

**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL / CHIEF
JUDICIAL MAGISTRATE COURT, THOOTHUKUDI.**

**Present : Thiru.P.V.Vasheeth Kumar, B.A. B.L (Hons.), M.L.,
P.G.D.I.P.L., P.G.D.C.F.S.
Chief Judicial Magistrate/
Motor Accident Claims Tribunal Judge, Thoothukudi.**

Monday, this the 10th day of February 2025

M.C.O.P. No.20 of 2023

(CNR No.TNTT02-017772-2023)

M.Sahaya Sunil Anz Nixson, S/o.Maria Philomin Baskaran, Christian, aged about 26 years, residing at Door No.83, Narayanan Street, Thoothukudi. - 628 001.

... Petitioner

/ Vs. /

1. P.Kanagaraj, S/o.Perumal, Hindu, aged about not known, residing at Door No.2/47, Parakiramapandi, Srivaikundam, Thoothukudi – 628 620.
2. The Branch Manager, United India Insurance Company Ltd., Door No.457 (Policy No.0901003122P103748186 for the period from 27.07.2022 to 26.07.2023.)

... Respondents

Date of filing of the claim petition	:	30.06.2023
Date of Disposal	:	10.02.2025
Award amount	:	Rs.11,47,775/-
Total Court fee	:	Rs.10,850/-
Court fee paid in the main petition	:	Rs.372.50/-
Balance of court fee to be paid	:	Rs.10,478/-
Note	:	As per the direction of the Hon'ble High Court, Madras in Tr. CMP. Nos.262 to 281 of 2020. M/s.Cholamandalam MS Genl. Ins. Co. Ltd. -

	vs. - Mr.Ayyannar.S and others dated 11.05.2020, no separate decreetal order will be drafted.
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This petition is coming up on 27.01.2025 for final hearing before me in the presence of Thiru.A.Gomathi Manikandan, Advocate for the petitioner, Thiru.M.Velmurugan, Advocate for the 1st respondent and Thiru.D.Godwin, Advocate for the 2nd Respondent and upon hearing both sides and upon perusing the case records and having stood over for consideration till this day, this tribunal delivers the following:-

AWARD

This claim petition is filed by the petitioner under Sections – 142 and 166 of the Motor Vehicles Act 1988 praying to direct the respondents to pay the petitioner a sum of Rs.1,10,00,000/- together with interest thereon from the date of accident till date of realization at 12% p.a. on account of the injuries sustained by the petitioner in a motor accident.

2) The averments of the petition in brief :

The case of the petitioner is that on 01.03.2023 at about 06:45 hours the petitioner was riding in the Bullet Motor Cycle bearing Registration No.TN69BP 4633 driven by the petitioner along with his friend namely Miss.Navarojini, Beautician, who is pillion rider, in moderate speed travelling from west to east direction in the Tirunelveli to Thoothukudi Main Road in the left side of the road. While he was on the bridge at 3rd mile, the Tata Indica Motor Car bearing Registration No.TN69AL 5727 travelling in the opposite direction driven by the 1st respondent's driver, because of the burst of right front tyre of the above car had hit the motor cycle from behind and due to the accident, the petitioner rider and his friend pillion rider was thrown away and was grievously injured in his right forearm and

right thigh and multiple injuries on his right leg and multiple lacerated wounds all over his body and got fainted. The accident had happened due to the rash, carelessness and negligent driving of the respondents without observing traffic rules. It is further submitted that due to the accident the petitioner sustained grievous injuries in his right forearm and right thigh and multiple injuries on his right leg and multiple lacerated wound all over his body and was taken to Thoothukudi Government Medical College hospital immediately. There they have given first aid and took blood test and x-ray test and then shifted to Royal Hospital, Mappillaiurani by ambulance immediately from the Government hospital on the same day for further treatment of the fracture and surgical corrections in the right leg surgery was done on 01.03.2023 at Royal Hospital and was discharged on 10.03.2023 and subsequently he was again admitted in the above hospital on 09.05.2023 for delayed union fracture shaft of right femur with nail in SITU, delayed union segmental fracture right tibia with ortho fix external fixator, post traumatic stiffness right knee and raw area middle one third of the right leg and was discharged on 14.05.2023 and till now treated as outpatient in the hospital. It is further submitted that the petitioner is taking treatment from the date of accident to till date and now also not fully recovered from injuries due to the accident and the petitioner also cannot do his daily duties by himself till date. Due to the sudden impact of the accident the petitioner is suffering from financial burden and obtained huge amount for interest from others for treatment for immediate. Till date the petitioner is taking treatment and nourishing and his medical bills are increasing day by day and for future treatment also the petitioner has to spend huge amount. It is submitted that prior to the accident, the petitioner was active and energetic young man with hale and healthy body with good physique. The petitioner was a whole saler in Fish Market at Thoothukudi Threspuram Fishing Harbour and his annual income was Rs.36,00,000/- from his business and till date the petitioner has no source of income as he was unable to do any usual work. Due to this

