IN THE COURT OF THE SUBORDINATE JUDGE, OMALUR

Present : Tmt.T.MALATHI, B.Sc., B.L.,
Subordinate Judge,
Omalur.

Saturday, the 06th day of June 2026
(Thiruvalluvarandu 2057 Sri Parabhava Varudam Vaikaasi 23rd day)

MCOP.No.88/2023
[CNR: TNSA19-000439-2023]

(a)	Name and address of the claimant / Petitioner	Sathiesh @ Sathishkumar, S/o. Mariyappan, aged about 23 years, residing at Door No.2/204, Chinnavadagampatti, Periyavadakampatti Post, Danishpet Village, Kadayampatti Taluk, Salem District – 636354.
(b)	Name and address of the respondents	1. G. Vinothkumar, S/o. Govinthan, residing at Door No.360, Old Aadhidhiravidar Colony, Bommiyampatti Post, Kadayampatti Taluk, Salem District– 636351. 2. M/s. National Insurance Company Ltd., having Divisional office No.1, 2nd Floor, LRN Building, LRN Colony, Saradha College Main Road, Salem – 636007.
(c)	Name and address of the Insurance company	M/s. National Insurance Company Ltd., having Divisional office No.1, 2nd Floor, LRN Building, LRN Colony, Saradha

		College Main Road, Salem – 636007.
(d)	Name and address of the Transport Corporation or such other respondents who are held liable to pay	Not Applicable
(e)	Date of filing of the claim petition	01.06.2023
(f)	Date of award	**06.06.2026**
(g)	Amount of award	**Rs.2,00,000/-**
(h)	Interest rate applicable	**7.5% per annum**
(i)	Date (s) from which interest is payable	01.06.2023
(j)	Costs, if any	Stamp on petition: Rs.20/- Stamp on Vakalath: Rs.10/- Stamp on documents: Rs.75/- Court fee: Rs.1,373/- Advocate fee: Rs.7,000/- **Total**: **Rs.8,478/-**
(k)	In cases where the compensation, interests and costs are directed to be paid proportionately, the award should also specify who shall pay which portion of award, interest and costs.	The petitioner is awarded **Rs.2,00,000/-** together with interest at 7.5% per annum from the date of petition till the date of deposit excluding the period of dismissal for default if any, and including cost to be paid by the 2nd respondent / Insurance company shall recover the award amount including interest and costs from the 1st respondent / owner-cum-driver of the offending vehicle. (Pay and recovery)
(l)	In cases where there are several claimants, the shares and amounts payable to each of them shall be	The petitioner is awarded **Rs.2,00,000/-** together with interest at 7.5% per annum

	specified.	from the date of petition till the date of deposit excluding the period of dismissal for default if any, and including cost to be paid by the 2nd respondent / Insurance company shall recover the award amount including interest and costs from the 1st respondent / owner-cum-driver of the offending vehicle. (Pay and recovery)
(m)	The mode and manner of deposit of compensation	As per the decision of Hon'ble Supreme Court held in Civil Appeal No.4299/2025 and the direction issued by the Hon'ble High Court of Madras in R.O.C.No.55584/2025/S.C. the petitioner shall pay the balance court fee with in 15 days from the date of this order, failing which the petitioner is not entitled to the interest for the default period. After the receipt of payment of balance court fee, with in one month the award amount shall be deposited in **petitioner savings Account 6818716455, IDIB000T059, Indian Bank, Theevattipatti Branch** and the same has to intimate to this Tribunal by way of sending pay advice slip via **e-mail. subordinatecourtomalur@gmail.com**

(n)	The mode and manner of disbursement.	The petitioner is entitled to withdraw the entire award amount immediately on its deposit.
(o)	Period of default to which the petitioner are not entitled for interest, if any.	**NIL**
(p)	Balance of Court fee	**Rs.1,353/-**

Sathiesh @ Sathishkumar ... Petitioner

// Versus //

1. G.Vinothkumar,
2. M/s. National Insurance Company Ltd, Salem Branch.

... Respondents

The Case originally filed	In the Court of the Subordinate Judge, Omalur.
Date of taken on file	01.06.2023

Counsel of Petitioner : Thiru. R.Eswaran

Counsel of 2nd Respondent : Thiru. M.Venkateshan

Counsel of 1st Respondent : Exparte

This petition came up for final hearing on 16.04.2026, upon hearing the both sides and perusing the materials available on record, this Court delivered the following :-

AWARD

This claim petition has been filed under Section 166 of the Motor Vehicles Act, seeking a compensation of Rs.20,00,000/-.

