

BEFORE THE MOTOR ACCIDENTS CLAIMS TRIBUNAL,
CHENNAI

(In the IV Court of Small Causes, Chennai)

Present: Tmt.S.TAMILSELVI, B.A. L.L.M., Dip. in (J.P. & J.J.),
IV Judge

Monday the 2nd day of December 2024

M.C.O.P.3420 of 2021
CNR No.TNCH09-004552-2021

Abdul Hussain,
S/o.Appas Hussain,
No.19/15, Ramasamy Street,
Thanthai Periyar Nagar,
Taramani,
Chennai – 600 113.

....Petitioner

-Vs-

1. M/s. Arush Retail,
No.1, Guruswamy Nagar Extension,
Madhanandapuram Main Road,
Mugalivakkam,
Chennai – 600 125.
2. Bajaj Allianz General Insurance Co., Ltd.,
Old No.276 &277, New No.497 & 498,
“Isana Kattima Building”, 5th Floor,
Poonamallee High road,
Opposite to Tamilnadu Pollution Control Board,
Arumbakkam,
Chennai – 600 106.

....Respondents

This petition is came up before me for final hearing on 07.11.2024 in the presence of M/s. S.Ravikumar, Counsel appearing for the Petitioner, 1st Respondent called absent and set exparte and M/s. K.Mohan, Counsel appearing for the 2nd respondent upon hearing the arguments on both sides and upon perusing the entire records of the case, having stood over for consideration till this date, this Tribunal pronounces the following:-

ORDER

1. This petition has been filed under Section 166 of the Motor Vehicles Act and Rule 3 of the Motor Vehicles Rules, seeking for compensation of Rs.10,00,000/- for the injuries sustained by the Petitioner in a motor accident.

2. The averments made in the petition are briefly as follows:-

The Petitioner in the petition stated that on 16.06.2021 at about 10.50 hrs, when the petitioner riding the motorcycle bearing Reg.No.TN 22-BA-0380, at that time van bearing Reg.NO.TN 05-BX-5288 driven by its driver in a rash and negligent manner and hit behind the petitioner's motorcycle. Due to that, petitioner fell down and left side wheel of the van ran over the petitioner's right hand and petitioner sustained grievous injuries and hence stated that driver of the van bearing Reg.NO.TN 05-BX-5288 caused the accident negligently.

3. First respondent called absent and set exparte.**4. The averments made in the counter filed by the 2nd respondent are briefly as follows:-**

The respondent denies all the averments and allegations made in the claim petition, except those that are specifically admitted hereunder. Second respondent filed the counter stating that the accident occurred due to negligent act of the rider of the two-wheeler bearing Reg.No.TN 22-BA-0380 and further stated that the claim of the petitioner is highly excessive.

The petitioner is put to strict proof of the alleged accident, involvement of the vehicle in question in the alleged accident, manner of accident and alleged injuries due to the accident. The petitioner is put to strict proof of injuries alleged to have been sustained, nature of injuries, nature of treatment, period of treatment, age, income and disability through proper documentary and oral evidences. Hence, the claim petition is liable to be dismissed.

5. The point for consideration in this petition are as follows:-

- (1) Whether this accident has occurred due to the rash and negligent driving of the driver of the van bearing Reg.NO.TN 05-BX-5288?
- (2) Who is liable to pay the compensation?
- (3) Whether the Petitioner is entitled to compensation? and if so, what is the quantum?

6. On the side of the Petitioner, PW1 examined and Ex.P1 to Ex.P9 marked. On the side of the Respondent, no witnesses examined and no exhibits marked. The Disability Certificate issued by the Regional Medical Board, Government Kilpauk Medical College Hospital, Chennai is marked as Ex.C1.

7. Point No.1:

(i) The case of the petitioner is that on 16.06.2021 at about 10.50 hrs, when the petitioner riding the motorcycle bearing Reg.No.TN 22-BA-0380, at that time van bearing Reg.NO.TN 05-BX-5288 driven by its driver in a rash and negligent manner and hit behind the petitioner's motorcycle. Due to that, petitioner fell down and left side wheel of the van ran over the petitioner's right hand and petitioner sustained grievous injuries and hence stated that driver of the van bearing Reg.NO.TN 05-BX-5288 caused the accident negligently.

