

BEFORE THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, ATTUR

Present: Thiru.K.Ananthan, M.Sc., M.Phil., L.L.M.,
MOTOR ACCIDENTS CLAIMS TRIBUNAL
(SUBORDINATE JUDGE)

Thursday, this the 08th day of February 2024

M.A.C.O.P. No. 12/2019

(CNR No.TNSA 12000-362-2019)

M. Kootha Pillai, aged about 32, S/o. Natesan, residing at 4/200-1,
Vadaku Kadu, Navalur post, Attur Taluk, Salem District. ... Petitioner

/versus/

1. S. Telugu Ramakrishna, S/o. T. Sunkanna, H.No. 21-65, Kondapeta Dhone
Kurnool, Kurnool, 518222, Andhra Pradesh.

2. Reliance General Insurance Co. Ltd. Sri Sai Jewels, 2nd Floor, RF Road,
Anantapur – 515001, Andhra Pradesh. ... Respondents

This petition came before me on 11.01.2024 for final hearing in the presence of Thiru.S.Balakrishnaraj, the Learned counsel for the Petitioners, and Respondent called absent *set ex-parte* and upon hearing Petitioner side argument and on perusal of entire material records placed before me, this Tribunal passed the following

ORDER

Facts relating to the claim:

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|-----------------------|---|---------------------------------|
| 1.Claim for | : | Injured |
| 2.Name of the injured | : | N. Kootha pillai, S/o. Natesan |
| 3.Age of the injured | : | 32 years |
| 4.Occupation | : | Supervisor of Harvester vehicle |

bearing Registration No. TN. 77.H.9236

- 5.Income pleaded : Rs. 15,000/- Per month
- 6.Date of accident : 15.04.2018
- 7.Compensation claimed : Rs.19,00,000/-

1. The laconic of facts stated in the petition is as follows: The case of the Petitioners is laconically projected that on 15.04.2018, the Petitioner Kootha Pillai was traveling through the Harvester vehicle bearing Registration No. TN.77.H.9236 from Navalur to go to Kodada village situated at Andhra Pradesh state and the Harvester vehicle driver was observing the traffic rules and it was proceeding on the left side of the road and it was reached near Mokshagundam village, Pethavaripeta Police limit, Prakasam District, Andhra Pradesh state at about 01.00 p.m. At that time, the driver of the first respondent was driving the LMV Goods vehicle bearing Registration No. AP.21.TZ.3396, rash and negligently at a great speed without following the traffic rules and it was upcoming on the opposite direction and the same dashed against the Harvester vehicle bearing Registration No. TN-77-H-9236. The Petitioner and the Harvester driver sustained severe bleeding injuries. The petitioner sustained bleeding injuries at 1) Left fore head 2) Left hand elbow 3) Left hand upper arm 4) Left side hip and he has sustained grievous fracture injuries at fracture of the left hand shaft of Humerus. Immediately, after the accident, the petitioner was taken to the Cumbum community Health Center and he was admitted as an inpatient on 15.04.2018 at about 2 p.m. and he was discharged on the same day at about 7 p.m. The Petitioner was taking treatment as an out patient at Chinnasalem Lingam Health Center. The petitioner was advised by the doctor, to undergo the ortho Surgery for the fracture of right hand Humerus bone. The petitioner was admitted as an inpatient on 30.04.2018 at London Ortho Specialty Hospital and he underwent one Surgery for the open and reduction internal fixation and he was discharged

on 01.02.2018. Subsequently the petitioner was taking treatment as an out patient till to this date. The accident was occurred only due to the rash and negligent driving of the first respondent's driver at the time of the accident. In this regard, Andra Pradesh State, Prakasam District, Bestha varipeta Police had registered a case against the driver of the first respondent in crime No. 49/2018 under section 337 IPC. The first respondent is the owner of LMV Goods vehicle bearing Registration No. AP-21-TZ-3396 and the 2nd respondent is the insurer of the vehicle. Both the respondents are jointly and severally liable to pay the compensation amount of Rs. 19,00,000/- with cost and interest at the rate of 15% per annum from the date of accident till his date of realization. Hence, the respondents are liable to pay the compensation as prayed for. Thus, the Petitioners claimed compensation under various heads as follows:

