

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

Thursday, 25th day of April, 2024
5th day of Vaisakha, 1946

ORIGINAL PETITION (MV) No.480/2022

Between:

Akarsh C.M., @ Akarsh Mathew, aged 24 years,
S/o.Mathew, Residing at Chundakkara House,
Pallikkunnu Post, Kaniyambetta, Wayanad -673121. } Petitioner

And:

- R1. Sunil Kumar, aged 45 years, S/o.Kumaran,
Kunnathodil House, Varadoor Post, Kaniyambetta
Amsom, Wayanad District-673591.
(Rider-cum-owner of Motorcycle No.KL-12/G 1031)
- R2. The Branch Manager, United India Insurance Co.
Ltd., Branch Office, Kalpetta Arcade, 2nd floor,
Near New Bus Stand, Kalpetta, Wayanad -673121.
(Insurer of Motorcycle No.KL-12/G 1031)
- (Suppl.) The Branch Manager, National Insurance Co. Ltd.,
R3. Kalpana Shopping Complex, Main Road, Kalpetta
Post, Wayanad District -673121.
(Insurer of Motorcycle No.KL-12/G 1031)
- } Respondents

*(Supplemental respondent No.3 impleaded and amended as
per orders in IA 2/2023 & 3/2023 dated 14/09/2023)*

This OP(MV) is coming on this the 23rd day of March, 2024 for
final hearing before me in the presence of Smt.Bincy Aby Cheriyan,
counsel for petitioner, Smt.Aneesha K., counsel for respondent No.1,
Sri.C.C.Mathew, counsel for respondent No.2, Sri.P.C.Prasad, counsel

for supplemental respondent No.3 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 as follows:- On 03/01/2021 at about 16.30 hours, while the petitioner was travelling on a motorcycle from Chundakkara to Kambalakkad road and when he reached at Manancherry at Kaniyambetta amsom, a motorcycle bearing registration No.KL-12/G 1031 ridden by 1st respondent, in a rash and negligent manner, came from opposite side and hit on the petitioner's vehicle, by which, he sustained injuries. After the accident, petitioner was taken to DM WIMS Hospital, Meppadi. The accident happened due to the rash and negligent riding of motorcycle bearing Reg.No. KL-12/G 1031 by the 1st respondent. Supplemental respondent No.3 was the insurer; hence, respondent No.1 and supplemental respondent No.3 are jointly and severally liable to pay compensation of ₹4,00,000/- to the

petitioner.

3) Respondents 1, 2 & supplemental respondent No.3 filed written statement.

4) The main contentions of respondent No.1 are as follows:-
Respondent No.1 admits that he was the driver cum owner of the vehicle at the time of accident. There was no negligence on his side. Respondent No.1 was having valid driving licence and the vehicle was having valid vehicular documents.

5) Respondent No.2 filed written statement with the following contentions: The petition is not maintainable and respondent No.2 denies the insurance coverage of the vehicle. The amount claimed by the petitioner is excessive.

6) In the written statement filed by supplemental respondent No.3, the following contentions are raised:- The supplemental respondent No.3 admits the insurance coverage of the vehicle. There was no negligence on the part of respondent No.1. The amount claimed by the petitioner is highly exorbitant.

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

- (1) Whether the accident happened due to the rash and negligent riding of motorcycle bearing Reg.No. KL-12/G 1031 by the respondent No.1?
- (2) Whether the petitioner sustained injuries due to the negligent act of respondent No.1 and is the petitioner entitled to get compensation as claimed and if so what is the quantum?
- (3) Who is liable to pay compensation to the petitioner?
- (4) Relief and cost?

8) Exts.A1 to A8 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.

9) Heard both sides.

10) **Issue No.1** : - The case of the petitioner is that the accident happened due to the rash and negligent driving of

respondent No.1, while riding the vehicle bearing Reg.No. KL-12/G 1031. To prove the rashness and negligence of respondent No.1, the petitioner relied on Ext.A1 copy of First Information Report, Ext.A2 copy of scene mahazar, Ext.A3 series AMVI reports and Ext.A4 copy of charge sheet. On perusal of Ext.A1 and Ext.A4 documents, petitioner sustained injuries in the road traffic accident due to the rash and negligent riding of motorcycle bearing Reg.No.KL-12/G 1031 by the respondent No.1 and a Crime No. 07/2021 for offences punishable U/s 279 and 337 of IPC was registered against respondent No.1 by Kambalakkad Police. 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 vehicle by the 1st respondent. Thus, issue No.1 is found in favour of petitioner.

11) **Issue No.2:-** Petitioner's version is that he sustained injuries in the alleged road traffic accident. Ext.A5 discharge summary produced by the petitioner proved the said fact. Therefore the petitioner is entitled to a just and reasonable compensation.

12) According to the petitioner, he is working as a dance master and has been earning ₹18,000/- per month. Ext.A7 salary certificate produced by the petitioner shows that he is working as a Dance master in 'Nadana Kalakendram' from the month of October 2018 and it shows that the earnings of the petitioner is ₹18,000/- per month. But, the petitioner did not examine the person who issued Ext.A7 certificate to prove the document. 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 ₹1,08,000/- towards loss of earning. The medical records show that the petitioner sustained injuries such as 'shoulder contusion'- to rule out rotator cuff injury and neck contusion. In view of the injuries sustained by the petitioner in the accident, it

would not have been possible for him to go to his work for three months. Therefore, the petitioner is entitled to ₹39,000/- as compensation towards loss of earnings for a period of three months.

