IN THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, WAYANAD, KALPETTA

Present: Sri. S.K. Anilkumar, Motor Accidents Claims Tribunal, Kalpetta

Thursday, 8th day of February, 2024

19th day of Magha, 1945

ORIGINAL PETITION (MV) No.558/2022

Between:

Sathyan, aged 48 years, S/o.Chellappan, Vadakkekavumpurath House, Nellarachal Post, Thomattuchal Village, Sulthanbathery Taluk, Wayanad.	Petitioner

And:

R1. Shaji K., aged 36 years, S/o.Kesavan, Marathattu House, Nellarachal Post, Ozhalakolly, Thomattuchal Amsom, Sulthanbathery Taluk, Wayanad District. *(Rider of Motorcycle No.KL-12/C 9361)* R2. Kumaran C.C., aged 46 years, S/o.Soman, Kolathur House, Palakolly Post, Pulpally, Wayanad. *(Owner of Motorcycle No.KL-12/C 9361)* R3. The Manager, United India Insurance Company, Branch office Kalpetta, Kalpetta Post, Wayanad. *(Insurer of Motorcycle No.KL-12/C 9361)*	Respondents

This OP(MV) is coming on this the 6th day of February, 2024 for final hearing before me in the presence of Sri.A.U.Suresh Kumar, counsel for petitioner, Sri.Rajeev P.M., counsel for respondent No.2, Sri.Jose Therakam, counsel for respondent No.3, respondent No.1 remained exparte and having stood over for consideration to this day the Tribunal passed the following.

A W A R D

The above OP(MV) was dismissed by this Tribunal on 28/11/2023. As against the order dated 28/11/2023, the petitioner filed

IA 06/2024 to restore the OP(MV). On 03/02/2024 the above IA 06/2024 is allowed. Hence the OP(MV).

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 in short is thus:- On 23/03/2022 at about 7.00 pm, while the petitioner was travelling as a pillion rider from Ambalavayal to Ozhalakolly, on a motor cycle bearing registration No. KL-12/C 9361 ridden by 1st respondent in a rash and negligent manner and in over speed and when the vehicle reached in front of RARS, the respondent No.1 lost his control over the vehicle and had hit on the back side of the car bearing Reg. No. KL-12/E 8526 and then hit on another motorcycle bearing Reg.No. KL-12/C 3941. As a result of the impact, the petitioner sustained injuries. Immediately after the accident, the petitioner was taken to St.Martin's Hospital, Ambalavayal and from there he was shifted to Medical College Hospital, Mananthavady. The accident happened due to the rash and negligent riding of motorcycle bearing Reg.No. KL-12/C 9361 by the 1st respondent. 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 ₹5,00,000/- to the petitioner.

3) Respondent No.1 remained exparte.

4) The respondent No.2 filed written statement. His main contentions are as follows:- The petition is not maintainable. The accident happened due to the negligence of the petitioner. On 26/01/2022, the respondent No.2 sold the vehicle in favour of Saradhi Motors Manikuni, Sulthanbathery. Compensation claimed by the petitioner is highly excessive.

5) In the written statement filed by the respondent No.3, the following contentions are raised:- The respondent No.1 was not having valid driving licence at the time of accident. The Ambalavayal police has charge sheeted a crime against respondent No.1. u/s 3(1) r/w 181 of the Motor Vehicles Act. Respondent No.3 admits the validity of insurance coverage of the motorcycle bearing Reg.No.KL- 12/C 9361. 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 the rash or negligent riding of motorcycle bearing Reg.No. KL-12/C 9361 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?

7) Exts.A1 to A9 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.

8) Heard both sides.

9) **Issue No.1** : - The case of the petitioner is that the accident happened only due to the negligent riding of motorcycle bearing Reg.No. KL-12/C 9361 by the respondent No.1. To prove the accident, the person responsible for the accident and to prove the negligence the petitioner has produced Ext.A1 First Information Statement and First Information Report, Ext.A2 Scene Mahazar, Ext.A3, A3(a) AMVI Reports and Ext.A4 Charge Sheet. Ext.A4 is the copy of final report submitted by the Sub Inspector of police, Ambalavayal police station against 1st respondent herein alleging commission of offences punishable u/ss 279 and 338 of IPC and u/s 3(1) r/w 181 of the MV Act. 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 riding of motorcycle bearing Reg.No. KL-12/C 9361 by the 1st respondent. Thus, issue No.1 is found in favour of petitioner.

