



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 28.10.2024

CORAM:

**THE HON'BLE Mrs. JUSTICE V.BHAVANI SUBBAROYAN
AND
THE HON'BLE Mr. JUSTICE K.K.RAMAKRISHNAN**

C.M.A.(MD).Nos.107 of 2021 and 567 of 2020
and
C.M.P.(MD).No.946 of 2021

C.M.A.(MD).No.107 of 2021:

The Managing Director,
Tamil Nadu State Transport Corporation,
Kumbakonam

... Appellant/Respondent

Vs.

G.Sivagami

... Respondent/Claimant

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, praying to set aside the impugned award passed in M.C.O.P.No.49 of 2019 on the file of the MACT (Chief Judicial Magistrate Court), Virudhunagar @ Srivilliputhur dated 06.09.2019.



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For Appellant : Mr.P.M.Vishnuvarthanan

For Respondent : Mr.S.Srinivasa Raghavan

C.M.A.(MD).No.567 of 2020:

G.Sivagami

... Appellant/Petitioner

Vs.

The Managing Director,
The Tamil Nadu State Express Transport Corporation,
Kumbakonam. ... Respondent /Respondent

Prayer : Civil Miscellaneous Petition filed under Section 173 of Motor Vehicle Act, praying to set aside the fair and decreetal order dated 06.09.2019 made in M.C.O.P.No.49 of 2019 on the file of Motor Accident Claims Tribunal (Chief Judicial Magistrate), Virudhunagar at Srivilliputhur, allow the above appeal.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondent : Mr.P.M.Vishnuvarthanan



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COMMON JUDGMENT

[Order of the Court was made by **K.K.RAMAKRISHNAN, J.**]

The Transport Corporation filed this appeal, challenging the award passed in the M.C.O.P.No.49 of 2019, on the file of the Motor Accident Claims Tribunal, Virudhunagar.

2. The claimant filed the claim petition M.C.O.P.No.49 of 2019, claiming the compensation for the loss of her right hand in the accident said to have happened on 10.08.2016.

3. The respondent claimant is a teacher. After the school hours, on 10.08.2016, when she was returning in her Vehicle, bearing Registration No.TN-35-K-8523 on Kamudhi-Veeracholan Main Road to reach her residence at Veeracholan, from south-north direction, the appellant corporation bus came from north to south direction, in a rash and negligent manner and dashed against the right side of the injured claimant, and as a result, she sustained crushed injury on her right hand. Therefore, her right



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hand was amputated. Hence, the police registered the case against the appellant Transport Corporation driver, namely, RW1 and investigated the case and filed the final report before the Jurisdictional Court. Pending the criminal proceedings, claimant filed the petition before the Court below claiming a compensation of Rs.1,00,00,000/-.

4. In the claim petition, she has averred that at the time of accident, she was working as a teacher and as a result of the amputation of the right hand, she is unable to do even her daily routine habits, namely wearing her inner wear and other routine daily activities. Further, due to the accident, her entire life is paralyzed, her social activities totally crippled, and hence, she filed the petition claiming compensation of Rs.1,00,00,000/-.

5. The appellant corporation filed the counter denying the manner of the accident and disputing the loss of income pleaded by the injured claimant. In the counter of the appellant corporation it is specifically stated that when the injured claimant overtook the parked van, she herself rammed into the oncoming bus. Hence, there was no negligence on the part of the corporation bus and in any case, the contributory negligence is to be



attributed against the injured claimant and also the injured claimant did not wear the helmet and hence, the contributory negligence ought to have been fixed upon the injured claimant. With these pleadings, the Trial Court commenced the proceedings.

6. During the course of the trial, the injured claimant, to prove the claim, examined P.W.1 and 2 and marked Ex.P1 to Ex.P29 and on the side of the respondent, RW1, driver of the bus was examined and the permanent disability certificate was marked as EX.C1.

7. The learned trial Judge, after considering the evidence and also all the material documents, fixed the negligence upon R.W.1 and held that due to the rash and negligent driving of R.W.1, the accident happened and hence the entire negligence was fixed upon the driver of the appellant corporation bus. The Tribunal applying the principle of multiplier, fixed the loss of earning under permanent disability and granted Rs.30,68,640/- and the medical expenditure of Rs.3,32,302/-.



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8. The transport corporation filed the appeal in C.M.A.(MD).No.107 of 2021, challenging the award amount granted by the impugned judgment. The injured claimant also filed the appeal to enhance the compensation granted by the Court below. Both cases were taken together. The learned counsel for the Appellant in C.M.A.(MD).No.567 of 2020 Corporation made the following submissions:-

9. From the records, including the sketch marked on the side of the claimant and the evidence of the R.W.1, it is clear that the injured claimant contributed by her own negligence to the accident. According to the learned counsel for the transport corporation, the injured overtook the parked van and hit against the oncoming appellant Transport Corporation vehicle. R.W.1 clearly deposed before the court that only due to the negligence of the injured claimant the accident happened and the same was not properly considered. Hence the learned tribunal ought to have fixed the contributory negligence upon the injured claimant. But the total negligence is fixed erroneously upon the Appellant Corporation. It is true that 96% of disability certificate is issued by the board but the same is not a ground to adopt multiplier method to determine loss of earning without considering the



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admission of the claimant that she after the accident continued to work as a teacher and there is no impediment on the basis of the injury to get further promotion. Hence, the tribunal erroneously applied the multiplier method and granted Rs.30,68,640/- for the loss of income. Hence he seeks to set aside the award amount granted as loss of income. In such circumstances, he seeks to set aside the award amount under the said head.

