

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL AT DINDIGUL

Present: Thiru.S.SOMASUNDARAM, M.A., L.L.M.,
Special Subordinate Judge,
(To deal with MCOP Cases),
Dindigul.

Tuesday, the 29th day of October, 2024

M.C.O.P.No.596 of 2023
(CNR.No.TNDG050011172023)

Mr.Muthalagu, S/o.Muthusamy, aged about 40 years, residing at near Union Office, Colony, Shanarpatti Post, Dindigul East Taluk, Dindigul District.

... Petitioner

-Vs.-

Mr.C.Saravanan, S/o.Chinnadurai, residing at Thavittukadai, Sirumalai Post, Dindigul East Taluk, Dindigul District.

... Respondent

Date of filing of the claim petition	::	24.03.2023
Date of Award	::	29.10.2024
Amount of Award	::	Rs.15,09,000/-
Interest rate applicable	::	7.5% p.a.,
Date(s) from which interest is payable	::	From 24.03.2023
Costs, if any	::	Rs.48,247/- (as described in the order)
Dismissed for default period	::	--
In cases where the compensation, interests and costs are directed to be paid proportionately, the award should also specify Who shall pay which portion of award, interest and costs.	::	The respondent is liable to pay compensation with interest and costs excluding the default period if any.
The mode and manner of deposit of compensation	::	By NEFT or RTGS Mode and shall also sent a copy of the payment advice to this Tribunal within two months.

The mode and manner of
disbursement

:: After depositing the compensation by the respondent into the Court, it will be disbursed to the petitioner by NEFT or RTGS Mode in to his Bank Account.

This petition has been received by transfer from the Principal District Court, Dindigul in M.C.O.P.No.596/2023 and having come up on 23.10.2024 for final hearing in the presence of Thiru.P.Ponnaiyan, Advocate for petitioner and respondent being called absent and set exparte on 04.10.2023 and after hearing petitioner side arguments and after perusing available material records and having stood over till this day for consideration this Court delivers the following:

ORDER

This petition has been filed under sections 140 and 166(1) (a) of Amended Motor Vehicles Act 54/1994 by the petitioner for claiming compensation of Rs.10,00,000/- (Rupees Ten Lakhs Only) with interest and costs.

1. Brief Averments of the petition as follows:

(i) On 04.09.2022 at about 03.45 p.m., after returning from his work, the petitioner was travelled as a pillion rider in Honda Splendor Plus two wheeler bearing Regn.No.PY-01-BD-8052 along with his friend one Mr.Karuppasamy, in Natham to Dindigul main road, from east to west direction, near Mettukadai, the respondent drove his Jeep bearing

Regn.No.TN-27-A-6669 in a rash and negligent manner and hit the petitioner's vehicle.

(ii) Due to the accident, the petitioner sustained grievous injuries on his fore head, sustained abrasions on his face, both legs, suffered with fracture on his right leg and bleeding injuries throughout the body. Immediately, the petitioner was admitted in Dindigul Government Medical College Hospital and then he was referred to Madurai Government Rajaji Hospital for intensive care, there he took treatment as inpatient from 21.11.2022.

(iii) A criminal case was registered by Shanarpatti Police as against the respondent in Cr.No.232/2022 U/s.279 and 337 IPC.

(iv) The petitioner was aged about 40 years and he was doing Centering work and earning a sum of Rs.21,000/- per month at the time of accident. Due to the accidental injuries, the petitionenr could not perform his regular work as before. Hence this claim petition has been filed by the petitioner as against the respondent for claiming compensation of Rs.10,00,000/- along with interest and costs.

2. In this case, after due service of notice, the respondent being called absent and set exparte on 04.10.2023.

3. On the petitioner side, the petitioner was examined as P.W.1, through whom Ex.P1 to Ex.P6 and Ex.C1 documents were marked. Mr.Karuppasamy/two wheeler rider was examined as P.W.2, through whom,

no documents were marked. Mrs.Karuppayee was examined as P.W.3, through whom, no documents were marked.