The first respondent called absent and set exparte. Second respondent filed the counter stating that the accident occurred due to negligent act of the rider of the two-wheeler bearing Reg.No.TN 22-BA-0380 and further stated that the claim of the petitioner is highly excessive and prays to dismiss the petition.

On the side of the petitioner, PW1 Abdul Hussain examined and Ex.P1 to P9 marked, on the side of the 2nd respondent, no witnesses examined and no exhibits marked and the 2nd respondent filed petition u/s 170 MV act and allowed by this Tribunal. On perusal of Ex.P1 FIR, it was registered against driver of the van bearing Reg.NO.TN 05-BX-5288 on 16.06.2021 in crime No.92/2021 U/s.279, 337 IPC.

There is no contra evidence to disprove the negligent act of the driver of the van bearing Reg.NO.TN 05-BX-5288. Hence this Tribunal felt that the petitioner proved the rash and negligent driving of the driver of the van bearing Reg.NO.TN 05-BX-5288 by oral and documentary evidence. Hence Point No.1 is answered accordingly.

8. Point No.2 :-

(i) In Point No.(1), it has been found that the accident has occurred due to the rash and negligent driving of the driver of the van bearing Reg.NO.TN 05-BX-5288.

(ii) The petitioner has mentioned in his petition that the first respondent vehicle was insured with the second respondent under Policy No.OG21-1501-1803-00005402 valid from 20.11.2020 to 19.11.2021. The date of accident is 16.06.2021. The petitioner has stated that the 1st respondent is the owner and 2nd respondent is the insurer as per the Insurance policy filed along with the main petition for the van bearing Reg.NO.TN 05-BX-5288. Hence the 1st respondent is the owner of the van bearing Reg.NO.TN 05-BX-5288 and 2nd respondent is the insurance company in which 1st respondent insured the van bearing Reg.NO.TN 05-BX-5288 and hence 2nd respondent is liable to pay the compensation. Therefore Point No.2 is answered accordingly.

9. Point No.(3):

(i) In the petition and in the evidence of P.W.1, the petitioner has stated as to the injuries sustained by him in details. In order to prove the same, the petitioner has filed Ex.P2 Accident register, Ex.P3 Discharge summary and hence the petitioner proved that he sustained injuries due to accident.

The petitioner referred to medical board and Ex.C1 is the Disability Certificate issued by the Regional Medical Board, Government Kilpauk Medical College Hospital, Chennai and the percentage of disability is 22%. As per Ex.P3 Discharge summary, petitioner sustained "Crush injury in Right hand" and admitted on 16.06.2021, discharged on 19.06.2021 and surgery conducted on 16.06.2021. On perusal of Ex.P4 Photograph of the injured petitioner, it goes to show that small

finger and ring finger of right hand amputated. Hence it goes to show that the petitioner sustained permanent disability without functional disability and hence this Tribunal decides to assess the compensation for disability by applying multiplier method.

Income of the Petitioner:

The Petitioner stated in the petition that he was working as Assistant Manager at One stone mobile shop and earning Rs.20,000/- per month. The petitioner filed no documents to prove the income. Hence in these circumstances, this Tribunal has to fix the notional income. In view of the recent Judgment passed by our Honourable High Court, (DB) in CMA 2330/2017 dated 09.10.2018

Andal and others .vs. Avinav Kannan and others, it was held that notional income has to be determined in following manner i.e., Rs.6,500/- for the year 2008 for vegetable vendor as per Syed Sadiq case and hence Rs.6,500/- x cost of inflation of the year of accident / cost of inflation in the year of 2007 – 2008 has to be calculated.

Hence considering the above direction by Honourable High Court, this Tribunal fixed the notional income. As per Syed Sadiq case, the notional income is Rs.6,500/- for vegetable vendor. Cost of inflation in the year of accident i.e., **2021-2022** is **317**. Cost of inflation in the year 2007 -2008 is 129. Hence Rs.6,500 x **317/129** which comes around Rs.15,972/-. Hence this Tribunal fixed the notional income as Rs.16,000/-.

Accordingly the notional income of the petitioner is fixed as Rs.16,000/- per month. The age of the injured is 31 years at the time of accident as per Ex.P5 Driving license and on perusal of Ex.P4 Photograph, it goes to show that there is no loss of avocation due to the disability of the injury sustained by the petitioner at the time of accident. Hence this Tribunal is not inclined to take the future prospects to the annual income. Hence annual income of the petitioner is fixed as Rs.1,92,000/- (Rs.16,000x12).

