



C.M.A.(MD)No.1459 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.11.2024

CORAM:

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

**C.M.A.(MD)No.1459 of 2024
&
C.M.P(MD)No.15644 of 2024**

The Manager,
United India Insurance Company Limited,
1547, Classic Towers, II Floor,
Trichy Road,
Coimbatore.

... Appellant/ 2nd Respondent

Vs.

1.Sankarapandian ...1st Respondent / Petitioner
2.Clemence Irudayaraj ...2nd Respondent/1st Respondent

(No relief sought against 2nd respondent
Hence notice not necessary for 2nd respondent)

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act,
1988, to set aside the fair and decretal order dated 14.07.2023 made in



C.M.A.(MD)No.1459 of 2024

MCOP No.1298 of 2019 on the file of Motor Accident Claims Tribunal,
(Special Sub Court), Madurai, and allow this Civil Miscellaneous
Appeal.

For Appellant : Mr.I.Robert Chandra Kumar

For Respondent No.1 : Mr.V.Gubanthiran

JUDGMENT

(Judgment of this Court was delivered by **R.POORNIMA, J.**)

The appellant / 2nd respondent / Insurance Company has filed this Civil Miscellaneous Appeal against judgment and decree dated 14.07.2023 passed in M.C.O.P.No.1298 of 2019 by the Motor Accident Claims Tribunal (Special Sub Court) Madurai.

2. Brief case of the claimant before the lower Court are as follows:

(a) On 8.3.2018, the petitioner after his work returned from Thalavaipuram to Coimbatore, he was travelling in a private bus named as Jaya Travels bearing registration No.TN.76 U 3499. The bus was driven by the first respondent, driver, in a rash and negligent manner without following the traffic rules and regulation.



C.M.A.(MD)No.1459 of 2024

(b) When the bus was nearing Killani Nursing College, Rajapalayam to Madurai Road at about 8.30 p.m., the first respondent's driver turned the bus at an L-bend with high speed. Due to the rash and negligent driving, he could not control the bus and the bus was capsized, due to the sudden impact, the petitioner sustained injuries all over the body viz., left hand index, middle, ring and small fingers were severed in the accident.

(c) The petitioner was taken to the government Rajaji Hospital at Madurai and took treatment as inpatient from 09.03.2018 to 05.04.2018. Thereafter, the petitioner was admitted at Rex Ortho Hospital, Coimbatore, where artificial finger were implanted in his left hand index and middle fingers by way of operation. The petitioner spent nearly Rs.1,00,000/- for that operation. The medical experts wanted to further operate on his middle and small fingers. The accident happened only due to the rash and negligent act of the first respondent's driver.

(d) A criminal case has been registered against the first respondent's driver at Kallupatti Police Station in Crime No.53 of 2018, under sections 279, 337 of I.P.C. The case is under investigation.

(e) The petitioner sustained multiple grievous injuries all over the body, and his left hand amputated due to finger injuries. The petitioner



C.M.A.(MD)No.1459 of 2024

sustained permanent disability. He is unable to lift articles and pursue his professional work in engineering . He suffered immense pain and suffering at the time of undergoing treatment.

(f) At the time of accident, the petitioner was aged about 20 years and he was hale and healthy,he is the only breadwinner of his family. After the accident, he was not able to do his normal work and he lost his professional income due to amputation of his left hand fingers. The petitioner and his family member are kept in the dark. He has claimed Rs.30,00,000/- (Rupees Thirty Lakhs only) as compensation.

3. The case was filed against the driver and the insurance company. The first respondent, driver did not appear and was called absent and set ex-parte.

4. The second respondent filed their counter denying all the allegations, including the petitioner earning capacity, and the manner of accident. The respondent stated that at the time of accident, the bus was properly driven by the first respondent, at that time, the petitioner was in a sleeping mood. When the bus slowly turned on L bend near Killani Nursing College, the petitioner lost his balance and fell out of the bus



C.M.A.(MD)No.1459 of 2024

and sustained injuries. Accident happened only due to negligence act of the petitioner and the first respondent is not responsible for the same.

5. On the side of the petitioner, the petitioner has been examined as PW1 exhibit P1 to P9 were marked. The medical board issued disability certificate which was marked as Ex.C1.