02. The petitioner's case is as follows :

On 16.02.2023, the petitioner, aged 23 years and employed as a lorry driver earning ₹30,000/- per month, sustained grievous injuries when a Hero Splendor Plus motorcycle bearing Registration No. TN 30 CY 9816 was driven in a rash and negligent manner and collided with the petitioner's Hero Passion Pro motorcycle bearing Registration No. TN 30 CY 7651. Due to the injuries sustained in the accident, the petitioner has suffered a loss of earning capacity. Therefore, the owner-cum-driver and the insurer, namely Respondents 1 and 2, are jointly and severally liable to pay compensation to the petitioner. Consequently, the petitioner has claimed compensation of ₹20,00,000/- from them.

03. The 2nd Respondent's case is as follows :

This petition is not maintainable either in law or on facts. The manner of the accident, the treatment allegedly undergone by the petitioner for the injuries said to have been sustained in the accident, his age, occupation, income, nature of injuries, period of treatment, and disability are all denied. The petitioner is put to strict proof of the same by producing acceptable oral and documentary evidence. This respondent submits the rider of two-wheeler bearing Registration No. TN 30 CY 9816 rode the vehicle slowly and carefully following all traffic rules and regulations. The petitioner, who was riding the vehicle bearing Registration No.TN 30 CY 7651 rode in a rash and negligent manner and dashed against the insured vehicle. Therefore, this respondent is not liable to pay any compensation as claimed in the petition. At the time of the accident, the 1st respondent, Vinothkumar, the owner-cum-rider of the motorcycle bearing Registration No. TN 30 CY 9816, did not possess a valid driving licence. The same amounts to a statutory violation of the provisions of the Motor Vehicles Act and Rules, as well as a breach of the terms and conditions of the insurance policy. Hence, this respondent is not liable to indemnify or compensate the petitioner. The 1st respondent, being the owner-cum-rider of the offending vehicle, alone is liable to compensate the petitioner. Therefore, the petition is liable to be dismissed with costs.

04. In the inquiry, on the side of the petitioner, PW1 was examined and documents Ex.P1 to Ex.P16 were marked. The Disability Certificate issued by the Medical Board was marked as Ex.C1. On the side of the 2nd respondent/Insurance Company, RW1 was examined and documents Ex.R1 and Ex.R2 were marked. Ex.R3 was marked by consent. The 1st respondent remained ex parte.

05. Points of Findings :-

The points for findings in this claim petition are formulated as follows:

1	Whether the accident occurred in the manner alleged by the petitioner, resulting in the injuries sustained by him?
2	Whether the petitioner is entitled to compensation from the respondents as claimed in the petition?
3	What is the appropriate amount of compensation to be awarded to the petitioner?

06. Evidence on record, as well as the arguments submitted by the learned counsels for both sides, has been considered.

07. Findings No. 1:-

The claim petition has been filed under Section 166 of the Motor Vehicles Act. The claimant must establish before this Court that the accident was caused by the rash and negligent driving of the owner-cum-rider of the offending vehicle on the touchstone of preponderance of probabilities, as held by the Hon'ble Supreme Court in Sajeena Ikhbal & Ors. v. Mini Babu George & Ors., 2024 LiveLaw (SC) 810. As such, strict proof is not required. In the absence of rebuttal evidence, the Tribunal's finding on negligence cannot be said to be perverse or based on no evidence, as held by the Hon'ble Division Bench of the High Court of Madras in United India Insurance Co. Ltd. v. Krishnaveni & Ors., 2016 (1) TN MAC 563 (DB). The said decision further affirmed that proceedings before the Claims Tribunal are summary in nature and that proof of the manner of the accident on a preponderance of probabilities is sufficient.

08. The evidence available in the present case has been evaluated on the basis of the principle of preponderance of probabilities.

09. The petitioner claims that on 16.02.2023, while riding his Hero Passion Pro motorcycle bearing Registration No. TN 30 CY 7651 with observing all traffic rules, he sustained grievous injuries in an accident allegedly caused by the rash and negligent riding of a Hero Splendor Plus motorcycle bearing Registration No. TN 30 CY 9816. Thereby causing the accident. As a result, the petitioner sustained grievous injuries all over his body. In contrast, the 2nd respondent denied the said allegations and contended that the 1st respondent, the owner-cum-driver of the offending vehicle, did not possess a valid driving licence at the time of the accident, thereby violating the provisions of the Motor Vehicles Act and the terms of the insurance policy. And the petitioner drown this vehicle with rash and negligent manner and caused the accident. Hence, the 2nd respondent contended that the respondent is not liable to pay any compensation to the petitioner.

