

**BEFORE THE COURT OF MOTOR ACCIDENT CLAIMS TRIBUNAL,
KARUR**

(IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, KARUR)

PRESENT: Thiru.C. RAJALINGOM, B.A., B.L.,

Chief Judicial Magistrate, Karur.

Tuesday, the 3rd day of January 2023

M.C.O.P.No.126/2020

CNR.No.TN KR 02000531-2020

Siva

....Petitioner

/vs/

1) Natesan

2) M/s United India Insurance Company

Limited, Represented by its Manager, Karur.

.....Respondents

This Petition is Coming on 22.12.2022 before me for final hearing in the presence of Thiru.N. Senthilkumar, Advocate for the Petitioner and the Respondents remained exparte and upon hearing arguments of petitioner's side, and on perusing the records and having stood over for consideration till this day this court passed the following:

ORDER

The petitioner has filed this petition u/s 141 and 166 of Motor vehicles Act praying that directing the respondents to pay Rs.10,00,000/- as compensation with interest at the rate of 9% from the date of accident to till the date of realisation with cost.

2) The brief facts of the petition is as follows:

The 1st Respondent is the owner-cum-driver and the 2nd respondent is the insurer of the offending TATA 407 vehicle bearing Reg.No.TN-27-Y-3434. On 17.11.2019 evening at about 5.30p.m. the rider Karikalan rode the PULSAR bearing Reg.No.TN-88-V-0894 alongwith petitioner and his friend Naveenkumar sat as pillion riders, after returning from the Tiruchengode Arthanareeswarar Thirukovil, proceeding towards their home in Nallur to Kabilarmalai road from north to south on the extreme left side of Rangampalayam near four road pirivu , at that time, on the same road in the opposite direction from south to north the owner-cum-driver of the TATA 407 vehicle bearing Reg.No.TN-27-Y-3434 has driven in a rash and negligent manner and trying to overtake in front of his vehicle, and came in a wrong side i.e., right side and dashed against the petitioner's vehicle and the accident was occurred. Due to the accident, the petitioner had sustained fracture in his right leg and grievous injuries all over his body. One of the pillion rider Naveen Kumar sustained grievous injuries and he was died after treatment. Immediately, the petitioner was taken to Indira hospital at Paramathi-Velur by an ambulance and he was given first aid, thereafter he was referred to Raj Ortho hospital, Karur and he was admitted as an inpatient for 30 days, and surgery was also performed, iron rods and screws were fixed, thereby he had incurred Rs.2,00,000/- for medical expenses. Doctors advised him that he has to spend Rs.1,00,000/- for his future medical expenses. The petitioner was 19 years old at the time of accident. Before the accident, he was hale

and healthy. At that time, he was studying in college and doing a part-time job as a computer operator, thereby he was earning Rs.10,000/-p.m. Due to the accident, he was permanently disabled and lost his part time job and income. The accident had happened only due to the rash and negligent driving of the 1st respondent. If the 1st respondent drove his vehicle in a slow speed with following road rules, the accident would not have happened. With regard to the accident, Jedarpalayam police has registered a case against the 1st respondent in Cr.No.196/19 u/s 279, 337 and 304(A) of IPC. The 1st respondent is the owner-cum-driver and the 2nd respondent is its insurer, hence both the respondents are liable to pay compensation of Rs.10,00,000/- to the petitioner,

3) Points for consideration:

1. On Whose negligence the accident was occurred?
2. Whether the petitioner is entitled to get compensation? If so, what is the quantum?

4) On the side of Petitioner, PW1 was examined and Exs.P1 to Ex.P9 were marked. Disability certificate was issued to the petitioner by the Government Medical College Hospital, Medical board, Karur and it was marked as Ex.C1.

5) Point No.1.

