

IN THE COURT OF THE ADDITIONAL SUBORDINATE JUDGE, PONNERI

Present : Thiru.K.Bakkiaraj, B.Com., B.L.

Motor Accident Claims Tribunal Judge/ Additional Sub Judge

Dated this 17th day of December 2024, Tuesday

MCOP.No.492 of 2019

CNR.No.TNTR0F0012002019

Kotteswari

..... Petitioner

Vs

1. Subramani

2. New India Assurance Company Limited,

Third Party Motor Claims Office,

No.232, Bombay Mutual Building-VI Floor,

NSC Bose Road, Chennai – 600 001.

..... Respondents

This petition is coming up before this court on 16.12.2024 in the presence of M/s MSLR Association, P.Moorthy and G.Logu, learned counsels for the petitioner, and the respondents were called absent and remained ex parte and upon perusing the records submitted by petitioner side and on hearing petitioner side and having stood over for consideration till this day, this court delivers the following:

ORDER

This petition has been filed under section 166 of Motor Vehicles Act 1988 r/w Rule 3 of Tamil Nadu Motor Vehicles Claims Tribunal Rules 1989, claiming compensation of Rs.15,00,000/- restricted to Rs.50,000/- (Rupees Fifty thousand only), for the purpose of court fee towards the injury caused in a road

traffic accident on 16.07.2016, along with interest from the date of filing of the petition till the date of realization with costs.

1. Brief averments made in the Petition:

On 16.07.2016 at about 6.30 p.m., at Thiruvallur to Thiruthani Road, was a pillion rider in a motorcycle bearing Regn.No.TN-12-E-3679, proceeding from Thirumazhisai to Aattupakkam. At that time the 1st respondent driver of the lorry bearing Regn.No.TN-47-Z-1608, from same direction, driven by its driver in a rash and negligent manner and dashed the petitioner's motorcycle, as a result, she was sustained grievous injuries. The accident was occurred due to rash and negligent driving of the driver of the lorry bearing Regn.No.TN-47-Z-1608. The 1st respondent is the owner of the vehicle and the 2nd respondent is the insurer of the vehicle both are jointly and severally liable to pay compensation to the petitioner. At the time of accident the petitioner is a self-employed, she was aged about 28 years and earning Rs.20,000/- per month and claiming compensation against the respondents.

2. Originally the National Insurance Company Limited had been added as 2nd respondent. The 2nd respondent had filed counter. Then the petition had been amended based on the Court Order in I.A.No.1/2022 dated 18.01.2024. Then the 2nd respondent namely The New India Assurance Co. Ltd has been impleaded in this petition instead, and the 1st and 2nd respondents being called absent and set exparte.

3. Points for consideration is :

1. Who has attributed the accident which was took place on 16.07.2016?
2. Whether the 2nd respondent is liable to pay compensation or not?
3. Whether the petitioner is entitled to the compensation, if so, what is the quantum?

4. On behalf of the petitioner, the petitioner herself examined as PW.1, Ex.P1 to Ex.P9 were marked. Medical Board Disability Certificate was marked as Ex.C1.

5. Point No:1

Heard the arguments advanced by the learned counsel for the petitioner and I have gone thorough the entire records carefully. It is the case of the petitioner that on 16.07.2016 at about 6.30 p.m., at Thiruvallur to Thiruthani Road, was a pillion rider in a motor cycle bearing Regn.No.TN-12-E-3679, proceeding from Thirumazhisai to Aattupakkam at that time the respondent driver of the lorry bearing Regn.No.TN-47-Z-1608, from same direction, driven by its driver in a rash and negligent manner and dashed the petitioner's motor cycle, as a result, she was sustained fracture on her left leg and right toe and multiple injuries all over the body and the petitioner was taken by 108 Ambulance to Sri Ramachandra Hospital, Porur, and she was taken inpatient treatment for 3 weeks. Surgery was done to the petitioner. Subsequently, the petitioner was taken treatment as out patient. The accident was occurred due to

rash and negligent driving of the driver of the lorry bearing Regn.No.TN-47-Z-1608. The petitioner is claiming compensation a sum of Rs.15,00,000/- against the respondents.

