

**MOTOR ACCIDENT CLAIMS TRIBUNAL,
MADURANTAKAM.**

**PRESENT: Mr. T. GANESH, B.A.,B.L.,
Subordinate Judge,
Madurantakam.**

Monday, this 11th day of November 2024

MCOP No. 23/2023

(CNR.No.TNCG-000073-2023)

Balasundaram (age 50 years),

S/o. Elumalai, residing at

No. 44, Bharathi Street,

Alancheri Village,

Uthiramerur Taluk,

Kancheepuram District.

...Petitioner

..Vs..

1. Viswanathan, S/o. Annadurai,

residing at Puzhudhivakkam Village,

Madurantakam Taluk,

Chengalpattu – 603 314.

2. Mr. Viji, S/o. Annadurai,

residing at Puzhudhivakkam Village,

Madurantakam Taluk,

Chengalpattu – 603 314.

... Respondents

This petition came up on 27.09.2024 for final hearing before me in the presence of Mr.C.Venkatesan, counsel for the petitioner and Mr.Tamilmaran, counsel for respondents, and respondents called absent and set exparte due to non-filing of counter, upon hearing petitioner side arguments, perusing the case records and having stood over for consideration till this day, this court delivers the following;

ORDER

This petition is filed under Section 140 & 166 of Motor Vehicles Act 1988 (Act IV of 39 r/w Rules 3 of M.M.C.T Rules 1961) claiming compensation of Rs.25,00,000/- (Rupees Twenty Five Lakhs) with interest and costs from the respondents for the injuries sustained by the petitioner in the accident which occurred on 28.12.2021.

2. The case made out by the petitioner in claim petition is as follows:

On 28.12.2021 the petitioner was travelling as rider of two-wheeler bearing registration No. TN 21 AE 0290 from Puzhudhivakkam Junction to Vedanthangal. At about 7.30 p.m when he was proceeding near MGR Nagar, Madurantakam Taluk, the 2nd respondent's vehicle bearing registration number TN 19 V 1771 driven by the 1st respondent in the same direction in a rash and negligent manner and hit him. Due to that the petitioner sustained grievous injuries all over the body. He was taken to Government Hospital, Chengalpattu and underwent treatment in private hospital.

The S.I. of police Madurantakam also registered a case in Crime No. 731/2021 under section 279 and 337 of IPC against the respondents. The 1st respondent is the rider and the 2nd respondent is owner of the vehicle involved in the accident. Hence the respondents are vicariously and statutorily liable to pay compensation to the petitioners. Hence the petitioner is claiming a sum of Rs.25,00,000.00

3. Though the respondents entered appearance through their counsel, they failed to file counter and hence they were set exparte.

4. Based on the above pleadings, the following points were framed for determination:

1. Whether the accident occurred due to the rash and negligent driving of the of the 2nd respondent's vehicle bearing Reg. No. TN 19 V 1771 by the 1st respondent?
2. Whether the petitioner is entitled for compensation and if so, what is the amount?
3. Who is liable to pay the amount to the petitioner?

5. The petitioner examined himself as Pw1 and through him Exs. P1 to P12 marked.

6. Heard the learned Counsel for petitioner.

7. The learned counsel appearing for the petitioner would contend that the accident occurred only due to the rash and negligent driving of 1st respondent alone. He further contends that as a result of injury, the petitioner could not continue his task and therefore compensation as claimed by the petitioner has to be granted.

8. POINT No.1 - NEGLIGENCE:

On a careful consideration of oral and documentary evidence available on record, the petitioner has claimed compensation for the injuries sustained by him in the accident said to have been caused by the vehicle alleged to be belonging to the 2nd respondent by the 1st respondent. Though the respondents were set exapрте, it is bound and duty of the petitioner to prove his case.

Petitioner examined himself as Pw1 and clearly deposed that the accident was solely occurred due to the rash and negligent act of the 1st respondent. He also filed the, Ex.P1 –Copy of F.I.R, where a case in Cr.No.731/2021 came to be registered by Madurantakam police station on 30.12.2021 for the alleged offences punishable

U/s.279, 337 of IPC on the ground that the accident occurred only due to the rash and negligent driving by the 1st respondent of the two-wheeler bearing registration No. TN 19 V 1771. Petitioner by way of examining himself as Pw1 and Ex P1, proved that the accident was occurred solely due to the rider of the offending vehicle. It was neither denied nor disputed by the respondents. Hence, this court of considered opinion that the petitioner has established that the rider of the two-wheeler, the 1st respondent, bearing registration number TN 19 V 1771 was responsible for the accident and that point No.1 is answered accordingly.

