

\BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL, PARAMAKUDI.
(In the Court of the Subordinate Judge, Paramakudi.)

Present : Tr.R.Sathish, M.L.,
Subordinate Judge, Paramakudi.

Friday, the 30th day of August 2024.

M.C.O.P. No.74 of 2021.

Ganesan, S/o. Arumugam, Hindu, aged about 45 years, residing at door no.1/42, East Street, Kammonkottai Village, Paramakudi Taluk, Ramanathapuram District.

.. Claimant

/vs/

The Administrative Director, Tamil Nadu Transport Corporation, Office functioning at Head Office, Kumbakonam Kottam III Limited, Karaikudi, Sivagangai District.

.. Respondent

This Claim Petition presented on 02.02.2021 and taken on file of this court on 01.11.2021 came before this Court for the final hearing on today (30.08.2024) in the presence of Thiru.S.Pasumalai, Advocate for the Claimant and Advocate Thiru.Ravichandran for the respondent and on hearing both sides arguments and on perusing the case records & evidence, having stood over for consideration till this date, this Court delivers the following:-

ORDER

Claim Petition filed by the Claimant under Section 163 & 166 u/s.3(1) of the Motor Vehicles Act(Amended), 1994 seeking a compensation amount of Rs.25,00,000/- for the injuries sustained by him in a road accident on 13.06.2019.

1. Case of the Claimant in brief :-

The petitioner was working as a part time Sanitary worker in the BC Hostel at the Collector Office, Ramanathapuram and he was also doing centering works. After the marriage the petitioner was living along with his wife and has no issues. On 13.06.2019 the petitioner after completing his work at Ramanathapuram at 9.50 p.m.

in his Passion Pro two wheeler bearing registration no. TN 65 Z 5307 was travelling from east to west in NH 49 Madurai Rameswaram Highway while so near Thallakulam Muniyandi Temple in Manamadurai bridge the petitioner was driving on the left side of the road. At that time Government Bus bearing registration no.TN 63 N 1805 had come behind the petitioners vehicle from east to west on the left side of the road driven by one Govindaraj, S/o. Nagu of Urapuli Kamarajar Nagar had hit the petitioner and has caused the accident.

In the above accident the claimant sustained injury on the back of the head, injury in the left shoulder, blood injury in the both legs, bruises and swelling injuries all over the body. The nearby persons has taken the claimant to Government Hospital, Sivagangai for first aid and as the injuries were grievous in nature he was referred to Rajaji Hospital, Madurai where he has taken treatment and thereafter is taking treatment as outpatient till 03.07.2019.

A case in Cr.No.219/2019, u/s.279,337 IPC has been registered on the basis of complaint preferred by petitioner's wife Kanagu and the same is pending before Judicial Magistrate Court, Manamadurai. Before accident the claimant was hale and healthy and due to the grievous injury sustained by him he could not do his work as he was doing before. Due to the injury in the head the skull has been damaged and the same is replaced. Further due to the head injury he frequently gets headache, giddiness and the claimant is not able to go out without the assistance of another person. The claimant is also not able to continue his work and the claimant is the only earning member of the family. Hence, the claimant is suffering without any income.

The respondent vehicles driver had driven the vehicle at a high speed in a rash & negligent manner without making horn and following the traffic rules thereby has caused the accident. The respondent's driver is responsible for the accident and as such the respondent is liable to compensate the petitioner.

The claimant for the Pain & Suffering, Medical Expenses, Loss of Income, Future loss of income has claimed Rs.29,24,000/- However, he has restricted his claim to Rs.25,00,000/-. Hence, the present petition.

2. Statement of objections of respondent are as follows:

The respondent has denied the averments stated in the petition and would contend that the present petition is not maintainable. The petitioner should give an undertaking that no similar petition has been filed u/s.140 MV Act in any other tribunals. The respondent would contend that on 13.06.2019 the driver of the bus bearing registration no.TN 63 N 1805 at about 7 p.m. was travelling at moderate speed making horn following the traffic rules and about 9.50 p.m. next to the Manamadurai Bridge the two wheeler driven by the petitioner without wearing helmet negligently was speaking in mobile phone in a zig zag manner and at that time the driver had over taken the two wheeler on the right side of the road but the petitioner lost his control had hit on the back side the bus. Further if the petitioner was wearing the helmet the petitioner would not have sustained the injury. The petitioner is fully responsible for the accident that has taken place and the respondent is no way liable to compensate the petitioner who has to produce his license.