10. The petitioner examined himself as PW1 and narrated the manner of the accident in detail in his evidence. Ex.P1, the copy of the FIR, reveals that a criminal case was registered against the 1st respondent, the owner-cum-rider of the offending vehicle, for rash and negligent driving resulting in the accident and the injuries sustained by the petitioner. Upon completion of the investigation, the police found fault with the 1st respondent and filed a final report against him before the jurisdictional criminal court. A copy of the final report has been marked as Ex.P14. The filing of a final report against the 1st respondent is a prima facie indication of his culpability in driving the vehicle in a rash and negligent manner, as held by the Hon'ble Supreme Court in Mangla Ram v. The Oriental Insurance Co. Ltd. & Others, reported in (2018) 5 SCC 656. Moreover, the 1st respondent did not appear before this Court and remained ex parte.

11. Notwithstanding the above, the 2nd respondent has made no effort to examine the 1st respondent, who was the owner-cum-rider of the offending vehicle, or any other eyewitness who had knowledge of the occurrence. Consequently, there is no rebuttal evidence on behalf of the 2nd respondent. Therefore, the petitioner's case remains unchallenged in this regard. Upon a comprehensive consideration of the oral and documentary evidence adduced by the petitioner, this Court concludes that the petitioner has sufficiently established that the 1st respondent, being the owner-cum-rider of the offending vehicle, drove the vehicle in a rash and negligent manner, thereby causing the accident and the injuries sustained by the petitioner.

12. Findings No. 2:-

The question of the respondents' liability now falls for consideration. It has already been established that the accident was caused by the rash and negligent driving of the 1st respondent, who was the owner-cum-rider of the offending vehicle, resulting in the injuries sustained by the petitioner. Therefore, it is necessary to determine whether the petitioner is entitled to the compensation claimed from the respondents.

The case of the 2nd respondent/Insurance Company is that there was a breach of the policy conditions inasmuch as the rider of the offending vehicle was not holding a valid and effective driving licence on the date of the accident. The 1st respondent, being the owner-cum-rider of the offending vehicle, did not come forward before this Court to contest the claim on merits and remained ex parte. Apart from the above, the 2nd respondent relied upon Ex.R2, the MVI Report, and the legal notices issued to the owner-cum-rider calling upon him to produce the driving licence, if any. However, he did not come forward to respond to the same. Therefore, this Court is constrained to draw an inference that the rider of the offending vehicle was not possessing a valid and effective driving licence on the date of the accident, thereby constituting a breach of the policy conditions. However, there is no evidence to show that the said breach relating to the driving licence was so fundamental as to have contributed to the cause of the accident.

In the above circumstances, the learned counsel for the 2nd respondent contended that this Court has no power to pass a pay-and-recovery order against the 2nd respondent on the ground of breach of policy conditions by the 1st respondent and, therefore, the 2nd respondent/Insurance Company is liable to be exonerated, since the proviso to the old Section 149(4) has been deleted by the Amending Act and has not been incorporated in the new Section 150(4).

In these circumstances, this Court concludes that it is just and necessary to apply the principle laid down by the Hon'ble High Court of Madras in similar cases in ***The Branch Manager, M/s. SBI General Insurance Company Limited, Villupuram v. Muthulakshmi & Others*, reported in 2025 (1) TN MAC 597.** The Hon'ble High Court of Madras has held that, notwithstanding the deletion of the proviso to sub-section (4) of the old Section 149 and sub-section (5) of the very same section, which has been renumbered as Section 150, the insurer's liability to satisfy the award passed against the insured in respect of third-party claims continues. In the event of the insurer successfully raising a defence under sub-section (2) of the new Section 150, the Tribunal is empowered to pass a pay-and-recovery order. The same has now also been confirmed by **the Hon’ble High Court in CMA (MD) No. 517 of 2025, dated 01.06.2026.** Applying the above principle, this Court directs the 2nd respondent/Insurance Company to satisfy the award amount payable to the petitioner, with liberty to recover the same from the 1st respondent in accordance with law.