13) The petitioner claimed ₹5,000/- as compensation towards transportation charges. The petitioner has not produced any document to prove his claim. Considering the distance from the residence of petitioner to the hospital where he had undergone treatment, I am inclined to allow ₹5,000/- towards travelling expense.

14) The petitioner was treated as inpatient for three days, therefore the petitioner is entitled to ₹1,500/- (₹500/- per day) as compensation towards bystander's expenses.

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

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

17) The petitioner produced Ext.A6 series medical bills for ₹19,701/- to prove his claim towards medical expenses. Hence, I am inclined to allow ₹19,701/- towards medical expenditure.

18) According to the petitioner, he sustained injuries such as shoulder contusion to rule out rotator cuff injury, neck contusion, swelling on left shoulder, tenderness in AC joint and suprecapular muscles on left shoulder, left shoulder abduction 0-60 degree, left shoulder pain and severe tenderness in left paraspinal area. Considering all these aspects I am inclined to allow ₹30,000/- as compensation towards pain and suffering.

19) Ext.C1 Medical certificate issued by Medical Board, District Hospital, Mananthavady shows that petitioner sustained injury such as, shoulder contusion left and percentage of disability is 3%. 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 ₹20,000/- under the head loss of amenities and ₹10,000/- under the head inconveniences caused.

20) The petitioner claimed ₹4,00,000/- 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 ₹20,000/- is awarded for loss of amenities and enjoyment in life, I am not inclined to award compensation under the above heads separately.

21) The petitioner claimed ₹2,00,000/- towards loss of earning power. The monthly income of petitioner is already arrived at ₹13,000/-. Considering the petitioner was aged at 24 years at the time of accident, 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***. As per Ext.C1 Medical Certificate the petitioner is suffering 3% 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 3% 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 ₹84,240/- ie. [$₹13000 \times 12 \times 18 \times 3/100$] (annual income x multiplier x percentage of functional disability)]. All other claims are disallowed.

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)	108000	39,000	₹13000x3 months
2	Loss of earning (Partial)	50000	0	Nil
3	Medical and miscellaneous expenses	50000	19,701	Ext.A6 series
4	Future treatment	0	0	Nil
5	Bystander expenses	10000	1,500	3x500
6	Transportation expenses	5000	5,000	Nil
7	Extra nourishment	10000	5,000	Nil
8	Damage to clothing, etc	5000	2,000	Nil
9	Pain and suffering	200000	30,000	Considering injury

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	200000	84,240	$13000 \times 12 \times 18 \times 3 / 100$
15	Loss of amenities and conveniences, etc	100000	20,000	Nil
16	Compensation for continuing/permanent disability	400000	0	Nil
17	Physical and mental shock	50000	0	Nil
18	Loss of expectation of life	0	0	Nil
19	Inconveniences, hardship, discomfort, frustration, disappointment and mental stress in life	0	10,000	Nil
20	Salary paid to attendant for 6 months	60000	0	
21	Future recurring expenses	100000	0	
22	Compensation for functional disability	300000	0	
	Total	₹16,48,000/- claim limited to 4 lakh	₹2,16,441/- rounded to ₹2,16,500/-	

23) Therefore I find it just and reasonable to award

₹2,16,500/- (Rupees Two lakh sixteen 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.3:-** Supplemental respondent No.3 admitted the insurance coverage of the vehicle during the period of accident. So, the supplemental respondent No.3 is liable to pay compensation awarded to the petitioner. The issue No.3 is answered accordingly.

25) **Issue No.4 :-** As discussed above, supplemental respondent No.3 is liable to pay compensation to the petitioner.

26) In the result, this application is allowed and an award is passed for **₹2,16,500/- (Rupees Two lakh sixteen thousand and five hundred only)** with interest @ 8% per annum from the date of filing of petition i.e., on 15/11/2022, till realisation with proportionate cost.

Supplemental 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.

Supplemental 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.

Supplemental 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.

Supplemental 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 25th day of April, 2024)

Sd/-

MOTOR ACCIDENTS CLAIMS TRIBUNAL

APPENDIX

Petitioner's Witnesses : Nil

Petitioner's Exhibits :

A1-	05-01-2021	Copy of FIR
A2-	06-01-2021	Copy of scene mahazar
A3(s)-	16-01-2021	Copy of AMVI report
A4-	16-01-2021	Copy of final report
A5-	05-01-2021	Discharge Summary
A6-	-	Medical bills
A7-	19-10-2020	Salary certificate
A8-	-	Prescriptions

Respondents' Witnesses & Exhibits : Nil

Court Witnesses : Nil

Court Exhibits :

C1-	10-10-2023	Medical Board Report issued by District Medical Board, Mananthavady, Wayanad.
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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.480/2022</u>	
<u>Dated : 25/04/2022</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”.