The respondent would contend that as per 2017(1) TNMAC 484 it is held that triple riding is illegal and if the accident has taken place 20% of compensation has to be deducted. Further as per 2016(1) TNMAC 718 it is held that 15% of compensation is to be reduced for not wearing helmet and for driving without license 10% has to be deducted and totally 45% as to be deducted.

The averments as to the claim of compensation as under various heads are exaggerated and as the accident has not taken place due to the negligence of the respondent he is no way liable to compensate.

The petitioner should also assure that no compensation has been availed through any other Insurance Company and the disability has to be assessed after subjecting the petitioner to medical board assessment as per 2017(A) TNMAC 106.

The Supreme Court in CA No.60/2001 published in 2001/ACJ page no.428 (Kushma Begam & others-Vs- New India Assurance Company Limited and others) had reduced the interest rate from 12% to 9% based on the current rate of 9% interest charged by Nationalized Banks for one year deposit based on the recommendation of Reserve Bank of India. From 2001 onwards in CA No.2765/05 it is ordered in the case of Tamil Nadu State Transport Corporation Limited – VS – S.Rajapriya & others that rate of interest shall be 7.5%. Further now rate of interest in the Nationalized Banks have been reduced to 5.25%. Therefore the claim of this Hon'ble Court awards in compensation, the rate of interest claimed by the petitioner is not maintainable.

As per the section 34 of the Code of Civil Procedure 2009 (CPC Amendment Act 1976) where the liability in relation to the sum of so adjudged had arisen out of a commercial transaction, the rate of such further interest should be the sum of so adjudged had arisen out of a commercial transaction, the rate of such further interest should not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by Nationalized Banks in relation to commercial transactions, so as per the above provisions even for commercial transactions only 6% interest to be given. So the petitioner who had filed claim petition claiming compensation under M.V.Act is not entitled to more than 6% . Further the present rate of interest is only 6% and it is not 7.5%.

3. Points for Consideration in this Petition are:-

- 1) Whether the accident occurred due to the rash and negligent driving of the Respondent's vehicle?
- 2) Whether the Respondent is liable to pay compensation to the Claimant?

3) What is the compensation amount, the Claimant is entitled to?

4. The Claimant was examined as P.W1 and Exhibits P1 to P13 were marked on the side of the Claimant. The Respondent was examined as RW.1 and no documentary evidence has been marked.

5. Heard claimant side and records perused.

Point Nos.1 & 2 :-

The petitioner was working as a part time Sanitary worker in the BC Hostel at the Collector Office, Ramanathapuram and he was also doing centering works. After the marriage the petitioner was living along with his wife and has no issues. On 13.06.2019 the petitioner after completing his work at Ramanathapuram at 9.50 p.m. in his Passion Pro two wheeler bearing registration no. TN 65 Z 5307 was travelling from east to west in NH 49 Madurai Rameswaram Highway while so near Thallakulam Muniyandi Temple in Manamadurai bridge the petitioner was driving on the left side of the road. At that time Government Bus bearing registration no.TN 63 N 1805 had come behind the petitioners vehicle from east to west on the left side of the road driven by one Govindaraj, S/o. Nagu of Urapuli Kamarajar Nagar had hit the petitioner and has caused the accident.

In the above accident the claimant sustained injury on the back of the head, injury in the left shoulder, blood injury in the both legs, bruises and swelling injuries all over the body. The nearby persons has taken the claimant to Government Hospital, Sivagangai for first aid and as the injuries were grievous in nature he was referred to Rajaji Hospital, Madurai where he has taken treatment and thereafter is taking treatment as outpatient till 03.07.2019. Hence the present petition seeking compensation for the injuries suffered.

6. The petitioner would contend that it is only due to the negligence on the part of the respondent and for the above occurrence a First Information Report has

been registered in Cr.No.219/2019 for the offence u/s.279, 337 IPC. The petitioner has marked Ex.P1 in support of the same. A go through of the above would reveal that a case has been registered against the respondent for the accident that has taken place. The petitioner would contend that the investigation Officer in the present case has gone to the scene of occurrence and has prepared the Observation Mahazar and Rough Sketch as per Ex.P2 & Ex.P3. The petitioner would contend that the Investigating Officer after culmination of the Investigation has laid the Charge sheet which has been marked as Ex.P10. A go through of the above would reveal that the respondents driver has been charge sheeted and it is due to respondent's vehicle driver the accident has taken place.

