

**BEFORE MOTOR ACCIDENTS CLAIMS TRIBUNAL, TENKASI
ADDITIONAL DISTRICT COURT(FTC), TENKASI**

**PRESENT: Thiru. S. Manojkumar, M.A., M.L.,
Motor Accidents Claims Tribunal Authority,
Additional District Judge, Tenkasi.**

Monday, the 24th Day of June 2024

M.C.O.P. No.146/2021

CNR No.TNTL1D-000501-2021)

Manikandan, Aged 28 years, S/o. Muthupandi and residing at Door No. 1/16, Bajanaik Kovil Street, Mullikulam, Thalaivankottai, Sankarankoil Taluk, Tenkasi District.

...Petitioner

/Vs/

1. Pattupandian, Age not known, S/o. Kannan and residing at Door No. 2/1, Balaji Nagar 3rd Street, Vandiyoor, Madurai, Madurai District.

2. Kannan, Age not known, S/o. Mookan and residing at Door No. 2-163, Vandiyoor, Madurai, Madurai District.

3. The New India Assurance Company Limited having their office at Door No. 4/619, Vandiyoor Main Road, Madurai, Madurai District through its Divisional Manager.

...Respondents

This Claim Petition came before this Tribunal for final hearing on 05.06.2024 in the presence of Thiru. K.P. Kumar, Advocate for the Petitioner and Advocate Thiru. P.V.R. Arumugam @ Kannan filed Vakalat for 1st and 2nd Respondents and not filed counter and further 1st and 2nd Respondents called absent and set ex parte and the 3rd Respondent also called absent and set ex parte,

and on hearing the arguments of Petitioner's side and upon perusal of the entire case records and this Petition having stood over for consideration till this day, this Tribunal delivered the following

ORDER

This Claim Petition has been filed by the Petitioner u/s 166 and 140 of the Motor Vehicles Act 59/1988 claiming compensation of Rs.15,00,000/- for the injuries sustained by the petitioner in the road accident that took place on 05.08.2018.

2) Briefly stated averments in the Petition are as follows:

On 05.08.2018 at 6.30 P.M., in order to attend a condolence, the petitioner was proceeding in his own Auto bearing Reg.No. TN 76 W 4406 along with his father Muthupandi, sister-in-law namely Ulagammal in Madurai to Tenkasi main road, north of Pattangadu junction from North to South, keeping left side of the road in slow speed, with care and control, observing traffic rules. At that time, a Mahindra car bearing Reg. No. TN 69 AU 5872 coming from opposite direction which was driven by the 1st Respondent in a rash and negligent manner, without observing traffic rules, without blowing horn, without giving signal and hit on the auto and caused the accident. The 1st Respondent is the sole cause for the accident. In the accident, petitioner has sustained fracture below the left knee, left feet and severe injuries on chest and intestine came outside and spleen damaged and sustained multiple injuries all over the body and the others co passengers in the auto were also sustained grievous and severe injuries. The petitioner and his family members were admitted in Govt. Hospital, Sivagiri wherein he was given first aid treatment. Thereafter, the petitioner got treatment in Tirunelveli Medical College Hospital, Sushrusa Hospital, Nagercoil and in various private hospitals as an inpatient and outpatient. Due to the accident, the petitioner had met medical expenses to the tune of Rs.2,00,000/-. The petitioner

was aged 26 years at the time of the accident and he was active and hale and healthy and the petitioner is a Civil Engineer and he is an auto driver of his own through which he was earning Rs.25,000/- per month. Due to the accident he is unable to perform his work as he did it before the accident. Due to the accident, the petitioner is permanently disabled. The petitioner is undergoing unbearable pain and physical sufferings with mental agony. In total the petitioner herein estimates the loss and expenses caused to Rs. 18,84,000/-. However, he restricts his claim to the tune of Rs.15,00,000/-. The 1st Respondent is the driver of the Mahindra car bearing Reg.No. TN 69 U 5872 and the 2nd respondent is the owner of the vehicle and 3rd Respondent is the insurer of the 2nd Respondent's vehicle. Hence the respondents are jointly and severally liable to pay compensation to the petitioner.