10. The learned counsel for the claimant on other hand submitted that the trial court considered the evidence of R.W.1 that in order to overtake the vehicle the injured claimant without taking precaution, herself contributed to the accident which is the plea of the appellant corporation. But to prove the same, no evidence was adduced by the corporation except R.W.1. Even R.W.1's evidence is not clear about the pleadings. From the available documents, learned trial judge correctly held that the accident was caused by R.W.1. Apart from that criminal case was registered and final report also was filed against R.W.1. In such circumstances, the learned trial judge after considering the evidence of the injured claimant and the perusal of the sketch marked on side of the claimant and also the filing of final report against R.W.1 correctly fixed negligence upon R.W.1 and hence, there was



no perversity in this finding and same has to be confirmed.

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11. This court considered the rival submission and perused the records and also the number of the precedents relied by the both parties, more particularly on the claimant side.

12. The following points arise for consideration of this appeal:

12.1. Whether the negligence is correctly fixed on the appellant Transport Corporation bus?

12.2. Whether the compensation granted is in accordance with law?

13.The discussion on negligence

The injured claimant was working as a teacher in Padanankurichi Elementary School. Her residence was at the “Veeracholan” Village. On 10.08.2016 after the school hours, in order to go home she was riding her two wheeler bearing registration number TN35 K 8523 around 04.00 pm., from south to north direction on the Kamudi-Veeracholan main road. When she was riding her two wheeler on the said main road near the Muthurani Karai near Krishnan Kovil, the appellant corporation bus coming in the



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opposite direction, dashed against her right side of the vehicle in a rash negligent manner, in which, her right hand was completely crushed resulting in amputation of her right hand. The specific case of R.W.1 namely the appellant corporation driver is that when a van was parked on the right side of the road. The injured claimant tried to overtake that parked lorry without noticing the oncoming vehicle of the appellant corporation and she rammed into the right side of the bus and hence she is solely responsible for the accident. Only due to her negligence the accident took place. This is the basic pleading of the appellant corporation bus driver, namely, R.W.1.

13.1.To prove the same, the court considered the other circumstances. The sketch has been marked by the claimant. It is clearly noted that the accident took place extremely “on the western side of the road”, meant to be used by the deceased. From the sketch it is understandable that the accident has not taken place as pleaded and deposed by the driver of the appellant corporation bus. If the case of the driver is accepted, the accident spot must be on the “eastern side”. But, it is on the extreme western side. The case of the claimant is that she was going on the extreme left side ie., western side



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of the road and the oncoming bus dashed against her and caused the accident. From that it is clear that the accident happened only due to the negligence of the driver. Further, FIR was registered against the driver of the corporation bus and the final report was also filed against him. He did not question the validity of the same. In view of the above appreciation of the fact, apart from the finding of the learned trial judge, this court finds that there was no negligence on the part of the victim as pleaded by the appellant corporation. The further submission of the appellant corporation that the appellant did not wear the helmet and hence there was a contributory negligence on the part of the injured claimant is not accepted in this case. The reason being that the claimant did not suffer any head injuries. The appellant corporation bus was negligent and dashed against the right side of the injured claimant's vehicle and caused the accident. In the said circumstances, this court finds no merit in the contention of the appellant corporation that the injured herself was responsible for the accident and affirms the finding of the learned tribunal that the appellant corporation bus driver was solely responsible for the accident.



14. The discussion on quantum

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14.1. The learned counsel for the claimant further made a detailed submission relating to the enhancement of compensation. The injured claimant was working as a teacher before the accident. She is a married woman living with her husband and child. After the accident, her right hand had been amputated upto her shoulder and hence, she is unable to even wear her attire and find it difficult to attend nature's call and do ablutions without the help of somebody.

14.2. The trial court has erred in not applying the multiplier method and had not awarded suitable compensation under the head of attendance. He relied the judgment of the Honorable Supreme Court in the case of ***Kajal Vs. Jagdish Chand and others*** reported in ***2020 (4) SCC 413***. In special cases, the Supreme Court adopted the multiplier method to provide the attendant's charges. The learned counsel further elaborated the argument that the future medical expenditure is not given effect and also the social excommunication as a result of the amputation, has also not been considered. Apart from that no proper compensation was granted to the appellant under various heads. Hence she seeks for enhancement of the compensation.



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15.To consider the said submission of the learned counsel appearing for the claimant to enhance the compensation, this Court duty bound to recapitulate the precedents to determine the compensation in the motor accidental case of injury.

15.1.The Hon'ble Supreme Court, reiterated the requirement of the Motor Vehicle Accident Tribunal and the High Courts to decide the Motor Accident injury cases with more sensitive responsibility that is usually taken in other death cases. Some of the judgments of the Hon'ble Supreme Court and other Courts in this regard are as follows:

Case Laws	Relevant portions
<i>Nizam's Institute of Medical Sciences v.Prasanth S. Dhananka</i> (2009) 6 SCC 1	<i>"90. At the same time we often find that a person injured in an accident leaves his family in greater distress vis-à-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity."</i>
<i>Shilaben Ashwin Kumar Rana Vs. Bhavin K.Shah and other</i> (2020) 18 SCC 652	<i>cases involving disability are in many respects even more tragic than cases of death, particularly where the disability is of a nature involving a lifelong condition of despair and helplessness.</i>



*Divisional
Controller,
KSRTC v. Mahadeva
Shetty and another,*
2004 (1) TN MAC
534 (SC) Arijit
Pasayat, J.