9. POINT No.2 QUANTUM:

Ex P2- the discharge summary would show that the petitioner has sustained open Grade IIIB fracture of both bone left leg and hence this court proceeds to award compensation under the following heads:

(i) Permanent disability: -

In order to assess the percentage of disability, the petitioner has appeared before the medical board and after examination, the members of the medical board assessed the disability at 8% which is obvious from disability certificate, Ex P12. There is no contra evidence adduced on the side of respondent to reduce the percentage of disability and as such the disability as assessed by Medical Board is accepted.

As per the decision of our hon'ble high court reported in ***2022 – 1 – TNMAC – 299, Manager claims, IFFCO TOKIO General Insurance Co., Ltd Vs Venkatesh and another*** for each percentage Rs.5,000/- has to be awarded as the accident was occurred in the year 2021. Hence, a sum of (8 X 5000) Rs.40,000 is awarded under this head.

ii) Pain and Sufferings: -

Petitioner has produced Ex P2 – the discharge summary for the period

28.12.2021 to 08.01.2022, which shows that the petitioner has sustained both bone fracture on his left leg and that he underwent wound debridement with external fixation on 02.01.2022. Ex P4 – the discharge summary for the period 30.08.2022 to 15.09.2022, which shows that the petitioner underwent Ilizarov fixations for the said fracture on his left leg on 17.09.2022, where there is infection on his left leg with non-union of bones. Ex P5 – the discharge summary for the period 17.01.2023 to 23.01.2023, which shows that the Ilizarov fixed to the petitioner was removed on 19.01.2023. Ex P2, P4 and P5 would show that the petitioner underwent surgeries on 02.01.2022, 17.09.2022 and 19.01.2023. No doubt that the petitioner has undergone three surgeries. So, the petitioner has suffered untold pain due to the above said injuries and treatment taken. Hence this court awards a sum of Rs. 1,35,000.00 under this head.

(iii) Loss of Income:-

According to the petitioner, he is a painter and earned a sum of Rs.25,000.00 per month. In support of the same the petitioner has not produced any documents. Hence this court wants to fix notional income. This court wants to rely upon a decision of our Hon'ble High court in *Petchiammal and others Vs M. Sathiyamoorthy* in **CMA 2636 of 2022** where it is held that a sum of Rs. 17,000.00 to be taken as notional income of non-earning member of the year 2019. Here the accident was occurred in the year 2021. Considering the same this court fix a sum of Rs.17,000.00 per month as notional income of the injured petitioner. As per Ex P2 to P5 the discharge summaries (28.12.2021 to 23.01.2023), there is no doubt that the petitioner cannot be mobilized till 23.01.2023. It is pertinent to note that Ilizarov was fixed on the left leg of the petitioner. So, no doubt that the petitioner unable to mobilize for nearly 18 months. Petitioner could not have attended his avocation atleast for a period of 18 months, particularly as he sustained both bone fracture on his left leg and external fixator done to him under Ilizarov fixation. Therefore, a sum of (18 X 17,000) Rs.3,06,000.00 is awarded under this head.

(iv) Transport:-

The petitioner has not produced any proof for transport expenses. Considering the nature of injuries sustained by the petitioner and treatment taken for nearly more than one year, this court inclined to award a sum of Rs. 10,000.00 under this head.

(v) Nutritious Food:-

For taking nutritious food to recuperate his health, notionally a sum of Rs.5,000.00 is awarded under this head.

(vi) Medical Expenses:-

The petitioner has produced Ex P8 medical bills for a sum of Rs. 25,517.75 which corresponds to Ex P3. Hence this court award a sum of Rs. 25,517.75.00 under this head.

(vii) Attender charges: -

As the petitioner sustained fracture on his leg, underwent wound debridement, external fixation and removal of external fixation, etc., he would have definitely needed the assistance of an attender to take care of him. No doubt that he cannot move out and be immobilized for a period of one year. Hence assistance of attender was necessary to the petitioner for the said period. Each day the petitioner could have spent a sum of Rs.300.00 as attender charges, as the accident was occurred in the year 2021. Calculating the same the petitioner could have spent a sum of (300 X 365 days) Rs.1,09,500.00. Hence, considering the same the petitioner is entitled to a sum of Rs.1,09,500.00 under this head.