6. The petitioner has filed her proof affidavit and she was examined as PW.1. she is reiterating the averments contained in the petition. Ex.P1 is the Copy of FIR, Ex.P2 Copy of Accident Register, Ex.P3 Copy of Registration certificate of the 1st respondent, Ex.P4 Copy of Insurance policy, Ex.P5 Copy of driving licence of the 1st respondent driver, Ex.P6 Discharge summary, Ex.P7 X-ray, Ex.P8 Medical Bills, Ex.P9 Charge sheet, Ex.C1 Disability certificate issued by District Medical Board, Tiruvallur have been marked through her. Ex.P1 FIR would show that the Sub Inspector of Police, Thiruvallur Police Station had registered a case Under Section 279, 337 of IPC against the driver of the lorry bearing Regn.No.TN-47-Z-1608 on the same day itself. Ex.P2 Accident Register had been mentioned that injuries found on Kotteswari due to hit by a lorry on 16.07.2016 at 6.45 P.M. Both the respondents were remained exparte Therefore, adverse inference has been drawn against the respondents. A copy of charge sheet was marked as Ex.P9. It is seen from the copy of charge sheet was filed against one Mr.Subramani/1st respondent, under sections 279 and 338 of IPC, which was submitted against the driver of the lorry bearing Regn.No.TN-47-Z-1608, that the accident was happened due to rash and

negligent driving of the 1st respondent and he had punishable offence U/s 279 & 338 of IPC. All the above records would show that the petitioner had sustained injuries in the road accident, which was caused due to the negligence on the part of the driver of the lorry bearing Regn.No.TN-47-Z-1608. Hence, this court has come to the conclusion that the accident took place due to the rash and negligence act of the 1st respondent lorry bearing Regn.No.TN-47-Z-1608.

7. POINT NO. 2

Whether the 2nd respondent is liable to pay compensation or not?

The vehicle belongs to the 1st respondent. Ex.P3 Copy of Registration certificate was stands in the name of the 1st respondent and the vehicle was insured with the 2nd respondent. Copy of Insurance Policy was marked as Ex.P4, it would shows the policy period from 17.06.2016 to 29.04.2017. The date of accident on 16.07.2016. It is seen from the F.I.R, the case was registered Under Section 279, 337 IPC against the lorry only. The driver of the lorry Mr.Subramani/1st respondent, Copy of driving licence was marked as Ex.P5. The said driving licence would show that the said 1st respondent had valid driving licence of Non Transport vehicle upto 16.04.2026 and Transport vehicle upto 04.09.2018. The respondents also failed to come forward to contest the case. Considering all the above and in the absence of contra evidence, being the owner and insurer, the respondents are liable to pay compensation to the

petitioner. As insurance company of the 1st respondent vehicle, the 2nd respondent is liable to pay the same and this point is answered accordingly.

8. Point No: 3

Whether the petitioner is entitled to compensation, if so what is the quantum?

(i) Loss of Income during the Medical Treatment:

The petitioner was examined herself as PW.1, she stated that she is aged about 28 years, she is a self employee and earning Rs.20,000/- per month and she has not filed any proof. Similarly, she has not filed any document to prove her income. In the absence of the proof, the tribunal is not bound to fix the monthly income of the injured petitioner as she stated. However, it is duty bound to this tribunal and to accept the views, principles and the method of income arrived by the *Hon'ble Apex Court in Syed Sasid Vs United India Insurance Company Limited reported in 2014 (1) TN MAC 459* case. In the said case, the Apex Court has clearly and categorically fixed the monthly notional income at Rs.6,500/- for a vegetable Vendor, who sustained injuries in the accident which occurred in the year 2008. As such, this Motor Accident Claim Tribunal has to consider the all factors are mentioned in the said judgement before fixing the monthly salary of the petitioner.

Therefore, it is just and necessary to increase the Notional income of Rs.6,500/- fixed by the Hon'ble Apex Court in Syed Sasid case during the year

2008 corresponding to the cost of living, prices of the essentials and inflation. Hence, to determine the notional income of the injured petitioner who was earning as ordinary employee in the year 2016 this tribunal decides to apply the cost of inflation Index as issued by the Central Board of Direct Tax (CBDT) for the purpose of determination of National Income of the petitioner. The CBDT vide Notification No.73/2021/F.No.370142/10/2021-TPL, dated 15.06.2021 specifies the cost of inflation year mentioned in the corresponding entry in Colum No.3, for the financial year metioned in the corresponding entry in Column No.2 in the below said Tabular :