In case of personal injury the position is different from loss of property. In the later case there is possibility of repair or restoration. But in the case of personal injury, the possibility of repair or restoration is practically non-existent.

The reason behind the above observation of the Hon'ble Supreme Court is that the motor accident claim is one time measurement, not with recurring cause of action as in the case of maintenance claim either for increase or decrease. Therefore, the determination of compensation must be full, adequate and just. The same was observed by the House of lord as earlier in the year 1874 itself in the case of ***Phillips v. Western Railway Co.***, reported in ***1874 (4) QBD 406, Field, J.***, while emphasizing that damages must be full and adequate, it was held thus:

*“you cannot put the plaintiff back again into his original position, but you must bring your reasonable common sense to bear, and you must always recollect that this is the only occasion on which compensation can be given. **The plaintiff can never sue again for it. You have, therefore, now to give him compensation once and for all.** He has done no wrong, he has suffered a wrong at the hands of defendants and you must take care to*



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give him full and fair compensation for which he has suffered.”

emphasize supplied

15.2.The physical frame of the claimant has been shattered and money cannot compensate what has been shattered. No amount of compensation can restore the lost limb of the claimant. There must be determination of the fair compensation and the same has been reiterated by the house of Lord and the Court of appeal and our Apex Court in the following cases:-

15.2.1.Armsworth v. South Easter Railway Co., reported in 1847 11

Jur. 758 at 760, it is held as follows:

“Scarcely any sum could compensate a labouring man for the loss of a limb, yet you do not in such a case give him enough to maintain him for life... You are not to consider the value of existence as if you were bargaining with annuity office.... I advise you to take a reasonable view of the case and give what you consider fair compensation.”

15.3.In *Fowler v. Grace* [*Fowler v. Grace*, reported in (1970) 114

Sol Jo 193 (CA)] , Edmund Davies, L.J. has said that:



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‘It is the manifest duty of the Tribunal to give as perfect a sum as was within its power. There are many losses which cannot easily be expressed in terms of money. If a person, in an accident, loses his sight, hearing or smelling faculty or a limb, value of such deprivation cannot be assessed in terms of market value because there is no market value for the personal asset which has been lost in the accident, and there is no easy way of expressing its equivalent in terms of money. ...’

15.4. Lord Reid in ***Baker v. Willoughby*** [***Baker v. Willoughby***, reported in **1970 AC 467** has said:

‘... A man is not compensated for the physical injury: he is compensated for the loss which he suffers as a result of that injury. His loss is not in having a stiff leg: it is in his inability to lead a full life, his inability to enjoy those amenities which depend on freedom of movement and his inability to earn as much as he used to earn or could have earned....’”

15.5. Lord Morris of Borth-y-Gest in ***Perry v. Cleaver***, reported in **1969 ACJ 363** (HL, England), said “to compensate in money for pain and



for physical consequences is invariably difficult but...no other process can be devised than that of making a monetary assessment”.

15.6. The Supreme Court held in ***R.D. Hattangadi v. Pest Control (India) Pvt. Ltd. And Others***, reported in ***(1995) 1 SCC 551***:

“Whenever any amount is determined as the compensation payable or any injuries suffered due to the accident, the object is to compensate such injury so far as money can compensate, because, it is impossible to equate money with the human suffering or personal deprivations. Money cannot renew a broken and shattered physical frame.”

15.7. ***Malay Kumar Ganguly v. Dr. Sukumar Mukherjee***, reported in ***(2009) 9 SCC 221 at page 282***

170. Indisputably, grant of compensation involving an accident is within the realm of law of torts. It is based on the principle of restitutio in integrum. The said principle provides that a person entitled to damages should, as nearly as possible, get that sum of money which would put



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him in the same position as he would have been if he had not sustained the wrong.

15.8.In *Rekha Jain v. National Insurance Co. Ltd.*[*Rekha Jain v. National Insurance Co. Ltd.*, reported in (2013) 8 SCC 389, this Court at paragraphs 34-35, 38-39 and 41-43, with regard to the quantum of damages, has held as under:

“34. ... ‘24. In deciding on the quantum of damages to be paid to a person for the personal injuries suffered by him, the court is bound to ascertain all considerations which will make good to the sufferer of the injuries, as far as money can do, the loss which he has suffered as a natural consequence of the wrong done to him.’

(1)In *Nagappa v. Gurudayal Singh*, reported in [2003 ACJ 12 \(SC\)](#):

“(13) ...it is for the Claims Tribunal to determine just compensation from the evidence which is brought on record despite the fact that claimant has not precisely stated the amount of damages of compensation which he is entitled to. If evidence on record justifies passing of such award, the claim cannot be rejected solely on the ground that claimant has restricted his claim...”



(2) ***Oriental Insurance Co. Ltd. v. Mohd. Nasir***, reported in **2009**

ACJ 2742 (SC):

“(27) Even if no amount is claimed, the Commissioner must determine the amount which is found payable to the workman.

(Emphasis added)

(3) ***Ningamma v. United India Insurance Co. Ltd.***, reported in **2009**

ACJ 2020 (SC):

“(23) ...it is not necessary in a proceeding under the MVA to go by any rules of pleadings or evidence. Section 166 of the MVA speaks about ‘just compensation’. The court's duty being to award ‘just compensation’, it will try to arrive at the said finding irrespective of the fact as to whether any plea in that behalf was raised by the claimant or not... ”

(Emphasis added)

15.9.In ***R.D. Hattangadi v. Pest Control (India) (P) Ltd.***, reported in **(1995) 1 SCC 551 at page 555** has held as follows:

“(9) Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special



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damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant : (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include : (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages to compensate towards the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.



