

**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL,
KARAIKAL**

IN THE COURT OF SUB-COURT, KARAIKAL.

**Present : Thiru. S. Palani, B.Sc., M.L.,
Sub-Judge
Karaikal**

On this Monday, the 28th day of April 2025

M.C.O.P. No.2 of 2024

C.N.R. No. PYKL-05-000005-2024

Minor Logithasri, aged 4 years,
D/o. Tharmalingam,
rep by her father and next friend Tharmalingam,
No.72, Duplex street,
Karaikal,

.... Petitioner

/Vs./

1. Ahamed Kabir,
S/o. Sadakathulla,
No.121/38, Puthumanai street,
Nagore, Nagapattinam.
2. Mubeen Ahamad,
S/o. Abubackar,
No.42A, Samuthambi Maraicar street,
Nagore Kottagam, Nagapattinam.
3. Royal Sundaram General Insurance Co. Ltd.,
No.148, 4th floor, A-Block,
Mono Kampala Arcade,
Sir Theyagaraya road, Chennai.

.... Respondents

This claim petition was taken on file on 07.12.2023 and came for

final hearing on 22.04.2025 in the presence of advocate Thiru. A. Senthilkumar, learned counsel for the petitioner, and in the presence of Thiru. H. Umar Farook, learned counsel for the 1st Respondent and in the presence of Thiru. A. Thariq Ahmed, learned counsel for the 2nd respondent and in the presence of advocate Thiru. G.V. Balamurugan, learned counsel for the 3rd Respondent, and upon hearing both sides and on perusal of the oral and documentary evidence of both sides, this Tribunal pronounces the following.

ORDER (AWARD)

PLEADINGS :

The averments made in the claim petition are briefly stated as follows:-

1. On 30.10.2022 at 8.30 a.m., while the minor petitioner Logithasri was walking with her grandmother by name Lakshmi and her siblings at Bharathiar road, Deitha street near Shiva Bajana Madam, from south to north direction, at that time, the 1st respondent had driven the Honda city car bearing Reg. No. TN06 M 6078 from the same direction in a very rash and negligent manner and had hit on the petitioner and the petitioner had sustained severe simple injuries. Immediately, the petitioner was treated at General Hospital, Karaikal as inpatient. But for the rash and negligent driving of the 1st respondent, this accident would not have happened. A criminal case in Cr. No.125/2022, u/s. 279 and 337 of IPC was registered with the Traffic Police

Station (North), Karaikal, against the 1st respondent- driver and the same is pending for investigation on the file of the said police. The petitioner was a LKG student at the time of the accident. The 1st respondent is the driver of the offending car bearing Reg. No. TN06 M 6078 which caused the accident, the 2nd respondent is the owner of the offending car bearing Reg. No. TN06 M 6078 and the 3rd respondent is the Insurance Company with whom the said offending car bearing Reg. No. TN06 M 6078 had been insured with. Hence, it is prayed to pass an award holding that all the respondents are jointly and severally liable to pay the claimed compensation of Rs.5,00,000/- with cost and interest thereon.

The averments made in the counter filed by the 1st respondent is briefly stated as follows:

2. This respondent denied all the averments stated in the petition except those that are specifically admitted herein. This respondent denied that the 1st respondent had driven the car in a rash and negligent manner and denied that the petitioner was hit by the 1st respondent's vehicle. The 1st respondent stated that this respondent vehicle is no way connected with the accident. This respondent stated that neither the respondent nor the driver is liable for the alleged injuries claimed by the petitioner and the alleged injuries have occurred due to the negligence of the petitioner. The 1st respondent stated that

if this Court comes to the conclusion to pay compensation, the award may be passed against the 3rd respondent only as this respondent's vehicle is insured with the 3rd respondent. The compensation claimed is too heavy, excessive and exorbitant. The petition is devoid of merits and the 3rd Respondent, therefore, prayed that this petition may be dismissed with exemplary costs. The counter filed by the 2nd respondent is the verbatim as are used in the counter of the 1st respondent.