gruesome accident the petitioner is totally collapsed and the petitioner can do nothing without other's help and he cannot go for any job till date. It is submitted that he petitioner is still having disability and this made him not to do his business for earning for any kind of livelihood and he is prevented from discharging his previous activities and function as before the accident. Due to the injuries he cannot freely move and attend his duties. His movements are restricted to a large extent and he has to suffer very much in his old age. Due to the accident he is not as fit prior to the accident in his day today life, resulting in reducing his capacity to do his business related hard works. The main elements of damages are the pain shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy limbs. The compensation should enable the petitioner to acquire something or to develop a different life style which will effect to some extent the inconvenience or discomfort arising out of the disability. The appropriate compensation for disability should take care of all the non pecuniary damages apart from this claim for the actual expenditure for treatment, attendant, transportation etc. It is further submitted that, the accident was caused due to the careless and negligent driving on the part of the 1st respondent offending vehicle bearing Registration No.TN69AL 5727 who was driving the said vehicle without observing the intensity of the road and without caring for the traffic rules, so due to the negligence of the 1st respondent's driver the accident had happened. At the time of accident the 1st respondent is the owner and 2nd respondent is the insurer of the offending vehicle Indica car bearing Registration No.TN69AL 5727 vide Policy No.0901003122P103748186 and period from 27.07.2022 to 26.07.2023. A criminal case registered against the 1st respondent by the Sub-inspector of Police, Thoothukudi South Police Station in Crime No.98/2023 under Section 279 and 337 IPC. Hence all the respondents are jointly and severally liable to pay the compensation amount to the petitioner with cost and interest. Hence it is prayed that the petition be allowed.

3) **The averments of the counter filed by the 1st respondent in brief :**

This petition is not maintainable either in law or on facts of the case and it has to be dismissed in limine. The petitioner is not entitled to the relief as prayed for. The petitioner is put to strict proof as to the averments mentioned in the petition. The fact that the petitioner was a whole seller in Fish Market at Thoothukudi Threspuram Fishing Harbour and his annual income was Rs.3,00,000/- from his business is not true. The petitioner is trying to convert the accident into a source of income. Further this respondent has insured his vehicle with United Insurance Company Ltd., Thoothukudi and the driver of the 1st respondent is having a valid driving licence. Since the 1st respondent has not violated the terms and conditions of the policy the 2nd respondent is liable to pay the compensation amount. In fact the accident occurred only due to the rash and negligent driving of the petitioner and not due to the 1st respondent who had driven the vehicle with care following traffic rules. Since the insurance policy is in force at the time of accident, the 2nd respondent is liable to pay the compensation amount. The amount claimed in the petition under various head are highly excessive and exaggerated. Hence it is prayed that the petition be dismissed.

4) **The averments of the counter filed by the 2nd respondent in brief :**

This petition is not maintainable either in law or on facts of the case and it has to be dismissed in limine. The petitioner is not entitled to the relief as prayed for. The petitioner is put to strict proof as to the details of the accident. The petitioner is also put to strict proof as to the allegation that the accident took place due to the rash and negligent driving on the part of the driver of the 1st respondent who drove the car bearing Registration No.TN69AL 5727. Without proving the negligence of the 1st respondent's driver, the petitioner has no locus standi to claim compensation as against this respondent. The petitioner is put to strict proof as to his age, occupation

and monthly income at the time of accident. The petitioner is put to strict proof as to each and every allegation mentioned in the petition. The claim of the petitioner are highly excessive, out of proportion and it cannot be granted to the petitioner for an accident which has happened due to an Act of God. Further mere accident cannot be converted into the source of income. The accident took place due to the rash negligent driving on the part of the 1st respondent. The accident took place only due to the burst of the front right side tyre of the car. The car went to the wrong side of the road and dashed against the petitioner two wheeler. It is purely an Act of God and hence this respondent is not liable to pay any compensation to the petitioner. The rate of interest claimed in the petition is too high and as per the High Court rulings the petitioner is entitled to claim interest at the rate of 6% only. Hence it is prayed that the present petition be dismissed.

5) To fortify his claim, the petitioner Thiru.Sahaya Sunil Anz Nixon has been examined as PW1 and Ex.P1 to Ex.P21 were marked. Also the disability certificate issued by the medical board has been marked as Ex.C1. On behalf of the respondents no witness has been examined and no document has been marked. This tribunal has carefully taken into consideration, the arguments put forth on behalf of the petitioner and the respondents.

6) Points for determination in this claim petition are as follows :-

- 1) Whether the accident took place due to the rash and negligent driving of the 1st respondent's driver?
- 2) Who is liable to pay compensation?
- 3) What is the quantum of compensation amount payable to the petitioner?