4. On the above pleadings the points that arise for determination are:

- (1) Whether the accident is caused due to rash and negligent driving of the respondent ?
- (2) Whether the respondent liable to pay compensation to the petitioner ?
- (3) Whether the petitioner is entitled to compensation as claimed in the petition?

5. The Learned counsel appearing for the petitioner argued that the accident happened due to the rash and negligent driving of the respondent. Due to the accidental injuries, the petitioner suffered with disability to an extent of 54%. Therefore, this petition may be allowed as prayed for.

6. Point No.1:-

(i) Petition, documents and evidences are perused. P.W.1 to P.W.3 deposed that on 04.09.2022 at about 03.45 p.m., while the petitioner was travelled as a pillion rider in two wheeler along with his friend one Mr.Karuppasamy, in Natham to Dindigul main road, from east to west direction, near Mettukadai, the respondent drove his Jeep bearing Regn.No.TN-27-A-6669 in a rash and negligent manner and hit the petitioner's vehicle. Their evidences are natural and believable.

(ii) There is no contra evidence adduced on the respondent's side. Hence, the accident happened due to the the rash and negligent driving of the respondent is being proved. Hence this point is answered accordingly.

7. Point No.2:

The respondent is the owner -cum- driver of the vehicle bearing Regn.No.TN-27-A-6669. The respondent being called absent and set exparte. Hence, the respondent is liable to pay compensation to the petitioner. Hence this point is answered accordingly.

8. Point No.3:

In Judgment, Rajkumar Vs. Ajay Kumar reported in **2011 -1- SCC 343** Hon'ble Supreme Court given guidelines to assess compensation in permanent disability cases. ***"The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned"***.

On perusal of injuries, it is clearly reveals that the petitioner sustained permanent disability to an extent of 54%. Considering the above Judgment, this Tribunal fixed the petitioner's functional disability to an extent of 40% for calculating multiplier method. On perusal of discharge summary, Ex.P2 shows that the petitioner sustained injuries **"Compound**

Grade 3B fracture both bone right leg with comminuted tibia with bone loss” and ***“Wound debridement and external fixator application and Tibialisation of fibula (Huntington procedure with skin grafting)”*** procedure was done to the petitioner. He was admitted as inpatient before Madurai Government Rajaji Hospital from 04.09.2022 to 21.11.2022 and from 27.04.2024 to 03.05.2024 (**79 days + 7 days = 86 days**) and taken treatment continuously as outpatient. As per Ex.C1 ***“ Old non union both bone leg fracture on right” and implantation was inserted and suffered with stiffness.*** As per medical records, his right leg was affected, so he unable to walk, sit and doing any work normally like other persons.

The petitioner’s disability will affect the entire life and career of the man due to the unfortunate accident. Considering the above discussions and as per the dictum laid down by the Hon’ble Supreme Court, this Court finds that compensation to be assessed by using of multiplier method. Hence multiplier method has to be adopted .

Income of petitioner:

In view of the income of the petitioner, the petitioner has not filed any proof to prove his income. Hence notional income to be calculated as per the cost inflation index methodology followed by

In the Judgment, reported in **2014 (1) TN MAC 459 {Syed Sadiq vs. United India Insurance Co. Ltd.,}**, the Hon'ble Supreme Court had taken consideration of the monthly income of a vegetable vendor during the year

2008 as Rs.6,500/-. Our Hon'ble High Court of Madras in **“2019 (1) TNMAC 54, Andal and others Vs. Avinav Kannan and another”** was also relied the above Apex Court Judgment. If so, the notional income of the petitioner for the year of 2022-2023, would

Inflation Index

Sl.No.	Financial Year	Cost of Inflation Index
1.	2019-20	289
2.	2020-21	301
3.	2021-22	317
4.	2022-23	331
5.	2023-24	348

Notional Income fixed for the vegetable vendor i.e., ₹ 6,500 during the year 2007-2008 X Cost of Inflation Index for the year

$$\begin{aligned} &\text{Cost of Inflation Index for the year 2007-2008} \\ &= \frac{6500 \times 331}{129} = \underline{\underline{\mathbf{16,678/-}}} \end{aligned}$$

Considering the age and nature of work of the petitioner, his notional income is fixed as Rs.15,000/-.

i) LOSS OF EARNING CAPACITY DUE TO PERMANENT DISABILITY:

As per the law laid down by our Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others 2017 (2) TNMAC 609(SC)** and **Smt.Sarla Verma and others Vs. Delhi Transport Corporation (2009 (2) TNMAC 1 (SC)**, loss of earning is calculated.