13. <u>Finding No. 3:-</u>

Finally, the amount of compensation to be awarded to the petitioner for the injuries sustained in the accident has to be determined. The petitioner underwent treatment as an inpatient at the Government Hospital, Salem, from 16.02.2023 to 03.03.2023. Ex.P4, the Discharge Summary, discloses the particulars of the treatment undergone by the petitioner for the zygomatic bone and head injuries. The petitioner was physically examined by the Medical Board, which assessed his physical disability and functional disability at 5% each. The Disability Certificate has been marked as Ex.C1. It is well settled by ***the Hon'ble Supreme Court of India in Raj Kumar v. Ajay Kumar & Another, reported in 2010 (2) TN MAC 581 (SC),*** that all disabilities arising from injuries do not necessarily result in a loss of earning capacity. The percentage of permanent disability with reference to the whole body of a person cannot be assumed to be the percentage of loss of earning capacity. In other words, the percentage of loss of earning capacity is not the same as the percentage of permanent disability, except in cases where the Tribunal, on the basis of the evidence, concludes that both are identical.

14. Further, the Medical Board, which examines a claimant for the purpose of assessing the extent of disability, can depose only with regard to the nature and extent of the disability, whether permanent or partial permanent. The loss of earning capacity is a matter that has to be independently assessed by the Tribunal on the basis of the entire evidence on record. The same disability may result in different degrees of loss of earning capacity in different persons depending upon their profession, occupation, age, educational qualifications, and other relevant factors. Therefore, in the light of the above legal position, this Court holds that the assessment of functional disability made by the Medical Board cannot automatically be treated as the percentage of loss of earning capacity claimed by the petitioner. The loss of earning capacity, if any, has to be determined by the Tribunal on an appreciation of the entire evidence available on record.

15. The petitioner has failed to prove his occupation and income by valid documentary evidence and has also failed to establish that his injuries completely impaired his earning capacity, as claimed. There is no document to indicate that the petitioner underwent any further treatment after 03.03.2023. If the petitioner had suffered any continuing disability following the accident, he would have undoubtedly sought medical treatment for its correction. The fact that he did not do so indicates that he has fully recovered and that there is no functional disability preventing him from performing his daily activities. Accordingly, it is held that the petitioner has not suffered any loss of earning capacity, and the disability of 5% noted in Ex.C1

Disability Certificate is treated as partial permanent disability. In view of the foregoing, this Court has decided to adopt the percentage method for determining just compensation.

16. The accident in this case had taken place in the year 2022. In view of the same, as per the Judgment of the Hon'ble High Court of Madras in the case of ***J.Chithirai Sekar Vs Purushothaman and others reported in 2025(2) TN MAC 6*** this court is inclined to fix a sum of ₹.9,000 per percentage. Accordingly, the compensation under the head of disability is fixed at ₹.45,000.(₹ 9,000 x 5%).

17. Based on the above facts and circumstances of the case, this court decides to award compensation to the petitioner under the following heads.

<u>1). Pecuniary damages</u>

(i) Damages for partial permanent disability (Rs.9,000 x 5%)

(ii) Expenses relating to treatment, hospitalization, medicines GH- Treatment.

(iii) Loss of earning during the period of treatment and rest for 4 months at the rate of ₹.15,000 per month

Discomfort, inconvenience and loss of earnings to the parents of the petitioner during the period of hospitalization.

(iv) Expenses relating to attenders,

(v) Expenses relating to transportation,

(vi) Expenses relating to nourishing food.

(vii) Damage to clothes

2) Non Pecuniary Damages

(i) Damages for pain, suffering and trauma as a consequence of the injuries

(ii) Loss of amenities

This Court also decides to calculate the compensation to be paid to the petitioner for the above categories and apportion it to the respective categories as follows.

18. Apportionment of Compensation:-

Sl.No	Categories of Compensation	Apportioned Amount
1	Damages for partial permanent disability (Rs. 9,000 x 5%)	Rs.45,000/-
2	Damages for pain, suffering and trauma as a consequence of the injuries	Rs.30,000/-
3	Loss of amenities	Rs.20,000/-
4	Expenses relating to treatment, hospitalization and medicines	GH- Treatment
5	Loss of earning during the period of treatment and rest for 4 months at the rate of ₹.15,000 per month	Rs.60,000/-
6	Expenses relating to attenders	Rs.20,000/-
7	Expenses relating to transportation,	Rs.10,000/-
8	Expenses relating to nourishing food.	Rs.10,000/-
9	Damages to cloths	Rs.5,000/-
	Total Compensation	**Rs.2,00,000/-**

On the basis of the evidence on the record in this petition, it is decided to award a total of **Rs.2,00,000/-** as appropriate compensation for the injuries sustained by the petitioner and to award the same with 7.5% interest for the remaining period, excluding any default period, from the date of the petition until the amount is collected. The Court also concludes that the said compensation is just and appropriate. This case arises out of a personal injury that occurred in 2019. The petitioner was hospitalized due to his injuries. The learned counsel for the petitioner submitted that the petitioner requires further treatment and, therefore, seeks permission to withdraw the entire award amount upon its deposit. Upon considering the above, this Court is inclined to permit the petitioner to withdraw the entire award amount immediately upon its deposit.