2) In this claim petition, even though Vakkalat was filed on the side of the 1st and 2nd Respondents, counter not filed. Further 1st, 2nd and 3rd Respondents called absent and they remained exparte.

5) Points:

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|---|---|
| 1 | Whether the accident was occurred due to the rash and negligent driving of the 1 st Respondent who had driven the Mahindra Car bearing Reg.No. TN69 AU 5872? |
| 2 | Who is liable to pay compensation? |
| 3 | What is the quantum of the compensation the petitioner is entitled to get? |

6) The petitioner himself was examined as P.W.1 and Ex.P1 to Ex.P10 were marked through P.W.1. The Disability Certificate was marked as Ex.C1.

7) Point No.1 and 2:

(i) It is the case of the petitioner that, 05.08.2018 at 6.30 P.M., in order to attend a condolence, the petitioner was proceeding in his own Auto bearing Reg.No. TN 76 W 4406 along with his father Muthupandi, sister-in-law namely Ulagammal in Madurai to Tenkasi main road, north of Pattangadu junction from North to South, keeping left side of the road in slow speed, with care and control, observing traffic rules. At that time, a Mahindra car bearing Reg. No. TN 69 AU 5872 coming from opposite direction which was driven by the 1st Respondent in a rash and negligent manner, without observing traffic rules, without blowing horn, without giving signal and hit on the auto and caused the accident. The 1st Respondent is the sole cause for the accident. In the accident, petitioner has sustained fracture below the left knee, left feet and severe injuries on chest and intestine came outside and spleen damaged and sustained multiple injuries all over the body and the others co passengers in the auto were also sustained grievous and severe injuries. The petitioner was examined as P.W.1 and he has stated in his Proof Affidavit regarding the accident took place which is extracted hereunder:

எனது தந்தை முத்துப்பாண்டி மற்றும் என்னுடைய தம்பி காளிமுத்துவின் மனைவி உலகம்மாள் ஆகியோர்களுடன் சேர்ந்து எங்களது உறவினரின் இறந்த விசேஷத்திற்கு செல்ல வேண்டி டி.என். 76 டபிள்யூ 4406 என்ற பதிவு எண் கொண்ட ஆட்டோவினை நான் மெதுவாகவும், கவனமாகவும், ஜாக்கிரதையாகவும், சாலைவிதிகளை கடைபிடித்தும் கடந்த 05.08.2018 ம் தேதி மாலை சுமார் 6.30 மணிக்கு மதுரை - தென்காசி மெயின் ரோட்டில் பட்டாங்காடு விலக்கிற்கு வடக்கே, வடக்கிலிருந்து தெற்காக ரோட்டின் கீழ்புறம் ஓட்டிக் கொண்டிருக்கும்போது, மேற்படி வாகனத்திற்கு எதிரே டி.என்.69 ஏயு 5872 என்ற பதிவெண் கொண்ட மகிந்திரா காறை ஓட்டி வந்த ஓட்டுனரான 1ம் எதிர்மனுதாரார் மேற்படி டி.என். 69 ஏயு 5872 என்ற பதிவெண் கொண்ட மகிந்திரா காறை அதிவேகமாகவும்,

அஜாக்கிரதையாகவும், சாலைவிதிகளை கடைபிடிக்காமலும், ஒலி எழுப்பாமலும், சிக்னல் செய்யாமலும் ஓட்டி வந்து நானும், எனது குடும்பத்தார்கள் பயணித்து வந்த ஆட்டோவின் மீது மோதி மேற்படி கோர விபத்தை ஏற்படுத்தி விட்டார். மேற்படி விபத்திற்கு முழுக்காரணம் டி.என்.69 ஏயு 5872 என்ற பதிவெண் கொண்ட மகிந்திரா காரை ஓட்டி வந்த 1ம் எதிர்மனுதாரரே காரணமாவார்.