Loss of permanent disability:-

On perusal of Disability certificate and photographs, it goes to show that petitioner sustained permanent disability of 22% resulting without functional disability and hence as per direction of the Hon'ble Madras High Court, Annual income x relevant multiplier x percentage of disability assessed divided by 100 has to be calculated. The age of the petitioner is 31 as per Ex.P5 Driving license. Hence $1,92,000 \times 16 \times 22/100 = \text{Rs.}6,75,840/-$. Hence this tribunal decides to award **Rs.6,75,840/-** under the heads of loss of permanent disability.

Loss of earning:

The petitioner in his petition stated that the loss of earning is from 16.06.2021 to 15.09.2021. As per Ex.P3 Discharge summary, petitioner sustained "Crush injury in Right hand" and admitted on 16.06.2021, discharged on 19.06.2021 and surgery conducted on 16.06.2021. On perusal of Ex.P4 Photograph of the injured petitioner, it goes to show that small finger and ring finger of right hand amputated. The notional income of the petitioner is Rs.16,000/- per month. Hence considering the period of admission in Hospital and other aspects, this Tribunal decides to award **Rs.48,000/-**(Rs.16,000x3) for loss of earnings.

Compensation for Pain and Sufferings:

As per Ex.P3 Discharge summary, petitioner sustained "Crush injury in Right hand" and admitted on 16.06.2021, discharged on 19.06.2021 and surgery conducted on 16.06.2021. On perusal of Ex.P4 Photograph of the injured petitioner, it goes to show that small finger and ring finger of right hand amputated. Hence considering the age, work, income of the injury, this tribunal decides to award **Rs.1,00,000/-** under the head of Pain and Sufferings.

Transport Charges:

The petitioner took treatment at Kilpauk Medical College hospital for 4 days as inpatient. Considering the place of accident and distance to the Hospital, this Tribunal decides to award Rs.5,000/- will be just compensation under the head of Transport

Charges.

Extra-nourishment:

The petitioner took treatment at Kilpauk Medical College hospital for 4 days as inpatient. Hence considering the period of admission in hospital and nature of injuries, this Tribunal decides to award **Rs.10,000/-** towards Extra-nourishment.

Damages to clothing and articles:

The petitioner claimed Rs.50,000/- for damages to clothing, articles. No documents filed to prove the same and hence considering the manner of the accident, this Tribunal decides to award **Rs.2,000/-** as just compensation for damages of clothing and articles.

Attender Charges:

As per Ex.P3 Discharge summary, petitioner sustained "Crush injury in Right hand" and admitted on 16.06.2021, discharged on 19.06.2021 and surgery conducted on 16.06.2021. On perusal of Ex.P4 Photograph of the injured petitioner, it goes to show that small finger and ring finger of right hand amputated. Considering the period of treatment and nature of injuries, this Tribunal decides to award **Rs.25,000/-** for attender charges.

Loss of disfigurement:

The petitioner sustained crush injury in the right hand. On perusal of Ex.P4 Photograph, it shows that there is a disfigurement in the right hand and hence this Tribunal decides to award **Rs.25,000/-** for loss of disfigurement.

Future loss of earning power:

The petitioner filed no documents to show that he took treatment after discharge from Government Kilpauk medical college Hospital and further not proved the loss of avocation. Hence this Tribunal felt that the petitioner failed to prove the future loss of earning due to injuries caused because of accident. Hence this Tribunal is not inclined to award for the same.

CALCULATION:

1. Disability	:	Rs. 6,75,840/-
2. Loss of earnings	:	Rs. 48,000/-
3. Pain and Sufferings	:	Rs. 1,00,000/-
4. Transportation	:	Rs. 5,000/-
5. Extra Nourishment	:	Rs. 10,000/-
6. Damages to clothing and articles	:	Rs. 2,000/-
7. Attender Charges	:	Rs. 25,000/-
8. Loss of disfigurement	:	Rs. 25,000/-

Total Compensation is fixed at	:	<u>Rs. 8,90,840/-</u>
Rounded off to	:	Rs. 8,90,800/-

The petitioner is entitled for a total compensation of Rs.8,90,800/- as just compensation for the injuries sustained by him in the above accident. Accordingly, this point is answered.

