

Date of presentation:12.03.2014
Date of filing : 17.03.2014
Orders reserved on: 23.02.2023

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.

Thursday, the 23rd day of February 2023
MCOP 102/2020 (Old No.459/2015)
CNR No: TNKI0B-000287-2022

1.	Name and address of the Claimant(s)	SarathKumar, S/o.Shanmugam, aged about 22 years, Dekkalapalli, Sundagiri Village, Shoolagiri Post, Hosur Taluk, and now residing at Kurubarapalli Village, Krishnagiri Taluk and District.
2.	Name and address of respondent(s)	1.G.Ganesan, S/o.Govindasamy, ward No.2 Kalikuppam village, Madhanur post, Vellore District. 2. Shriram General Insurance Company Limited, E-8, RIICO Industrial Area, Sitapura, Jaipur, Rajasthan 302 022. 3.P.Dhanapal, S/o.Paalappan, No.1/166-a, Kundarapalli (village), Ramapuram (Po), Krishnagiri District. 4.The Branch Manager, Oriental Insurance Co., Ltd., 81-C, 1 st floor, KRC complex, Krishnagiri. Amended as per IA 6/2021 dated 20.10.2021.
3.	Date of filing of the claim petition	17.03.2014
4.	Date of award	23.02.2023
5.	Amount of award	Rs.15,00,000/-
6.	Costs allowed	Rs.36,553/-
7.	Court Fee for award amount	Rs.14,373/-

8.	Court Fee paid	Rs.375/-
9.	Balance of court fee to be paid	Rs.13,998/-
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 17.03.2014 and came up for final hearing before this court on 23.02.2023 in the presence of Advocate Thiru.V.Yuvaraj for Petitioner and R1 and R3 called absent set exparte and Advocate Thiru.M.Jayakumar appeared for R2. Advocate Thiru.K.Chinnathambi appeared for R4. Heard the arguments, 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 the MV Act claiming compensation of Rs.20,00,000/- for the injuries caused to him in the road accident on 26.05.2013.

2. The brief avernments of the petition:-

The petitioner was travelling as pillion rider in the Bajaj pulsar vehicle bearing registration No. TN 24 K 8088 and Saravanan @ Gnanasekaran was riding the said vehicle. Whey they both were proceeding near Alagubavi diversion road, the owner-cum driver namely 1st respondent of the lorry bearing registration No.TN 23/AD 1084 has driven in a rash and negligent manner and in an uncontrollable speed in front of the two wheeler suddenly stopped the lorry without giving any signal or indication of his stopping in the middle of the road. The rider of the motor cycle bearing registration No. TN 24 K 8088 has not anticipated the sudden stopping of the said lorry. Due to the sudden stopping of the lorry by the 1st respondent, the rider of the pulsar motor cycle even after trying to avert the accident by applying sudden brakes to stop the two wheeler dashed on the backside of the lorry and both the pillion rider

and the rider of the pulsar vehicle were thrown off and sustained injuries. The rider sustained head injury and died on the spot. The petitioner was admitted at Govt. Hospital, Hosur and still undergoing treatment. The petitioner was aged 22 years and employed in a bakery at Bangalore and earning Rs.12,000/- per month. The respondents 1 to 4 are liable to pay compensation to the petitioner jointly and severally.

3. The 1st and 3rd 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 manner of accident stated by the petitioner is disputed. The rider of the bike who was riding the bike without driving licence in a rash and negligent manner lost control of the bike while riding with great speed and when the lorry slowed down the rider of the bike could not control the bike and dashed behind the lorry and invited the accident. The accident took place only due to the negligent act of the rider of the two wheeler. The negligence was purely on the part of the rider of the two wheeler. Hence in the absence of negligence on the part of the driver of the lorry 1st respondent herein the 2nd respondent is not liable to pay any compensation to the petitioner. The amount claimed under different heads is not sustainable.

5. **The brief averments of the counter filed by the 4th 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 manner of accident stated by the petitioner is disputed. The motor cycle bearing registration No.TN 24 K 8088 was driven by its rider slowly however the driver of the lorry without any indication has suddenly stopped the lorry in the middle of the road. Due to the sudden

stopping of the lorry, the rider of the pulsar motor cycle even after applying sudden brakes to stop the motor cycle dashed on the back side of the lorry and both the rider and pillion rider were thrown out and sustained injuries. The accident had occurred only due to the negligent act of the stopping of the lorry all of a sudden in the middle of the road without giving any signal or any precautions indication and without even brake lamps. Hence the 3rd and 4th respondents are not liable to pay compensation to the petitioner and claim petition is liable to be dismissed. The amount claimed under different heads is not sustainable.

