

IN THE COURT OF MOTOR ACCIDENT CLAIM TRIBUNAL,
PERIYAKULAM.

Present: Tmt. S.Sameena, B.A. L.L.B.,
Additional District And Sessions Judge,
Periyakulam.

Friday, the 31st day of January 2025.

CNR.No.TNTH09 001152 2023
MOTOR ACCIDENTS CLAIM ORIGINAL PETITION No.268/2023

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Aakila Banu W/o. Mohamed Haarish,
aged about 21 years and residing at
Door No.111, Savadi Street,
Erumalainayakkanpatii Village,
Periyakulam Taluk, Theni District.

... **Petitioner**

// Vs. //

1. The Owner,
Murugan Bus Services,
Door No.57A, Salem Road,
Namakkal District.
2. The Branch Manager,
The National Insurance Company,
Division Office First Floor,
K.R.T. Building, No.33,
Bharathidasan Salai, Piramanadiyaroad,
Tiruchirappalli District.

... **Respondents**

This petition came on 21.01.2025 for final hearing before me in the presence of Mr.S.Raja Mohamed, Learned Counsel for the petitioner and Mr.R.Murugan, Learned Counsel for the 2nd respondent and 1st respondent remained exparte and upon hearing both side arguments and upon perusing the documents and having stood over till this day for consideration and this Court delivered the following...

AWARD

This petition is filed by the petitioner Aakila Banu U/s.140, 141, 142, 163 (b), 166 and 183 (a) of MV Act 1988 r/w Rule 3 (1) of MACT Rules claiming compensation for the injury sustained by the petitioner in the accident.

2. The petitioner is the injured in the accident. The petitioner's case is that, on 28.05.2023 at 11.15.a.m, while the petitioner was travelling as pillion rider of the motor cycle bearing registration No.TN 37 CA 3182 Yamaha FZ along with her husband at Devadanapatti to Batlagundu Main Road and when they reached near M.R.C. Bakery at Ghat Road, the driver of the 1st respondent's bus bearing registration No.TN 57 AQ 2345, drove the bus in the same direction in a rash and negligent manner and without sounding horn, dashed against the two wheeler. As the result of this, the petitioner sustained grievous injuries on the dorsum of the left leg and also all over her body. Immediately she was taken to D.M.S. Hospital, Batlagundu, where she underwent treatment from 28.05.2023 to 31.05.2023 and on 28.05.2023 she underwent a surgery.

3. A case in Crime No.180/2023 was registered by the Devadanapatti Police Station against the driver of the bus for the offence punishable U/s.279 and 337 of IPC. Further from 01.06.2023 onwards the petitioner was undergoing

continuous treatment in the above said Private Hospital as outpatient. The petitioner is aged 21 years and was hale healthy and is a Tailor by profession and was earning Rs.700/- per day. After the accident the petitioner was not able to walk long distance and to climb stairs and was not able to squat. She was also not able to do the tailoring work as that of before the accident.

4. According to the petitioner the accident happened only due to the rash and negligent driving of the driver of the 1st respondent's bus. The 1st respondent's bus was insured with the 2nd respondent and hence the 1st and 2nd respondents are liable to compensate the petitioner. The petitioner has claimed Rs.15,07,000/- under various heads but has limited her claim to Rs.10,00,000/-.

5. The 1st respondent, the owner of the bus remained exparte. The 2nd respondent is the insurer of the 1st respondent's bus bearing registration No.TN 57 AQ 2345. The 2nd respondent insurance company filed counter denying the manner of accident and contended that, the 1st respondent's driver drove the bus in a moderate speed and when the bus reached near Ghat Road, M.R.C. Bakery, the motor cycle driven by the petitioner's husband suddenly turned from the left to the right side of the road in rash and negligent manner and on seeing that the 1st respondent driver suddenly applied the break and tried to stop the bus. But the petitioner's husband who was riding the motor cycle with the petitioner at pillion lost his control and fell down on the road and sustained injuries. The accident happened only due to the rash and negligence of the rider of the two wheeler and hence the 2nd respondent is not liable to pay any compensation to the petitioner.

6. The 2nd respondent further contended that, the owner and the insurer of the two wheeler is not added as party to the petition and hence the petition is liable to be dismissed for non joinder of necessary parties. Also it is contended that the petitioner was not wearing helmet at the time of the accident and the petitioner is put to strict proof of her occupation and monthly income and the injuries sustained by her is simple in nature and there is no permanent disability to the petitioner and the compensation claimed under various heads are exorbitant and arbitrary and prayed to dismiss the petition with cost.

7. On the side of the petitioner, the petitioner herself has been examined as **P.W.1** and **Ex.P.1 to Ex.P.14** marked. There was no oral or documentary evidence on the side of the 2nd respondent.

Heard both sides.

8. **Point for consideration:**

1. Whether the accident occurred due to the rash and negligent driving of the driver of the bus bearing registration No.TN 57 AQ 2345 ?
2. Whether the petitioner is entitled for compensation for the injuries sustained by her, if so, what is the quantum ?
3. Who is liable to pay the compensation ?