S.No.	Financial Year	Cost of inflation Index
1.	2001-2002	100
2.	2002-2003	105
3.	2003-2004	109
4.	2004-2005	113
5.	2005-2006	117
6.	2006-2007	122
7.	2007-2008	129
8.	2008-2009	137
9.	2009-2010	148
10.	2010-2011	167

11.	2011-2012	184
12.	2012-2013	200
13.	2013-2014	220
14.	2014-2015	240
15.	2015-2016	254
16.	2016-2017	264
17.	2017-2018	272
18.	2018-2019	280
19.	2019-2020	289
20.	2020-2021	301
21.	2021-2022	317
22.	2022-2023	317

As per the above said Index, the cost of Inflation Index for the year as 2007-2008 in 129 and for the year 2016-2017 is 264 as per the Notification Index. Now, this tribunal determines the National Income of the petitioner in the manner stated below.

The National Income fixed by the Hon'ble Supreme Court of India for the Vegetable vendor i.e., Rs.6,500/- during the year 2007-2008	Cost of Inflation Index for the year 2016-2017
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Cost of Inflation Index for the year 2007-2008

Therefore, Income of the injured petitioner is $\text{Rs.}6500 \times 264 / 129 = \text{Rs.}13,302/-$. The Notional income of the injured petitioner after applying Inflation Index, is a sum of $\text{Rs.}13,302/-$ and the same is rounded off $\text{Rs.}13,300/-$. In order to calculate the Future Prospects, it is necessary to refer the judgment of the Hon'ble Apex Court in the case of National Insurance Company Vs. Pranay Sethi reported in 2017 (2) TN MAC 609 (SC), in which the Hon'ble Supreme Court has ruled if that the injured was having either self-employment or fixed salary and age below 40 years old, 40% of the monthly income to be added as Future Prospects. So, this tribunal fixes the addition towards Future Prospects as 40%. Accordingly, the monthly income of the injured petitioner has fixed at $\text{Rs.}13300/-$. Adding a component of 40% ($\text{Rs.}5320$) for future prospects, the income would be a at ($\text{Rs.}13300 + 5320$). Hence, this tribunal considering the age of the petitioner, the monthly income is fixed as **$\text{Rs.}18,620/-$** per month.

It is seen from the Ex.P6 Discharge summary which would show the petitioner has diagnosed "Left Foot Deep Laceration over the Lateral Aspect and Left foot Medical Malleolar Fracture and Right Foot Great Toe Distal Phalanx Fracture" to the petitioner. Hence, the petitioner would have taken atleast 6 months to recover. Hence, the loss of income during medical treatment is awarded as $\text{Rs.}18,620 \times 6 = \text{Rs.}1,11,720/-$.

(ii) **Loss due to permanent Disability** : As per medical records and disability assessment certificate Ex.C1, which would show the petitioner has suffered "Left foot PTR A Scar and Left Medial Malleolus #" her disability is 20%. Hence, applying the ratio in *2018 (1) MWN (civil) 1 (Oriental Insurance Company Ltd., Vs Perumal & others)* the Hon'ble High Court of Madras has fixed Rs.4000/- per percentage. Applying the same, the loss of the petitioner due to disability compensation is arrived at Rs.4000/- per percentage and for 20 % it works out to **Rs.80,000/-** (Rs.4000x20 %).

(iii) **Medical Expenses:** The petitioner has produced medical bills which was marked as Ex.P8. It is proved that the petitioner has spent totally a sum of Rs.22,329/- for her medical expenses. Hence, the petitioner is entitled to get a sum of **Rs.22,329/-** towards medical expenses.

(iv) **Attender charges:** The petitioner has filed a copy of discharge summary which was marked as Ex.P6, which would show petitioner had taken treatment as inpatient from 17.07.2016 to 04.08.2016. It is seen from the above the petitioner has taken treatment as inpatient nearly 19 days. Hence, he is entitled to 19 days attender charges (i.e) Rs.400 per day, (400x19)= **Rs.7,600/-**.

(v) **Transport charges:** Considering the medical treatment taken by the petitioner, she would have incurred transportation expenses. Considering those

facts and the accident was happened in 2016, transportation charges is arrived at **Rs.5,000/-**.

(vi) **Extra Nourishment & Damage to clothing & Articles:** Considering the nature of accident and the injuries suffered by the petitioner and the period of treatment it will be just and necessary to provide a sum of **Rs.10,000/-** towards extra nourishment and **Rs.1,000/-** towards damages to clothing and articles.