After hearing the submissions made by Petitioner's side, is carefully considered which shows the petitioner in the case would contend that, on 17.11.2019 evening at about 5.30p.m. the rider Karikalan rode the PULSAR bearing Reg.No.TN-88-V-0894 alongwith petitioner and his friend Naveenkumar sat as pillion riders, after returning from the Tiruchengode Arthanareeswarar Thirukovil, proceeding towards their home in Nallur to Kabilarmalai road from north to south on the extreme left side of Rangampalayam near four road pirivu , at that time, on the same road in the opposite direction from south to north the owner-cum-driver of the TATA 407 vehicle bearing Reg.No.TN-27-Y-3434 has driven in a rash and negligent manner and trying to overtake in front of his vehicle, and came in a wrong side i.e., right side and dashed against the petitioner's vehicle and the accident was occurred. The accident occurred purely due to the rash and negligent manner of the 1st respondent. Then only the Jedarpalayam police charged against the 1st respondent in Crime No.196/2019. The accident occurred only due to the rash and negligent driving of the 1st respondent and the petitioner proved his contention by way of documentary and oral evidence.

6) The Respondents 1 and 2 remained exparte.

7) After careful consideration of the case records which shows the petitioner's side, the petitioner was examined as PW1 through him, the Online downloaded copy of the FIR was marked as Ex.P1. It shows that the rider of two wheeler named

Karikalan has given a complaint to Jedarpalayam Police, and based on this, the case was registered against the 1st respondent u/s 279, 337 and 304(A) of IPC by Jedarpalayam Police. Ex.P2 is the Online downloaded copy of wound certificate which shows the injuries sustained by the petitioner is due to the accident. Ex.P3 is the copy of MVI report of the offending TATA 407 vehicle bearing Reg.No.TN-27-Y-3434 shows that the accident was not happened due to any mechanical defects. Ex.P4 is the copy of rough sketch which shows the scene of occurrence and it was indicated that the place of occurrence was mentioned on the eastern side of the north-south road. The case of the petitioner is also that he was proceeding from north to south in the left side of the road, at that time, the offending vehicle was came from south to north and proceeded in a wrong direction and dashed on the two wheeler. The scene of occurrence clearly shows that the negligence was on the side of the 1st respondent's vehicle, because, the place of occurrence was mentioned on the eastern side of the road. Ex.P5 is the copy of final report and as per version of police, the accident was occurred due to rash and negligent act of the 1st respondent and charged against the 1st respondent in Crime No.196/2019 u/s 279, 304(A) and 338 of IPC. The petitioner is the eye-witness of the accident and he is only the competent person to depose the manner of the accident and accordingly, PW1 deposed that the accident occurred only due to the rash and negligent manner of the 1st respondent. The 1st and 2nd respondents did not appear before this court and not denied the accident and had not entered into the witness box to adduce evidence and they remained exparte.

Hence, after considering all these facts and circumstances and evidence of the parties as well as the case records are carefully perused which shows that the accident occurred only due to the rash and negligent driving of the 1st respondent. Thus point No.1 is answered accordingly.

8) Point No.2

In this aspect, the petitioner would contend that due to the sudden impact the petitioner sustained fracture in his right leg and the injuries all over the body. Immediately, the petitioner was taken to Indira hospital at Paramathi-Velur by an ambulance and he was given first aid, thereafter he was referred to Raj Ortho hospital, Karur and he was admitted as an inpatient for 30 days, and surgery was also performed, iron rod and screws were fixed, thereby he had incurred Rs.2,00,000/- for medical expenses. Doctors advised him that he has to spend Rs.1,00,000/- for his future medical expenses. The petitioner was 19 years old at the time of accident. Before the accident, he was hale and healthy. At that time, he was studying in college and doing a part-time job as a computer operator, thereby he was earning rs.10,000/- p.m. Due to the accident, he was permanently disabled and lost his part time job and income.

9) After considering the submissions made by petitioner's side the Doctor who was treated to the petitioner has given Ex.P6 discharge summary shows :

DIAGNOSIS:

COMMINUTED FRACTURE RIGHT FEMUR/BOTH BONES GRADE II
COMPOUND FRACTURE RIGHT LEG
CRUSH INJURY WITH TARSO METATARSAL JOINT DISLOCATION
RIGHT FOOT.