Point No.1.

9. The injured petitioner has examined herself as P.W.1. The 2nd respondent has filed counter, wherein the nature of accident has been denied. P.W.1 has stated in her evidence that, on 28.05.2023 when she was riding in the two wheeler bearing registration No.TN 37 CA 3182 as a pillion rider and the two wheeler was driven by her husband and at about 11.15.a.m when they reached near the M.R.C. Bakery at Ghat Road in Devadanapatti to Batlagundu Main Road, the AVR private bus bearing registration No.TN 57 AQ 2345 came in a great speed in a rash and negligent manner from behind and dashed against the two wheeler, as a result of which they fell down and the petitioner sustained severe injuries on her dorsum of her left leg and she was admitted at D.M.S Private Hospital at Batlagundu, and the driver of the AVR bus is responsible for the accident.

10. Ex.P.1 is the copy of FIR registered by the Devadanapatti Police wherein a case in Crime No.180/2023 has been registered against the driver of the bus bearing registration No.TN 57 AQ 2345 for the offence punishable U/s.279 and 337 of IPC. The complaint has been lodged by the petitioner. Ex.P.5 is the copy of Final Report wherein the Police has laid the Charge Sheet against the driver of the bus for the offence U/s.279 and 337 of IPC. Ex.P.8 is the copy of Judgment of the Judicial Magistrate Court, Periyakulam in S.T.C.No.496/2023 wherein the driver of the bus viz., Rajapillai Thevar S/o. Annakodi had pleaded guilty and the Judicial Magistrate Court, Periyakulam has imposed a fine of Rs.1,500/- for the offences punishable U/s.279 and 337 of IPC.

11. Therefore, it is clear that the accident had occurred due to the rash and negligent driving of the driver of the private bus bearing registration No.TN 57 AQ 2345 and this point is answered accordingly.

Point No.2.

12. The petitioner has claimed a total sum of Rs.10,00,000/- as compensation. The petitioner has been examined as P.W.1. P.W.1 would stated in her evidence that she is a tailor by profession and on account of the injury on her left leg, she could not work as that of before and she could not sit cross legged and she was admitted as inpatient at D.M.S Hospital at Batlagundu from 28.05.2023 to 31.05.2023 and she had undergone surgery in her left leg.

13. Ex.P.2 is the Wound Certificate and Ex.P.3 is the Discharge Summary issued by D.M.S. Hospital at Batlagundu. In Ex.P.2 and Ex.P.3 it is mentioned as '6 x 3 sized lacerated wound at the dorsum of foot exposing torn ends of T3 T4 extensor digitorum' and the petitioner has undergone wound debridement and tendon suturing on 28.05.2023. Since the injury is a tendon injury it takes time for healing. From Ex.P.11 Photographs it is seen that, the wound has gone deep. Further, the petitioner has sustained lacerated wound with T3 and T4 extensor bones and tendon is cut on her left foot which connects the bone to the muscle. If the tendon is cut patient cannot do the movements and her movements will be restricted. According to the petitioner she is a tailor by profession. Ex.P.14 is the Certificate issued by Mobile Tailoring Training Center, Reaching The Unreached, G.Kallupatti. From Ex.P.14 it is seen that, she is a tailor by profession. Being a tailor she cannot do the tailoring work till her wound has been healed completely. According to the petitioner she was under treatment as inpatient from 28.05.2023

to 31.05.2023 and thereafter underwent treatment as out-patient from 01.06.2023 onwards. According to the petitioner she was earning Rs.700/- per day through her tailoring profession. This court is of the view that a tailor can earn Rs.700/- per day. Hence, the income of the petitioner can be taken as Rs.700/- per day and the monthly income of the petitioner will be Rs.17,500/- (Rs.700 x 25 days) deducting the Sundays. Further she has stated in her evidence that she is not able to do the tailoring job as she had done before and she was under complete rest for about 3 months. The wound being deep it may take time to heal completely. Further from Ex.P.7 Medical Bills and Transport Bills it is seen that she was continuously under treatment as out-patient till October 2023 i.e., for about 5 months after the accident. Even after healing she needs 3 months rest to resume her tailoring work. Hence, the **loss of income** to the petitioner would be **Rs.1,40,000/-** (Rs.17,500 x 8 months).

14. Ex.P.7 is the Medical Bills and Transportation Bills showing the expenses incurred by the petitioner. It is seen that, she has spent **Rs.53,354/-** towards **medical expenses** and **Rs.39,000/-** towards **transportation to hospital**. There is nothing to suspect the genuineness of the bills and hence the same is awarded as such.

15. The petitioner has claimed Rs.4,00,000/- towards pain and suffering. The wound being tendon injury which has gone deep with T3, T4 extensor bones cut and wound debridement plus suturing done on the left foot and healing of the same takes time like that of fracture injury this court awards a sum of **Rs.2,00,000/-** under the head of **pain and suffering** which is just and reasonable.