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15.10.The object of granting compensation as rightly observed by the

Hon'ble Thiru.Justice N. Kirubakaran in the judgment in the case of

Pradeep v. P.V. Mathai, reported in ***(2012) 2 TN MAC 240 at page 243***

Compensate-Console-Comfort”: What is the principle to be followed in the case of Motor Vehicle claims is “Compensate-Console-Comfort” of.

The tribunal has a duty to follow the above C³ in the case of determination of the Motor Vehicle compensation. Object of the compensation is based on the maxim “restitutio in integrum”.Indisputably, grant of compensation involving an accident is within the realm of law of torts. It is based on the principle of *restitutio in integrum*. The said principle provides that a person entitled to damages should, as nearly as possible, get that sum of money which would put him in the same position as he would have been if he had not sustained the wrong. (See *Livingstone v. Rawyards Coal Co.* [(1880) 5 AC 25 (HL)])

15.11.It is further relevant to extract the following observation made by this Court ***Dhanalakshmi Vs. Paneerselvam and another*** reported in ***2017 (2) TNMAC 480:-***



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I woke up from the surgery minus my left and right leg(s)

With searing pain below my hip as if a powder keg

Exploded deep within my thigh, leaving nothing there

But tissues sewn together, which was more that I could bear...

*The pain, so knife-like, so intense has melted with the snow And now
as spring awakens in my chair I slowly go*

To the window of my bedroom and the windows of my mind

Wondering if I will be forever so confined...

—Richard Lackman

8.The above said poetics reveals the unbearable pain every amputee has to undergo. Not only the physical pain, but also the mental pain for having become 'forever confined'—this fact and thought would give perennial daunting and hunting pain in the mind. Even without any poetic prop, anybody can easily empathise with the cause of the amputees.

15.12.Whenever we use Word “Mother (அம்மா), Sister (அக்கா தங்கை), Wife (Darling), Daughter, Grand Daughter, etc., in our own mother tongue, we experience a pleasant bond. The said bond naturally emanates from their unparalleled contribution towards the family. Hence, an author by name “Donna Ashworth” expresses the following touching words:-

*When GOD created woman he was working
late on the 6th day.*



An angel came by and asked, “Why spend so much time on her?”

The LORD answered, “Have you seen all the specifications I have to meet to shape her?

She must function in all kinds of situations.

She must be able to embrace several kids at the same time.

Have a hug that can heal anything from a bruised knee to a broken heart.

She must do all this with only two hands. She cures herself when sick and can work 18 hours a day.”

The ANGEL was impressed, “Just two hands...impossible! And this is the standard model?”

15.13.Therefore, the hands of women not only meant for discharging the household chores things and also to console the human mind by hugging by hands”. Such God gifted right hand of the claimant crushed and amputated in the motor vehicle accident happened on 10.08.2016.

15.14.It is always a vexed question to determine compensation in similar cases of amputation entire right hand and this Court faced the same in this case. By keeping in mind above principles and considering the nature



of injuries and the permanent disability and the condition of the claimant, this court is inclined to grant adequate and just compensation by dwelling upon the process of the redetermination of the compensation as a appellate court by exercising power under section 173 of the motor vehicle act under the various heading.

16.Discussion on the head attendant charges:

Normally, the cost of attendant is awarded only for the purpose of taking care of the injured till he is able to look after himself. The inability to take care during the period of hospitalisation and post-hospitalisation for a specified period of time is generally the norm while awarding compensation for attendant charges. However, in exceptional case, where the injured is immobile and in case like amputation, there is total inability on the part of the injured to take care of himself or herself without aid of attendant's service for an undefined period and in such cases, the court has to take into consideration the necessity for award of just and reasonable compensation. More particularly, in the case of the amputation of any part of the women as a result of the accidental injuries, the Court has to consider the attendant's charges by adopting the multiplier method for simple reason that the



gratuitous services rendered by women to her family members cannot be measured with that of services of an employee.

16.1. Similarly, in the following cases, the Hon'ble Supreme Court has adopted the multiplier method to arrive the proper attendant's charges.

Case Laws	Relevant Portions
<i>Kavitha Vs. Deepak</i> <i>reported in 2012 ACJ 2161.</i>	<i>Attendant charges calculated as follows: Rs.2,000/- p.m for 25 years Rs.2,000/-X12X25=Rs.6,00,000/-</i>
<i>Kajal Vs. Jagdish Chand</i> <i>reported in 2020 4 SCC 413.</i>	<i>The multiplier system should be followed not only for determining the compensation on account of loss of income but also for determining the attendant charges, etc. We, therefore, assess the cost of one attendant at Rs. 5,000/- which comes to Rs.1,20,000/- p.a and using the multiplier of 18, it works out to Rs.21,60,000/- for the attendant charges for her entire life. This takes care of all the pecuniary damages.</i>
<i>Abhimanyu Partap Singh Vs. Namita Sekhon</i> <i>reported in 2022 8 SCC 489.</i>	<i>As discussed, if we apply the multiplier method and in view of the judgment of Kajal, we accept the rate of attendant charges at Rs.5,000/- p.m for 12 hours, looking to the nature of injuries and disability the claimant is required two attendants at least within 24 hours then the expenses in the head of attendant charges comes to Rs.10,000/- p.m. If we apply the multiplier of 18, the amount comes to Rs. 21,60,000/-</i>