(viii) Comfort and Amenities: -

Due to the said injuries, the petitioner would face lot of discomfort to do his daily chores and has lost his comfort and amenities. Considering the same, this court decided to award a sum of Rs 10,000.00 under this head.

The petitioner is entitled for compensation under various heads is as follows:

Sl.No.	Heads	Granted amount
1)	Permanent Disability	Rs. 40,000.00
2)	Pain and Sufferings	Rs.1,35,000.00
3)	Loss of Income	Rs. 3,06,000.00
4)	Transport	Rs. 10,000.00
5)	Nutritious Food	Rs. 5,000.00
6)	Medical Expenses	Rs. 25,517.25
7)	Attender charges	Rs. 1,09,500.00
8)	Comfort and Amenities	Rs. 10,000.00
	Total	Rs.6,41,017.25 Rounded off to Rs.6,41,000.00

Therefore, the petitioner is entitled for a compensation of Rs.6,41,000.00 with interest and costs and the point No.2 is answered accordingly.

10. POINT No.3 - LIABILITY:

Petitioner has produced the copy of registration certificate of the offending vehicle as Ex P9 which shows that the 2nd respondent is the owner of the offending vehicle. Ex P1 the First information report would show that the 1st respondent is the rider of the two-wheeler. There is no denial by the respondents in respect of the same. Hence both are jointly and severally liable to pay compensation to the petitioner.

11. Result:

In the result, this petition is partly allowed with proportionate costs and the

respondents are liable to pay a sum of Rs.6,41,000.00 (Rupees Six Lakhs Forty one Thousands) is passed in favour of the petitioner with interest at 7.5 percent per annum from the date of petition till the date of payment payable by the respondent No.2 with interest and costs, which shall be deposited into the MACT account of this court in account No. **42910484246** (IFSC code SBIN0000870) at State Bank of India, Madurantakam through RTGS or NEFT within 30 days from the date of this order and deposit report shall be intimate to this court immediately as well as to the petitioner by way of memo. The petitioner is directed to file appropriate petition for payment of the compensation amount and the amount payable shall be transferred to petitioner's bank account through RTGS or NEFT. The petitioner shall submit her bank details to this court by way of memo within ten days of this order, if not produced. The petitioner is further directed to pay the balance court fee, if any, within ten days and obtain the copy of the order. Failing which, the petitioner is not entitled for the interest from the date of order till date of deposit of balance court fee. Advocate fee is fixed at Rs.13,410.00. The interest will not carry for the default period, if any.

Directly typed by me in my lap – top, corrected and pronounced by me in the open court, this the 11th day of November 2024.

Sd/T.GANESH,
Motor Accidents Claims Tribunal Judge/
Subordinate Judge,
Madurantakam.

PETITIONER'S WITNESSES:

PW1: Balasundaram (Petitioner).

PETITIONER'S EXHIBITS:

Ex P1	30.12.2021	First Information Report.	True copy
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Ex P2	28.12.2021 to 08.01.2022	Discharge Summary, Chengalpattu Medical College and Hospital, Chengalpattu.	Original
Ex P3	11.01.2022	Doctor Prescription, Vasam Hospital.	Original
Ex P4	30.08.2022 to 15.09.2022	Discharge Summary, Chengalpattu Medical College and Hospital, Chengalpattu.	Original
Ex P5	17.01.2023 to 23.01.2023	Discharge Summary, Chengalpattu Medical College and Hospital, Chengalpattu.	Original
Ex P6		CT Scan.	Original
Ex P7		X-Rays.	Original
Ex P8		Medical Bills	Original.
Ex P9		Certificate of Registration.	Xerox copy
Ex P10		Aadhar Card of the Petitioner.	Xerox copy
Ex P11		Bank Pass book of the Petitioner.	Xerox copy
Ex P12		Disability certificate of petitioner.	Original

RESPONDENT'S WITNESSES: Nil

RESPONDENT'S EXHIBITS: Nil

Sd/T.GANESH,
Motor Accidents Claims Tribunal Judge/
Subordinate Judge,
Madurantakam.

TNCG130000732023