(ii) In this regard, FIR was registered against the 1st Respondent in Vasudevanallur P.S. in Cr.No. 171/2018 u/s 279, 337, 338 IPC and the copy of the FIR was marked as Ex.P1. On perusal of the FIR and the testimony of P.W.1, it transpires that the accident was occurred due to the rash and negligent driving of the 1st Respondent. 2nd Respondent is the owner of the said vehicle. Moreover the 1st and 2nd Respondents not appeared before this court to put forth their defence and so they had been set exparte. Therefore, adverse inference is drawn against the 1st and 2nd Respondents. Hence, in the absence of contra evidence, it is concluded that the accident on 05.08.2018 happened due to the 1st respondent who had driven the Mahindra Car bearing Reg.No. TN 69 AU 5872 rashly and negligently.

(iii) Regarding liability, The 2nd Respondent is the owner of the vehicle. The petitioner has marked the copy of Insurance Policy of the Mahindra Car bearing Reg.No. TN 69 AU 5872 as Ex.P 3. From Ex.P3, it is evident that the 2nd Respondent has insured his vehicle with the 3rd Respondent and the policy was valid from 03.02.2021 to 02.02.2022. The accident happened on 19.04.2021 and the Insurance Policy is on force on the date of accident. Therefore, it is decided that this accident happened due to the rash and negligent driving of 1st Respondent and so the insurer of the 2nd Respondent's vehicle, i.e., the 3rd Respondent is liable to pay compensation to the petitioner. Accordingly Point No. 1,2 are answered.

8) Point No.3: (Quantum): The Petitioner's learned counsel has argued the petitioner is aged 26 years and he is a Civil Engineer and he is an Auto driver of his own auto and through which he was earning Rs.25,000/- per month and due to the accident the petitioner has sustained fracture in left leg and grievous injuries in chest and abdomen and he could not perform his driving as he did before the accident and the Medical Board had assessed the Disability of the petitioner as 40% partially permanent and the Medical Board Report was marked as Ex.C1 and therefore, compensation is to be fixed according to this Disability and his age, income and avocation. P.W.1 in his evidence has stated that in the accident he has sustained injuries on left leg, chest, stomach and multiple injuries all over the body and to substantiate his evidence, the petitioner has marked the copy of the Discharge Summary issued by Dr. Jeyashekar Hospital and Nursing Home, Nagercoil as Ex.P2, Medical Bills as Ex.P5, Medicine Prescriptions as Ex.P6, X-Rays (16 Nos.) as Ex.P7. From Ex.P2, the Discharge Diagnosis is extracted hereunder:

Blunt Injury Abdomen - Hemopneumoperitoneum Distal Ileal,
Perforation and Ileal Mesenteric Tear

Lung Contusion with Acute Respirator Distress Syndrome

Bilateral Renal Haematoma

Fracture : Left Femur, Tibia, and Fibula

Fracture: Pelvis

Exploratory laparotomy proceed resection and Anastomosis of Distal Ileum done under GA on 10.08.2018. Delayed Primary Closure done under LA 19.08.2018. CMR and Closed Interlocking Nailing done for Femur, CMR and closed. Interlocking Nailing done for Left Tibia done under GA, Femoral + Sciatic+Lateral Femoral Cutaneous Nerve, Obturator Block on 23.08.2018.

