

Date of presentation: 15.06.2020

Date of filing : 18.06.2020

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL
SUBORDINATE JUDGE, UTHANGARAI

Present: Thiru. Senthil Kumar Rajavel, L.L.M.,
Subordinate Judge, Uthangarai.

Tuesday, the 26th day of September 2023

2054 திருவள்ளூர் ஆண்டு முடி சோபகிருது வருடம் புரட்டாசி மாதம் 09-ம் நாள் செவ்வாய் கிழமை

MCOP.No.84/2020

CNR No:TNKI11-000233-2020

1.	Name and address of the Claimant(s)	Minor Nithiyasri, aged about 02 years, D/o. Thirupathi. Rep. by guardian her father Thirupathi, aged about 35 years, S/o. Muthu, <u>residing at:</u> Kommampattu Village, Govindapuram Post, Uthangarai Taluk, Krishnagiri District.
2.	Name and address of respondent(s)	1. S. Naveenkumar, S/o. Sanjeevan, <u>residing at:</u> 1/104, Kailayapuram Village, Mampatti Post, Harur Taluk, Dharmapuri District. 2. The Branch Manager, The Royal Sundaram General Insurance Company Limited, No.186/5, 3 rd Floor, Royal Tower's, New Bus Stand Road, Meiyyanoor, Salem – 636 004.
3.	Date of presentation of the claim petition	15.06.2020
4.	Date of award	26.09.2023
5.	Amount of award	Rs. 2,13,803.00
6.	Costs allowed	Rs. 7,978.00
7.	Court Fee for award amount	Rs. 1,511.50
8.	Court Fee paid	Rs. 500.00
9.	Balance of court fee to be paid	Rs. 1,011.50
10.	ORDER	As per the direction of the Hon'ble High Court, Madras in Tr.CMP. Nos.264 to 281 of 2020 M/s.

	Cholamandalam MS Genl. Ins. Co. Ltd., Vs. Mr. Ayyannar S. and others dated 11.05.2020 , no separate decretal order will be drafted.
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This petition came up before this tribunal for final hearing on 11.07.2023 in the presence of Tr. M. Sakthivel, Advocate for the petitioner, 1st respondent was called absent and ex parte and of Tr. J. Sathiyarayanan, Advocate for the 2nd respondent, and set ex parte due to non filing of counter, and on hearing the Arguments of the petitioner, and upon perusal of the entire case records and this petition having stood over for consideration till this day, the tribunal delivered the following order.

ORDER

1. This petition is filed by the petitioner under section 166 of the MV Act for claiming compensation of Rs.5,00,000/- for the injuries caused to her in the road accident on 30.10.2019.

2. The brief avernments of the petition:

On 30.10.2019 at about 10.15 hours, morning the petitioner's grand mother going to Eri work and the same time come rain, so the petitioner, her grand mother Madhu and other workers are go to their houses slowly, cautiously in the left side of the road, at that time the Maruthi Suzuki car bearing Regn. No.TN-29-BT-7695 owned by the 1st respondent and insured with the 2nd respondent was driven by the 1st respondent in a rash and negligent manner without observing any rules of the road, without raising horn and at an uncontrollable speed and suddenly hit against the petitioner. As a result the petitioner sustained grievous injuries of laceration occipital region, abrasion on the left elbow, abrasion on the right knee. The petitioner was taken to Govt. Hospital Uthangarai and after first aid treatment, she was shifted to Kauvery Hospital, Salem and admitted there as an inpatient. The respondents 1 and 2 are liable to pay compensation. Hence, this petition.

3. The 1st respondent remained ex parte. Tr. J. Sathiyarayanan, Advocate for the 2nd respondent and set ex parte due to non filing of counter

4. Points for consideration:

- 1) Whether the accident was due to the rash and negligent driving of the 1st respondent of the Maruthi Suzuki car bearing Regn. No.TN-29-BT-7695 ?
- 2) Whether the driver of the Maruthi Suzuki car has also contributed for the accident?
- 3) Whether the petitioner is entitled to get any compensation?
- 4) Who is liable to pay compensation?
- 5) What is the quantum of compensation entitled for?

