

Date of presentation:26.04.2023
Date of filing :21.06.2023
Orders Reserved on : 08.01.2025

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL
SPECIAL SUBORDINATE JUDGE, KRISHNAGIRI

Present : Thiru. M. Ashfaq Ahamed, B.A., B.L.,
Motor Accident Claims Tribunal Authority,
Subordinate Judge, Krishnagiri.

Friday, the 21st day of February 2025

MCOP No. 762/2023

CNR No:TNKI0B-001200-2023

1.	Name and address of the Claimant(s)	Sarathamma, W/o. Narayanappa, aged about 53 years, residing at D.No.1/38, Chokkanathapuram Village, Nallur Post, Hosur Taluk, Krishnagiri District – 635 103.
2.	Name and address of respondent(s)	1) Arunachala Logistics Private Ltd., Eluvapalli Village, Bagalur Road, Nallur Post, Hosur Taluk, Krishnagiri District – 635 109. 2) The Manager, M/s New India Assurance Company Limited office at 14/7, K.G.Swamy Complex, Bagalur Road, Hosur – 635 109, TamilNadu, Hosur 635 109.
3.	Date of filing of the claim petition	21.06.2023
4.	Date of award	21.02.2025
5.	Amount of award	Rs.4,60,000/-
6.	Costs allowed	Rs.15,753/-
7.	Court Fee for award amount	Rs.3,973/-
8.	Court Fee paid	Rs.375/-
9.	Balance of court fee to be paid	Rs.3,598/-
10.	ORDER	As per the direction of the Hon'ble High Court, Madras in Tr.CMP. Nos.264 to 281 of 2020 M/s. Cholamandalam MS Genl. Ins. Co. Ltd., Vs. Mr. Ayyannar S. and others dated 11.05.2020 , no separate decreetal order will be drafted.

This petition has been filed on 21.06.2023 and came up for final hearing before this court on 21.06.2023 in the presence of Advocates Tmt.C.YoghaPriya for Petitioner, 1st Respondent remained exparte and Tmt.S.Bhuvaneswari for 2nd Respondent. Heard the arguments of both, perusing the case records and having stood over for consideration till this day, this tribunal delivers the following.

ORDER

1. This petition is filed by the Petitioner under Section 166 of M.V Act claiming compensation of Rs.25,00,000/- for the injuries caused to her in the road accident on 06.12.2022.

2. **The brief averments of the petition:-**

The petitioner and husband went to Hosur for personal work and returned back home by two wheeler ampere Magnus bearing Registration No. TN 70 AL 3646. The petitioner Sarathamma seated as pillion rider and her husband driven the vehicle, slowly keeping to the left side of the road and while nearing Maharishi Vidhya Mandir School, the Eicher lorry bearing Registration No. TN 70 AB 6172 belonging to 1st respondent and insured the 2nd respondent was driven by its driver in the same direction, rash and negligently and dashed the two wheeler and caused an accident. Due to the impact, the petitioner sustained injuries. The petitioner has taken treatment at Govt. Hospital, Hosur, SPARSH Hospital, Narayana Health Mazumdar Shaw Medical Center Bangalore and till undergoing private treatment. The petitioner was aged 53years and she was doing coolie work and earning Rs.15,000/- per month. The 1st respondent being the owner and 2nd respondent being the insurer of the eicher lorry are liable to pay compensation to the petitioner jointly and severally.

3. 1st respondent remained exparte.

4. **The brief averments of the counter filed by the 2nd respondent read as follows:**

The petition is not sustainable. The age, occupation, income, period of treatment, disability are to be proved by the petitioner. The rider of the two wheeler was not holding valid DL at the material time of accident. The rider of the two wheeler, has no knowledge to drive the two wheeler. The manner of accident and damages sustained to the 1st respondent vehicle goes to show that the rashness is only on the part of the rider of the two wheeler. The rider of the two wheeler deviated from his path and came to the right side of the road and invited the accident. The entire negligence is only on the part of the rider of the two wheeler. In the absence of negligence on the part of the driver of the 1st respondent vehicle, this 2nd respondent is not liable to pay compensation. The amount claimed under different heads is not sustainable.