16.2. The gratuitous service of women has been observed by various Courts in different angle and emphasised to grant compensation for the service rendered by her. Some of the precedents are as follows:



16.3. In the case of ***Arun Kumar Agrawal v. National Insurance Co.***

Ltd., reported in **(2010) 9 SCC 218**

The gratuitous services rendered by the wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data can possibly be produced for estimating the value of such services. It is virtually impossible to measure in terms of money the loss of personal care and attention suffered by the husband and children on the demise of the housewife./mother

172. Loss of wife to a husband may always be truly compensated by way of mandatory compensation. How one would do it has been baffling the court for a long time. For compensating a husband for loss of his wife, therefore, the courts consider the loss of income to the family. It may not be difficult to do when she had been earning. Even otherwise a wife's contribution to the family in terms of money can always be worked out. Every housewife makes a contribution to his family. It is capable of being measured on monetary terms although emotional aspect of it cannot be. It depends upon her



educational qualification, her own upbringing, status, husband's income, etc.

*16.4. In the case of **Mehmet v. Perry**, reported in **1978 ACJ 112 (QBD, England)**, the pecuniary value of a wife's services was assessed and granted under the heads of:*

- (a) loss to the family of the wife's housekeeping services;*
- (b) loss suffered by the children of the personal attention of their mother, apart from housekeeping services rendered by her; and loss of the wife's personal care and attention, which the husband had suffered, in addition to the loss of her housekeeping services.*

*16.5. In **Lata Wadhwa and Others v. State of Bihar and Others**, reported in **2001 ACJ 1735**, where the Supreme Court held that The monetary quantification of the work done by the women at home is something that has not been really assessed.*

*16.6. **Arun Kumar Agrawal v. National Insurance Co. Ltd.**, reported in **2010 ACJ 2161 (SC)**:*

26. The gratuitous services rendered by a wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by



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others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend to the employer's work for particular hours. She takes care of all the requirements of husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean, etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.

(27) It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family, i.e., husband and children. However, for the purpose of award of compensation to the dependants, some pecuniary estimate has to be made of the services of housewife/mother. In that context, the term 'services' is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention



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given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier.”

(Emphasis added)

(2) I

....While estimating the ‘services’ of the housewife, a narrow meaning should not be given to the meaning of the word ‘services’ but it should be construed broadly and one has to take into account the loss of ‘personal care and attention’ by the deceased to her children, as a mother and to her husband, as a wife. The award cannot be diminished merely because some close relation like a grandmother is prepared to render voluntary services.



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16.7. The important aspect which eluded consideration by the Tribunal is the services, which were rendered by the injured woman prior to the accident and was thwarted by doing so, after that mishap. Calculation of those services in terms of money is the most difficult thing. In other words, the calculation of compensation in lieu of contribution to be made available by the widow to the upbringing of her dependent child is critical and it becomes all the more difficult, as provision has to be made for her own life, apart from that of her child.

16.8. The Hon'ble three judges bench of this Court in the case of ***Kirti v. Oriental Insurance Co. Ltd.***, reported in ***(2021) 2 SCC 166*** at page 180, has held as follows:

23. In fact, the recently released Report of the National Statistical Office of the Ministry of Statistics & Programme Implementation, Government of India called “Time Use in India-2019”, which is the first Time Use Survey in the country and collates information from 1,38,799 households for the period January 2019 to December 2019, reflects the same gender disparity. [National Statistical Office, Time Use in India, 2019 (September 2020).] The key findings of the survey suggest that, on an average, women spend nearly 299 minutes a day on unpaid domestic services for household members versus



97 minutes spent by men on average. [Id, at p. 56.] Similarly, in a day, women on average spend 134 minutes on unpaid caregiving services for household members as compared to the 76 minutes spent by men on average. [Id, at p. 54.] The total time spent on these activities per day makes the picture in India even more clear—women on average spent 16.9% and 2.6% of their day on unpaid domestic services and unpaid caregiving services for household members respectively, while men spent 1.7% and 0.8%. [Id, at p. x.]

41.2. Taking into account the gendered nature of housework, with an overwhelming percentage of women being engaged in the same as compared to men, the fixing of notional income of a homemaker attains special significance. It becomes a recognition of the work, labour and sacrifices of homemakers and a reflection of changing attitudes. It is also in furtherance of our nation's international law obligations and our constitutional vision of social equality and ensuring dignity to all.

17.1. In this case as per the doctor's evidence the right hand of the claimant had been amputated upto her shoulder. She is unable to perform even his daily ablutions without assistance and she deposed before the Tribunal regarding her unbearable suffering as :

இந்த விபத்தினால் என்னுடைய வலது மேல்
அவயம் துண்டிக்கப்பட்டு விட்டதால்
என்னால் விபத்திற்கு முன்பு போல்