19. In the result, the petition is partly allowed as follows:

(1) The petitioner is awarded **Rs.2,00,000/-** together with interest at 7.5% per annum from the date of petition till the date of deposit excluding the period of dismissal for default if any, and including cost to be paid by the 2nd respondent / Insurance company shall recover the award amount including interest and costs from the 1st respondent / owner-cum-driver of the offending vehicle. (Pay and recovery)

(2) As per the decision of Hon'ble Supreme Court held in Civil Appeal No.4299/2025 and the direction issued by the Hon'ble High Court of Madras in R.O.C.No.55584/2025/S.C. the petitioner shall pay the balance court fee of with in 15 days from the date of this order, failing which the petitioner is not entitled to the interest for the default period. After the receipt of payment of balance court fee, with in one month the award amount shall be deposited in **petitioner savings Account**

6818716455, IDIB000T059, Indian Bank, Theevattiatti Branch and the same has to intimate to this Tribunal by way of sending pay advice slip via **subordinatecourtomalur@gmail. com**

(3) Court fee paid along with this petition is **Rs.20/-.** Court fee for the award amount is **Rs.1,373/-** and the Advocate fee is fixed at **Rs.7,000/-.** The petitioners are directed to pay the balance court fee within a period of 10 days. Total cost of the claim is **Rs.8,478/-.**

(4) The Petitioner shall intimate the payment of balance court fee to the 2nd respondent by way of service of the acknowledgement of this court immediately.

(5) Following the judgment of the Hon'ble High Court of Madras in M/s.Cholamandalam MS General Insurance Co Ltd., Vs. Ayyanar & others reported in 2020 (4) CTC 272, no decree is prepared. All parties are entitled to free copies of the award as per Section 168(2) of the Motor Vehicles Act and Rule 20(6) of the Rules.

Dictated to the Typist, typed by his directly into the computer, corrected, printed out and pronounced by me in Open Court on this the **06th day of June 2026.**

Sd/-T.Malathi,
Motor Accident claim Tribunal Authority,
Subordinate Judge,
Omalur.

Petitioner's side Witness:

PW1	Sathiesh @ Sathishkumar (Petitioner)

Petitioner's side exhibits:

Sl. No.	Exhibits	Date	List of documents
1.	Ex.P1	-	Copy of First Information Report
2.	Ex.P2	-	Copy of Accident Register
3.	Ex.P3	-	Copy of Wound Certificate
4.	Ex.P4	-	Discharge summary
5.	Ex.P5	-	Copy of Aadhar Card (Petitioner)
6.	Ex.P6	-	Copy of Bank Passbook (Petitioner)
7.	Ex.P7	-	Copy of Registration Certificate (TN 30 CY 9816)
8.	Ex.P8	-	Copy of Insurance Policy (TN 30 CY 9816)
9.	Ex.P9	-	Copy of MVI report (TN 30 CY 9816)
10.	Ex.P10	-	Copy of Registration Certificate (TN 30 CY 7651)
11.	Ex.P11	-	Copy of Insurance Policy (TN 30 CY 7651)
12.	Ex.P12	-	Copy of Petitioner's Driving Licence
13.	Ex.P13	-	Copy of MVI report (TN 30 CY 7651)
14.	Ex.P14	-	Copy of Charge sheet
15.	Ex.P15	-	Copy of Observation Mahazar
16.	Ex.P16	-	Copy of Rough sketch

Respondents side witnesses:-

1.	RW1	Abirami

Respondent side Exhibits :

Sl.No.	Exhibits	Date	List of documents
1.	Ex.R1	-	Permission Letter
2.	Ex.R2	-	Copy of MVI report (TN 30 CY 9816)

Court Concern Exhibits:

1.	Ex.R3	-	Legal Notice

Court Document:

1.	Ex.C1	-	Disability Certificate (5%)

Sd/-T.Malathi,
Motor Accident claim Tribunal Authority,
Subordinate Judge,
Omalur.