7) Point No.1 : Whether the accident took place due to the rash and negligent driving of the 1st respondent's driver?

a) The specific case of the petitioner is that, on 01.03.2023 at about 06:45 hours the petitioner was riding in the Bullet Motor Cycle bearing Registration No.TN69BP 4633 driven by the petitioner along with his friend namely Miss.Navarojini, Beautician who is pillion rider in moderate speed travelling from west to east direction in the Tirunelveli – Thoothukudi main road on the left side of the road. While he was on the bridge at 3rd Mile, the Tata Indica Motor Car bearing Registration No.TN69AL 5727 travelling in the opposite direction driven by the 1st respondent's driver because of the burst of the front tyre of the above car hit the motor cycle from behind and due to the accident the petitioner rider and his friend pillion rider were thrown away and was grievously injured. In this regard the Thoothukudi South police has registered a case against the driver of the 1st respondent in Crime No.98/2023 for offences under Section 279, 337 IPC and the First Information Report in Crime No.98/2023 dated 01.03.2023 which reveals the occurrence as pleaded in the petition, has been produced and marked as Ex.P1. In Ex.P1 First Information Report in Sl. No.12 in supportive of the above specifically pleaded case of the petitioner, it is found to have been mentioned as follows :

"இன்று 01.03.2023 ம் தேதி காலை சுமார் 06.45 மணி அளவில் நான் எனது நண்பரின் சகாய சுனில் ஆன்ஸ் நிக்ஸன் என்பவரின் இருசக்கர வாகனத்தில் TN69BP 4633 புல்லட் வண்டியில் அவருக்கு பின்னால் உட்கார்ந்து கொண்டு திருநெல்வேலியில் பியூட்டிசன் வேலை முடித்துவிட்டு திருநெல்வேலி to தூத்துக்குடி

மெயின் ரோட்டில் உள்ள 3 ம் மைல் பாலத்தில்
மேற்கிலிருந்து கிழக்கு நோக்கி வந்து
கொண்டிருக்கும் போது அதே மெயின் ரோட்டில்
எதிர் திசையில் அதிவேகமாகவும்,
அஜாக்கிரதையாகவும், கவனக்குறைவாகவும்
வேகமாக வந்து TN69AL 5727 என்ற டாடா
இண்டிகா காரின் வலது முன் பக்க டயர் வெடித்து
எங்களது இருசக்கர வாகனத்தில் மீது இடித்து,
மோதியதில் நாங்கள் இரண்டு பேரும் கீழே
விழுந்ததில்"

b) Further the petitioner has been examined as PW1 and in her proof affidavit also she has specifically stated about the occurrence of accident as follows :

"கடந்த 01.03.2023 அன்று காலை சுமார் 6.45
மணி அளவில், தூத்துக்குடி 3 வது மைல் பாலத்தில்
நான் எனது TN69BP 4633 பதிவெண் கொண்ட
புல்லட் மோட்டார் இருசக்கர வாகனத்தில்
மேற்கிலிருந்து கிழக்காக வரும் போது, எனக்கு
எதிர் திசையில் வந்த 1ம் எதிர்மனுதாரருக்கு
சொந்தமான 2ம் எதிர்மனுதாரரால் காப்பீடு
செய்யப்பட்டுள்ள வாகனமான TN69AL 5727
என்ற பதிவெண் கொண்ட டாடா இண்டிகா
மோட்டார் கார் வாகனத்தை ஓட்டி வந்தவர்

**அஜாக் கிரதையாகவும், கவனக்குறைவாகவும்,
வேகமாகவும் ஓட்டி வந்ததில் அவரின் காரின்
வலது முன்பக்க டயர் வெடித்து நான் ஓட்டி வந்த
இருசக்கர வாகனத்தின் மீது இடித்து மோதியதில்
நானும் எனது இருசக்கர வாகனத்தின் பின்
இருக்கையில் இருந்த எனது குடும்ப நண்பர்
நவரோஜினி என்பவரும் கீழே விழுந்ததில்"**

The oral evidence of PW1 is found to be corroborated by Ex.P1 First Information Report and it proves the alleged manner of accident. Further regarding the aspect of negligence, on behalf of the contesting respondents they have not let in any contra evidence to put forth the claim that, the driver of the 1st respondent was not negligent to cause the accident. Hence admittedly as First Information Report has been registered against the driver of the 1st respondent for having caused the accident in a rash and negligent manner it is the duty of the 1st and 2nd respondents to prove that the accident never occurred due to the negligence of the driver of the 1st respondent by adducing evidence to that effect which in fact had not been adduced on behalf of both the respondents. Further this tribunal also takes into consideration the recent decision of the Hon'ble Supreme Court in the case of ICICI Lombard General Insurance Co. Ltd. Vs. Rajani Sahoo & Ors. reported in 2025 INSC 6 wherein it has been held as follows : (Paragraphs 7, 8 and 9)

"7. As regards the reliability of charge sheet and other documents collected by the police during the investigation in motor accident cases, this Court in the case of Mangla Ram v. Oriental Insurance Co. Ltd. and Ors. 1 , held in paragraph No.27, thus : -