2. Particulars of loss and expenses

1.	Loss of Earnings	Rs. 90,000.00
2.	Transport to Hospital	30,000.00
3.	Extra Nourishment	30,000.00
4.	Damage to clothing and articles	5,000.00
5.	Other medical expenses	2,00,000.00
6.	Attendar charges	50,000.00
7.	Compensation for pain and suffering	1,00,000.00
8.	Compensation for continuing or permanent disability	2,00,000.00
8.	Compensation for loss of earning power	11,95,000.00

	Total	19,00,000.00
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3. Despite of R1 and R2 Counter not filed and they have not appeared before this Tribunal and Respondents were set *ex-parte*. On the side of Petitioner, he was examined himself as PW.1. Ex.P1 to Ex.P8 were marked through PW.1 and Ex.C1 was marked.
4. **The point for consideration is:** Whether the Respondents are liable to pay the compensation to the Petitioners? if so what is the quantum?
5. **Point No.1:-** In order to substantiate the case of the Petitioner, he was examined himself as PW1 and the evidence of PW1 is nothing but total replica of the averments made in the petition. Through the PW1, the copy of the FIR, Wound Certificate, Discharge summary(2), Insurance policy copy of Mahendra Bolero Pickup vehicle, R.C. copy, Medical Bills and Copy of Athar of the Petitioner were marked as Ex.P1 to P8 through PW.1. Disability certificate was marked as Ex.C1.
6. Though Counter not filed by the Respondents, they have not appeared before this Tribunal and to the contest the case of the Petitioner, then they failed to appear, they remained *ex-parte*. On perusing the petition, evidence of PW1 along with Ex.P1, a case has been registered against the driver of the LMV Goods vehicle bearing Registration No. AP-21-TZ-3396. Since there is no contra evidence against the evidence of PW1 and Ex.P1 this court has to accept that the accident was occurred only due to the rash and negligent driving of the vehicle. The 1st Respondent is the owner of the vehicle. The vehicle is insured with the 2nd Respondent. Since this court finds that the accident has occurred only due to rash and negligent act of the driver of the above said vehicle.
7. For disproving and disbelieving the case of the Petitioner, neither the Owner nor the Respondents have come forward before to adduce their

evidence. Thus, this court has no hesitation to draw an adverse inference against the Respondents, ***under Section 114(g) of the Evidence Act***, thereby the case of the Petitioners is manifestly proved ***under Section 101 of the Evidence Act***.

8. From the scanning of the Ex.P5, the Insurance policy copy of the LMV Goods vehicle bearing Registration No. AP-21-TZ-3396, the vehicle is insured with the 2nd Respondent from 23.11.2017 to 27.11.2018 and the insurance is in force at the time of accident. Under the Ex.P6 R.C. of the vehicle, it reveals that the 1st Respondent is the owner of the above said vehicle.. Since the accident was taken place only by the negligence of driver of the above said vehicle. It is evidently apparent that the accident was taken place only by the negligence of driver of the said vehicle, not by the negligence of injured. Therefore, the 2nd Respondent who is the insurer of said vehicle have to pay the following compensation amount to the Claimant and the point is answered accordingly.
9. **Point No.2:-**It is also noted that due to the said accident, the Petitioner was immediately taken to the London Artho Hospital, Salem and he was admitted as an inpatient on 30.04.2018 to 01.05.2018 and still under treatment as an out patient. Under Ex.C1 Medical Board Certificate for person with disabilities is fixed to **15%**.
10. It is also noted that the said Petitioner was sustained the Injury, under the Ex.C1 the percentage of the disability is 15% only. The Petitioner had permanent disability and difficulty in lifting overhead objects, Abulation, pain over shoulder as per Ex.C1. Thereto, a quantum has to be arrived with the above said consideration, Now this Tribunal has to look into the medical certificates, receipts and duration of the treatment of the petitioner as an inpatient of the Petitioner's. Further as per the evidence

of the PW1, the petitioner was given treatment at Salem London Artho Hospital. To prove the injuries sustained on the part of the Petitioner under Ex.P2 and Ex.P3.