The averments made in the counter filed by the 3rd respondent is briefly stated as follows:

3. This respondent submitted that the petition is neither maintainable in law nor sustainable in facts. The 3rd respondent denied that the vehicle involved in the accident is insured with this respondent and that the policy was in force at the time of accident if so insured. This respondent further denied that the driver who had driven the car was duly licenced and has specific endorsement to drive the car on the date of accident. This respondent further denied that the person named as driver had driven the vehicle at the time of the accident. The 3rd respondent submitted that the terms of policy is violated and therefore, this claim is not maintainable as per Section 147 of the M.V. Act. Therefore, the claimants cannot claim either Section 166, 140 or under Section 163A of the M.V. Act. The 3rd respondent stated that this claim petition is barred by limitation as per amendment of 2019 in the M.V. Act and

hence, it is liable to be dismissed in *limini*. This respondent further denied that the accident was due to the rash and negligent driving of the 1st respondent's vehicle. The 3rd respondent stated that the petitioner had carelessly crossed the road without noticing the oncoming vehicle and therefore, the petitioner alone is responsible for the accident or contributory negligence. The 3rd respondent stated that the injuries sustained by the petitioner are simple in nature. The compensation claimed is too heavy, excessive and exorbitant. The petition is devoid of merits and the 3rd Respondent, therefore, prayed that this petition may be dismissed with exemplary costs.

4. The driver and owner of the alleged offending car bearing Reg. No. TN06 M 6078, the respondents 1 and 2 remained have appeared and contested in the proceedings. The insurer of said alleged offending vehicle/ 3rd respondent has also contested this claim.

5. The minor petitioner's father has been examined as PW1 and the documents, namely Exs.P1 to P9 have been marked through him and the respondent No.3 have neither examined any witness, nor have marked any documents. The minor petitioner, having only suffered simple injury, did not press for referral to medical board.

POINTS FOR DETERMINATION :

6. Having regard to the pleadings and materials, these following points would arise before this Tribunal and these points are required to be solved in this claim in the light of evidence adduced on either side.

1. Whether the accident was the result of wrongful act or negligence on part of the driver-the 1st respondent had driven the car bearing Registration No.TN06 M 6078?

2. Whether the alleged offending car bearing Reg. No. TN06 M 6078 had been insured with the 3rd respondent and was there any policy violation?

3. Whether the petitioner is entitled for compensation, if so, what is the quantum of the compensation and against whom the decree/award has to be enforced?

CONTENTIONS:

7. The learned counsel for the petitioner would submit that the accident which had occurred on 30.10.2022 is proved to have been caused due to rash and negligent driving by the 1st respondent had driven the car bearing Reg. No.TN06 M 6078. The learned counsel for the petitioner would also submit that the petitioner had sustained simple injury in the said accident as per medical records. Therefore, the learned counsel for petitioner would sum up

his argument that the petitioner is entitled to seek the compensation as her future livelihood is affected in the accident and the learned counsel for petitioner would pray for passing an award by granting just compensation to the petitioner. The learned counsels for the 1st and 2nd respondents would submit that since the insurance policy was in force at the time of the accident, the insurer alone is answerable for the claim preferred by the claimant on the basis of law of indemnity.

8. Per contra, the learned counsel 3rd respondent would submit that the accident had occurred by reason of negligence on part of the petitioner who had carelessly crossed without noticing the oncoming vehicle and had herself invited the accident and the 1st respondent was not responsible for the accident. The learned counsel for the 3rd respondent would submit that the 1st respondent was not having a valid driving licence to drive the said vehicle. The learned counsel for the 3rd respondent would further submit that the minor petitioner had not sustained any permanent disability, nor had suffered by the loss of income due to the injuries and this claim is liable to be dismissed.

REASONS FOR DECISION

Point No.1:

9. This Tribunal has cogitated over the rival submissions and has keenly perused the relevant records. In deciding a claim under the Motor Vehicle Act,

the proceeding being conducted before a Tribunal is a summary nature and a Tribunal has to decide the case on the basis of the preponderance of probability and the higher degree of proof beyond the reasonable doubt (for deciding a criminal case) is not required for fixing the liability in a claim petition. Keeping the above salutary principle on the mind, this Tribunal proceeds to decide this case in the light of evidence being adduced by both sides. The evidence of the PW1- petitioner's next friend/father would establish that on 30.10.2022 at 8.30 a.m., while the minor petitioner Logithasri was walking with her grandmother by name Lakshmi and her siblings at Bharathiar road, Deitha street near Shiva Bajana Madam, from south to north direction, at that time, the 1st respondent had driven the Honda city car bearing Reg. No. TN06 M 6078 from the same direction in a very rash and negligent manner and had hit on the petitioner and the petitioner had sustained severe simple injuries. The evidence of the PW1, though he is not an eye-witness, is strengthened by the Ex. P1, an FIR, registration of criminal case in Cr. No. 125/2022, under sections 279 and 337 of IPC on the file of Traffic Police Station (North), Karaikal, against the 1st respondent who had driven the car bearing Reg. No. TN06 M 6078. Although the PW1 had been cross-examined by the learned counsel for respondents, the version of the PW1, remains creditworthy. The evidence is fully corroborated by the evidence of

eye-witness/PW2. The version of the PW1 and PW2 regarding the manner of happening of accident is supported and strengthened by the police records, namely FIR-Ex.P1. No evidence has been led as to challenging the version of accident as stated in the FIR-Ex.P1. At this juncture, it is worth to refer the ruling of the Hon'ble Supreme Court in **Sunitha and others Vs. Rajasthan State Transport Corporation and another, 2019 AIR SCC 994**, wherein, it was held that if the FIR is not challenged before the Court of law and is not shown to be in deficient and are corroborated by the other evidence, they can be considered to form an opinion that the accident occurred was due to the negligence of accused-driver-1st respondent in the criminal case concerned, irrespective of the out-come of such criminal case. The following proposition has been laid down as under:

"25. The Tribunal's reliance upon FIR 247/2011 (Exh.1) and charge sheet (Exh.2) also cannot be faulted as these documents indicate the complicity of respondent No.2. The FIR and charge sheet, coupled with the other evidence on record, inarguably establishes the occurrence of the fatal accident and also point towards the negligence of the respondent No. 2 in causing the said accident. Even if the final outcome of the criminal proceedings against respondent No. 2 is unknown, the same would make no difference atleast for the purposes of deciding the claim petition under the Act."

No eye-witnesses has been examined on the side of the respondents to disprove the fact which is established in the evidence adduced by PW1 and PW2 that the accident was the result of negligent driving of the 1st respondent-driver. No contra evidence against the evidence of PW1 and PW2

is forthcoming on the side of the respondents. Relying on the controverted evidence of PW1 and PW2 (eye-witness) coupled with documentary evidence of FIR/Ex.P1, this Tribunal safely comes to irresistible conclusion that the accident is the result of negligent driving of the 1st respondent had driven the car bearing Reg. No.TN06 M 6078 at the time of the accident. In view of above discussions, this Tribunal holds that the car bearing Registration No. TN06 M 6078 had been driven in a rash and negligent manner, which alone had caused the accident and the 1st respondent is the guilty of negligence. The 2nd respondent/owner has not taken a plea that his motorcycle was used against his will and he had no effective control over the 1st respondent at the time of the accident. The 2nd respondent is constructively and vicariously liable for the tortious act committed by the 1st respondent in the eye of law.

POINT No.2 :

10. The 2nd respondent is the owner of the said offending car bearing Reg. No. TN06 M 6078 as per Ex.P3/ copy of certificate of registration. The driver /1st respondent was having the valid driving license at the time of the accident as per Ex.P7 / copy of driving licence. The offending vehicle bearing Reg.No. TN06 M 6078 had been duly insured in the name of its previous owner with the 3rd respondent at the time of the accident under the insurance policy/Ex. P2. As per Section 157 of the M.V. Act, once the transfer of

ownership takes place in the RC, this is sufficient to accept the deemed transfer in the insurance policy in respect of third party risks. The petitioner is the 3rd party to the insurance policy/Ex.P2. The 3rd respondent has not pleaded/proved any policy violation while using the offending car bearing Reg. No. TN06 M 6078 at the time of the accident by placing evidence. It is the contention of the learned counsel for the 3rd respondent that this claim petition having been not preferred within the period of six months from the date of accident is hopelessly barred by limitation. As far as the defence plea of limitation is concerned, the records would reveal that this claim petition has been filed on 07.12.2023 and the accident had occurred on 30.10.2022 and the FIR as regards the accident had been registered on 30.10.2022, which is on the same date of accident. This Tribunal is of the considered view that this claim petition has been filed within the period of limitation, since the FIR has been registered/filed within the period of six months from the date of the accident, as per the decision of Hon'ble Madras High Court in Malaravan vs. Parveen travels Pvt. Ltd., and two others, CRP.No.2558 of 2023, dated 18.08.2023. Hence, this Tribunal concludes that present claim has been filed within the period of limitation. The tortious act of committing the accident by the 1st respondent-driver will bind on the 2nd respondent-owner in the eye of law and both are vicariously liable. However, in view of the Ex. P2 contract

of policy being in force at the time of the accident, by virtue of the law of indemnity and by application of section 149 of the Motor Vehicle Act, the insurer is liable to make the compensation to the 3rd party-petitioner who is injured by the accident caused by the insured vehicle. Therefore, 3rd respondent being the insurer is liable to pay the compensation to the petitioner and the entire liability is fastened on the 3rd respondent.

POINT No.3 :

11. The minor petitioner's father/PW1 has stated that the minor petitioner Logithasri having sustained simple injuries in the said accident, she had been treated at Government Hospital, Karaikal. Regarding the injuries sustained by the petitioner the medical records produced by him would show that she sustained the following injuries in the accident.