6. **Points for consideration**

- a) Whether the accident was due to the rash and negligent driving of the lorry by the 1st respondent?
- b) Whether it is true the rider of the two wheeler has also contributed for the accident?
- c) Whether the petitioner is entitled to get any compensation?
- d) Who is liable to pay compensation?
- e) What is the quantum of compensation that the petitioner is entitled to?

7. To prove the case of the petitioner, he has examined himself as PW1 and Ex.P1 to P10 was marked. No oral and documentary evidence adduced on the side of the respondents 2 and 4.

8. Documents perused and arguments of both heard.

9. The application filed by the 4th respondent under 170 of MV Act was allowed in IA.9/2023 dated 23.02.2023.

10. **Point No.1 &2**

a) It is the case of the petitioner while he was travelling as pillion rider driven by his friend owned by the 3rd respondent, due to sudden stoppage of lorry in the

middle of the road the accident has taken place. On the complaint given by the petitioner a case was registered against the rider of the two wheeler. In the complaint the petitioner has stated the rider of the two wheeler was rash and negligent and dashed the lorry on the rear side due to stoppage of lorry. The 2nd respondent has not chosen to examine the 1st respondent. As per the pleadings in the present claim the petitioner has stated the accident is due to negligence of both the rider of the two wheeler as well as the lorry. The rough sketch regarding the place of accident was not produced. The petitioner was not controverted by the insurer of the 2nd respondent by referring to the facts stated in the FIR. However during the cross examination of the petitioner by the 2nd respondent (insurer of the lorry) nothing was elicited materially to show the innocence of the lorry driver. It is admitted the lorry was loaded. The MVI report of the lorry was produced which shows the damages to the lorry are only on the right rear side. The lorry driver while moving ahead is not supposed to stop the vehicle in the middle of the road without any indications so as to prevent the free access of the users of the road following the said lorry. It is contended by the 2nd respondent that the rider of the two wheeler has not maintained safe distance. The rough sketch which is material document was not produced. No independent witness were also examined. The rider of the two wheeler has not wore helmet and the condition of the lorry was also not substantiated. The rider of the two wheeler was also not having valid driving licence is also elicited from the cross examination of PW1. The petitioner has reiterated the accident is due to the negligence of the lorry driver. The manner of the accident shows both the rider of the two wheeler and driver of the lorry have contributed for the accident in equal proportionate. If the rider of the two wheeler had maintained sufficient distance and the 1st respondent having stopped the lorry with due indication both could have avoided the accident. Since the 1st respondent was not examined the negligence cannot be completely fixed on the rider of the two wheeler. As such both the driver of the vehicles are tortfeasors and responsible for the accident. Accordingly the points 1 and 2 are answered in affirmative.

11. **Point No.3**

After the accident the petitioner has taken treatment at Government Hospital Hosur and Sparsh Hospital, Bangalore as inpatient from 26.05.2013 to 03.06.2013 (10 days) as per discharge summary marked as Ex.P2. As per the Ex.P2 it is clear the petitioner has sustained left leg upper 3rd both bones comminuted fracture complicated into compartment syndrome with complete neurovascular compromise. left upper brachial plexus injury and in the course of treatment left leg below knee was amputated. The medical bill was produced and marked as Ex.P7. As such the petitioner is entitled to compensation and the point is answered in favour of the petitioner.

12. **Point No.4**

The 1st respondent is the registered owner of the lorry Registration Number TN 23 AD 1084 which caused the accident and the 2nd respondent is the insurer of the vehicle under Policy certificate No.10003/31/13/76513 with validity from 31.03.2013 to 30.03.2014. The insurance policy was marked as Ex.P3. So also the 3rd respondent is the insured of the two wheeler and the 4th respondent is the insurer. The two wheeler in which the petitioner travelled and which is covered under certificate of Policy No.455190/31/2013/2967 was valid and effective and in force at the time of accident. Though the driving licence of the rider of the two wheeler was disputed, no steps was taken to prove the said contention. In the absence of any evidence and materials, violation of policy conditions cannot be inferred As regard the two wheeler and the lorry the petitioner is a 3rd party and he is covered under the policy. While deciding the question of negligence the rider of two wheeler and driver of the lorry were held to be jointly responsible for the accident and they are joint tortfeasors. Hence, the 2nd respondent has the statutory liability to indemnify the 1st respondent and 4th respondent has the statutory liability to indemnify the 3rd respondent in respect of the compensation payable to the petitioner. Consequently, it is concluded that the respondents 1 to 4 are liable to pay compensation to the petitioner for the injuries

sustained by him in the accident and the point is answered accordingly.