11. Further the Petitioner was referred to medical board and doctors of the medical board have assessed the disability as 15% and the same has been marked as Ex.C1 the disability certificate. On perusal of Ex.C1 it is evident that the permanent disability of the petitioner was assessed at 25%. In the Judgment of *M.Chinnathambi -vs- S.Deepa reported in 2020 (1) TN MAC 617*, the Hon'ble High Court of Judicature, Madras, it is expressed that if no evidence that Claimant suffered functional Disability, then the Multiplier method not applicable, that the percentage method should be applied. Added to it, taking into consideration of raising a Cost of living, the amount of Rs.5,000/- was fixed per a percentage of disability. For the percentage of disability $15\% \times 5000 = 75,000/-$ is awarded. Since the Petitioner got permanent disability, thus, the compensation towards loss of amenities is fixed as **Rs.30,000/-** and extra nourishment is fixed as **Rs.10,000/-**. The Petitioner is entitled for compensation of **Rs.30,000/-** pain and suffering, since he underwent one Surgery for the open and reduction internal fixation and fixed to be future medical expenses is **Rs.15,000/-** and Transport expenses is fixed at **Rs.5,000/-**. Further as per the Ex.P7 he has spent a sum of **Rs.60,390/-** towards the medical expenses. Further he could have assisted with an attender at hospital and thereafter and as such the petitioner is entitled for a sum of **Rs.5,000/-** towards the attender charges. Damage of clothes for a sum of **Rs.1,000/-**. Hence the total compensation is calculated as follows:-

		Rs.
1.	Permanent Disability	75,000.00
2.	Loss of Amenities	30,000.00
3.	Extra Nourishment	10,000.00
4.	Pain and Suffering	30,000.00
5.	Future Medical Expenses	15,000.00
6.	Transport Expenses	5,000.00
7.	Medical Expenses (Ex.P9)	60,390.00
8.	Attendar Charges	5,000.00
9.	Damage to clothes	1,000.00
	Total	2,31,390.00

RESULT:

Eventually, the Petitioner is awarded as follows:-

1) The Petitioner is entitled to awarded the Compensation of **Rs.2,31,390/- (Rupees Two Lakhs Thirty one thousand three hundred and ninety only)** against the 2nd Respondent with cost.

2) The 2nd Respondent shall pay the compensation amount with 7.5 % interest from the date of filing of petition till the deposit. The interest is fixed based on the Judgment of *United Insurance Co., Ltd., vs.Indro Devi and others* reported in **2018-ACJ-P -2051**

- 3) The 2nd Respondent shall deposit the above said amount within one month from the date of this Order by NEFT/RTGS mode in the MACT Bank Account No. **36154598767** under intimation to this Tribunal by way of Sending pay advice slip.
- 4) The petitioner is hereby directed to furnish the first page of Bank Pass Book copy of Petitioner, which compulsorily contain the photograph of the Petitioner duly attested by the bank concerned self attested copy of the pan card if available to this Tribunal within a period of one month from today for the deposit of award amount in his bank account failing to produce the said document the Petitioners are not entitled to withdraw the award amount.
- 5) The Petitioner shall not withdraw the amount without obtaining permission from this Tribunal.
- 6) On such deposit the said amount shall be deposited if any one of the Nationalized Bank for a period of one year with condition that the 2nd Respondent has to send the detail of deposited amount to this Court **within 48 hours of** depositing the compensation amount to the mail of this Court i.e., **slmatu.SC-tn@indiancourts.nic.in**
- 7) The Balance Court fee shall be paid ***within 15 days*** from this date, the ***Court fee will not pay in-time then the Petitioners are not entitled for interest for that the defaulted period.***
- 8) Copy of order and decretal order is prepared Under Sub Rule 6 of Rule 20 of TNMAC Rules 1989 and Hon'ble High Court ROC of 390-A/2014-F1 dated 13.12.2014 is obediently followed.

Dictated to the Steno-typist typed by her through computer and directly and corrected and pronounced in the open court on this the 8th day of February 2024.

**MOTOR ACCIDENTS CLAIMS TRIBUNAL
(SUBORDI NATE JUDGE) ATTUR**

Witness on Petitioner's side:-

PW.1-Thiru.Koothapillai

Documents on Petitioner's Side:-

Ex.P1	08.02.2017	Copy of First Information Report
Ex.P2	08.02.2017	Copy of Wound Certificate
Ex.P3	13.02.2017	Discharge summary of Chinnasalem Lingam Health Centre Hospital
Ex.P4	18.02.2017	Discharge summary of London Artho Hospital, alem
Ex.P5	23.11.2017	Insurance policy copy of Mahendra Bolero pickup goods vehicle AP21-TZ-3396
Ex.P6	–	R.C. copy of Mahendra Bolero pickup goods vehicle AP21-TZ-3396
Ex.P7	–	Medical Bills 25 for Rs.60,390/-
Ex.P8	–	Photo copy of Athar card of the petitioner

Respondents side witnesses and Exhibits : NIL

Court Documents:-

Ex.C1-Disability Certificate

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