ExP6 discharge summary was carefully perused, which shows the petitioner was affected with **CRUSH** injury in his right foot.

10) The evidence of PW1 and the Ex.P2 the wound certificate shows the Medical Officer gave an opinion that the injuries are grievous. After careful consideration of the injuries, this court holds that the injuries sustained by the petitioner is grievous in nature. Further Ex.P6 is the discharge summary of the petitioner which shows the details of the injuries and the treatment given to him are mentioned and it is supported to the petitioner's case. Ex.P7 is the medical and hospital bills. On the careful scrutiny there is no discrepancies about the medical bills, hence, the petitioner is entitled to get the amount as stated in the bills.

11) Now the petitioner would contend that the Medical board, Government Medical College hospital, Karur after analysing the wound certificate, medical prescription and discharge summary and fixed the percentage of permanent disability of the petitioner is 17%. Ex.C1 disability certificate shows the Medical Board,

Government Medical College hospital, Karur has given an opinion that the petitioner was affected with **RIGHT FEMUR – BOTH NONES RIGHT LEG - CRUSH INJURY RIGHT FOOT**. The percentage of disability is concerned, the evidence of PW1 shows due to the crush injury in his right foot and right leg, the petitioner could not be able to do continue his studies and not to do any work. But, even before the accident, he is the only earning member of the family and now the petitioner became jobless and the earning capacity of the petitioner was totally lost. Hence, it is necessary to adopt the multiplier method to fix the loss of earning capacity.

Furthermore, though the Medical board, Karur fixed the percentage of disability is 17%, but the loss of earning capacity of the petitioner is 100% as contend by the petitioner is also considered and all the facts and circumstances, Ex.C1 medical report and the evidence of PW1 as well as the Ex.P6 discharge summary of the petitioner are carefully considered and the loss of earning power of the petitioner is fixed at 17% as decided by the Medical board, Karur.

Furthermore, the petitioner would contend that prior to the accident the petitioner was studying in college and doing part-time job as a computer operator thereby he earned Rs.10,000/-p.m. and due to this accident, the petitioner is unable to continue his studies and not to do part-time job and earn money even before the accident. Hence, the petitioner prayed to taken the monthly income of the petitioner for a sum of Rs.10,000/-p.m. According to the evidence of the petitioner, was studying in

college and doing part-time job as a computer operator thereby he earned Rs.10,000/- p.m. before the accident. But there is no proof in this regard and to support of his contentions, he relied on a judgment reported in.....

2020 (1) TN MAC 449 (DB)

IN THE HIGH COURT OF MADRAS

C.M.A.No.470 OF 2018

Manikandan

.... Appellant

/vs/

P. Palani and six others

.... Respondents

INCOME – NOTIONAL INCOME - LOSS OF INCOME - Determination of – Injured/Claimant aged 28 years, a Car Driver – Driving Licence marked – Tribunal fixing Monthly Income at Rs.6,000/-p.m. - If, proper – Apex Court in Neeta fixed Monthly Income of a Carpenter at Rs.12,000/-p.m. for an accident that occurred in year 2011 – Instant accident occurred in year 2013 – Considering nature of work of Claimant, High Court fixed Notional Income at Rs.15,000/-p.m. - Following ratio in Pranay Sethi (SC) , 40% added towards Future Prospects – Monthly Income fixed at Rs.21,000 (Rs.15,000 + 40%) - Applying Multiplier of 17, Loss of Income awarded at Rs.42,84,000 (Rs.21,000 x 12 x 17) as against Rs.4,03,920 awarded by Tribunal.