10) **Issue No.2**:- 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 wound certificate issued from St.Martins Hospital, Ambalavayal. As per Ext.A5 document, the petitioner sustained injuries in the road traffic accident and was referred to Government Hospital, Mananthavady. Ext.A6 wound certificate issued from District Hospital, Mananthavady shows that the petitioner sustained fracture distal femur and fracture patella. The petitioner produced Ext.A8 discharge summary and it shows that he sustained fracture Supracondylar femur right. The petitioner produced another discharge summary. 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.

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

12) According to the petitioner, he was aged 48 years and had earning ₹30,000/- per month from his avocation as construction worker. But, the petitioner did not adduce any evidence to prove his 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 ₹1,80,000/- towards loss of earning and ₹90,000/- towards partial loss of earning. As per the medical record the petitioner sustained injuries such as, fracture distal femur and fracture patella. 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 3 months. Hence I am inclined to allow ₹40,500/-, @ ₹13,500/- per month being the actual loss of earning for a period of 3 months.

13) The petitioner claimed ₹5,000/- as compensation towards transportation charges. Considering the distance from the residence of petitioner to the hospital, I am inclined to allow ₹5,000/- towards travelling expense.

14) Medical records show that, the petitioner was treated as inpatient for 8 days, therefore the petitioner is entitled to ₹4,000/- (500x8) as compensation under the head bystander's expenses.

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

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

17) Ext.A9 series medical bills shows that the petitioner had incurred an amount of ₹3,420/- towards treatment expenses. Hence I am inclined to ₹3,500/- as compensation under the head medical expenses.

18) From the medical records, it is seen that the petitioner sustained fracture Supracondylar femur right. He had to undergo surgeries. His treatment continued for about 3 months. Considering these aspects, I am inclined to allow ₹50,000/- as compensation towards pain and sufferings.

19) Ext.C1 is the medical certificate issued from District Medical Board, Wayanad. The petitioner was referred to the Board for assessing his permanent disability. The Board has assessed his permanent disability as 50%. The petitioner stated that the accident caused very physical pain, mental agony and permanent loss to him and he is not able to do any work as before. Due to the accident, the petitioner has lost the amenities in his

life. Considering these aspects, I am inclined to allow ₹25,000/- each towards loss of amenities and inconvenience caused.

20) The petitioner claimed ₹1,00,000/- towards loss of earning power. The monthly income of petitioner is already arrived at ₹13,500/-. The petitioner was aged 48 years at the time of accident. 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 ₹2,02,500/- (13,500 +25% of 13500x12). For the age group between 46 and 50 the applicable multiplier is ' 13' 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 sustained injuries such as, supra condylar fracture right femur and suffered 50% permanent disability due to the injury. 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 50% 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 ₹13,16,250/- ie., [₹2,02,500x13x50/100) (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)	180000	40,500	₹13500x3 months
2	Loss of earning (Partial)	90000	0	Nil
3	Medical expenses	100000	3,500	Ext. A9 series
4	Future treatment	0	0	
5	Bystander expenses	10000	4,000	500x8
6	Transportation expenses	5000	5,000	Nil
7	Extra nourishment	10000	5,000	Nil
8	Damage to clothing, etc	10000	2,000	Nil
9	Pain and suffering	100000	50,000	₹50,000/ for major fractures suffered in patient for 8 days surgical procedures undergone
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	100000	13,16,250	202500x13x50 /100
15	Loss of amenities and conveniences, etc	0	25,000	Nil
16	Compensation for	200000	0	Nil

	continuing/permanent disability			
17	Physical and mental shock	0	0	Nil
18	Loss of expectation of life	0	0	
19	Inconveniences, hardship, discomfort, frustration, disappointment and mental stress in life	0	25,000	Nil
	Total	₹8,05,000/- claim limited to 5 lakh	₹14,76,250/- rounded to **₹14,76,300/-**	

22) Therefore I find it just and reasonable to award ₹14,76,300/- (Rupees Fourteen lakh seventy six thousand and three hundred only) as compensation. This issue is answered in favour of petitioner in respect of the compensation awarded as referred to above.