சாதாரணமாக உட்கார்ந்து எழுந்திருக்கவோ, படுக்கையிலிருந்து எழுந்திருக்கவோ இயலாது. மேலும், என்னுடைய அன்றாட கடமைகளான உணவு உட்கொள்ளுதல், குளித்தல், மல ஜலம் கழித்த பின் கப்பில் தண்ணீர் எடுத்து கழுவுவது, தலைவாருவது, ஏழுதுவது போன்ற செயல்களை செய்வதற்கு மற்றவர்களின் துணையை நாட வேண்டியுள்ளது. இவ்வாறாக நான் வாழ்நாள் முழுவதும் எனது அன்றாட கடமைகளை செய்வதற்கு மற்றொருவர் துணை எனக்கு தேவைப்படுகிறது. மேலும் என்னால் மேல் சட்டை அணிய இயலாது. நான் வீட்டை விட்டு வெளியே செல்லும் போது மேல் துண்டு (கூடிநட) போர்த்தியே செல்ல வேண்டியுள்ளது. இந்த விபத்திற்கு முன்பு நான் வலது கை பழக்கம் உடையவராகவே இருந்து வந்தேன். இந்த விபத்தினால் என்னுடைய வலது கை வலது தோள்பட்டை அளவிற்கு துண்டிக்கப்பட்டு விட்டதால் வலது கை இல்லாமல் என்னால் வீட்டு வேலைகள் செய்யவோ, ஆசிரியை பணியை செய்ய இயலாது. இந்த விபத்தினால் எனக்கு ஏற்பட்டுள்ள



கொடுங்காயங்களினால் நிரந்தர ஊனம் ஏற்பட்டுள்ளது. அதனால் நான் ஆசிரியை பணியினை சிறப்பாக செய்ய இயலாமல் நிரந்தர வருமான இழப்பும் ஏற்பட்டுள்ளது. மேலும் அதனால் எனக்கு உடல் ரீதியாகவும், மனரீதியாகவும் பலத்த அதிர்ச்சி ஏற்பட்டு எனது இயல்பு வாழ்க்கை பாதிக்கப்பட்டுள்ளதுடன், வாழ்க்கை வசதி இழப்பும் மற்றும் வாழ்நாள் குறைவும், சுக வாழ்க்கை அனுபவிப்பதில் தடையும் ஏற்பட்டுள்ளது.

17.2.From the above evidence of injured, it is painful to console her suffering.

17.2.1. The services rendered by the injured to the family are both tangible and intangible. Even tangible services can not be valued in terms of money and it is left out of consideration either in the name of sacrifice or selfless service or invaluable.

17.3.The working woman has her responsibility both at the “working place” as well as at “the home”. The responsibility as wife never ends. She



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has a duty to take care of the husband and also the child. In each stage of her life, she has different roles. She has to take care of her parents before marriage. The responsibility continues after marriage to attend her husband and thereafter her child till the end of her life. She would also lend her hands even to the grandchildren. In the said circumstances, she has lost the right hand. In view of the amputation of the right hand from the shoulder, she is unable to do household activities. Apart from that she is unable to do her work as a teacher in the school. Even in the school, she has to work with the help of somebody. Since her right hand is amputated, she is unable to discharge her duty as a teacher as done before the accident.

17.4. Woman companionship is something extraordinary. In each stage woman companionship is required by all the family members. From the birth to before marriage, her companionship as a daughter is required by the parents. After the marriage, up to the birth of the child, her companionship is required by the husband. After the birth of the child, her companionship is required by both the husband and child. Even after the child's marriage, her companionship does not come to an end and further it is required by her grandchildren. In all aspects, until her death, the woman



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companionship is required by, family members. That is why, all over the world, Law Courts while determining the compensation in the case of a woman, claimant special attention has been given to her considering her household duties. In this case the injured claimant is unable to do her household duties. After the removal of her right hand, she has to depend on somebody, even for her own daily activities. She is unable to discharge her household responsibilities to her husband and her child. Apart from her personal suffering, the child and the husband are deprived of her full contribution. In the said circumstances, this court feels that it is a case for applying the multiplier method in awarding the attendant's charges.

17.5. Attendants charges in the case of working women is divided in two categories. The requirement of the attendant to discharge the household activities in her house and requirement of attendant in discharging her employment activities. Hence she requires two attendants' charges. Earlier to the accident, it was the admitted case that she herself was riding the vehicle and attending the school. After the accident, she is unable to drive the vehicle and hence she has to depend on other mode of transport or other persons even for attending the school. Apart from that, in the school, she



was using right hand for routine work. But due to that accident, she is unable to provide full commitment attached with the profession. Even though she receives her salary as per the norms fixed by the Government without any loss but the expenditure being incurred to discharge her duty with the assistance of the other person is to be taken into consideration in determining the award under the head of the attendant charges. Hence, this court fixes the attendant charges in the discharge of her duty in the school as Rs.3,000/- per month.

17.6. Apart from that, for discharging the household activities, this court considered the various aspects. Firstly she is unable to do her daily work even to wear her clothes and also not able to take bath and perform ablutions. In the said circumstances, so far as the household activities are concerned, this Court divides the attendant's charges in two categories. One is the attendant charges for her personal requirements and other is the attendant charges for doing household duties. As far as her personal requirement is concerned, this court fixes a sum of Rs.3,000/- per month.