(vii) **Loss of amenities:** The petitioner definitely would not act as before the accident due to the injuries suffered by her. Hence, considering these facts and age , it would be just and proper to grant a sum of **Rs.50,000/-** towards loss of amenities.

(viii) **Pain and suffering :** Considering the nature of injury suffered, disability and the nature of treatment taken by the petitioner for the fracture of left foot and right toe and she had taken treatment as inpatient hence, it is just and proper to award **Rs.20000/-** towards pain and sufferings.

Therefore the compensation is assessed as follows :

CALCULATION:

1. Loss of income	Rs.111720.00
2. Loss of permanent disability	Rs. 80000.00
3. Medical Bills	Rs. 22329.00
4. Attender charges	Rs. 7600.00

5.	Transport charges	Rs. 5000.00
6.	Extra Nourishment & Damage to cloth and articles	Rs. 11000.00
7.	Loss of amenities	Rs. 50000.00
8.	Pain and suffering	Rs. 20000.00

	Total	Rs.3,07,649.00

In the light of the above discussions and assessment, the petitioner claimant is entitled to a just compensation of Rs.3,07,649/- (i.e) (Rupees Three Lakhs Seven thousand Six hundred and Forty Nine only). This point no.3 is answered accordingly.

In view of the findings given in points the petitioner is entitled for compensation a sum of Rs.3,07,649/- together with interest at 7.5% from the date of presentation of petition till the date of realisation, together with cost. The interest for the period of dismissed for default stands excluded.

9. RESULT:-

In the result, this petition is allowed with cost as follows:-

- (i) An award for Rs.3,07,649/- (i.e) (Rupees Three Lakhs Seven thousand Six hundred and Forty Nine only), including interim award passed if any is passed in favour of the petitioner, and the respondents are jointly and severally directed to pay the sum of Rs.3,07,649/- (i.e) (Rupees Three Lakhs Seven

thousand Six hundred and Forty Nine only) in favour of the petitioner and the 2nd respondent/insurer is vicariously liable to pay compensation of Rs.3,07,649/- (i.e) (Rupees Three Lakhs Seven thousand Six hundred and Forty Nine only) to the petitioner in default of the 1st respondent herein together with an interest at the rate of 7.5% per annum from the date of presentation of petition (i.e) 18.06.2019 to till the date of realisation, excluding the default period of his own if any.

(ii) As per the directions of the Hon'ble High Court of Madras in C.M.A.428/2016, dated 11.03.2016 and circular order in R.O.C.31955-A/2016/F1, dated 09.05.2016, the 2nd respondent is directed to deposit the award amount with interest and cost into the bank account of this Tribunal maintained at State Bank of India, Ponneri Branch, under the head of The Subordinate Judge, Ponneri in Account No.36339276683, MICR Code: 600002116, IFSC Code: SBIN0001024 within two months from the date of this order to the credit of Bank account of this court and the above amount is to be transferred to the Bank Account of the petitioner through RTGS or NEFT transfer by this court.

(iii) The petitioner has paid Rs.110/- for a sum of Rs.50,000/- as court fees and the petitioner is directed to deposit the deficit court fee within 15 days and the respondent is hereby directed to pay the advocate fee as fixed by rules.

Dictated by me to steno-typist, typed by her, corrected and pronounced by me in the open court on this 17th day December-2024.

(Sd/- K.Bakkiaraj)
Additional Sub Judge,
Ponneri.

Petitioner's side witnesses:-

PW.1 Mr.Kotteeswari

Petitioner's side Exhibits:-

Ex.P1 - Copy of First Information Report

Ex.P2 - Copy of Accident Register

Ex.P3 - Copy of Registration Certificate of the 1st respondent

Ex.P4 - Copy of Insurance Policy of the 1st respondent

Ex.P5 - Copy of Driving Licence of the 1st respondent

Ex.P6 - Discharge summary

Ex.P7 - X-ray

Ex.P8 - Medical Bills

Ex.P9 - Copy of Charge sheet

Respondent side witness and Exhibits:- Nil

Court side Exhibits:-

Ex.C1 - Disability Certificate issued by District Medical Board,
Thiruvallur.

(Sd/- K.Bakkiaraj)
Additional Sub Judge,
Ponneri.

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