5. **Points for consideration**

- a) Whether the accident was due to the rash and negligent driving of the driver of Eicher lorry bearing Regn.No.TN 70 AB 6172?
- b) Whether the petitioner is entitled to get any compensation?
- c) Who is liable to pay compensation?
- d) What is the quantum of compensation that the petitioner is entitled to?

6. To prove the case of the petitioner, she has examined herself as PW1 and Ex.P1 to P11 was marked. The District Medical board report issued by the Chairman and Joint Director of Health services standing Medical Board Govt. Head Quarters Hospital, Krishnagiri was marked as Ex.C1. No oral and documentary evidence adduced on the side of 2nd respondent.

7. Documents perused and arguments of both heard.

8. **Point No.1**

It is the case of the petitioner while she traveled in the two wheeler as pillion

rider due to the rash and negligent driving of the 1st respondent vehicle by its driver who came behind in the same direction the accident has taken place. FIR is registered against the driver of 1st respondent vehicle. It is the contention of 2nd respondent the negligence of the two wheeler rider is the cause for the accident. However to prove the said fact the 2nd respondent has not adduced any evidence. No inroads was made in the cross examination to shift the entire negligence on the two wheeler rider. The manner of accident, the 1st respondent vehicle dashed the two wheeler from behind shows the driver of the 1st respondent is rash and negligent and responsible for the accident. The driver of the 1st respondent was not examined to show that he exercised due care and caution and there was no negligence on his part. In the absence of any contra evidence the evidence of the petitioner as to negligence on the driver of the 1st respondent is reliable, convincing and satisfactory. Accordingly the tribunal concludes the accident has taken place due to the negligence of the driver of 1st respondent and point No.1 is answered in affirmative.

9. Point No.2

After the accident the petitioner was treated at Govt. Hospital, Hosur as per Ex.P2. NH Mazumdar Shar Medical Center, Bangalore as inpatient from 06.12.2022 to 09.12.2022 (4 days) as per Ex.P4, 06.02.2023 (1 day) as per Ex.P10 Wound certificate was marked as Ex.P3. As per Ex.P2, Ex.P3, Ex.P4 and Ex.P10, the petitioner sustained degloving injury left upper and lower limb. The petitioner treated with wound debridement and tagging sutures of left upper and lower limb. The petitioner was treated conservatively. Medical bills was marked as Ex.P5. As such the petitioner is entitled to compensation.

10. Point No.3

The 1st Respondent is the Registered owner of the eicher lorry bearing Registration TN 70 AB 6172 which involved in the accident and 2nd Respondent is the insurer of the vehicle under Policy certificate No.61030031220300000439 validity from 08.05.2022 to 07.05.2023. The insurance certificate of the Lorry was marked as

Ex.P7. The driving license of the lorry driver was marked as Ex.P8. The Registration Certificate of the vehicle was marked as Ex.P6. There is no violation of policy conditions. The petitioner is 3rd party as regard 1st respondent vehicle is concerned. Hence, the 2nd respondent has the statutory liability to indemnify the 1st respondent in respect of the compensation payable to the petitioner as determined by the tribunal and liability of the respondents are joint and several and the point is answered accordingly.

11. Point No.4

a) Age and Income of the petitioner:-

The petitioner has stated her age to be 53 at the time of accident. The Aadhar card shows her date of birth as 1969. If the said details is taken into consideration her age at the time of accident would be 53 years. Accordingly the age of the petitioner is determined as 53 for the purpose of the claim. The petitioner has pleaded that she was doing Coolie work and earning Rs15,000/- per month. No documents produced regarding her occupation and income. As such in the absence of documents as to income, notional income has to be taken into consideration. Considering the period of accident and taking into account of the fact of cost inflation index, and money value the monthly income of the petitioner is fixed as **Rs.10,000/-** per month.

b) Disability

After the accident the petitioner was treated at Govt. Hospital, Hosur as per Ex.P2. NH Mazumdar Shar Medical Center, Bangalore as inpatient from 06.12.2022 to 09.12.2022 (4 days) as per Ex.P4, 06.02.2023 (1 day) as per Ex.P10 Wound certificate was marked as Ex.P3. As per Ex.P2, Ex.P3, Ex.P4 and Ex.P10, the petitioner sustained degloving injury left upper and lower limb. The petitioner treated with wound debridement and tagging sutures of left upper and lower limb. The petitioner was treated conservatively.