17.7. Apart from that, it is an admitted fact that there may be an age for retirement from Government Service in the case of the salaried persons



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and there is no retirement for the household service. The household service is never ending. It ends with the death of the woman, whether at a young age or at old age. In all the ages, womens' household service is part of their life. So far as her duties towards the husband and the child are concerned, this court fixes Rs.2,000/- per month. Considering the over all circumstances and the peculiar nature of this case where the woman has suffered intolerable social stigma attached with the amputation of the right hand, this court is inclined to fix the attendant charges of Rs.8,000/- per month and the same is calculated for the remaining period of 70 years as decided by the Hon'ble Supreme Court in the case of *Kajal Vs. Jagtshchane* reported in **2020 4 scc 413**. Thus the attendants charges of the claimant is calculated

$$8000 \times 12 \times 32 = 30,72,000/- .$$

18. Discussion on the head of the loss of income and permanent disability:

18.1. The learned counsel for the transport corporation submitted that there was no income loss and hence he sought to set aside the award amount granted by the learned tribunal for loss of income. The said submission of the learned counsel for the transport corporation deserves to be accepted to



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certain extent. Even though 98% disability is stated by the medical board but as admitted by the claimant in her evidence that she continues her employment as a teacher and there is was no impediment for further promotion, due to the amputation of the right hand, this court is inclined to set aside the award granted under the head of the loss of income to the extent of 30 lakhs. But this court is duty bound to award amount under the head of permanent disability. The term 'permanent disability' refers to the residuary incapacity or the loss of use of some part of the body found existing at the end of the period of treatment/recuperation, which would remain forever without marked change in future. Therefore, the Hon'ble Supreme Court in the case of *Subulaxmi V. TN state Transport corporation* reported in *2012 10 SCC 177* and in the case of *S.Manickam Vs. MTC limited* reported in *2013 12 SCC 603*, has directed to pay the amount equivalent to the percentage of the disability under the separate head of the permanent disability apart from the award in the compensation under the head of loss of income calculated on the basis of the multiplier method. Following the same, upon considering the circumstances that the Tribunal has failed to grant any amount per percentage of the disability as awarded by this Court in various cases, this Court inclines to award Rs.5,000/- per



percentage. This Court increases the said amount from Rs.3,000/- to Rs. 5,000/- per percentage by considering the cost of living. Therefore, the claimant is entitled to get a sum of Rs.4,90,000/- under the head of permanent disability. $[98 \times 5000 = 4,90,000/-]$

19.Discussion on the head of Mental Agony:

Mental agony is the internal pain, a person undergoes just by the thought that he is disabled and is not in a position to do something. It is different from the physical pain that a person suffers due to injury. Because of the accident, indirectly, there is a social excommunication of the injured claimant. Due to the social excommunication, the injured claimant is unable to participate in various social functions due to the amputation of her right hand. In the said circumstances, her mental agony relating to the day-to-day affair is considered and it is calculated as Rs.2,00,000/-.

20.Discussion on the head of the loss of amenities:

20.1.The loss of amenities covers deprivation of the ordinary experiences and enjoyment of life and includes loss of the ability to walk or see, loss of a limb or its use, loss of marriage prospects and loss of sexual



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function. on account of disability suffered by claimant, namely, amputation of right hand, she has to carry on rest of her life with much hardship. She cannot lead her normal life as she was doing before the accident. Before accident, the claimant was driving her two wheeler to reach the work place. She lost the said pleasure of driving. Before accident, she used her right hand to write and for all the official's purpose. From the record, it is clear that the claimant has painfully put her left hand thumb impression in the claim petition. Therefore, she is entitled to Rs.1,00,000/- under the head of loss of amenities.

21. Discussion on the head of medical expenditure to fix prosthetic hand:

21.1. Apart from that, her right hand is amputated and there is a specific pleading that there is a requirement of further medical expenditure. For the future medical expenditure only a sum of Rs.1,00,000/- has been awarded. The process of prosthetic limb will be incurring more recurring expenditure. In this country the medical expenditure increases alarmingly due to the cost of living. In this case only Rs.1,00,000/- has been awarded and no amount for future medical expenditure is awarded but only one lakh



rupees is awarded for prosthetic hand. In this aspect, it is relevant to extract

the following evidence of Doctor/P.W.2:

சிவகாமி என்பவர் வழக்கு விபத்தில்
காயமடைந்து அவருக்கு வலது கை
மேற்பகுதியில் காயம் அடைந்து வலது
கையில் தோள்பட்டைக்கு கீழ்
துண்டிக்கப்பட்டிருந்தது. அவருக்கு செயற்கை
கை பொறுத்துவதற்காக அவருக்கு
ரூ.3,00,000 வரை செலவாகும். அவருக்கு
எடுக்கப்பட்ட நுண்கதிர் படம் ம.சா.ஆ.29
ஆகும். அவ்வாறு செயற்கை
பொருத்தபடுமாயின் 5 முதல் 7
ஆண்டுகளுக்கு ஒருமுறை மேற்படி செயற்கை
கை பொருத்தப்பட வேண்டும். மேற்படி
செயற்கை கையின் பராமரிக்க வருடம்
ஒன்றிற்கு ரூ.3 ஆயிரம் முதல் 5 ஆயிரம்
வரை செலவாகும். செயற்கை கை
பொறுத்தும் வகைக்கு நான் எதிர்கால
செலவுகளை பொறுத்து தான் நான்
சாட்சியம் வழங்குகிறேன் என்றால் சரிதான்.
செயற்கை கை பொறுத்துவதற்கு அரசு
மானியம் வழங்கப்படும் என்றால் சரிதான்.