5. To prove the case of the minor petitioner's father has examined himself as PW1 on behalf of her daughter and Ex.P1 to P11 was marked. Medical board report issued by the Chairman, Standing Medical Board, Government Headquarter Hospital, Krishnagiri was marked as Ex.C.1. On the respondents side no oral and documentary evidence was adduced.

6. The oral and documentary evidence produced in the case were perused and arguments advanced by petitioner was heard.

7. Point No.1 and 2

According to the petitioner on 30.10.2019 at about 10.15 hours, morning the petitioner's grand mother went to Eri work since there was raining, the petitioner and her grand mother Madhu and other workers were return to their houses slowly, cautiously in the left side of the road, at that time the Maruthi Suzuki car bearing Regn. No.TN-29-BT-7695 owned by the 1st respondent and insured with the 2nd respondent was driven by the 1st respondent in a rash and negligent manner without observing any rules of the road, without raising horn and at an uncontrollable speed and suddenly hit against the petitioner and the petitioner sustained injuries.

In support of the case while the minor petitioner's father was examined as Pw1 adduced evidence. true copy of FIR in Cr.No.345/2019 at Singarapettai Police Station for the alleged offence under section 279, 337 IPC as marked as Ex.P1, xerox copy of accident register is marked as Ex.P2, xerox copy of Motor Vehicle Inspection Report

carried out by the Regional Inspector at Krishnagiri dated 04.11.2019 is marked as Ex.P9, xerox copy of insurance policy is marked as Ex.P4. photo copy of driving license of the Maruthi Suzuki car driver is marked as Ex.P5 and photo copy of RC is marked as Ex.P3.

Regarding the accident, the petitioner produced Ex.P1 true copy of FIR registered by the Singarapettai Police in Cr.No.345/2019 for the offence under section 279, 337 of IPC. Immediate to the accident, a complaint was lodged and FIR was registered. A perusal of the same would reveal that accident was caused by the 1st respondent of the Maruthi Suzuki car bearing Regn. No.TN-29-BT-7695.

Therefore, as regards the negligence is concerned it was only due to rash and negligent driving of the driver of 1st respondent's vehicle. Due to the accident the minor petitioner was sustained grievous injuries all over her body. Despite of the receipt of notice the respondents have not chosen to either appear or engaged counsel. Therefore, it is clear case that due to the accident occurred only, the petitioner sustained injuries which are very grievous in nature.

Accordingly, in the facts and circumstances of the case, the tribunal is of the view that the accident was taken place only due to the rash and negligent driving of 1st respondent vehicle and by its driver, thus, the point No.1 is answered in affirmative and the point No.2 is answered in negative.

8. Point No.3

Immediate to the accident, the petitioner was taken to the Govt. Hospital at Uthangarai given first aid treatment and then she has taken to Kauvery Hospital, Salem on 30.10.2019 at the time of 03.00 P.M. Accident register cum Wound certificate is marked as P8 and discharge summary cum wound certificate is also marked as Ex.P2.

In obedience to the Hon'ble High Court direction and reference made by this Court, medical disability certificate issued by the competent authority is marked as Ex.C1. From the above records it is clear that the petitioner was sustained injuries on

pain and deformity of **occipital reigion, post trametic seigme disorder, post trametic strom disorder, poor understanding headach.** Accordingly, medical board was given opinion to that effect that due to the above disability she is having 30% partial permanent disability. As such the petitioner is entitled to get compensation and the point is answered in favour of the petitioner.

9. Point No.4

A perusal of motor vehicle inspection report under Ex.P9, copy of driving license Ex.P5 and policy marked under Ex.P4 would seems that the Maruthi Suzki car driver had valid driving license and there is valid coverage of insurance policy as on the date of the accident. As such, on above discussion this Court viewed that there is no violation of the policy. Since, the 1st respondent's vehicle is insured with 2nd respondent, the 2nd respondent is liable to pay compensation to the petitioner. Accordingly, the point is answered.

