



C.M.A.(MD)No.1488 of 2024

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

WEB COPY

DATED : 25.11.2024

CORAM:

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

**C.M.A.(MD)No.1488 of 2024  
&  
C.M.P(MD)No.15819 of 2024**

The Branch Manager,  
Reliance General Insurance Company Limited,  
Tirunelveli. ... Appellant/ 2<sup>nd</sup> Respondent

Vs.

1.J.Jeyakumar ...1<sup>st</sup> Respondent / Petitioner  
2.S.Nagaraja ...2<sup>nd</sup> Respondent/1<sup>st</sup> Respondent

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 13.04.2023 made in MCOP No.37 of 2018 on the file of Motor Accident Claims Tribunal, (Additional Sub Court), Tenkasi, and allow this Civil Miscellaneous Appeal.



C.M.A.(MD)No.1488 of 2024

WEB COPY

For Appellant : Mrs.K.R.Shivashankari

For Respondent No.1 : Mr.D.Srinivasa Ragavan

For Respondent No.2 : no appearance

### **JUDGMENT**

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

The appellant / 2nd respondent / Insurance Company in the claim application has filed this Civil Miscellaneous Appeal against judgment and decree dated 13.04.2023 passed in M.C.O.P.No.37 of 2018 by the Motor Accident Claims Tribunal (Additional Sub Court), Tenkasi.

2. The brief averments contained in the petition are as follows:

(a) On 29.8.2017 at about 09.00 p.m., the petitioner came to his residence with his friend in a two wheeler bearing registration number TN 76 AX 4365 Honda Unicorn, which was driven by the petitioner's friend, and he was travelling as pillion rider in the said two wheeler. When the vehicle reached Madhaapuram check Post on the way to Mettur Main Road from West to East near Sengamall belonging to one



C.M.A.(MD)No.1488 of 2024

Ruben, suddenly a cow crossed the road; in order to avoid dashing against the cow, the vehicle was turned and dashed in the mud heap and there by the accident occurred.

(b) In the said accident, the petitioner sustained fracture injury on top of his head, occurred fracture injury near his left eye, and lacerated injuries all over the body. He also loss 13 or his teeth. All the injuries are grievous injuries. He was immediately taken to Government Hospital, Tenkasi and treated as inpatient. After first aid, due to grievous injury, he was taken to Shiva Hospital, Thirunelveli. Thereafter, he was taken to Meenakshi Mission Hospital, Madurai and several operations were conducted and he survived. Till date he is under treatment.

(c) The accident took place due to the carelessness of the first respondent. A case was registered in Kadayam Police Station in Crime No.185 of 2017 for the offence punishable under sections 279, 337 IPC and the same is pending. The petitioner was working as a driver and earning a sum of Rs.20,000/-. Due to the injury sustained by him, he is not able to continue his profession and prayed for a sum of Rs. 50,00,000/- (Rupees Fifty Lakhs only) as compensation.



C.M.A.(MD)No.1488 of 2024

3. The 2<sup>nd</sup> Respondent/1<sup>st</sup> respondent in his counter stated that the accident occurred due to the sole reason that a cow was crossing the road and in order to avoid the same, he turned the vehicle and hit the mud heap and therefore, the accident did not happen due to his rash and negligence.

4. The appellant/ 2<sup>nd</sup> respondent/insurance company strongly opposed the contention of the petitioner and stated that the compensation claimed is far excessive.

5. During trial, the petitioner was examined as PW1, Ex.P1 to Ex.P 13 were marked. No evidence adduced on the side of the respondents and no documents produced.

6. After perusing the entire records, the trial court awarded compensation of Rs.19,42,681/-.

7. Aggrieved by the said order, the present Civil Miscellaneous Appeal filed on the following among other grounds:

(1) That section 168 of the Motor Accident Tribunal



WEB COPY



C.M.A.(MD)No.1488 of 2024

act is required to make an award determining the amount of compensation which is to be in the real sense damages, which in turn appears to it to be just and reasonable. The compensation is not expected to be windfall for the victim.

(2) The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. The expression 'just' denotes equitability, fairness and reasonableness and non-arbitrariness. And there is no golden rule applicable to all cases for measuring the value of human life or a limb. The awarding amount of Rs.19,42,681 is not a reasonably liable for compensation with the interest of 7.5% in favour of the claimant and prayed to set aside the award passed in M.C.O.P.NO. 37 of 2018 dated 13.4.2023 and to allow Civil Miscellaneous Appeal.

8. The first respondent/claimant argued that the compensation award by the trial court is just, reasonable and there is no ground available to interfere with the order of the lower Court and hence, prays that the Civil Miscellaneous Appeal is liable to be dismissed.