13. **Point No.5**

a) Age and Income of the petitioner:-

The petitioner has stated his age to be 22 at the time of accident. The Aadhar card shows his date of birth as 20.04.1996. If the said details is taken into consideration his age at the time of accident would be 17 to 18 years. The petitioner has pleaded that he is working in a bakery, Bangalore and earning Rs.12,000/- per month. The occupation was not seriously disputed. At the same time no documents was produced to prove the income. As such in the absence of documents, 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 annual income of the petitioner is fixed as Rs.67,000/-

b) Disability and future loss of earning capacity:-

After the accident the petitioner has taken treatment at Government Hospital Hosur and Sparsh Hospital, Bangalore as inpatient from 26.05.2013 to 03.06.2013 (10 days) as per discharge summary marked as Ex.P2. As per the Ex.P2 it is clear the petitioner has sustained left leg upper 3rd both bones comminuted fracture complicated into compartment syndrome with complete neurovascular compromise. left upper brachial plexus injury and in the course of treatment left leg below knee was amputated.

Further the petitioner subjected himself to assessment for disability certificate before the medical board and as per Ex.P8 the disability of the petitioner was assessed as 75% partial permanent disability as regard the lower limb of the body. The tribunal during evidence has observed the petitioner has little difficulty in walking due to amputation of left leg below knee and he was moving with artificial limbs. The petitioner is said to be working in bakery. The nature of the injuries would partially incapacitate him as he could not able to do heavy work, move fastly, drive vehicles and he has to depend upon others. The petitioner was very young and sportive at the time of accident. Due to the accidental injury the petitioner could continue his work

in the bakery with difficulty and inconveniences. The petitioner can discharge his work by sitting at one place and do manual work. The disability assessed by the medical board if taken into consideration for the whole of the body, the functional disability of the petitioner would be 30 to 35% however the nature of the injuries would handicap the petitioner and affect his earning capacity. As such considering the nature of the injury and avocation the tribunal is of view the loss of earning capacity of the petitioner was assessed as 50%. Considering the age and nature of the injuries the tribunal is of view the loss of earning capacity shall be worked out by multiplier method.

The Hon'ble Apex Court has laid down the principles for calculation of the quantum of compensation in the case of *Sarla Verma and others /vs/ Delhi Transport Corporation and another, reported in 2009 (2) TNMAC 1 (SC)*. The quantum of compensation in case of functional disability loss of earning capacity shall be calculated by applying the multiplier method and as per the guidelines laid down by the Hon'ble Apex Court, multiplier no.18 is applicable for this petitioner who was aged between 15 to 20 years. The petitioner's annual income was already fixed as Rs.67,000/-per annum. Since the petitioner is below 40 years, 40% of his income has to be added towards the future prospects.

Therefore, the age of petitioner being 18, his annual income after adding the future prospects would be Rs.93,800/-. By applying multiplier no.18 his loss of earning power of 50% is calculated as follows:-

$$93,800 \times 50/100 \times 18 = \text{Rs.8,44,200/-}$$

As such on the head of loss of earning capacity the petitioner is entitled for a sum of **Rs.8,44,200/-**

c) Medical expenses:

The petitioner has produced medical and hospital bills to the tune of Rs.1,49,389/- The same is formally objected on the part of the 2nd respondent. But the 2nd respondent has not produced any documents to disprove the same. As such

the petitioner is entitled to Rs.1,49,400/- on the head of medical expenses.

d) Pain and suffering:

After the accident the petitioner has taken treatment at Government Hospital Hosur and Sparsh Hospital, Bangalore as inpatient from 26.05.2013 to 03.06.2013 (10 days) as per discharge summary marked as Ex.P2. As per the Ex.P2 it is clear the petitioner has sustained left leg upper 3rd both bones comminuted fracture complicated into compartment syndrome with complete neurovascular compromise. left upper brachial plexus injury and in the course of treatment left leg below knee was amputated. In view of the injuries the petitioner would have suffered severe pain and suffering. Hence a sum of **Rs.60,000/-** is awarded towards pain and suffering.

e) Other heads:

i) The petitioner would have incurred transportation expenses to take treatment and hence **Rs.15,000/-** is fixed towards transportation expenses.

ii) The petitioner sustained injuries and suffered disability and as such he would be in need of additional nourishment and therefore the Tribunal is inclined to award **Rs.20,000/-** in this aspect.