“27. Another reason which weighed with the High Court to interfere in the first appeal filed by Respondents 2 & 3, was absence of finding by the Tribunal about the factum of negligence of the driver of the subject jeep. Factually, this view is untenable. Our understanding of the analysis done by the Tribunal is to hold that Jeep No. RST 4701 was driven rashly and negligently by Respondent 2 when it collided with the motorcycle of the appellant leading to the accident. This can be discerned from the evidence of witnesses and the contents of the charge-sheet filed by the police, naming Respondent 2. This Court in a recent decision in *Dulcina Fernandes* [*Dulcina Fernandes v. Joaquim Xavier Cruz*, (2013) 10 SCC 646, noted that the key of negligence on the part of the driver of the offending vehicle as set up by the claimants was required to be decided by the Tribunal on the touchstone of preponderance of probability and certainly not by standard of proof beyond reasonable doubt. Suffice it to observe that the exposition in the judgments already adverted to by us, filing of charge-sheet against Respondent 2 prima facie points towards his complicity in driving the vehicle negligently and rashly. Further, even when the accused were to be acquitted in the criminal case, this Court opined that the same may be of no effect on the assessment of the liability required in respect of motor accident cases by the Tribunal”. (Emphasis Supplied)

9. Thus, there can be no dispute with respect to the position

that the question regarding negligence which is essential for passing an award in a motor vehicle accident claim should be considered based on the evidence available before the Tribunal. If the police records are available before the Tribunal, taking note of the purpose of the Act, it cannot be said that looking into such documents for the aforesaid purpose is impermissible or inadmissible.”

Perusal of the above decision clearly reveals that it is permissible for this tribunal to look into the records including the First Information Report, Final Report and to rely upon them. Further it has also been clearly held that, in the claim petitions the manner in which the accident has been caused need not be established beyond reasonable doubt and, it is sufficient that the same is proved based on preponderance of probabilities in road traffic accident. Hence this tribunal is of the considered view that the accident occurred only due to the rash and negligent driving of the 1st respondent's driver. Accordingly this point is answered.

8) Point No.2 : Who is liable to pay compensation ?

Perusal of Ex.P5 Certificate of Registration reveals that at the time of accident the vehicle bearing Registration No.TN69AL 5727 was owned by the 1st respondent. Further on behalf of the petitioner, the copy of the insurance policy of the 1st respondent for his vehicle which was involved in the accident has been produced and marked as Ex.P6 and it reveals that, the period of insurance was from 27.07.2022 to 26.07.2023 and hence insurance policy was well in force at the time of accident on 01.03.2023. Further it is pertinent to note that on behalf of the contesting 2nd respondent, objection has not been raised in the present case on the ground that there was any kind of policy violation and hence considering all the above and the fact that

already under Point No.1, it has been decided by this tribunal that, the accident had occurred due to the rash and negligent driving of the vehicle owned by the 1st respondent, this tribunal hereby decides that, the 2nd respondent being the insurance company of the 1st respondent vehicle and since the 1st respondent has not committed any breach of policy conditions, the 2nd respondent is liable to indemnify the 1st respondent for any loss sustained by him on account of the accident. Hence the 2nd respondent is liable to pay the compensation which is to be awarded to the petitioner. Accordingly, this point is answered.

9) Point No.3 : What is the quantum of compensation amount payable to the petitioner?

a) Nature of injuries sustained and the medical treatment undergone by the petitioner :

The petitioner after sustaining injuries in the accident that happened on 01.03.2023 at about 06:45 hours he has been immediately taken to the Thoothukudi Government Medical College Hospital at 07:35 a.m. and the copy of the Accident Register issued by the said hospital has been produced and marked as Ex.P2. Ex.P2 reveals the existence of laceration injuries in his right forearm, right knee, abrasion injuries on his left foot and also existence of compound fracture of proximal tibia with bone exposure. After obtaining first aid treatment at the Government hospital the petitioner has been shifted to Royal Hospital at Mapillaiyurani in Thoothukudi and in the said hospital he has been admitted as inpatient on the very same day on 01.03.2023 and has been discharged only on 10.03.2023. The discharge summary issued by the said Royal Hospital to the petitioner has been produced and marked as Ex.P7 and it reveals that surgeries has been done to the petitioner on the same day on 01.03.2023 and the diagnosis, procedure done during the said inpatient period of 10 days is found to have been mentioned in it as follows :

“DIAGNOSIS :**RTA with laceration right forearm.****RTA with grade III B Compound communitied fracture both bones right leg.****PROCEDURE DONE :****1) Wound Debridement Right Forearm and Right Forearm exploration and suturing done of the muscles and skin and pop applied.****2) Wound Debridement Right leg, Reduction Done and Orthofix external fixation done suturing of the muscles done, stay sutures applied.****3) Crif with Titanium femur nailing done (right side).”**