12) However in the present case is concerned, considering the age of the petitioner in the Ex.P2 wound certificate as well as Ex.P6 discharge summary is 18

years old, hence the monthly income of the petitioner is fixed as Rs.10,000/- p.m. As per Ex.P8 Aadhar card, the year of birth of the petitioner was mentioned as 2001. Hence, the age of the petitioner was 18 years as per Ex.P8 Aadhar card at the time of accident.

13) The Petitioner's side further would contend that due to the crush injuries, the petitioner was affected with permanent physical impairment. Hence, the court may adopt multiplier method while fixing the loss of earning power and to support of his contention, he relied on a judgment

2017 (2) TN MAC 293

IN THE HIGH COURT OF MADRAS

C.M.A.Nos.1461 of 2016, 732, 1807 of 2015 & Cross -Objection No.42 of 2016

Dated 29.06.2017

C.M.A.Nos.1461 of 2016

Metropolitan Transport Corporation Limited

Rep. by its Managing Director, Pallavan Salai,

Chennai -2

.... Appellant

/vs/

V. Sundara Vadivel

... Respondent

C.M.A.Nos.732 of 2015

V. Sundara Vadivel

.... Appellant

/vs/

**The Managing Director, Metropolitan Transport
Corporation Limited, Pallavan Salai,
Chennai -2**

... Respondent

C.M.A.Nos.1807 of 2015

**United India Insurance Company Limited,
R.O., Legal Dept, Silingi Building,
No.134, Greams Road,
Chennai -6.**

....Appellant

/vs/

Sujitha N. Raju and another

...Respondents

Cross- Objection No.42 of 2016

Sujitha N. Raju

...Cross - Objector

/vs/

**United India Insurance Company Limited,
R.O., Legal Dept, Silingi Building,
No.134, Greams Road,
Chennai -6. and another**

....Respondents

**PERMANENT DISABILITY – LOSS OF EARNING CAPACITY –
Assessment – Methods – Multiplier method – Percentage of Disability method –**

Contention that Compensation assessed through Percentage of Disability method not sufficient to suitably compensate injured/Claimant in view of sky rocketing prices of essential commodities – That, Percentage of Disability method has become obsolete, therefore, Multiplier method alone to be adopted – Division Bench decision in Prabhu issued direction to introduce uniform system of assessment of disability by District Medical Board – Once such direction for constitution of Medical Board to issue disability Certificate followed, apprehension of inconsistency made by Claimants would become unnecessary.

The Hon'ble High Court observed that how to adopt method while awarding the claim petitions when injured person claiming award. In this case also, the petitioner was affected with severe crush injuries. The Ex.C1 was also clearly shown about the injuries and the future disabilities of the petitioner. Hence, this court is carefully considering the available materials and come to the conclusion that the petitioner was affected with permanent physical impairment and it is a functional disability. Hence, the loss of earning power is calculated with multiplier method.

14) The court fixed notional income of Rs.10,000/-p.m. In **2020 (1) TNMAC 449 (DB) and in Smt. Sarla Verma and others vs. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1 (SC)**, the Honourable Supreme Court has held that how to apply multiplier method . Ex.P2 wound certificate and Ex.P6

discharge summary, and Ex.P8 Aadhar card shows the age of the petitioner was mentioned as 18 years. Hence, this court is also fixed the age of the petitioner is 18 years. Hence, the correct multiplier is 18 as per Sarla Verma Case. Further with regard to the future prospects of the petitioner is calculated based on the ruling reported in

2017 (2) TNMAC 609 (SC) in SLP © No.25590 of 2014 dated 31.10.2017

National Insurance Company Limited

/vs/

Pranay Sethi and others

**Compensation – Quantum – Determination – Standardization of income –
Future prospects – Addition of in respect of person self employed or on fixed
salary-**

Aged below 40 years – 40%

Aged between 40-50 years – 25%

Aged between 50-60 years – 10%

In the present case on hand the petitioner is 18 years young boy and this court already fixed Rs.10,000/- as notional income. Hence, to calculate the annual income is concerned

$10,000 \times 12 = 1,20,000/-$ and for the future prospects 40% also add in the amount .

$$10000 \times 40/100 = 4000$$

$$10000 + 4000 = 14000$$

$$14000 \times 12 = 1,68,000$$

The Annual income is arrived as Rs.1,68,000/- as per Sarla Verma case

$$\text{Rs.1,68,000} \times 18 \times 17/100 = 5,14,080$$

Hence, the petitioner is entitled to get a sum of Rs.5,14,080/- for his loss of earning capacity relating to the permanent disability.