After fixing the prosthetic hand, the same has to be properly maintained and
the same requires recurring expenditure. The recurring expenditure is to be



taken into consideration and the prosthetic hand is to be changed periodically. In the case of ***Mohd. Sabeer v. U.P. SRTC***, reported in 2022

SCC OnLine SC 1701

**COMPENSATION FOR THE PURCHASE
AND MAINTENANCE OF THE PROSTHETIC
LEG**

22. The High Court has awarded a compensation of Rs. 5,20,000/- for the prosthetic limb and Rs. 50,000/- towards repair and maintenance of the same. The Appellant submits that the cost of the prosthetic limb itself is Rs. 2,60,000/- and the life of the prosthetic limb is only 5-6 years. The prosthetic limb also requires repair and maintenance after every 6 months to 1 year, and each repair costs between Rs. 15,000 to Rs. 20,000/-. This would mean that the prosthetic limb would last the Appellant for only 15 years under the current compensation. The Appellant at the time of the accident was aged 37 years and has a full life ahead. It has been clearly stated by this Court in the case of Anant Son of Sidheshwar Dukre (Supra) that the purpose of fair compensation is to restore the injured to the position he was in prior to the accident as best as possible. The relevant paragraph of the judgment is being extracted herein:

“In cases of motor accidents leading to injuries and disablements, it is a well settled principle that a person must not only be compensated for his physical injury, but also for the non-pecuniary losses which he has suffered due to the injury. The Claimant is entitled to be compensated for his



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inability to lead a full life and enjoy those things and amenities which he would have enjoyed, but for the injuries.”

“The purpose of compensation under the Motor Vehicles Act is to fully and adequately restore the aggrieved to the position prior to the accident.”

23. As per the current compensation given for the prosthetic limb and its maintenance, it would last the Appellant for only 15 years, even if we were to assume that the limb would not need to be replaced after a few years. The Appellant was only 37 years at the time of the accident, and it would be reasonable to assume that he would live till he is 70 years old if not more. We are of the opinion that the Appellant must be compensated so that he is able to purchase three prosthetic limbs in his lifetime and is able to maintain the same at least till he has reached 70 years of age. For the Prosthetic limbs alone, the Appellant is to be awarded compensation of Rs. 7,80,000 and for maintenance of the same he is to be awarded an additional Rs. 5,00,000/-.

21.2. In these circumstances, the award amount under the future medical expenditure and recurring expenditure to maintain the prosthetic hand are to be considered and the same has to be enhanced up to Rs.7,00,000/-. Hence, this Court inclines to enhance the recurring expenditure to maintain the prosthetic hand.



WEB COPY **22.Conclusion:**

22.1.The disability is worse than the fatal accident, as the victim has to lead through her life with permanent disability. Therefore, the Hon'ble Supreme Court and Various High Courts awarded more compensation than that of the compensation awarded in fatal cases. In this aspect, it is relevant to extract the principle laid down by the various Courts in the case of *Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka*, reported in (2009) 6 SCC 1 has held as follows:

90. At the same time we often find that a person injured in an accident leaves his family in greater distress vis-à-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more



so on his family and attendants and the stress saps their energy and destroys their equanimity.

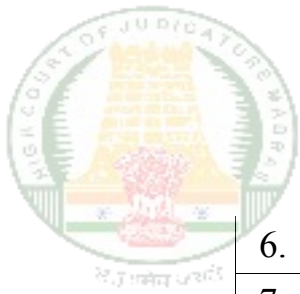
Managing Director, Tamil Nadu State Transport Corporation

Limited, Vellore v. Ajay Marar, reported in (2010) 2 TN MAC 167

17. The physical frame of the claimant has been shattered and money cannot compensate what has been shattered. No amount of compensation can restore the lost limp of the claimant.

22.2. Therefore, this Court revisited the entire case and reassessed the compensation with the following modification:-

<i>S. No</i>	<i>Description</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>	<i>Award confirmed or enhanced or granted</i>
1.	For attendants charges	-	30,72,000/-	Awarded
2.	For Permanent disability	30,68,640/-	4,90,000/-	Reduced
3.	For fixing prosthetic hand	1,00,000/-	7,00,000/-	Enhanced
4.	For pain and sufferings	1,00,000/-	1,00,000/-	Confirmed
5.	For transportation	15,000/-	15,000/-	Confirmed



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6.	For Nutrition	20,000/-	20,000/-	Confirmed
7.	For Medical Expenditure	3,32,302/-	3,32,302/-	Confirmed
8.	For loss of amenities	-	1,00,000/-	Awarded
9	Mental Agony	-	2,00,000/-	awarded
	Total	Rs.36,35,942/-	Rs.50,29,302/-	By enhancing a sum of Rs. 13,93,360/-

23. Accordingly, the appeal in C.M.A.(MD).No.107 of 2021 filed by the transport corporation is dismissed and the appeal in C.M.A.(MD).No. 567 of 2020 filed by the claimant is partly allowed by enhancing the compensation awarded by the Tribunal from Rs.36,35,942/- to Rs.50,29,302/- along with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of realisation. The respondent/ transport corporation in C.M.A.(MD).No.567 of 2020 is directed to deposit the enhanced award amount, minus the amount if already deposited, within a period of four weeks from the date of receipt of a copy of this order. The claimant/ appellant is directed to pay the excess court fee, if any. On such



deposit being made, the appellant in C.M.A.(MD).No.567 of 2020 is permitted to withdraw the amount. No costs.

[V.B.S.J] [K.K.R.K.J.]
28.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
sbn



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1. The Chief Judicial Magistrate,
MACT, Virudhunagar @ Srivilliputhur.
2. The Managing Director,
The Tamil Nadu State Express Transport Corporation,
Kumbakonam.
3. The Section Officer,
VR Section(Records),
Madurai Bench of Madras High Court, Madurai.



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**V.BHAVANI SUBBAROYAN, J.
AND
K.K.RAMAKRISHNAN, J.**

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C.M.A.(MD).Nos.107 of 2021
and 567 of 2020

28.10.2024