10. Point No.5:

The petitioner stated her age is 02 years in the petition, a perusal of copy of petitioner's Aadhar card under Ex.P6. Therefore this Court hold that the petitioner was 02 years old at the time of accident.

Disability:

Immediate to the accident, admitted to the Govt. Hospital at Uthangarai on 30.10.2019. The petitioner was required higher treatment admitted at Kauvery Hospital at Salem from 30.10.2019. During the course of treatment, operation was conducted on her right occipital born depresced fracture and had treatment on sutared. On consideration it is clear that the petitioner was sustained injury on her right occipital region.

Further, the petitioner was subjected to underwent herself to accesses disability by a duly constituted the Chairman and Joint Director of Health Services standing by the medical board government Head Quarters hospital at Krishnagiri. The disability certificate dated 22.04.2022 issued by the Medical board. In Ex.C1 it is found noted that the petitioner has disability of 30% which is partial permanent

disability. The doctor who diagnosed the petitioner has also observed that the petitioner has got complaints of pain, the details of the diagonalizes and his treatment.

A perusal of C1 also points out the medical board has not assessed the disability for whole body and it is partial. During evidence it has also observed that the petitioner has no difficulty in handling day to day affairs. Considering the above discussion and as held by the Hon'ble High Court, Madras in United India Insurance Company /Vs/ Velusamy and another reported in 2006 (1) ACC 416, the tribunal is of view that the accidental injuries has not resulted in any permanent disablement or functional disability multiplier method could not be invoked. Accordingly this Court considering the reported Judgment of Hon'ble High Court, Madras in M/s. IFFCO TOKIO General Insurance Company Limited /Vs/ Venkatesan and other dated on 09.01.2020 is inclined to award compensation on the basis of percentage method.

Applying the guidelines framed by the Hon'ble Madras High Court to the facts of this case and taking note of the date of accident, having taken place in the year 2019, this Tribunal is of view that a sum of Rs. 5,000/- may be awarded for 1% of disability and thus a sum of Rs.1,50,000/- is to be awarded for the 30% of the disability.

b. Medical Expenses.

The petitioner has produced medical and hospital bills to the tune of Rs. 3,803/-. **The said medical bills taken into consideration for the tune of Rs. 3,803/- alone after considering objection and careful perusal.** As such the petitioner is entitled to Rs.3,803 /- on the head of medical expenses.

c.Pain and suffering

Due to the accident the petitioner took treatment at Kauver Hospital at Salem as inpatient for some days and **had undergone conservative treatment for the fracture of right occipital region.** In view of the fact the petitioner would have undergone pain and suffering. Hence, the tribunal feels that **Rs.30,000/-** be awarded towards pain and suffering and thus the same is awarded.

d.Other heads

1. The petitioner would have incurred transportation expenses to take treatment and for visiting the hospital as outpatient and hence **Rs.4,000/-** is fixed towards **transportation expenses.**

2. The petitioner sustained injuries and suffered disability and as such he would be in need of additional nourishment and therefore Rs.10,000/- is awarded in this aspect.

3. For **damage of clothes** as would have been passed, the petitioner is entitled to **Rs.1,000/-.**

4. The petitioner took treatment as inpatient for some days and therefore she would have required the service of an attender for a period of some days. Hence a sum of **Rs.5,000/-** is awarded towards **attender charges.**

5. Due to the injuries sustained by the petitioner, he would forego certain amenities at present and future. Considering, this fact **Rs.10,000/-** is awarded towards **lose of amenities.**

6. On the discussion made above, the compensation as apportioned under various heads is awarded as below.

1. Disability(after deducting 10%)	– Rs.1,50,000/-
2. Medical Expenses	– Rs.3,803/-
3. Loss of income	– Rs. --
4. Pain and suffering	– Rs. 30,000/-
5. Transportation expenses	– Rs. 4,000/-
6. Additional nourishment	– Rs. 10,000/-
7. Damages to clothes	– Rs. 1,000/-
8.Attender charges	– Rs. 5,000/-
9. Loss of amenities	– Rs. 10,000/-
10. Future medical expenses	– Rs. --
Total Compensation	– Rs. 2,13,803/-

In fine, the petitioner is entitled to a sum of Rs. 2,13,803/- (Rupees Two Lakhs

Thirteen Thousand Eight Hundred and Three only) as just and fair compensation and the point is answered accordingly.