16. The petitioner has claimed Rs.5,000/- towards **damage to clothing** and articles for which a sum of **Rs.2,500/-** is granted. The petitioner has sustained grievous injury on her left leg and she was under complete rest for about 3 months. Hence, a sum of **Rs.10,000/-** is granted towards **attendant charges**. The petitioner has claimed Rs.2,00,000/- towards **extra nourishment** for which a sum of **Rs.25,000/-** is granted.

17. From what are discussed and as found above, compensation payable to the petitioner herein is hereby recorded as shown in the tabular column below:

Sl. No.	Head of claim	Amount claimed (in Rupees)	Amount awarded (in Rupees)	Basic vital details in a nut shell
1.	Transportation to hospital.	2,000	39,000	
2.	Extra nourishment.	2,00,000	25,000	
3.	Damage to clothing.	5,000	2,500	
4.	Medical expenses.	3,00,000	53,354	
5.	Pain and sufferings.	3,00,000	2,00,000	
6.	Compensation for continuing disability.	4,00,000	--	
7.	Loss of estate.	3,00,000	--	
8.	Loss of income.	--	1,40,000	(Rs.700 x 25 days = Rs.17,500 x 8 months)
9.	Attendant charges.	--	10,000	
	<u>Total.</u>	Rs.15,07,000	Rs.4,69,854	Rs.4,69,854

	restricted to Rs.10,00,000.		with interest at 7.5% per annum from the date of petition till realization.
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The rest of the claims in the OP are not allowed as shown in the tabular column are hereby disallowed and this point is answered accordingly.

Point No.3.

18. Admittedly there is valid insurance coverage for the offending bus. In the counter the 2nd respondent has stated that, the driver of the bus has no driving licence. But is seen from Ex.P.4 Motor Vehicle Inspection Reports that, both the driver of the bus and the husband of the petitioner who was riding the two wheeler was holding valid driving licence at the time of accident. Hence this court has no hesitation in holding that the 2nd respondent insurance company is liable to pay the award amount to the petitioner and this point is answered accordingly.

19. **In the result the petition is partly allowed** as follows:

- i). The 2nd respondent insurance company is directed to pay a sum of **Rs.4,69,854/-** (Rupees Four Lakh Sixty Nine Thousands Eight Hundred Fifty Four) as compensation to the petitioner with interest at the rate of 7.5% from the date of petition till the date of realization with cost within 3 months from the date of

this order.

- ii). Further ordered that, the petitioner is hereby permitted to withdraw the entire award amount.
- iii). The petitioner is not entitled to any interest for the defaulted period, if any.
- iv). Advocate fee is fixed at **Rs.11,699/-** (Rupees Eleven Thousands Six Hundred Ninety Nine).
- v). The petitioner is directed to pay the balance court fee amount of **Rs.3,697/-** (Rupees Three Thousand Six Hundred Ninety Seven) within 20 days from the date of this award.

Dictated by me, directly typed by Steno-Typist into computer, corrected and pronounced by me in the open Court, this the **31st day of January 2025**.

(Sd./- S.Sameena)
Additional District And Sessions Judge,
Periyakulam.

Evidence on the side of the petitioner:

P.W.1. - Aakila Banu (Petitioner).

Documents on the side of the petitioner:

Ex.P.1. - FIR in Crime No.180/2023 of Devadanapatti Police Station dated 28.05.2023.

Ex.P.2. - Wound certificate of the petitioner Aakila Banu.

- Ex.P.3.** - Discharge summary of the petitioner Aakila Banu dated 28.05.2023 issued by D.M.S.Hospital, Batlagundu.
- Ex.P.4.** - Inspection Reports of Motor Vehicles Inspector of Yamaha FZ two wheeler bearing registration No.TN 37 CA 3182 dated 30.05.2023 and bus bearing registration No.TN 57 AQ 2345 dated 31.05.2023.
- Ex.P.5.** - Final report in Crime No.180/2023 of Devadanapatti Police Station dated 17.07.2023.
- Ex.P.6.** - Rough sketch in Crime No.180/2023 of Devadanapatti Police Station dated 28.05.2023.
- Ex.P.7.** - Medical bills and Transport bills of the petitioner Aakila Banu.
- Ex.P.8.** - Order of Judicial Magistrate Court, Periyakulam in S.T.C.No.496/2023 dated 25.07.2023.
- Ex.P.9.** - X-ray of the petitioner Aakila Banu.
- Ex.P.10.** - E.C.G.report of Aakila Banu issued by D.M.S.Hospital, Batlagundu.
- Ex.P.11.** - Photographs (2 nos).
- Ex.P.12.** - Aadhaar Card of the petitioner Aakila Banu.
- Ex.P.13.** - Bank Pass-book of the petitioner Aakila Banu.
- Ex.P.14.** - Certificate issued by Mobile Tailoring Training Center, Reaching The Unreached, G.Kallupatti to the petitioner.

Respondents side Witness and Documents: Nil.

(Sd./- S.Sameena)
Additional District And Sessions Judge,
Periyakulam.