23) **Issues 3 and 4:-** It is already found that the accident happened due to the rash and negligent riding of motorcycle bearing Reg.No. KL-12/C 9361 by the respondent No.1. Respondent No.2 was the owner. Respondent No.3 admitted the insurance coverage of the vehicle, but they disputed the existence of driving licence of 1st respondent. Respondent No.3 filed IA 03/2023 to direct the respondent No.1, to produce his driving licence. But the respondent No.1 did not produce the driving licence. Hence I find that the 1st respondent did not possess a valid

driving license at the time of accident. Therefore respondent No.3 is not liable to pay compensation to the petitioner. However, the respondent No.3 is admitted the insurance coverage of the vehicle; hence, the respondent No.3 is liable to pay compensation awarded by this Tribunal to the petitioner and at liberty to recover the amount paid from respondents 1 and 2. Therefore, Issues 3 and 4 are answered accordingly.

24) In the result, this application is allowed and an award is passed for **₹14,76,300/- (Rupees Fourteen lakh seventy six thousand and three hundred only)** with interest @ 8% per annum from the date of filing of petition i.e., on 15/12/2022, till realisation with proportionate cost.

Respondent No.3 is directed to furnish cheques for ₹14,136/- towards Court Fee including court fee on excess award amount and ₹14,763/- towards LBF payable by the petitioner, in favour of Motor Accidents Claims Tribunal, Kalpetta.

Respondent No.3 is directed to deposit **₹5,00,000/-(Rupees Five lakhs only)** directly to the bank account of the petitioner by way of electronic transfer and the petitioner is entitled to draw the amount as and when required.

Respondent No.3 is further directed to draw the cheque for the balance amount and produce it before the bank along with a copy of this Award to create a fixed deposit in the name of petitioner for a period of two years.

The above fixed deposit receipt shall necessarily have the following endorsement on them stating that :

i. The amount shall be repaid only on maturity and by crediting to the petitioner's account or else only on the orders of this Tribunal.
ii. The fixed deposit amount, on maturity, along with its interest, shall be automatically credited to the petitioner's bank account.

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. Respondent No.3 can recover the paid amount from respondents 1 and 2.

The petition is allowed accordingly.

(Dictated to Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, dated this the 8th day of February, 2024)

Sd/-

MOTOR ACCIDENTS CLAIMS TRIBUNAL

APPENDIX

Petitioner's Witnesses : Nil

Petitioner's Exhibits :

A1-	04-04-2022	Copy of FIR & FIS
A2-	05-04-2022	Copy of Scene Mahazar
A3-	15-04-2022	Copy of AMVI report
A3(a)-	15-04-2022	Copy of AMVI report
A4-	30-06-2022	Copy of final report
A5-	23-03-2022	Copy of wound certificate
A6-	10-06-2022	Copy of wound certificate (MCH, Mananthavdy)
A7-	09-12-2022	Discharge Summary
A8-	30-03-2022	Discharge Summary
A9(s)-	-	Medical bills

Respondents' Witnesses & Exhibits : Nil

Court Witnesses : Nil

Court Exhibits :

C1-	21-02-2023	Medical Board Report issued by Superintendent, District Hospital, Mananthavady, Wayanad.

Sd/-
MOTOR ACCIDENTS CLAIMS TRIBUNAL

Typed by : Abhilash Devassy
Compared by : Sindhu A.R.
FCS :

<table>
<tr><td colspan="2"><u>FAIR AWARD IN O.P.(MV) No.558/2022</u></td></tr>
<tr><td colspan="2"><u>Dated : 08/02/2024</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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