6. After hearing, both side, the, trial, judge awarded compensation of Rs.43,96,400/- under the following heads :

Permanent disability	Rs.38,55,600/-
Pain and sufferings	Rs.2,00,000/-
Medical expenses	Rs.2,95,300/-
Extra nourishment	Rs.25,000/-
Nursing	Rs.15,500/-
Travel expenses	Rs.5,000/-
Total	Rs.43,96,400/-

The learned Judge directed the the second respondent to pay the entire amount.

7. Aggrieved by the said order, the present Civil Miscellaneous Appeal has been filed by the applicant who is the 2nd



C.M.A.(MD)No.1459 of 2024

respondent before the lower Court against the quantum of compensation with the following among other grounds :

1. The award of the lower Court is erroneous and exorbitant, and there is no loss of avocation in view of the injuries

2. That the Tribunal are not expected to apply multiplier method. It is admitted by the petitioner that he is working even after the accident and he had also produced the salary certificate to prove his employment

3. That the injury sustained by the petitioner is fracture injury and he had lost his four fingers on his left hand. However, his injuries did not affect his avocation. Hence the multiplier method applied is not proper.

4. That the learned tribunal awarded an exorbitant sum of Rs.15,000 as monthly income. The petitioner himself admitted that at the time of accident, he was not working anywhere and was a student and therefore, there is no chance for loss of income.

8. The counsel for the first respondent/claimant argued that the accident occurred due to the rash and negligent act of the first respondent and the second respondent who is the insurance company is



C.M.A.(MD)No.1459 of 2024

liable to pay the compensation.

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9. The first respondent/claimant lost his four fingers on his left hand. His future prospects were affected. He could not get a job for his professional course.

10. He further argued that after the accident, the respondent is not able to attend his regular day-to-day activities. After considering the entire evidence, the lower court allowed the compensation which is proper and there is no illegality and prayed to confirm the order of the trial Court.

11. Both sides heard.

12. In this case, the point for consideration is whether the multiplier method adopted by the trial court for arriving compensation is just and proper or liable to be set aside.

13. There is no grievance with regard to the compensation awarded on various heads, except the multiplier applied by learned Judge.



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14. The judgement reported in Rajkumar v. Ajay Kumar reported in 2011 (1) SCC 343, our Hon'ble Supreme Court sets out certain guidelines to assess compensation by the Motor Accidental Claims Tribunal.

8. In this regard, it is relevant to extract paragraphs 10 and 13 of the judgment in Raj Kumar's case(supra):-

"10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or

(ii) whether in spite of the permanent disability, the claimant could still effectively



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C.M.A.(MD)No.1459 of 2024

carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation



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C.M.A.(MD)No.1459 of 2024

under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.

13. We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not



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C.M.A.(MD)No.1459 of 2024

result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."

9.A Division Bench of this Court in United India



Insurance Co. Ltd., vs. Veluchamy and another reported in I (2006) ACC 416, sets out the parameters as to when the multiplier method can be adopted in the case of injury. In Paragraph 11 of the decision reads thus:-

"11. The following principles emerge from the above discussion:

(a) In all cases of injury or permanent disablement 'multiplier method' cannot be mechanically applied to ascertain the future loss of income or earning power.

(b) It depends upon various factors such as nature and extent of disablement, avocation of the injured and whether it would affect his employment or earning power, etc. and if so, to what extent?

(c) (1) If there is categorical evidence that because of injury and consequential disability, the injured lost his employment or avocation completely and has to be idle for the rest of his life, in that event loss of income or earnings may be ascertained by applying the 'multiplier method' as provided under the Second Schedule to Motor Vehicles Act, 1988. (2) Even so there is no need to adopt the same period as that of fatal cases as provided under the Schedule. If there is no amputation and if



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C.M.A.(MD)No.1459 of 2024

there is evidence to show that there is likelihood of reduction or improvement in future years, lesser period may be adopted for ascertainment of loss of income.

(d) Mainly it depends upon the avocation or profession or nature of employment being attended by the injured at the time of accident."

15. In this case, the petitioner Sankara Pandian who is a young man aged about 20 years had suffered 85% disability on his left hand due to the injury sustained by him in the accident occurred on 08.03.2018 which is established by the medical report, Ex.C1, the disability certificate issued by the medical board of Government Rajaji Hospital, Madurai dated 20.02.2023 in which the medical Board assesses the disability as follows :

Loss of prehension for function	30%
Partial loss.	15%
Loss of hand strength,	30%
Additional weightage	10%
Total	<u>85%</u>

which shows that due to crush injury, the petitioner had suffered 85%



C.M.A.(MD)No.1459 of 2024

disability on his left hand. However, it is not the case of the petitioner that the due to the injury sustained by him he suffered total functional disability, rather it is proved that the above said permanent disability is partial one and he is able to perform some duties.