iii) For damage of clothes as would have been caused, the petitioner is entitled to **Rs.1400/-**.

iv) In view of the nature of the injuries the petitioner would have been bedridden for a period of more than two months and therefore he would have required the service of an attender and hence **Rs.10,000/-** is awarded towards attender charges.

v) Due to the injuries sustained by the petitioner he would forego certain amenities at present and future. The petitioner is a bachelor and due to the accidental injuries he has also lost his marriage prospects and other comforts enjoyed by the individuals of the same age. Considering these facts **Rs.2,00,000/-** is awarded towards loss of amenities and discomfort and marriage prospects.

vi) The petitioner has claimed Rs.1,50,000/- towards future medical expenses. However to prove the said fact the petitioner has not produced any documents for

future medical expenses. During evidence of the petitioner and his appearance before the tribunal the petitioner was noticed using artificial limb (prosthesis) and the petitioner has stated the same was purchased two years back at Rs.50,000/- and it is the 2nd purchase and it requires service periodically and to be replaced once in three years, The petitioner had also stated that he is spending Rs.4,000/- towards service and maintenance. The tribunal considering the facts of the case is of view that if proper service and maintenance was done periodically the same could be utilised for extended period of six years. Considering the age of the petitioner the tribunal is of view the petitioner would require atleast three purchases in his life time towards prosthesis. Taking the nature of the injury this Court is inclined to award a sum of **Rs.2,00,000/-** towards future medical expenses.

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

1. Future loss of earning capacity	-	Rs.8,44,200/-
2. Medical expenses	-	Rs.1,49,400/-
3. Pain and suffering	-	Rs.60,000/-
4. Transportation expenses	-	Rs.15,000/-
5. Additional nourishment	-	Rs.20,000/-
6. Damages to the cloths	-	Rs.1400/-
7. Attender charges	-	Rs.10,000/-
8. Loss of amenities & Marriage prospects	-	Rs.2,00,000/-
9. Future medical expenses	-	Rs.2,00,000/-
Total compensation	-	Rs.15,00,000/-

In fine, the petitioner is entitled to a sum of **Rs.15,00,000/- (Rupees Fifteen lakhs Only)** as just and fair compensation and the point is answered accordingly.

14. 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.
SarathKumar	Not produced		5094 5087 7280	Not produced

15. In the result,

a)The petition is allowed in part with proportionate cost against the respondent 1 to 4. Awarding the compensation of **Rs.15,00,000/- (Rupees Fifteen lakhs Only)** including interim award passed if any, payable with interest at 7.5% per annum from the date of presentation of the petition.

b)The 2nd and 4th respondent being the insurer of the vehicle are directed to deposit the said compensation amount in equal proportionate 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.

c)After such deposit, the petitioner is entitled to withdraw half of the amount along with interest and cost and the balance amount shall be deposited in a nationalised bank for a period of 5 years and the petitioner is entitled to withdraw interest on the said amount once in three months which shall be directly credited to the account of the petitioner from the bank where such investment was made. The petitioner is not entitled for any permission for foreclosure or pre withdrawal of the balance amount. The compensation amount shall be deposited in the petitioner's bank account.

d) The advocate fee is fixed at Rs.22,000/- Court fee for the award amount Rs.14,373/- 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.

e) 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.

f) 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 23rd day of February 2023.

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	13,998.00
3.	Vakalath	10.00
4.	Advocate Fees	22000.00
5.	Stamp on Interim Petitions	20.00
6.	Process fees	15.00
7.	Stamp on Exhibits	35.00
8.	Typing charges	100.00
	Total	Rs.36,553. 00

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

Sl. No.	Witnesses	Name
1.	SarathKumar	(Petitioner)

Exhibits on the side of petitioner:-

Sl. No.	Exhibits	List of documents	
1	Ex.P1	First Information Report	True Copy
2	Ex.P2	Discharge summary	Original
3	Ex.P3	Insurance policy – TN 23 AD 1084	Xerox Copy
4	Ex.P4	MVI report of the lorry	Xerox Copy
5	Ex.P5	Legal notice issued to respondent	Xerox copy
6	Ex.P6	Postal acknowledge	Original
7	Ex.P7	medical bills	Original
8	Ex.P8	Disability Certificate issued by TamilNadu Govt.	Xerox Copy
9	Ex.P9	Aadhar card	Xerox Copy
10	Ex.P10	Insurance policy	Xerox copy

Witnesses on the side of Respondent:-NIL**Exhibits on the side of Respondent: NIL****Court side Exhibits: NIL**