Further on behalf of the petitioner another Discharge Summary issued by the same hospital for the inpatient treatment of the petitioner from 09.05.2023 to 14.05.2023 for a period of 6 days revealing the diagnosis and procedure undergone by the petitioner in the hospital as mentioned below, has been produced and marked as Ex.P8:

“DIAGNOSIS :**Delayed Union fracture shaft of right femur with nail in Situ.****Delayed Union segmental fracture right tibia with orthofix external fixator****Post Traumatic Stiffness right knee****Raw Area Middle one third of the right leg.****PROCEDURE :****1. Bone Grafting shaft of right femur.**

- 2. Bone Grafting Right Tibia Proximal and middle one third**
- 3. SSG Right leg middle one third.”**

b) Further on behalf of the petitioner for the removal of the Orthofix that had been done earlier he had been treated in the very same hospital as inpatient from 20.06.2023 to 22.06.2023 for a period of three days and the Discharge Summary issued by the said hospital for the said period has been produced and marked as Ex.P10. In Ex.P10 the diagnosis and procedure undergone by the petitioner during the said period are found to have been mentioned as follows :

“DIAGNOSIS :

Fracture Shaft of right femur with nail in Situ.

Segmental fracture right tibia with orthofix external fixator

Post Traumatic stiffness right knee

PROCEDURE :

Orthofix removal and pop application.

Further on behalf of the petitioner also it is submitted that the petitioner has been treated as inpatient in the very same hospital for the injuries sustained by him from 11.07.2023 to 17.07.2023 for a period of 7 days and the diagnosis, procedures undergone, implant fixation undergone by him are found to have been mentioned as follows in the Discharge Summary which has been produced and marked as Ex.P11.

“DIAGNOSIS :

Fracture Shaft of right femur with nail in Situ

Delayed union middle one third of right tibia

Post traumatic stiffness right knee.

PROCEDURE :

MIPPO (Titanium Plate Fixation Right Tibia)”

In this regard on perusal of Ex.P7, Ex.P8, Ex.P10 and Ex.P11 clearly reveals that in four spells from the date of accident onwards totally for 26 days the petitioner has undergone inpatient treatment and has undergone surgeries on 01.03.2023, 09.05.2023, 20.06.2023 and 11.07.2023 for the injuries sustained by him in the accident. Also on behalf of the petitioner 16 photographs taken in such a manner revealing the gravity of injuries sustained by the petitioner with its stage by stage progress and also X-ray images have been produced and marked as Ex.P16.

c) Further the Disability Certificate issued by the Medical Board of the Thoothukudi Government Medical College Hospital revealing his disability as 40% has been produced and marked as Ex.C1. Further another certificate claimed to have been issued by the HOD of Department of Orthopedics of Thoothukui Government Medical College Hospital during the National Lok Adalath sitting for the petitioner has been produced and marked as Ex.P21. Ex.P21 it is found to have mentioned diagnosis that fractures in the right femur in which implant plate has been fixed. In this regard it is also pertinent to note that, in the course of arguments on 21.01.2025 as recorded in the petition Notes paper on the petitioner side, it has been highlighted that, as mentioned in Ex.C1 percentage of disability of the petitioner be undisputedly considered as 40%. Considering all the above in toto, this tribunal is of the view that, due to the injuries sustained by the petitioner in the accident he has undergone grievous injuries and has suffered severely for which the compensation under various heads has to be analysed and fixed in a just manner.

d) Regarding what could be the reasonable compensation payable, the same has to be assessed based on the facts and circumstances of each case. In this regard, for necessary guidance this tribunal takes into consideration the following decisions of the Hon'ble Supreme Court :

- 1) **Smt. Sarala Varma and others /Vs/ Delhi Transport Corporation and another reported in 2009(2) TNMAC Page.1 (SC),**
- 2) **National Insurance Company Limited /Vs/ Pranay Sethi and Others reported in 2017(2) TNMAC 609.**
- 3) **Rajkumar /Vs/ Ajaykumar & others reported in 2011 ACJ 1 (SC).**

With the guidelines issued in the above cases, in mind this tribunal examines the case in hand to fix a reasonable compensation as follows,

e) The petitioner claims Rs.6,15,204/- under the head of medical expenses. In that regard has produced Ex.P9, 34 number of medical bills as Ex.P9 revealing the various medical expenses incurred by the petitioner during his treatment at Royal Hospital, and other pharmacies, institutions, abstract filed as a part of Ex.P9 reveals that, as per those bills the petitioner has incurred medical expenses for a sum of Rs.4,38,003/-. Further on behalf of the petitioner another two bills issued by the Royal Hospital for the inpatient treatment from 20.06.2023 to 22.06.2023 and 11.07.2023 to 17.07.2023 coming to a total amount of Rs.1,50,398/- has been produced and marked as Ex.P12. Further on behalf of the petitioner another 23 number of bills to prove that the petitioner has incurred medical expenses for a total amount of Rs.14,374/- has been produced and marked as Ex.P13. In this regard when Ex.P9, Ex.P12 and Ex.P13 are considered together reveals that total medical expenses for an amount of Rs.6,02,775/-. In this regard this tribunal is of the view that, the petitioner has spent Rs.6,02,775/- towards medical expenses for his treatment as a result of the accident and the same is not disputed on behalf of the contesting

