitioner is entitled to ₹6,500/- (₹500/- per day) as compensation under the head bystander's expenses.

14) Towards extra nourishment, ₹5,000/- is allowed.

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

16) The petitioner produced Ext.A4 series medical bills for ₹34,116/- to prove the claim under the head medical expenses. Therefore the petitioner is entitled to ₹34,116/- towards medical expenses. Though the petitioner claimed ₹50,000/- towards future treatment, he did not produce any documents to prove the same. Therefore, the petitioner is not entitled to get compensation under the head future treatment.

17) The petitioner claimed ₹1,00,000/- under the head pain and suffering. As per the medical records, the petitioner sustained crush injury L UL and extensor zone 8 injury. On the ground of injuries sustained by the petitioner, I am inclined to allow ₹50,000/- as compensation towards pain and suffering.

18) Ext.C1 medical certificate has marked on the side of petitioner to prove the disability suffered by the petitioner. Ext.C1 Medical certificate issued by Medical Board, District Hospital,

Mananthavady shows that petitioner sustained soft tissue injury left forearm and percentage of disability is 12%. 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 ₹3,00,000/- 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) The petitioner claimed ₹3,00,000/- towards loss of earning power. The monthly income of petitioner is already arrived at ₹15,000/-. Considering the age of petitioner was 28 years at the time of accident, the applicable multiplier is ' 17 ' as per the dictum in ***Sarla Verma and Others Vs Delhi Transport Corporation and another reported in AIR 2009 SC 3104.*** As per Ext.C1 Medical Certificate, the petitioner is suffering 12% permanent disability. 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 12% 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 ₹3,67,200/- ie. [$₹15,000 \times 12 \times 17 \times 12 / 100$] (annual income x multiplier x percentage of functional disability)].

21) 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)	200000	45,000	₹15000x3 months
2	Loss of earning (Partial)	0	0	Nil
3	Medical and miscellaneous expenses	100000	34,116	Ext.A4 series
4	Future treatment	50000	0	Nil
5	Bystander expenses	200000	6,500	13x500
6	Transportation expenses	25000	15,000	Nil
7	Extra nourishment	200000	5,000	Nil
8	Damage to clothing, etc	5000	2,000	Nil
9	Pain and suffering	100000	50,000	For 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	300000	3,67,200	15000x12x17x12/100

15	Loss of amenities and conveniences, etc	200000	25,000	Nil
16	Compensation for continuing/permanent disability	300000	0	Nil
17	Physical and mental shock	0	0	Nil
18	Loss of expectation of life	0	0	N il
19	Inconveniences, hardship, discomfort, disappointment, frustration and mental stress in life	0	25,000	Nil
	Total	₹17,80,000/- claim limited to 10 lakh	₹5,74,816/- rounded to ₹5,74,900/-	

22) Therefore I find it just and reasonable to award ₹5,74,900/- (Rupees Five lakh seventy four thousand and nine hundred only) as compensation. This issue is answered in favour of petitioner in respect of the compensation awarded as referred to above.

23) **Issue No.3 and 4:-** Respondent No.3 was the insurer. So, respondent No.3 is liable to pay compensation awarded by this Tribunal to the petitioner. The issues answered accordingly.

24) **Issue No.5** :- In view of the above findings, the respondent No.2 is the tortfeasor of the accident and respondent No.3 is liable to pay compensation to the petitioner.

25) In the result, this application is allowed and an award is passed for **₹5,74,900/- (Rupees Five lakh seventy four thousand and nine hundred only)** with interest @ 8% per annum from the date of filing of petition i.e., on 17/12/2022 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 ₹9,373/- towards Court Fee and ₹10,000/- 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 23rd day of April, 2024)

Sd/-

MOTOR ACCIDENTS CLAIMS TRIBUNAL

APPENDIX

Petitioner's Witnesses : Nil

Petitioner's Exhibits :

- | | | |
|-----|------------|---------------------------|
| A1- | 28-05-2022 | Copy of FIR |
| A2- | 30-08-2022 | Copy of final report |
| A3- | 28-05-2022 | Copy of wound certificate |

A4- - Discharge Summary & Medical bills

Respondents' Witnesses & Exhibits : Nil

Court Witnesses : Nil

Court Exhibits :

C1- 05-03-2024 Medical Board Report issued by District
Medical Board, Mananthavady, Wayanad.

Sd/-

MOTOR ACCIDENTS CLAIMS TRIBUNAL

Typed by : *Abhilash Devassy*

Compared by : *Sindhu A.R.*

FCS :

<u>FAIR AWARD IN</u> <u>O.P.(MV) No.562/2022</u>	
<u>Dated : 23/04/2024</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”.