10. In the result, this petition is partly allowed and a sum of **Rs.8,90,800/-** (Rupees eight lakh ninety thousand eight hundred only) is awarded as just compensation to the Petitioner with cost and interest at the rate of 7.5 percent per annum from the date of filing of the Claim Petition i.e.,22.07.2021 till the realization, payable by the 2nd Respondent. No interest for the default period as per orders if any. The 2nd respondent is directed to deposit the said amount to the credit of the bank account of this claim tribunal directly by NEFT OR RTGS mode within a period of two months from this order, and intimate the said deposit details to this tribunal with a copy of the said Bank advise. Thereafter, the said amount shall be made directly to the credit of the Petitioner bank account.

This Tribunal Account particulars:

Registrar (MACT), Court of Small Causes, Chennai

Account No. 7103261207

IFSC No. IDIB000M157

Indian Bank, Madras High Court Branch, Chennai.

E-mail ID. chnccc.sccrc-tn@indiancourts.nic.in

The Petitioner's Bank A/c, Aadhaar and Pan card details are given below: The Petitioner name is – A. Abdul Hussain

Bank name and Branch	Account No. and IFSC code	Adhaar card details	Pan card details
HDFC Bank Ltd, No.2, P S Sivaswamy Salai, Mylapore, Chennai – 600 004.	Acc : 50100047113670 IFSC : HDFC0000323	6008 7841 4063	BLZPA2714G

The petitioner has paid a sum of **Rs.372.50/-** towards Court fee. As per this award, the Court fee is **Rs.8,280.50/-**. The Advocate fee is fixed at **Rs.15,908/-**. The deficit court fee of **Rs.7,908/-** shall be paid by the petitioner within 2 weeks from the date of order.

Other necessary particulars:

Date of Presentation of petition	22.07.2021
Date of taken up on file	09.08.2021
Compensation claimed in the M.C.O.P.	Rs.10,00,000/-
Compensation awarded in this petition	Rs.8,90,800/-
Court fee paid along with the petition	Rs.372.50/-
Court fee payable on the award amount	Rs.8,280.50/-

Additional court fee shall be paid	Rs.7,908/-
Additional court fee paid, MPSR.No.....dated	

That the 2nd respondent do pay to the petitioner a sum of **Rs.24,233.50/-** towards the costs of this petition.

Cost List for the petitioner

<u>STATEMENT OF COSTS</u>						
<u>For the petitioners</u>				<u>For the Respondents</u>		
		<u>Rs.</u>	<u>P.</u>		<u>Rs.</u>	<u>P.</u>
Stamp on petition	-	8,280	.	50		
Stamp on Vakalat	-	5	.	00		
Stamp for process	-	40	.	00	-- not filed --	
Advocate fees		15,908	.	00		
Costs allowed	-	24,233	.	50		

The direction regarding copy of the Judgment and decretal order prepared under Sub rule 6 of Rule 20 of TNMAC Rules, 1989, and Honble Madras High Court's communication in R.O.C.No.390-A/2014/F1 dated 13.02.2014 are obediently followed. And further it is informed that, as per the direction of the Honourable High Court, as far as this claim Petition is concerned, Decree is not drafted separately. And in the award, instead of drafting the decree, necessary details have been incorporated in this claim Petition's order.

This order has been dictated by me to the Steno typist, typed by him in the computer directly, corrected and pronounced by me in the open Court, on this Monday, the 2nd day of December 2024.

**Motor Accident Claims Tribunal,
IV Judge
Court of Small Causes
Chennai**

Petitioner's sides Witness:

P.W.1: Mr.A.Abdul Hussain

Petitioner's side Exhibits:

Ex.P-1 : FIR Xerox copy

Ex.P-2 : Accident Register copy

Ex.P-3 : Discharge Summary and Continuous Treatment Records

Ex.P-4 : Petitioner's Injury Related Photos

Ex.P-5 : Petitioner's Driving License copy

Ex.P-6 : Petitioner's Employment Identity Card copy

Ex.P-7 : Petitioner's Aadhaar Card copy

Ex.P- 8: Petitioner's PAN Card copy

Ex.P- 9: Petitioner's Bank Front page copy

Respondents Side Witness & Exhibits: NIL

Court documents:

Ex.C1 : Disability Certificate issued by Medical Board.

**Motor Accident Claims Tribunal,
IV Judge
Court of Small Causes
Chennai**