Respondent No.2 both in the course of cross examination of PW1 and during arguments and hence accepting Ex.P9, Ex.P12 and Ex.P13 this tribunal is inclined to award Rs.6,02,775/- under the head of medical expenses to the petitioner.

e) The petitioner claims Rs.19,000/- under the head of damage to clothes and articles but however she has not produced any documentary evidence to prove the same and hence this tribunal is not inclined to award any amount under this head.

f) Further the petitioner claims Rs.20,000/- under the head of transport/ conveyance charges to hospitals. From Ex.P1 First Information Report it is seen that, immediately after the accident the petitioner has got admitted in Thoothukudi Government Medical College Hospital immediately on 01.03.2023 and immediately on the same day he has been shifted to Royal Hospital at Mapilaiyurani and in the said hospital he has been discharged after inpatient treatment on 10.03.2023 with severe fracture injuries, unable to walk and also subsequently another three times on 09.05.2023, 20.06.2023 and 11.07.2023 again the petitioner has travelled from his home to the said Royal Hospital, got admitted, has undergone inpatient treatment and thereafter subsequently discharged respectively on 14.05.2023, 22.06.2023 and 17.07.2023 which according to this tribunal clearly reveals that the petitioner should have incurred sufficient amount as expenditure towards transport charges for having travelled to the said hospital for his medical treatment and to return back both during the inpatient treatment and also in the course of of out patient treatment. In this regard even though on behalf of the petitioner 12 bills have been produced for a total amount of Rs.23,400/- as travelling expenses based on the bills issued by Saronin Roja Car & Ambulance Service still this tribunal is of the view that, the concerned person who has issued those bills have not been

examined as witness and the expenditure has not been proved by the petitioner. Considering all the above together this tribunal considering the inpatient treatment undergone by the petitioner in 4 spells is inclined to award a reasonable amount of Rs.15,000/- under this head.

g) The petitioner claims Rs.10,00,000/- under the head of pain and sufferings. In this regard the four discharge summaries issued by the Royal Hospital, Thoothukudi for the inpatient treatment of the petitioner from 01.03.2023 to 10.03.2023, 09.05.2023 to 14.05.2023, 20.06.2023 to 22.06.2023 and 11.07.2023 to 17.07.2023 have been produced and marked as Ex.P7, Ex.P8, Ex.P10 and Ex.P11 respectively. Already this tribunal has discussed about the nature of injuries sustained by the petitioner and the medical treatment undergone by him in an extensive manner are carefully taken into consideration. Considering the nature of injuries sustained by the petitioner he should have suffered considerably both physically as well as mentally. However, this tribunal is of the opinion that, the amount claimed by the petitioner under this head is not reasonable. Therefore this tribunal hereby awards Rs.1,00,000/- under this head.

h) The petitioner claims Rs.35,000/- under the head of extra nourishment. Having regard to the nature of injuries sustained by the petitioner and total duration of inpatient treatment being 26 days, definitely the petitioner should have taken some extra nourishment to regain his health. Therefore, the petitioner should have spent Rs.35,000/- for special diet. Therefore this tribunal allows Rs.35,000/- as stated by him in the petition.

i) Now coming to the compensation for the disability sustained by the petitioner due to the accident, he claimed Rs.10,00,000/- under this head. From

Ex.C1 Disability Certificate issued by the Medical Board of the Thoothukudi Government Medical College Hospital, it is seen that, the petitioner suffered with 40% permanent physical impairment. Therefore this tribunal is inclined to award Rs.2,00,000/- (40 x Rs.5,000) under this head by following the judgments of our Hon'ble Madras High Court reported in 2020(1) TNMAC 617 in the cases M.Chinnathambi – vs. S.Deepa and others (CMA No.4645/2019 dt.10.01.2020) and New India Assurance Co. Ltd. Vs. R.Ramesh and others reported in 2021 (1) TNMAC 481.

j) Further the petitioner claims Rs.30,000/- under the head of Extra Nourishing and Physiotherapy still no specific proof has been produced and hence this tribunal is not inclined to further award any amount under this head. Similarly since already compensation has been awarded under the head of pain and sufferings, further compensation sought for by the petitioner for mental and physical shock, frustration, mental stress, unhappiness in future life cannot be entertained and hence the compensation sought for on those heads are also denied by this tribunal. Further it is also pertinent to note that on behalf of the petitioner functional disability has neither be pleaded nor claimed.