16. The petitioner admitted that subsequent to the accident he is working in a private company. To prove the same, the petitioner himself produced salary certificate, Ex.P6 which shows that he received monthly salary Rs.20,000/- and incentive Rs.4000/- which proved that he is not totally disabled from earning for his livelihood and restricted from discharging duties. Medical board assessed 85% of disability with reference to the left hand and not to the whole body.

17. However, we notice from Medical certificate that due to accident, the claimant sustained injury on his left hand and in the result, amputation of 2nd to 5th finger at the middle phalanx level and plastic surgery done. In normal course it can lead to significant physical, and psychological challenges for an individual and it will affect his day-to-day activities.



C.M.A.(MD)No.1459 of 2024

18. His future marital life also will be affected in view of the above disability and he would face financial and professional setbacks.

19. Though he could perform some work, but he could not perform all the duties and body functions that was performed before the accident and the petitioner is entitled to be compensated for the above disability.

20. In this connection, he relied upon the judgement reported in 2003 (7) SCC 197, Divisional Controller, KSRTC Vs. Mahadeva Shetty and another, wherein, the Hon'ble Supreme Court had held as follows :

“15.It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages fixed should be in accordance with the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life, which has been



curtailed because of physical handicap. The normal expectation of life is impaired. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be “just” and it cannot be a bonanza; not a source of profit but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be “just” compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of “just” compensation which is the pivotal consideration. Though by use of the expression “which appears to it to be just”, a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness.. ...”

21. It is argued by the appellant's counsel that the petitioner



C.M.A.(MD)No.1459 of 2024

was unemployed at the time of accident and the sum of Rs.15,000/- fixed towards monthly income is excessive and liable to be reduced.

22. The petitioner is a Mechanical Engineer, he would derive a sum of Rs.15,000/- per month soon after completing his graduation at the time of accident he was 20 years and nearing completion of his studies and it is just and proper to fix his income as Rs.15,000/- per month and the trial Court fixed nominal income only.

23. Due to the partial disability, we feel it would be appropriate to award compensation for future prospectus since it is partial disablement at 45% instead of 85%. Further the lower court had not awarded compensation under the head of loss of amenities/and/or loss of prospectus of marriage, this court therefore, decided to award Rs.1,00,000/- for loss of amenities/and/or loss of prospectus of marriage.

24. The notional income is fixed at Rs.15,000/- and the future prospectus at 40% fixed by the lower is proper and we confirm the same. The age of the petitioner, at the time of accident, is 20 and applying the multiplier is 18, and the disability fixed at 45%. It works



C.M.A.(MD)No.1459 of 2024

out to Rs.15,0000 + 6000 x 45% x 12 x 18 = Rs.20,41,200/- which is

modified and apportioned as follows:

Permanent disability	Rs.20,41,200/-
Pain and sufferings	Rs.2,00,000/-
Loss of amenities/ loss of prospectus of marriage	Rs.1,00,000/-
Medical expenses	Rs.2,95,300/-
Extra nourishment	Rs.25,000/-
Nursing	Rs.15,500/-
Travel expenses	Rs.5,000/-
Total	Rs.26,82,000/-

25. In the result, the Civil Miscellaneous Appeal is partly allowed.

The award passed by the trial Court is modified and the Appellant is directed to pay a sum of Rs.26,82,000/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit the amount, less the amount if already deposited to credit of MCOP. No.1298/2019 on the file of the Special Sub Court for Motor Accident Claims Tribunal, Madurai, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the 1st respondent/claimant is permitted to withdraw the same, less the amount already withdrawn, if any, together with proportionate interest and costs,



C.M.A.(MD)No.1459 of 2024

by filing appropriate petition before the Tribunal. No costs.

Consequently, connected miscellaneous petition is closed.

**(G.R.S., J.) & (R.P., J.)
25.11.2024**

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
RM

To

1.The Motor Accident Claims Tribunal
(Special Sub Court)
Madurai.

Copy to

1.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD)No.1459 of 2024

G.R.SWAMINATHAN, J.

AND

R.POORNIMA, J.

RM

Judgment in

C.M.A.(MD)No.1459 of 2024

25.11.2024