Further the petitioner subjected herself to assessment for disability by a duly constituted Chairman and Joint Director of Health services standing medical board Govt. Head Quarters Hospital, Krishnagiri. Ex.C1 is the disability certificate dated 22.11.2024 issued by the Medical board. In Ex.C1 it is found noted the petitioner has disability of 35% which is partial permanent disability. The medical board which diagnosed the petitioner had observed the petitioner has got pain muscle deformity in the left elbow and leg, ROM decreased in left elbow and left ankle, muscle strength decreased in left upper and lower limb, difficulty in daily activities, SSG, sensation decreased in injured area. The perusal of C1 also points out the medical board has not assessed the disability for whole body and it is partial permanent disability confined to the upper and lower limb of the body. The assessment of disability by the medical board in the light of injuries is found to be excessive as the petitioner has not sustained any fracture rather she sustained loss of soft tissue. There is no material to show the petitioner has suffered any permanent or functional disability due to the accidental injuries. The difficulties observed by the medical board is due to cause of injuries. During appearance before the tribunal the physical movements of the petitioner appears to be normal and no inconveniences noticed. In the nature of the injuries and treatment the tribunal is inclined to accept the disability of the petitioner only to an extent of 25% partial permanent and award compensation on the basis of percentage method.

Applying the guidelines framed by the Hon'ble Madras High Court to the facts of this case and taking note of the date of accident, having taken place in the year 2022, by applying principles of Law laid down in the decision reported in **2024 (1) TNMAC 598 (Future Generali India Insurance Company Limited /Vs/ Manivannan)** this Tribunal is of view that Rs.7,000/- may be awarded for 1% of disability and thus a sum of **Rs.1,75,000/-** is awarded for the 25% of the disability to the petitioner as fixed by the tribunal.

c) Medical expenses:-

The petitioner has produced medical and hospital bills to the tune of Rs.1,58,333/- under Ex.P5. The same is formally objected on the part of 2nd respondent. But the 2nd respondent has not produced any documents to disprove the same. As such the petitioner is entitled to **Rs.1,58,400/-** on the head of medical expenses.

d) Loss of Income:

Due to the accidental injuries the petitioner could not have attended to her occupation for a period of three months and as such she would have lost income considerably and accordingly a sum of **Rs.30,000/-** is awarded towards loss of income.

e) Pain and suffering:

After the accident the petitioner was treated at Govt. Hospital, Hosur as per Ex.P2. NH Mazumdar Shar Medical Center, Bangalore as inpatient from 06.12.2022 to 09.12.2022 (4 days) as per Ex.P4, 06.02.2023 (1 day) as per Ex.P10 Wound certificate was marked as Ex.P3. As per Ex.P2, Ex.P3, Ex.P4 and Ex.P10, the petitioner sustained degloving injury left upper and lower limb. The petitioner treated with wound debridement and tagging sutures of left upper and lower limb. The petitioner was treated conservatively. In view of the injuries the petitioner would have suffered severe pain and suffering. Hence a sum of **Rs.35,000/-** is awarded towards pain and suffering.

f) Other heads:

i) The petitioner would have incurred transportation expenses to take treatment and hence **Rs.10,000/-** is fixed towards transportation expenses.

ii) The petitioner sustained injuries and suffered disability and as such she would be in need of additional nourishment and therefore the Tribunal is inclined to

award **Rs.10,000/-** in this aspect.

iii) For damage of clothes as would have been caused, the petitioner is entitled to **Rs.1,600/-**.

iv) Due to the injuries sustained by the petitioner, she would forego certain amenities at present and future and would also have required the assistance of attender for a short period. Considering these facts **Rs.40,000/-** is awarded towards loss of amenities , discomfort and attender charges.

v) The petitioner has claimed Rs. 1,00,000/- towards future medical expenses. As per the discharge summary the petitioner treated with wound debridement and tagging sutures of left upper and lower limb and conservative management. The Medical board while assessment of disability has also observed the disability has been reduced. The petitioner has not substantiated the need of future medical expenses or she was under continuous medical treatment by any evidence. Accordingly no amount is awarded on the head of future medical expenses.

vi) On the discussion made above, the compensation as apportioned under various heads is awarded as below.