“RTA with soft tissue injury of face and forearm”

The discharge slip/Ex.P6 issued by General hospital, Karaikal would establish that the injuries sustained by the petitioner are simple in nature. The PW1 has not established that the injury sustained by her had incapacitated her. This Tribunal is of the opinion that aforesaid injury sustained by the minor petitioner has not caused any permanent or functional disability to her and for this reason, multiplier cannot be applied for calculation of loss of future earning in the considered opinion of this Tribunal. The petitioner having

sustained the simple injury, not amounting to any permanent or functional disability, did not desire to appear before the medical board.

12. The claim petition says that minor petitioner is 4 years old at the time of the accident and serious objection is not raised by the learned counsel for respondent No.3 in respect of age of the said petitioner. The accident had occurred in the year 2022 and the minor petitioner was an LKG student at the time of the accident and hence, there is no loss of income for her.

Finally, this Tribunal calculates the award amount under the following heads:

Sl.No.	Head	Amount granted by the Tribunal Rs.
1	Future loss of earnings for the simple injury sustained by the petitioner in the accident	25,000/-
2	Attender expenses	5,000/-
3	Transport expenses	2,000/-
4	Nutrition expenses	3,000/-
5	Damage to the dress	1,000/-
6	Medical bills	Nil
	100% award amount	36,000/-

Result:

13. (i) In the result, in view of the above discussions and for the reasons stated and as has been concluded earlier, this claim petition is partly allowed by directing the 3rd respondent to pay the compensation a sum of **Rs.36,000/-**

including interest and cost to the minor petitioner.

(ii) The award amount shall be paid to the petitioner with interest at rate of 7.5% p.a. from the date of filing of the petition till the date of deposit/recovery excluding the period of dismissal for default, if any, and including cost of the petitioner.

(iii) The respondents are directed to bear their own cost under the facts and circumstances of the case. The cost of the petitioner is ordered to be borne by the 3rd respondent.

(iv) The 3rd respondent is directed to deposit the said compensation amount with interest and cost into this Tribunal's current account in Account No. 40318107617, State Bank of India, Karaikal main branch (IFSC Code SBIN0001418) within a period of one month and intimation regarding award amount deposited shall be intimated to this Tribunal, by email.

(v) Upon such deposit being made, the **petitioner being a minor**, to protect the interest of the minor, the compensation amount belonging to her shall be kept under **fixed deposit** in any one of the nationalized banks situated within the five kilometers radius of this Tribunal until the minor petitioner attains the age of majority.

(vi) The petitioner is directed to deposit the court-fees of this petition

within two weeks from the date of this order, if not already deposited, and the petitioner shall not be permitted to withdraw the claim amount until court-fee is paid.

(vii) The Advocate fees is fixed as **Rs.2,130/-**.

Dictated to the Stenographer directly and typed by her directly and pronounced by me in the open Court/Tribunal, this the 28th day of April 2025.

Sd/-

Motor Accident Claims Tribunal Judge/
Sub-Judge, Karaikal.

ANNEXURE : I

Petitioner's side witness :

- P.W.1 Darmalingam-petitioner's father
P.W.2 Lakshmi-petitioner's grandmother

Petitioner's side Exhibits :

Ex.P1	Copy of FIR in Cr.No. 125/2022
Ex.P2	Copy of Insurance policy of the offending vehicle
Ex.P3	Copy of Certificate of Registration of the offending vehicle
Ex.P4	Copy of Accident Register
Ex.P5	Copy of Accident Inspection Report
Ex.P6	Copy of discharge slip issued by General hospital, Karaikal
Ex.P7	Copy of driving licence of the 1 st respondent
Ex.P8	Copy of the Aadhaar card of the petitioner
Ex.P9	Copy of the Aadhaar card of the petitioner's father

The Respondents' side witness : Nil

The Respondents' side Exhibits : Nil

3rd person Exhibits : Nil

Court's/Tribunal's Exhibit : Nil

ANNEXURE : II

Date of filing petition	07.12.2023
Date of Order/award	28.04.2025
Compensation amount	Rs.36,000/-
Interest rate on compensation	7.5%
Time allowed for paying deficit court fee	Two weeks from the date of order
Whether the petition was dismissed for default period, if any.	No

ANNEXURE : III

Cost memo – List

List of cost memo	Amount (Rs.)
1. Stamp on petition already paid	10.00
2. Court fee to be paid	78.00
3. Stamp amount of Vakalath nama	1.50
4. Stamp on process	6.75
5. Typing preparation charges	100.00
6. Advocate fee	2,130.00
Total cost	2,326.25

Sd/-

Motor Accident Claims Tribunal Judge/
Sub-Judge, Karaikal.