k) The petitioner claims Rs.15,000/- as loss of earnings for five months and partial loss of earnings from 01.03.2023 to 17.07.2023 for about 4 months as Rs.7,50,000/- in the petition pleadings and in the oral evidence of petitioner/ PW1 he claims to be conducting business as a whole seller at fish market at Thoothukudi Threspuram Fishing Harbour prior to the accident with an annual income of Rs.36,00,000/-. In this regard it is claimed that, as if the petitioner was earning Rs.3,00,000/- as monthly income but however as admitted by the petitioner / PW1 in his cross examination he has not filed Income Tax Returns to reveal his

monthly income and instead he has categorically stated that he did not file any Income Tax Returns. Further on behalf of the petitioner statement of accounts of his bank account maintained in IDFC First Bank for a period from 01.07.2023 to 31.12.2023 has been produced and marked as Ex.P20 but however considering the fact that, the accident being on 01.03.2023 and the statement of accounts for the subsequent period being produced as Ex.P20 does not in any manner support the case of the petitioner and it infact reveals that the petitioner had only a balance amount of Rs.7,351.23 as on 02.07.2023 in his bank account. Considering the age of the petitioner being 26 at the time of accident and also having been hale and healthy prior to the accident since the petitioner has not produced any specific documentary evidence to prove his monthly income as well as the business claimed to have been done by him this tribunal reasonably fixes his monthly income as Rs.15,000/- Further the discharge summary issued by the Royal Hospital for the petitioner clearly reveals that, the petitioner has incurred four surgeries and has also undergone inpatient treatment in four spells as mentioned below :

- 1) 01.03.2023 to 10.03.2023 - 10 days
- 2) 09.05.2023 to 14.05.2023 - 6 days
- 3) 20.06.2023 to 22.06.2023 - 3 days
- 4) 11.07.2023 to 17.07.2023 - 7 days

Considering the inpatient treatment undergone by the petitioner as above for a total 26 days from 01.03.2023 to 17.07.2023 this tribunal is of the view that in view of the grievous injuries (fractures, implant) the petitioner could not have attended his regular work for atleast six months and therefore considering his monthly income as Rs.15,000/- per month this tribunal is inclined to award Rs.90,000/- under this head.

1) Further perusal of the petition reveals that, the petitioner has not claimed attendant charges but further from the nature of grievous injuries (fractures)

sustained by the petitioner and also considering the 26 days inpatient treatment he has undergone at the Thoothukudi Government Medical College Hospital and Royal Hospital, Thoothukudi which is evident from Ex.P7, Ex.P8, Ex.P10 and Ex.P11 Discharge Summary, this tribunal is of the certain view that, the petitioner could not have taken treatment without an attendant, during the inpatient period of 26 days and also considering the grievous injuries and in toto for about 4 months, this tribunal also takes into consideration the recent decision of the Hon'ble Supreme Court in **Chandramani Nanda Vs. Sarat Chandra Swain and another reported in 2024 INSC 777** wherein it has been held that, in order to award a just compensation the tribunal is empowered to grant compensation amount more than the claimed amount and in that regard the Hon'ble Supreme Court in its judgment has held as follows :

“It is a settled proposition of law, that the amount of compensation claimed is not a bar for the Tribunal and the High Court to award more than what is claimed, provided it is found to be just and reasonable. It is the duty of the court to assess fair compensation. Rough Calculation made by the claimant is not a bar on the upper limit. Reference in this regard can be made to the Judgment of this court in the case of Meena Devi Vs. Nunu Chand Mahto (2022 INSC 1080)”

In the light of the above decision and considering the injuries, inpatient treatment undergone by the petitioner in 4 spells between March 2023 to July 2023, this tribunal hereby awards Rs.40,000/- under the head of Attendant Charges.

m) Considering the nature of injuries sustained by the petitioner being grievous (fractures) in nature and perusal of Ex.C1 Disability Certificate issued by

the Medical Board of the Thoothukudi Government Medical College Hospital and also the specific evidence of the petitioner that he walks with the help of a stick “ஊன்றுகோல் வைத்து தான் நடக்கிறேன்” this tribunal is of the view that, the petitioner has sustained restricted movements in his leg. Considering all the above this tribunal is inclined to award Rs.65,000/- under the head of loss of convenience.

n) For the above reasons, the just compensation payable is calculated and tabulated as follows:-

Sl. No.	Head	Compensation (Rs.)
1	Medical Expenses	6,02,775/-
2	Transport to hospitals	15,000/-
3	Pain and Sufferings	1,00,000/-
4	Extra Nourishment	35,000/-
5	Loss of Income	90,000/-
6	Attendant Charges	40,000/-
7	Compensation for Disability	2,00,000/-
8	Loss of Convenience	65,000/-
	TOTAL COMPENSATION AWARDED	11,47,775/-

10) This court is inclined to award 7.5% interest on the compensation amount to be payable to the petitioners since it would be a reasonable rate of interest. Hence, the above said compensation is payable together with interest @ 7.5% per annum from the date of petition. This point is answered accordingly.