1. Disability	-	Rs.1,75,000/-
2. Pain and suffering	-	Rs.35,000/-
3. Transportation expenses	-	Rs.10,000/-
4. Additional nourishment	-	Rs.10,000/-
5. Damages to the clothes	-	Rs.1,600/-
6. Loss of amenities & attender charges	-	Rs.40,000/-
7. Loss of income	-	Rs.30,000/-
8. Medical expenses	-	Rs.1,58,400/-

Total compensation	-	Rs.4,60,000/-
--------------------	---	----------------------

In fine, the petitioner is entitled to a sum of **Rs.4,60,000/- (Rupees Four Lakhs Sixty Thousand Only)** as just and fair compensation and the point is answered accordingly.

12. The petitioner has to produce the attested copy of the 1st page of his bank passbook, PAN card and the xerox of the Aadhar card as per the directions of the Hon'ble High Court of Madras in CMA.No.428/2016 dated 11.03.2016 reported in 2016 (1) TNMAC 433 (DB).

Petitioner Name	Bank Name and Branch	Bank Account details and IFSC code	Aadhar Card No.	PAN Card No.
Sarathamma	Not produced		8945 6096 0922	Not produced

13. In the result,

a) The petition is allowed in part with proportionate cost against the respondents 1 and 2. Awarding the total compensation of **Rs.4,60,000/- (Rupees Four Lakhs Sixty Thousand Only)** including interim award passed if any, payable with interest at 7.5% per annum from the date of award.

c) The 2nd respondent being the insurer of the vehicle is directed to deposit the said compensation amount to the credit of the bank account of this tribunal, SPECIAL SUBORDINATE JUDGE (MACT), KRISHNAGIRI, STATE BANK OF INDIA, KRISHNAGIRI BRANCH, CURRENT ACCOUNT NO:36002300744 directly by NEFT or RTGS mode within a period of two months from date of this order and intimate the said deposit details to this tribunal with a copy of the bank advice.

d) After such deposit, the compensation amount shall be deposited in the petitioner's bank account.

e) The advocate fee is fixed at Rs.11,600/- Court fee for the award amount is Rs.3,973/- The deficit court fee shall be paid by the petitioner within two weeks from the date of order. No interest is awarded for the period when the petitioner defaulted,

as per orders if any and also for the period when the petitioner failed to pay the Court fees as directed.

f) A free copy of the award shall also be delivered to the parties on request within 15 days as per section 168(2) of the MV Act and Rule 20(6) of the Rules.

g) The petitioner is directed to produce the Pan card and Bank account details to this tribunal within 15 days. On failure to furnish the same the award amount shall not be disbursed.

Order directly dictated to the Steno Typist and typed by her in computer and taken print out and after rectification of mistake, Pronounced by me in open court, this the 21st day of February 2025.

Details of cost

Sl.No.	Cost statement on petitioner side	Amount Rs. P.
1.	Court Fees paid in Main petition	375.00
2.	Balance Court Fees to be paid as per award	3598 .00
3.	Vakalath	10.00
4.	Advocate Fees	11600.00
5.	Stamp on Interim Petitions	20.00
6.	Process fees	20.00
7.	Stamp on Exhibits	30.00
8.	Typing charges	100.00
Total		Rs.15,753.00

Appendix:**Witnesses on the side of Petitioner:**

Sl. No.	Witnesses	Name
1.	PW1	Sarathamma

Exhibits on the side of petitioner:

Sl.No.	Exhibits	List of documents	
1.	Ex.P1	F.I.R.	True Copy
2.	Ex.P2	Outpatient slip – Govt. Hospital Hosur	Original
3.	Ex.P3	Wound certificate	Xerox Copy
4.	Ex.P4	Discharge summary	Original
5.	Ex.P5	Medical Bills	Original
6.	Ex.P6	Registration Certificate	Xerox copy
7.	Ex.P7	Insurance Policy	Xerox copy
8.	Ex.P8	Driving license of the 1 st respondent	Xerox copy
9.	Ex.P9	Aadhar card of the petitioner	Xerox copy
10.	Ex.P10	Discharge summary	Original
11.	Ex.P11	Consultation Summary	Original

Respondents side witnesses: - NIL**Exhibits on the side of Respondents:- NIL****Court side Exhibits:**

Ex.C1	Medical board report	Original
-------	----------------------	----------