From Ex.P2, it is proved that in the accident, the petitioner has sustained injuries on his abdomen, lungs and fractures on Left Femur, Tibia, and Fibula and Pelvis and also he underwent surgeries. In Ex.C1, Disability Certificate, the present weakness of the petitioner is mentioned as difficulty of squatting and painful knee flexion and the fixed the disability as 40% partially permanent. From the records, it is seen that petitioner is aged 26 years. Even though, the petitioner's learned counsel has argued that the petitioner is is a Civil Engineer and also an auto driver of his own auto, in the FIR it was stated that the petitioner was driving the auto of one Ramar. Further, the petitioner has neither marked his driving license nor his educational qualification certificate. Therefore, considering the injuries sustained by the petitioner, and the disability certificate and his age, this Tribunal considers it fit to fix the compensation as per the guidelines in the Sarlavarma Vs.Transport corporation, Delhi, and adopt percentage method for calculation of compensation. The observations of the Hon'ble Supreme Court in the case of RajKumar Vs.Ajay Kumar, reported in 2011(1) SCC Page 343, whereby the methodology for determining the disability has been discussed in paragraphs 13, 14 and 15 are as follows:

“13.Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life.) The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii)whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60% if the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in Government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical function: and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of loss of future earnings. If the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore, be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity.

15. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%) the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation”.

9) A Constitution Bench of the Hon'ble Supreme Court in National Insurance Co.Ltd. V.Pranay Sethi, 2017 ACJ 2700 (SC), has held that section 168 of the Motor Vehicles Act, 1988, deals with the concept of just compensation and the same has to be determined on the foundation of fairness, reasonableness and equability on acceptable legal standards. The concept of 'just compensation' has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equability. As per the ratio decided and laid down in Sarla Verma v. Delhi Transport corporation, 2009 ACJ 1298 (SC); National Insurance Co.Ltd. V.Pranay Sethi, 2017 ACJ 2700 (SC) and United India Insurance Co.Ltd. Vs.Satinder Kaur, 2020 ACJ 2131 (SC), this tribunal has

applied the same yardsticks in the case on hand.

10) The petitioner was aged about 26 years at the time of accident as per the case records. The disability is 40% permanent disability. Therefore, This tribunal is inclined to fix a sum of **Rs.5,000/-** per percentage of disability. Therefore the compensation for disability is **(5,000x40) Rs.2,00,000/-**. After the accident, the petitioner was admitted in Govt. Hospital, Sivagiri wherein he was given first aid treatment and thereafter the petitioner got treatment in Tirunelveli Medical College Hospital, Sushrusa Hospital, Nagercoil and further he was admitted as an inpatient in Dr. Jeyasekaran Hospital and Nursing Home, Nagercoil from 09.08.2018 to 30.08.2018 and underwent surgery in this Hospital. Ex.P2 Discharge summary, Ex.P5 Medical Bills, Ex.P7 x-rays filed by the petitioner are in support of the same. Considering the nature of injuries and age of the petitioner at the time of accident, a sum of **Rs.50,000/-** is awarded towards pain and sufferings. In the Proof Affidavit and in the Petition, the petitioner has stated that he had met Rs.2,00,000/- towards medical expenses. Therefore, a sum of **Rs.2,00,000/-** for medicines and medical expenses which the petitioner has spent already is awarded. The petitioner has claimed a sum of Rs.35,000/- towards extra nourishment. However no bills were produced for the same. Considering the nature of injury and age of the petitioner at the time of accident, the petitioner would have incurred some expenses to have nutritious food and hence this tribunal finds it fit to grant **Rs.10,000/-** towards extra nourishment and **Rs.10,000/-** towards attender charges and **Rs.10,000/-** towards transportation charges is awarded. Apart from the above, the compensation claimed by petitioner under various other heads are disallowed. Therefore, on the basis of above discussion, the total compensation awarded to the petitioner is arrived as follows:

| Head of Compensation | Amount in Rupees |
|--|-------------------------|
| Compensation of Partial Permanent Disability | 2,00,000/- |
| Pain and Sufferings | 50,000/- |
| Medical Expenses | 2,00,000/- |
| Extra Nourishment | 10,000/- |
| Attender Charges | 10,000/- |
| Transportation Charges | 10,000/- |
| Total | 4,80,000/- |

10) In total the petitioner is entitled to get a sum of **Rs.4,80,000/ (Rupees Four Lakhs Eighty Thousand Only)** as just compensation Thus Point No.3 is answered.