C.M.A.(MD)No.1488 of 2024

WEB COPY

9. Now this court has to decide whether the compensation awarded by the trial Court is just, reasonable or highly excessive.

10. Ex.P3 is the discharge summary issued by the department of Meenakshi Mission Hospital and Research Centre, Madurai, shows that the petitioner was admitted in the hospital, on 05.09.2017 was brought to E R with alleged history of road accident on 29.08.2017 on examination was unconscious, shifted to ICU and connected with mechanical ventilator support. CT brain was done which showed – small extra axial hematoma seen in the left temporal region, maximum thickness 16mm. Diffuse brain edema noted. Haemorrhagic contusion seen in the right occipital lobe. Treated with anticonvulsants, anti odema, antibiotics, neuro protective, vitamins, along with other supportives.

DIAGNOSIS: LEFT TEMPORAL EDH/RIGHT OCCIPITAL  
CONTUSION/LEFT TEMPORAL BONE FRACTURE

LEFT ZYGOMATIC MAXILLARY COMPLEX  
FRACTURE/RIGHT ANTERO LATERAL WALL OF MAXILLARY  
SINUS FRACTURE



C.M.A.(MD)No.1488 of 2024

RIGHT 6TH AND 7TH RIB FRACTURE

MANAGEMENT: NEU.SUR: RIGHT FRONTAL BURRHOLE AND  
ICP MONITOR DONE ON 05.09.17

DENTAL: ORIF FOR LEFT ZYGOMATIC MAXILLARY  
COMPLEX FRACTURE USING TITANIUM PLATES AND SCREW  
DONE ON 15.09.17

CONSULTATIONS: SURGERY, CTVS, DERMATOLOGY,  
OPHTHALMOLOGY, PULMONOLOGY, HEMATOLOGY

HISTORY:

Alleged history of Road traffic accident on 29.08.17

Followed by Loss of consciousness

H/o Seizures

H/o Vomiting

History of bleeding - Nasal bleed

Not a known diabetes mellitus

Not a known Hypertensive//Coronary artery disease

EXAMINATION:

Unconscious

GCS EIVTMS (6T/15)



C.M.A.(MD)No.1488 of 2024

Pupils: Right Snm NRTL, Left 3mm NRTL

Cough reflex: Present

Doll's eye absent

CVS S1S2

RS: Bilateral air entry equal & Normal vesicular breath sounds

PA: Soft

Injuries: Multiple healed abrasions over the left side of the face.

11. Ex.P9, Ex.P10 and Ex.P11 are medical bills produced in support of the claim of the petition.

12. Apart from the above, Ex.P13 disability certificate issued by the District Medical Board Tirunelveli District @ Tenkasi, dated 17.03.2022, which shows as follows :

Diagnosis/injuries as follows : S/B PSYCHIATRIST

NIMHANS Neuro Physiological battery

Post trauma sequelae

Disability – 20%

S/B ophthalmologist



WEB COPY



C.M.A.(MD)No.1488 of 2024

Left Eye – Primary Optic atrophy 30%

blind A ...

S/B ENT Surgeon

B/C tympani normal

PTA

R1 ear – 15db

L1 ear – 78.6db

disability - 14%

The total disability assessed by the Medical Board is 51% partial permanent. Ex.P13 reveals that the petitioner's present deformities - 30% blind and present weakness assessed as exotropia.

13. The Disability Certificate issued by the Medical Board clearly proved that the petitioner was assessed with partial disability and he became 30% blind due to the accident and having weakness of exotropia which is a form of strabismus where the eyes or deviated outward. As per the medical dictionary, people with Exotropia often experience cross diplopia. The petitioner stated that he was a driver and earning a sum of Rs.20,000/- at the time of accident, however, no document produced to show his income. However, he had produced his



C.M.A.(MD)No.1488 of 2024

driving license Ex.P8 and Ex.P5 registration certificate of his vehicle TN-76-L-3343 tipper lorry, which shows that he is having a lorry and also holding a valid license, which infers that he derived income from his lorry.

14.If a person is having 30% blindness, he is not able to drive the lorry and derive income, however the petitioner during cross examination admitted that he is at present working as supervisor, which proved that he is not having complete functional disability. However partial loss of eyesight can have various implications viz., difficulties in seeing objects, and difficulty in movement on the sides, trouble reading, driving, etc., eyes are important part of one's health, as they are sensory organ that help everyone to see and make sense of the world around and partial loss of vision can affect one's life, due to the partial disability, his future income will definitely be affected.