At the time of accident, the petitioner was aged about 40 years and income of the petitioner is Rs.15,000/-. Future prospects 25% added i.e., Rs.3,750/-. Hence, income of the petitioner is Rs.18,750/- (Rs.15,000/- + Rs.3,750/-). Multiplier is '15'. In such circumstances, the future loss of income of the petitioner is fixed as **Rs.13,50,000/-** (Rs.18,750/- X 15 X 12 X 40%)

(ii) PAIN AND SUFFERING:

The petitioner sustained grievous injury on his right leg and he took treatment as inpatient before Madurai Government Rajaji Hospital from 04.09.2022 to 21.11.2022 and from 27.04.2024 to 03.05.2024 (**79 days + 7 days = 86 days**). Considering the nature of injuries suffered, surgery, disability and nature of treatment taken by the petitioner it is just and proper to award **Rs.50,000/-** towards pain and sufferings.

(iii) LOSS OF AMENITIES:

Due to ***old non union both bone leg fracture***, the petitioner definitely would not act as before the accident due to the injuries suffered by him. Hence, considering this facts, it would be just and proper to grant a sum of **Rs.40,000/-** towards loss of amenities.

(iv) Extra nourishment :

Considering the nature of accident and the injuries suffered by the petitioner and the period of treatment, it will be just to grant a sum of **Rs.15,000/-** towards extra nourishment.

(v) ATTENDER CHARGES:

The petitioner sustained grievous injury on his right leg. The petitioner has undergone treatment as an inpatient before Madurai Government Rajaji Hospital **for about 86 days**, the petitioner's mobility is restrained by the injury and he depended on an attender to do his day to day affairs. Hence considering the nature of injuries and period of recovery a sum of **Rs.35,000/-** is awarded towards attender charges.

(vi) TRANSPORTATION CHARGES:

Considering the medical treatment taken by the petitioner there might have also transport expenses from hospital to petitioner's home. Hence considering the same a sum of **Rs.15,000/-** allowed towards transport charges.

(vii) Damages to clothing and Articles:

Considering the nature of accident and the injuries suffered by the petitioner, it will be just to grant a sum of **Rs.4,000/-** towards damages to clothing and articles.

The petitioner not filed medical bills. Hence, the petitioner is not entitled to get compensation under the head of medical expenses.

In view of the foregoing discussion, this Tribunal fixed the compensation as follows:

Sl.No.	Particulars	Rs.
1.	For loss of earning capacity (Rs.18,750/- X 15 X 12 X 40%)	13,50,000.00
2.	Pain and sufferings	50,000.00
3.	Loss of Amenities	40,000.00
4.	Extra Nourishment	15,000.00
5.	Attender charges	35,000.00
6.	Transportation Charges	15,000.00
7.	Damages to clothing and Articles	4,000.00
	Gross Total	15,09,000.00

In view of the claim petition, it is noted that the petitioners claimed only Rs.10,00,000/- as compensation. As held above, the petitioners are entitled for total compensation of **Rs.15,09,000/-**. In the judgment reported in **AIR 2008 SC 1221{The A.P.S.R.T.C Rep. By its General Manager and another Vs. M.Ramadevi and others}**, the Hon'ble Apex Court held that, "Under Motor Vehicles Act, there is no restriction that the tribunal/court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/Court is to award just compensation which is reasonable on the basis of evidence produced on record". From the above proposition, it is understandable that there is no embargo for the tribunal in awarding just compensation, though it exceeds the amount claimed by the petitioners. Therefore, this tribunal quantified the just compensation for petitioners as **Rs.15,09,000/-**.