The petitioner would contend that he has taken treatment at Government Rajaji Hospital & Lakshmana Multi Speciality Private Hospital, Madurai and has marked Ex.P4, Ex.P8 & Ex.P13 which are the Accident Register, Discharge Summary & Wound Certificate respectively. A go through of the above would reveal that the petitioner has undergone treatment at various hospitals for the injuries suffered.

The petitioner has adduced oral evidence supported by documentary evidence to put forth that the accident has taken place only due to the negligence of the respondent and as such the petitioner has put forth his case as to the negligence on the part of the respondent. The respondent would contend that it is the negligence on the part of petitioner the accident has taken place and RW1 has been examined in the above context. But nothing in support of respondents case has come out. Since, the accident has taken place due to the negligence of the respondent he is liable to compensate the petitioner for the accident that has taken place.

The petitioner as to nature of the injury sustained and the expenses meted out by him for the treatment would contend that the petitioner sustained injury on the back of the head, injury in the left shoulder, blood injury in the both legs, bruises and swelling injuries all over the body. The petitioner would contend that due to the head injury the petitioner is not in a position to do his regular work and there is loss of

income on his part. Due to the injury in the head the skull has been damaged and the same is replaced. Further he could not carry out his day to day work. The petitioner would contend that the injury sustained by the petitioner is grievous in nature. The petitioner has claimed Rs.25,00,000/- for the injuries sustained by him. The petitioner has filed medical bills for the expenses in private hospital.

Further more as to the alleged head injury sustained by the petitioner are grievous in nature, that requires excess compensation. The petitioner has put forth the manner in which injuries were sustained by him with available records. Further, as there is no report from Medical Board as to disability & injuries with available medical records it can be concluded that there is head injury which is grievous in nature. Accordingly the petitioner is entitled to Rs.40,000/- as compensation for the head injury sustained by him which is grievous in nature and the petitioner is also entitled to Rs.41,907/- the medical expenses as found in Ex.P7. The petitioner is totally entitled to Rs.81,907/- (Rs.40,000/- + 41,907/-)

The respondent would contend that the petitioner was not wearing helmet and because of the same he sustained head injury.

The petitioner was not wearing helmet at the time of accident and as such 10% in the total compensation amount which is Rs.8,191/- (10% of Rs.81,907/-) is ordered to be deducted and a sum of Rs.73,716/- is awarded as compensation.

7. In the result Petition is allowed and the Respondent is directed to pay a compensation amount of Rs.73,716/- (Rupees Seventy Three thousand Seven Hundred and Sixteen only) to the petitioner with 7.5% interest from the date of filing of this Petition till realisation and costs. The Respondent shall deposit the compensation amount, interest and costs within 2 months from today in the name of SUBORDINATE JUDGE, MACT, PARAMAKUDI, State Bank of India, Paramakudi Branch (IFSC Code No.SBIN0000756) into the Virtual Account No. MACT91MCOP742021. IFSC CODE: SBIN0004266 Virtual Account

No:PSCM24MCOP742021. Time for payment of balance Court-fees is 2 weeks from today and excess court fee if any is to refunded.

<u>Partiulars of costs</u> <u>Claimant Side</u>	
1. Court fee on petitioner	- Rs. 248.00
2. Vakalat	- Rs. 10.00
3. Advocate fees	- Rs. 3,625.00

Total	- Rs. 3,883.00

Dictated by me to the Steno-typist, transcribed and typed by her, corrected and pronounced by me in Open Court, on this the 30th day of August 2024.

Subordinate Judge,
Paramakudi.

Claimant's Side Witnesses:-

P.W1 : Ganesan

Claimant's Side Documents:-

Ex.P1 : Certified copy of First Information Report.
Ex.P2 : Certified Copy of Observation Mahazar
Ex.P3 : Certified Copy of Rough Sketch.
Ex.P4 : Petitioner's outpatient treatment prescription
Ex.P5 : Certified copy of the Petitioner Aadhar Card
Ex.P6 : Pay slip of petitioner
Ex.P7 : Medical bills (35 Nos.)
Ex.P8 : Discharge Summary
Ex.P9 : Certified copy of Accident Register
Ex.P10 : Certified copy Charge Sheet
Ex.P11 : Alteration Report
Ex.P12 : Petitioner's Identity Card
Ex.P13 : Copy of the petitioner's wound certificate

Respondents' Side Witnesses:-

RW.1 : Govindaraj

Respondent's side Documents :- Nil.

Subordinate Judge,
Paramakudi.

Sub-Court, Paramakudi.

MCOP No.74 of 2021

ORDERS. Dt: 30.08.2024