11) In the result,

(i) This petition is partly allowed with proportionate costs against the Respondents.

(ii) The petitioner is entitled for the just compensation of **Rs.4,80,000/ (Rupees Four Lakhs Eighty Thousand Only)** payable with interest at 7.5% per annum from the date of filing of the petition i.e from 13.02.2021 till the date of realization with costs.

(iii) The 3rd Respondent is directed to deposit the said amount to the credit of the Bank account of the **Additional District Judge (MACT), Tenkasi in the Account No.6551027090** maintained at **Indian Bank, Tenkasi, IFSC Code No.IDIB000T009**, directly by NEFT or RTGS mode within a period of two months from the date of this order and intimate the said deposit details to this Tribunal.

(iv) The compensation amount of the petitioner shall be deposited in anyone of the Nationalized Bank for a period of three years. Thereafter, the compensation amount shall be transferred to the Petitioner's Bank account.

(v) In view of the direction issued by the Hon'ble Division Bench of the High Court of Madras in C.M.A. No. 428 of 2016 dated 11.03.2016, the Petitioner is hereby directed to furnish copy of Adhar card, attested copy of the first page of Bank Pass Book and self attested copies of PAN Card to this Tribunal within a period of one month.

(vi) Advocate fee is fixed as **Rs.13,300/-**

(vii) The Court fee paid along with the petition is **20/-**. The Court fee for the award amount is **Rs.4,172.50**. The deficit court fee of **Rs.4,152.50** shall be paid by the petitioner within two weeks from the date of order.

(viii) The Petitioner shall not be entitled to withdraw the sum deposited pursuant to the award unless balance of Court fee is deposited as directed by this Tribunal.

(ix) The 3rd Respondent is also directed to pay the Advocate fees, Court fees amount and the cost list amount to the petitioner.(Cost fixed as Rs.43.50)

(x) As per the Order of Hon'ble Madras High Court in Tr.Cmp.Nos.264 to 281 of 2020 M/s. Cholamandalam Ms General Insurance Company Ltd., Vs. Ayyanar and others, dated 11.5.2020, no separate Decree passed.

Cost

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|---------------------|-----------|
| 1.Vakkalat | Rs. 10.00 |
| 2.Stamp on Petition | Rs. 20.00 |
| 3.Batta memo | Rs. 13.50 |
| | ----- |
| Total | Rs. 43.50 |
| | ----- |

Dictated to the Steno-Typist, directly typed by her in the computer, corrected and pronounced by me in the open court on this, the 24th Day of June 2024.

Motor Accidents Claims Tribunal Authority,
Additional District Judge,
Tenkasi.

Petitioner's Side Witnesses:

P.W.1 Tr. Manikandan(Petitioner)

Petitioner's Side Exhibits:

| | | |
|--------|------------|---|
| Ex.P1 | 06.08.2018 | Copy of FIR in Cr.No. 171/2018 of Vasudevanallur P.S. |
| Ex.P2 | -- | Copy of Discharge Summary |
| Ex.P3 | -- | Copy of Insurance Policy of the vehicle bearing Reg.No. TN 69 AU 5872 |
| Ex.P4 | -- | Xerox copy of driving license of the 1 st Respondent`` |
| Ex.P5 | -- | Medicine Bills (Original) |
| Ex.P6 | -- | Medicine Prescriptions(Original) |
| Ex.P7 | -- | X-Rays (16 Nos.) |
| Ex.P8 | -- | Copy of Aadhar Card of the petitioner |
| Ex.P9 | -- | Copy of Bank Pass Book of the petitioner |
| Ex.P10 | -- | Discharge Summary (Original) |

Exhibits Marked on the side of the Court:

Ex.C1 : Disability Certificate dt.09.11.2023

Motor Accidents Claims Tribunal Authority,
Additional District Judge,
Tenkasi.

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| Additional District court (FTC), Tenkasi M.C.O.P.Nos. 146/2021 Dt. 24.06.2024 Order Draft/Fair |
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