15. We rely upon the judgement reported in Rekha Jain Vs. National Insurance Company Ltd., and others, wherein, the Hon'ble Supreme Court has held as follows :

*“14..... It is worthwhile to extract Paragraph 16 from K. Narasimha Murthy case (supra), which reads*



WEB COPY



C.M.A.(MD)No.1488 of 2024

as under:

*“16. The Courts and Tribunals, in bodily injury cases, while assessing compensation, should take into account all relevant circumstances, evidence, legal principles governing quantification of compensation. Further, they have to approach the issue of awarding compensation on the larger perspectives of justice, equity and good conscience and eschew technicalities in the decision-making. There should be realisation on the part of the Tribunals and Courts that the possession of one's own body is the first and most valuable of all human rights, and that all possessions and ownership are extensions of this primary right, while awarding compensation for bodily injuries. Bodily injury is to be treated as a deprivation which entitles a claimant to damages. The amount of damages varies according to gravity of injuries.”*

*15. In R.D. Hattangadi v. Pest Control (India) Private Limited and Ors.[2], speaking about the heads of compensation, this Court has held thus:*

*“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 damages. Pecuniary damages are those which the victim has actually incurred and which is 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 profit upto the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include; (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for 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."*

.....

*18. Lord Morris in his memorable speech in H. West and Sons, pointed out this aspect in the following words:*

*"Money may be awarded so that something tangible may be procured to replace of like nature which has been destroyed or lost. But, the money cannot renew a physical frame that has been battered and shattered. All the Judges and Courts can do is to award sums which must be regarded as giving*



*reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common assent awards must be reasonable and must be assessed with moderation. Further, more it is eminently desirable that so far as possible comparative injuries should be compensated by comparable awards."*

.....

*20. Further, a Division Bench of Karnataka High Court in Basavaraj v. Shekar[6], has held as under:*

*"If the original position cannot be restored - as indeed in personal injury or fatal accident cases it cannot obviously be - the law must endeavour to give a fair equivalent in money, so far as money can be an equivalent and so 'make good' the damage.*

*Therefore, the general principle which should govern the assessment of damages in personal injury cases is that the Court should award to injured person such a sum of money as will put him in the same position as he would have been in if he had not sustained the injuries. But, it is manifest that no award of money can possibly compensate an injured man and renew a shattered human frame." (Emphasis laid by the Court)*

*21. Lord Morris of Borth-y-Gest in Parry v. Cleaver[7], has 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".*

*(Emphasis laid by the Court)*

22. *The necessity that the damages should be full and adequate was stressed by the Court of Queen's Bench in Fair v. London and North Western Railway Company[8]. In Rushton v. National Coal Board[9], Singleton L.J. has said that:*

*"When damages have to be assessed in a case of this kind there are many elements for consideration: the pain and suffering undergone and that which may occur in the future; the loss of some of the amenities of life; the fact that a man with an injury of this kind will always require some measure of help, even though he may be able to earn considerable money. These are some of the matters which have to be taken into consideration, and another is the fact that his earnings will probably be less than they were before." (Emphasis laid by the Court)"*

16. We also rely on 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*



WEB COPY



C.M.A.(MD)No.1488 of 2024

*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*



C.M.A.(MD)No.1488 of 2024

*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.. ...”*

17. Taking into consideration of the above and also the fact that we are satisfied that due to the impact of the accident, the petitioner is not able to perform all his duties and bodily function that as he could perform before the accident.

18. We also note that the trial Court fixed monthly income Rs.20,000/-. The age of the petitioner at the time of accident is 30 and he had filed documents to prove his income. The monthly income is not excessive. As far as multiplier applied for future income, the trial Court had taken into consideration of 51% disability for future income and future prospects. The income fixed by the trial court is only nominal. The medical expenditure and other expenditure are not excessive and the interest calculated is not on the higher side. Though the learned counsel for the appellant Insurance company contended that the award is on the



**C.M.A.(MD)No.1488 of 2024**

higher side and it requires reduction, this Court is of the view that the Tribunal has awarded a just and reasonable compensation and there is no ground available to interfere with the order of the trial Court.

19. In view of the above stated reasons, we do not find any infirmity in the impugned award passed by the Tribunal and the same is confirmed. The appellant is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the 1<sup>st</sup> respondent/claimant is permitted to withdraw the same, less the amount already withdrawn, if any, together with proportionate interest and costs, by filing appropriate petition before the Tribunal.

20. In the result, the Civil Miscellaneous Appeal is dismissed. 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



**C.M.A.(MD)No.1488 of 2024**

WEB COPY To

The Motor Accident Claims Tribunal,  
(Additional Sub Court), Tenkasi.

Copy to

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



WEB COPY



C.M.A.(MD)No.1488 of 2024

**G.R.SWAMINATHAN, J.**

**AND**

**R.POORNIMA, J.**

RM

Judgment in

**C.M.A.(MD)No.1488 of 2024**

**25.11.2024**