In the result, the petition is partly allowed with proportionate cost against the 2nd respondent by awarding the compensation of Rs.2,13,803 /- (Rupees Two Lakhs Thirteen Thousand Eight Hundred and Three only) including interim award passed if any, payable with interest at 7.5% per annum from the date of the petition till the date of realization and dismissed rest of the claim as well as against the 2nd respondent. **The 2nd respondent is directed to deposit the said compensation amount to the credit of the bank account of this tribunal, Subordinate Judge (MCOP) Subordinate Court, Uthangarai maintained at State Bank of India, Uthangarai branch A/c. No.36955421971, IFSC code No.SBIN0007495, MICR No.635002010, directly by NEFT or RTGS mode within a period of two months from date of this order** and intimate the said deposit details to this tribunal with a copy of the bank advice. No interest is awarded for the period when the petitioner defaulted, as per orders if any. The award amount shall be deposited in any one of the Nationalized Bank, till her attaining majority, out of the deposited amount interest may be withdrawn for the welfare of the petitioner's father once in three years. The particulars of the petitioner bank account, Aadhar card and PAN card details are furnished below.

Petitioner Name	Bank Name and Branch	Bank Account details and IFSC code	Aadhar Card No.	PAN Card No.
Minor Nithiyasri	Pallavan Grama Bank, Periyathallapadi Branch	A/c.No. 10110191926 IFSC code: IDIB0PLB001	9343 8176 8899	Not furnished

Court fee paid along with this petition is Rs.500/-. Court fee for the award amount is Rs.1511.50 . The Advocate fee is fixed at Rs. 7278. A free copy of the award shall also be delivered to the parties on request within 15 days as per section 168(2) of the MV Act and Rule 20(6) of the Rules. The petitioner has to pay the remaining court fee within the period of two weeks.

Order directly dictated to the Steno - Typist and typed by her in computer and

taken print out and after rectification of mistake, Pronounced by me in open court, this the 26th day of September 2023.

Subordinate Judge,
(MACT),
Uthangarai.

Details of cost

Sl. No	Cost statement on petitioner side	Amount Rs. P.
1.	Stamp on petition	500.00
2.	Vakalath	10.00
3.	Advocate Fees	7,278.00
4.	Application charge	20.00
5.	Process fees	20.00
6.	Stamp on documents	50.00
7.	Typing charges	100.00
	Total	7,978.00

Appendix

Petitioner side witnesses:

PW1 - Thirupathi (Minor Petitioner's father)

Petitioner's side Exhibits:

1.	Ex.P1	First Information report	Xerox copy
2.	Ex.P2	Wound certificate of petitioner	Xerox copy
3.	Ex.P3	RC book of the car	Xerox copy
4.	Ex.P4	Insurance policy of the car	Xerox copy
5.	Ex.P5	Driving license of 1 st respondent	Xerox copy
6.	Ex.P6	Petitioner's Aadhar card	Xerox copy
7.	Ex.P7	Bank pass book of the petitioner	Xerox copy
8.	Ex.P8	AIR register of petitioner	Xerox copy
9.	Ex.P9	MVI Report of the car	Xerox copy
10.	Ex.P10	Charge sheet	Xerox copy
11.	Ex.P11	Medical bills of petitioner	Original

Respondents side witnesses - Nil

Respondents side Exhibits:- - Nil

Court side Exhibits:

Ex.C1 -- Medical Board Report

Subordinate Judge,
(MACT),
Uthangarai.