15) The petitioner is entitled to get Rs.5,14,080/- for his loss of earning power. Further, the petitioner is entitled to Rs.40,000/- for pain and suffering, and the petitioner is taking treatment from Raj Ortho hospital, Karur by using Car. Hence, the transport expenditure is fixed Rs.10,000/-. The Petitioner is entitled attendant charges of Rs.10,000/- and for nutrition is concerned, the petitioner is entitled for a sum of Rs.10,000/-. Ex.P6 discharge summary shows that the nails and screws were fixed to the right leg of the petitioner. In order to remove the same, he needs future medical expenses. Hence, the petitioner is entitled to get a sum of Rs.30000/- towards future medical expenditures. The Petitioner is also entitled Rs.10,000/- towards loss of amenities and Rs.2,000/- towards loss of damage to clothes. As per Ex.P7 Medical and hospital bills, the petitioner is entitled to get a sum of Rs.2,34,386/- for medical expenses.

Calculation of compensation Awarded:

Loss of earning capacity	Rs. 5,14,080.00
Pain and suffering	Rs. 40,000.00
Transport expenses	Rs. 10,000.00
Attendant charges	Rs. 10,000.00
Nutrition	Rs. 10,000.00
Medical Bills	Rs. 2,34,386.00
Loss of Amenities	Rs. 10,000.00
Future Medical Expenses	Rs. 30,000.00
Loss of damage to clothes	Rs. 2,000.00
Total	Rs. 8,60,466.00

The Petitioner is entitled to get an award of Rs.8,60,466/- (rounded off Rs.8,60,470/-) from the respondents 1 and 2, and the point no.2 is answered accordingly.

i) In the result, the petition is partly allowed. The respondents do pay Rs.8,60,470/- as compensation to the petitioner by way of NEFT or RTGS in the name of the CJM, KARUR (IFSC.No.IOBA0000738) Indian Overseas Bank, Thanthonimalai Account No.073802000001555 within two months with cost.

ii) the respondents are directed to pay the interest for the award amount at the rate of 7.5% per annum from the date of petition to till the date of deposit. The Petitioner has to pay the balance court fees within 10 days.

This order was dictated by me to the Steno typist, typed by her directly in Computer, corrected and pronounced by me in the open court on this the 3rd day of January 2023.

Sd/-C. Rajalingom
CHIEF JUDICIAL MAGISTRATE,
KARUR.

Petitioner side Evidence:-

P.W.1 .. Siva (Petitioner)

Petitioner side Documents:-

Ex.P1	18.11.2019	Online downloaded copy of First Information Report
Ex.P2	24.11.2019	Online downloaded copy of wound certificate of the Petitioner
Ex.P3	20.11.2019	Online downloaded copy of MVI report of the vehicle bearing Reg.No.TN-27-Y-3434
Ex.P4	18.11.2019	Online downloaded copy of rough sketch
Ex.P5	02.03.2020	Online downloaded copy of final report
Ex.P6	24.11.2019	Discharge summary of the petitioner
Ex.P7	-	Medical and Hospital bills
Ex.P8	-	Xerox copy of Aadhar card of the petitioner
Ex.P9	-	Xerox copy of 1 st page of the bank pass book of the petitioner

Document marked through Court:

Ex.C1 16.11.2022 Disability certificate issued by the Government Medical College Hospital, Medical Board, Karur to the Petitioner.

Sd/-C. Rajalingom
CHIEF JUDICIAL MAGISTRATE,
KARUR.