In the light of the above discussions and assessment, the petitioner claimant is entitled to a just compensation of **Rs.15,09,000/- (Rupees Fifteen Lakhs and Nine Thousand Only)**. This point No.3 is answered accordingly.

9. RESULT:

In the result, this petition is allowed with cost as follows:-

- (i) The respondent is directed to pay a sum of **Rs.15,09,000/- (Rupees Fifteen Lakhs and Nine Thousand Only)** to the petitioner with costs and liable to pay interest at the rate of 7.5% per annum from the date of presentation of petition **(i.e.) 24.03.2023** to till the date of realization, excluding the default period if any. (As per the **Judgment of Hon'ble Supreme Court of India in Civil Appeal No.6451/2021 dated 25.10.2021**).
- (ii) The respondent is directed to deposit the above amount into the bank account of this Tribunal maintained at Indian Bank, Dindigul, under the head of **The Special Subordinate Judge, Dindigul in Account No.V00022MCOP5962023, MICR Code: 625019021, IFSC Code: IDIB000D018** within two months from the date of this order to the credit of Bank account of this Court.
- (iii) The respondent is directed to send one copy of bank advice to this Tribunal and one copy to the petitioner or his Advocate.

(iv) It is also ordered that the amount of compensation paid by the respondent will be paid to the petitioner's Canara Bank, Shanarpatti branch Account No.110104981177, IFSC: CNRB0001427 through E-Transfer.

(v) Advocate Fee Rs.33,590/-.

(vi) Total Deficit Court Fee for the compensation amount is Rs.14,462.50p. The petitioner already paid Rs.372.50p as Court Fees and the petitioner is directed to deposit the Deficit Court Fee of Rs.14,090/- within one month.

Particulars of costs

Sl.No.	Particulars	Petitioner's side
1.	Stamp on petition	14,462.50
2.	Stamp on vakalat	10.00
3.	Batta Memo	4.50
4.	Postal register notice	30.00
5.	Pleading charge	150.00
6.	Pleader fee	33,590.00
	Total	48,247.00

Dictated by me to steno-typist, typed by her, corrected and pronounced by me in the open court this the 29th day of October, 2024.

Special Sub Judge,
(To deal with MCOP Cases)
Dindigul.

List of Petitioner's side witness:-

P.W.1 - Mr.Muthalagu

P.W.2 - Mr.Karuppusamy/two wheeler rider,

P.W.3 - Mrs.Karuppayee

List of Petitioner's side Exhibits:-

Ex.P1	06.09.2022	First information report (Copy)
Ex.P2	21.11.2022	Discharge summary of petitioner, issued by Madurai Government Rajaji Hospital (Original)
Ex.P3	--	Aadhar card of the petitioner (Copy) (Compared with original)
Ex.P4	--	Bank pass book 1 st page of petitioner (Copy) (Compared with original)
Ex.P5	03.05.2024	Discharge summary of petitioner, issued by Madurai Government Rajaji Hospital (Original)
Ex.P6	--	X-ray film of petitioner (Original)

List of Respondent's side witnesses: **NIL**

List of Respondent's side exhibits: **NIL**

List of Court Document:

Ex.C1	04.11.2023	Disability Certificate of petitioner, issued by Medical Board, Government Medical College Hospital, Dindigul District (Original)
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The account particulars of the petitioner are given as detailed hereunder:

Name of the applicant	Name of the Bank and Branch	Bank IFSC Code	Account No. of the applicant
Mr.Muthalagu	Canara Bank, Shanarpatti	CNRB0001427	110104981177

Special Sub Judge,
(To deal with MCOP Cases)
Dindigul.

Note:

Following the judgment of the Honourable High Court of Madras in M/s.Cholamandalam MS General Insurance Company Limited Vs. Ayyanar and Others – Reported in 2020 (4) CTC 272, no separate decree is prepared.