11) Further considering the fact that the petitioner is a major, having already suffered and incurred considerable medical expenses because of the injuries sustained by him in the accident this tribunal is of the view that imposing any condition upon the petitioner to compulsorily deposit any percentage of the compensation amount

which is awarded to him in this order, will not be just, reasonable and also in the interest of justice and it would also not serve any purpose, as a result this tribunal hereby decides that no such condition shall be imposed upon the petitioner and he shall be at liberty to withdraw the entire award amount, once the said amount is deposited by the respondent insurance company. In case any appeal is being preferred by any of the contesting respondents they shall exercise due diligence and bring the same to the knowledge of this court at the time of filing petition to withdraw the award amount by the petitioner.

In the result, this petition is partly allowed with proportionate costs as follows:

- i. The petitioner is entitled to a sum of **Rs.11,47,775/-** as compensation with interest at 7.5% per annum from the date of petition that is on 30.06.2023 to till the award amount is deposited. The petitioner is not entitled for any interest for the default period if any.
- ii. The 2nd respondent is directed to deposit the award amount within two months from the date of this order into this court's MACT Current Account No.35972775440 of the State Bank of India, SME Branch, Thoothukudi through NEFT and to file a Memo to that effect along with a proof of such deposit by serving copy of the same to the petitioner's counsel.
- iii. On such deposit of the award amount, entire amount is ordered to be paid to the petitioner immediately to his bank account through RTGS or NEFT on filing cheque petition. The petitioner has Savings Bank Account No.10023978728(IFSC Code No.IDFB0080105) of the IDFC First Bank, First Floor, Door No.9, 3rd Avenue, Indira Nagar, Adyar – 600 020.
- iv. The total court fee for the award amount is Rs.10,850/-. The petitioner has already paid the court fee of Rs.372.50/- at the time of filing the petition. The

deficit court fee of Rs.10,478/- shall be paid by the petitioner within two weeks from the date of order.

v. The award amount will be paid to the petitioner only after payment of balance court fee of Rs.10,478/-

vi. The 2nd respondent is directed to pay Rs.29,448/- to the petitioner as the cost of the petition.

vii. Advocate fee is fixed at **Rs.18,478/-**

viii. The parties are directed to receive free copies of this award as per Section 168(2) of the Motor Vehicles Act and Rule 20(6) of the Rules (M/s.Cholamandalam MS Genl. Ins. Co. Ltd. - vs. - Mr.Ayyannar.S and others in Tr. C.M.P. No.264 to 281/2020 dated 11.05.2020).

Dictated by me to the steno-typist, transcribed and typed by her in the computer, corrected and pronounced by me in open court, this the 10th day of February 2025.

**Motor Accidents Claims Tribunal Judge/
Chief Judicial Magistrate,
Thoothukudi.**

Cost Details (for petitioner)

Particulars	Amount (Rs.)
Court Fee	10850.00
Vakalath	10.00
Advocate Fee	18478.00
Batta Memo	10.00
Typing charges	100.00
Total	29448.00

Petitioner side witness :

PW1	Thiru. Sahaya Sunil Anz Nixon
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Petitioner side Exhibits :

Ex.P1	01.03.2023	Photo copy of First Information Report.
Ex.P2	01.03.2023	Photo copy of Accident Register.
Ex.P3	---	Photo copy of Petitioner' driving licence.
Ex.P4	---	Photo copy of Certificate of Registration for the vehicle bearing Registration No.TN69BP4633.
Ex.P5	---	Photo copy of Certificate of Registration for the vehicle bearing Registration No.TN69AL 5727.
Ex.P6	---	Photo copy of Certificate of Insurance for the vehicle bearing Registration No.TN69AL 5727.
Ex.P7	10.03.2023	Discharge summary.
Ex.P8	14.05.2023	Discharge Summary.
Ex.P9	---	Medical Bills (34 Nos.) for Rs.4,38,003/-
Ex.P10	22.06.2023	Discharge Summary.
Ex.P11	17.07.2023	Discharge Summary.
Ex.P12	22.06.2023	Medical Bills (2 Nos.) for Rs.1,50,398/-
Ex.P13	---	Medical Bills (23 Nos.) for Rs.14,374/-
Ex.P14	---	Ambulance bills (12 Nos.) for Rs.23,400/-
Ex.P15	---	Bank Account Statement of the petitioner.
Ex.P16	---	Photographs (13 Nos.).
Ex.P17	---	Photo copy of petitioner's Aadhar Card.
Ex.P18	---	Photo copy of petitioner's Pan Card.
Ex.P19	---	Photo copy of first page of petitioner's Bank pass book
Ex.P20	---	Bank Statement of the petitioner.
Ex.P21	---	Disability Certificate.

Respondent's side witnesses and exhibits : Nil

Court Document :

Ex.C1

Disability Certificate issued by the Medical Board.

**Motor Accidents Claims Tribunal Judge/
Chief Judicial Magistrate,
Thoothukudi.**

**Motor Accidents Claims Tribunal/
Chief Judicial Magistrate Court,
Thoothukudi.
Draft / Fair Order
M.C.O.P.No.20/2023
Dt. 10.02.2025**